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PROCEEDINGS

IN THE

EQUITY SUIT

OF THE

Commonwealth of Virginia

VS.

The State of West Virginia,

WITH AN APPENDIX.

COMPILED BY
CLARKE W. MAY, Attorney-General.

STATE LIBRARY, MINN.
1911

Charleston:
TRIBUNE PRINTING CO.,
1907.

TABLE OF CONTENTS.

	Page
Bill of Complaint,	1-93
Petition to File Demurrer	97
Demurrer	98-99
Amended Demurrer	103-105
Brief of C. W. May, Attorney General, and Associate Counsel, C. E. Hogg, and Mollohan, McClintic and Mathews, for the defendant	109-153
Brief of J. G. Carlisle for the Defendant,	157-219
Brief of William A. Anderson, Attorney General, and Associate Counsel, Holmes Conrad, for the Plaintiff,	223-268
Argument of C. E. Hogg, for the Defendant	271-287
Argument of Holmes Conrad, for the Plaintiff	291-317
Argument of William A. Anderson, for the Plaintiff,	321-344
Argument of J. G. Carlisle, for the Defendant	347-376
Supplemental Brief for West Virginia	380-390
Reply Brief for Virginia	393-413
Decision Overruling the Demurrer	417

APPENDIX.

Wheeling Ordinance, sections 9 and 10	437
Provisions of first West Virginia Constitution on the Virginia debt	438
Act of Virginia giving consent to formation of West Virginia	438-439
Act of Congress for admission of West Virginia into the Union	439-441
Act of Virginia transferring to West Virginia certain interests in property	441-443
Act of Virginia making appropriation to the proposed new State	443-444
Joint Resolution Concerning Reunion of Virginia and West Virginia	444-446
Arbitration proposed by Virginia,	449-451
West Virginia's Reply to the Proposed Arbitration	451-454
Report of Virginia Debt Commissioners, 1871	457-489
Report of Senate Finance Committee, 1873	490-493
Joint Resolutions passed by the West Virginia Legislature Relating to the Virginia Debt,	494-496

INTRODUCTORY.

In this volume will be found the proceedings in full to this time in the suit of the Commonwealth of Virginia vs. West Virginia, in the Supreme Court of the United States. There have been from time to time many requests made to me, to Governor Dawson and the other members of the Board of Public Works, from citizens of the State, for information as to the progress of this suit, and what is being done to protect the State's interests therein. And knowing of no better way by which the public could be informed of the true situation, I have prepared this volume and in it will be found all that has been done by either party to said suit to the present time.

For the further information of those interested, there is added as an appendix some sections of the ordinance of August 20, 1861, passed by the Wheeling Convention, relating to the public debt of Virginia, some sections of the first Constitution of West Virginia, the act of the General Assembly of Virginia giving the consent of that State for the formation of West Virginia, the act of Congress admitting West Virginia into the Union, resolutions of the West Virginia Legislature concerning the Virginia Debt and the report of the Commissioners appointed by the Governor of West Virginia pursuant to a resolution of its Legislature and the report of the Senate Finance Committee of 1873.

The Legislature, at its recent session, chapter 45, Acts 1907, passed an act directing the Attorney General to defend the State in this cause and authorized the Board of Public Works to employ such attorneys and agents to assist the Attorney General in such defense as in its judgment shall be necessary for the purpose; and in pursuance of this act, the Board has employed Hon. John G. Carlisle, late Speaker of the House of Representatives and Secretary of the Treasury, the law firm of Mollohan, McClintic and Mathews, of Charleston, and Hon. Charles Edgar Hogg, of Morgantown.

By reference to the opinion of the Court overruling the demurrer of the State of West Virginia, it will be noticed therein that nothing has been decided definitely against the State, as the Court in overruling the demurrer says that it is done without prejudice to any question raised in the demurrer being raised in the answer, which it

provides shall be filed by the first Monday of the next term, which term begins in October next.

The further proceedings in this case will be given in this manner from time to time, as they develop.

With the assurance that everything is being done by the Attorney General and the counsel employed to assist him in this behalf that can be done to protect the interests of the State, and that the Board of Public Works is heartily co-operating with the counsel, and that they together are giving to the case every attention that it requires, I beg leave to subscribe myself,

Very respectfully,

CLARKE W. MAY,
Attorney General.

IN THE SUPREME COURT OF THE UNITED STATES.

ORIGINAL, No. 7.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

1 To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the Court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

2 II.

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manu-

facturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river, since the first day of January, 1861, has increased to a very great and material ex-
3 tent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the puble debt for which her bonds were

issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear
4 from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local
5 purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was in-

tended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city, of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State;" Section 9 of which ordinance was as follows, to-wit:

6 "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein and it was provided by this Act of Congress that

7 whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, bridings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the
8 said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no
9 part of the property so received by West Virginia had been obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted.

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by Section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have
12 been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and recon-

struction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay
13 to the uttermost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since, January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over
14 Seventy One Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be

fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

15 XIV.

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto.

They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who who shall take the accounts hereinafter prayed for

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part if it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own
17 right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt

18 of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constituton under wheh she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she
19 should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact represented in said "Restored Goverment" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: "*A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of*

West Virginia to the payment of those found to be entitled to the same," approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the
20 active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled *"An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,"* the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last-mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completly shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (eight in number) which she prays may be read as a part of her bill, to-wit:

21 Exhibit Number 1. A copy of the said Act of the General Asembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of

the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the apointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1906, together with the accompanying papers.

22 XXII.

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto

your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
HOLMES CONRAD.

23 EXHIBITS WITH BILL.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

24 EXHIBIT NUMBER 1.

CHAP. 282.—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this State, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

25 2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day, and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues, and demands due the state, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the char-

26 acter herein authorized to be issued; and new certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virgin-

ia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared
27 shall commence the issuance of the same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts, respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest

28 certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

5. Whatever sum may be realized from the claims of this state against Seldon, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale and disposition of the stocks and bonds, and debts owned by the state in and against any and all railway or other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and the second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expense incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same,
29 signed by the treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

30 EXHIBIT NUMBER 2.

CHAP. 24—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial interests of the state and whereas the council of foreign bondholders

of London, England, and the funding association of the United States of America, limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall
31 be receivable at and after maturity for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired, may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is diveded into two classes, as follows, to wit:

Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one,

as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be
32 funded in the new bonds, to be issued under this act, as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II, refunded, shall never exceed in amount one-third (1-3) of the total amount refunded, until eighteen million dollars of Class I have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided, at least eight millions of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine, they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as
the said corporations shall present for funding the obliga-
33 tions aforesaid, in the amounts and in the periods aforesaid they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discre-

tion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so for as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the control of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper
34 obligations to be issued, register the same in his office, clip therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligation so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrenderd under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under

this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority
35 of this act are paid, there shall be levied and collected the same as, and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said inter-
36 est as it accrues. And in case the auditor shall not be able to raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollars. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such

certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hun-
37 dred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

38 EXHIBIT NUMBER 3.

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

			Interest.	Principal.
	Principal outstanding at this date:			
1861, January 1st,	Sterling debt bearing 5 per cent. interest	$ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest	29,533,582 90		
	Debt guaranteed bearing 6 per cent. interest	294,130 00		
	Total principal			$31,800,712 90
	Interest:			
	Past due and uncalled for at this date	101,023 63		
	Maturing at this date, January 1st, 1861	944,156 38		
	Total interest		$1,045,183 01	
1863, July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.			
39	*Principal July 1st, 1863:*			
	Sterling debt bearing 5 per cent. interest	$1,973,000 00		
	Do.lar debt bearing 6 per cent. interest	29,827,712 90		
	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02		
	Total principal July 1st, 1863			33,141,212 92
	Interest July 1st, 1863:			
	Past due January 1st, 1861, and uncalled for	1,045,183 01		
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07		
	Total interest to July 1st, 1863, inclusive		5,954,716 08	

1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—			
	Principal:			
	Two-thirds of $1,973,000 sterling debt		1,315,333 34	
	Two-thirds of $31,168,212.92 dollar debt		20,778,808 62	
	Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96
	Interest:			
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive		3,969,810 72	
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above	$20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67		
	Total dollar bonds		17,068,358 95	
	Total principal			18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:			
	On $1,315,333.34 sterling bonds at 5 per cent.		526,133 28	
	On $20,778,808.62 dollar bonds at 6 per cent.		9,973,828 14	
			10,499,961.42	

	Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58			
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11			
			4,039,546 69		
				6,460,414 73	
	Interest:				
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive		3,969,810 72		
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above		1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above	$20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67			
	Total dollar bonds		17,068,358 95		
	Total principal				18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:				
	On $1,315,333.34 sterling bonds at 5 per cent.		526,133 28		
	On $20,778,808.62 dollar bonds at 6 per cent.		9,973,828 14		
			10,499,967 42		
	Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58			

Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11			
		4,039,546 69		
			6,460,414 73	
Add interest accrued to July 1st, 1871, as above		6,767,790 90		
Total		18,041,288 93		
Less amount paid between July 1st, 1871, and October 1st, 1881—in money	$2,415,973 56			
In coupons	8,707,615 50			
Less amount covering average time of the redemption of the $1,540,658.12 bonds redeemed	331,800 00			
Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00			
Less tax-receivable coupons maturing in January and July, 1882	1,117,724 87			
Amount of interest (special):				
Redeemed and cancelled	380,110 02			
Total deductions		13,848,945 95		
Balance of interest to July 1st, 1882			4,192,342 98	
Total debt to July 1st, 1882:				
Principal, as above				16,843,034 17
Interest, as above				4,192,342 98
Total				21,035,377 15

Including bonds held by the literary fund to the amount of $1,428,245.25, an interest on the same—in arrears July 1st, 1881, $516,322.19—and interest added from that date to July 1st, 1882, $85,694.71, making $602,016.90 included in the above sum of $4,192,342.98.

Total debt	$21,035,377 15

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41 And whereas by this account it appears that Virginia owes her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, there hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eight-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eigthy-two, makes the amount of such interest then to be in arrears, one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of the government and the maintenance of their schools, as required by the constitution; and whereas the net revenues of the state, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from
42 the public free school fund, after liquidating gradually the ar-

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rearages to the Literary fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published in Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia asknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par; principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer.*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

43 No. —— (of bond).

The commonwealth of Virginia will pay to bearer —— dollars, in

lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—the first coupon to be payable January first eighteen hundred and eighty-three.

——— ———, *Treasurer.*

$———.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of a different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore numerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

42 No. ——.

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day of ——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificate of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this — day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second

auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of the issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

EXHIBIT NUMBER 4.

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt

created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.

(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourtenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteeen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States,) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually of which aggregate debt of about twenty-eight million of dollars the said bondholders committee represent that they now hold and agree to surrender not less than twenty-three million of dollars and

47

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly

between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore,

1. Be it enacted by the general assembly of Virginia, That
48 the commissioners of the sinking fund, a majority of whom may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasury of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved —— day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be
49 indebted to —— —— (in case of a coupon bond to the bearer, and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with

accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.] ——— ———, *Treasurer.*
——— ———, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of ——— the commonwealth of Virginia will pay to bearer ——— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number ———. ——— dollars.

——— ——— *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousaid dollars and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as

aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be number-
51 ed, and upon each package shall be endorsed the amount and character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of
52 twenty-three million of dollars or more if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under

this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount,
53 or the face value thereof in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated —— day of ——, and No. —, leaving a balance of —— dollars, with enterest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day
54 of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*

—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bond-holders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bond-holders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely to each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be re-
55 ceived for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received the said cash, if paid, to be returned if proper coupons are subsequently tendered and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said com-

mittee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasury for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nineteen hundred and twenty-nine, one half of one per cent, upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase at a rate not above par and accrued interest) of the bonds issued under the foresaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

56

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the man-

ner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

57 12. All coupons heretofore tendered for taxes and held by said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments

58 thereto- towit: an act entitled "an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it

shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

59 EXHIBIT NUMBER 5.

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eight, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the parti-

tion of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighfeen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state; now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or exisitng during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia
61 proper to be borne by West Virginia.

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

62 EXHIBIT NUMBER 6.

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept
63 the new bonds provided for by said several acts, certificates

for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificate this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Vrginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificate which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia
64 on said certificate as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate

holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account.

3. This act shall be in force from its passage.

65 EXHIBIT NUMBER 7.

Showing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * * * *

Amount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906	$35,551,642.82
Bonds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, p. 21, and now held by Virginia	10,771,791.49(*)
New Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her— See Second Auditor's Report for 1905, p. 9 ...	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include some considerable amounts of ante bellum bonds of Virginia paid her by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest of the State in such Companies or for property sold them by the State; nor does it include considerable amounts of said bonds received by the State from the sureties of certain Sheriffs—nor does the Statement include amounts paid by Virginia since 1861 in settlement of open accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

EXHIBIT NO. 8.

66 Report of the Commission appointed and acting under the joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly, approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., January 9th, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for

adjusting with the State of West Virginia the proportion of the debt of the originial State of Virginia proper to be bourne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March 6th, 1894, and an Act of the General Assembly entitled "An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State
67 with the request that such negotiations might accordingly be opened, which communication was laid before the Legislature of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899-90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed, showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two-thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your com-

mission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and insti-
68 tute such proceedings on behalf of the State as might, in the judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871, required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia, or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but
69 subject to renewal or extension by the parties, and to such amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might, under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advis-

ory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the pro-
70 posed settlement, which notice the agreement provided was to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that in the absence of such notification from a majority of the depositors, the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the Depositing Committee to Messrs. Brown Bros. & Co., the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64, of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind.

A copy of this agreement and receipt of December 14th,
71 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Com-

mission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a sub-committee consisting of Messrs. Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White, Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va., by the Attorney General and the chairman of the sub-committee, and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into negotiations in regard to a settlement in
an address made by him to the Senate and House Finance
72 Committees aforesaid. It was considered by your Commission that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that it was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed.

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia

to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"*Copy of Certificate under Act of March 30, 1871.*

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an Act approved March 30th, 1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amount-
73 ing to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"_____ _____,

"*Treasurer of the Commonwealth of Virginia.*

"_____ _____,

"*Second Auditor of Virginia.*"

So it would appear that if the contention of West Virginia is correct; the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certifi-
cates of 1871 and have only been restrained and prevented
74 by the prospect of some definite action on the part of Virginia.

So your Commission were confronted with the alternative of

either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distributive share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement endorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of December 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act
75 of March 6th, 1900, to accept the amount recovered in such suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77, of which $1,491,231.13 were those of 1871, had been deposited with them and were subject to the control and disposal of your Commission, making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust

Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in them, because your Commission have every reason to believe
76 them to be entirely responsible, but because it was deemed best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68 are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,778,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902, was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted.

JOHN B. MOON.
J. THOMPSON BROWN.
77 H. T. WICKHAM.
H. D. FLOOD.
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

AGREEMENT.

78 This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to-wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

Said board may add to their number, and any vacancy
79 may be filled by the remaining members.

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes

power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to-wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in
80 two of the newspapers published in New York City and London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

(3.) After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

(4.) Each depositor shall, when he receives his new bonds, in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges
81 and expenses of settlement, including the compensation of the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of certificates as may be necessary to reimburse the expenses actually in-

curred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

(5.) The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th day of July, 1898.

82 An act to provide for the settlement with West Virginia of the portion of the public debt of the original State of Virginia properly to be bourne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept

83 the new bonds provided for by said several acts, certificates

for such proportion of the obligation—surrendered by them as was deemed proper to be borne by the State of West Virginia—to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby, is authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates
84 that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate

holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

85 *Proposal.*

To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agree-

86 ment and contract aforesaid, then your commission should be authorized, by and with the approval of the Attorney-General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreement that all the said certificates so deposited would be promptly surrendered in exchange for whatever

amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to-wit, $8,565,095.70 and a majority of all the other certificates aforesaid, to-wit, $1,782,-475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid, do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
87 acting for the State of Virginia under the said joint resolution and act of Assembly aforesaid, that your commission will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney-General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shal' be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

Richmond, Va., September 18th, 1902.

88 The undersigned, Brown Brothers & Company, Bankers of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to-wit:

$8,565,095.70	certificates of	1871
1,782,475.13	" "	1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,
Chairman of the Virginia Commission.

Attest:

JOS. BUTTON, *Secretary.*

Richmond, Va., Sept. 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

89 *Plan for the Settlement of the West Virginia Debt.*

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds, or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission

which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney-General, be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims there-
90 under. On the 18th of September, 1902, the Committee held on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a settlement with respect to said certificates, and would by and with the advice and approval of said Attorney-General, take such action as they might deem needful in the premises; the amount realized on such settlement to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney-General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended, more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named Committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on;

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by
91 the Virginia Commission either under the agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious.

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows;* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

92 The following are the affidavits showing publication in two newspapers in London and New York on the notice given under Article 2 of the Agreement of July 28, 1898:

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas Mulhearn being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy has been regularly published in the said Mail and Express six times to-wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.

R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

93 STATE OF NEW YORK, *City and County of New York, ss:*

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times to-wit: on January 14, 17, 21, 24, 28, 31st, 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York at the offices of Messrs. Brown Brothers and Company, 59 Wall Street, and in the City of London, England, at the office of Messrs. Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

94 (Copy.)

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9, 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me

FRANCIS W. FRGOUT,
Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th, July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Sec-

tion 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under the said agreement, and all parti*d* in interest are notified that the plan may be obtained, without cost in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

95 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

96 (Copy.)

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was orcered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March, 1903.

(Signed RICHARD WESTCOTT.
Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.
To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company,

Founders Court. Lothbury, E. C., and 123 Pall Mall W.
97 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R .P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

98 *West Virginia Debt Settlement.*

Committee.		Advisory Board.
John Crosby Brown, Chairman.	George F. Baker,	W. Pinkney Whyte.
J. Kennedy Tod,	Bartlett S. Johnston,	Wayne MacVeigh.
Clarence Cary,	Wm. C. Legendre,	Lyman J. Gage.

R. P. Chew, of West Virginia.
Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th,* 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebtness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th day of December, 1904.

(Signed) BROWN BROTHERS & CO.

99 EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905.

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements

had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H. D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening
100 negotiations with the State of West Virginia looking to the adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized, and empowered by and with the advice and approval of the
101 Attorney General, to make a settlement and adjustment with West Virginia as provided in said act of March 6th, 1900. The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the Commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration; and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the original State of Virginia was deprived of more than one-third of
102 its white population and about one-third of its territory, embracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia, further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the

moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1961, shall be assumed by this state; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than
103 $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the Original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia.

4. It has been understood that West Virginia was not willing to negotiae directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to your Excellency and through you to the Legislature of your State, because they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlement between the States, it is hoped that the suggestions herein contained will re-

ceive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

104 ADDRESS

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

By RANDOIPH HARRISON.
Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the State of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing
105 the state of West Virginia contained immense resources of wealth, but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been goverened by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in
106 the town of Clarksburg, met together and called a convention to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what known as the "Restored Government of Virginia." They ignored the government at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia, and called a legislature together at Wheeling on July the 1st, 1861, which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congress-

men. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. The "Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducing therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated
107 that the old state would consent to her dismemberment only on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eighth article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd of May, 1862, this constitution was submitted to the people of the counties composing the new State of West Virginia for

ratification, and it was duly reported as ratified by a majority of the voters at the polls.

108 On the 13th of May, 1862, the legislature of the "Restored Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December, 1862, the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

Mr. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

MR. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"

MR. CRITTENDEN: "* * * There is another question; the state of Virginia owes a large debt. How is this debt to be divided?"

Mr. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

Mr. CRITTENDEN: "I only knew that in this bill there was
109 no provision made for a division of the said debt. The gentleman tells us there is provision made for it in the constitution, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe, 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virgin-

ia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt:

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863, passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on the condition that West
110 Virginia should account for it in the settlement to be had with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and the legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the man-
111 ner in which they had been received by the authorities in Virginia; but it is, of course, difficult to determine at this distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August, 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court instituted by the state of Virginia against West Virginia to
112 recover jurisdiction over the counties of Jefferson and Berkley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that

of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill, was as follows:

Copy of Certificate under Act of March 30, 1871.

113 "COMMONWEALTH OF VIRGINIA.

No. ——. $——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va. in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bond so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"—— ——,
"Treasurer of the Commonwealth of Virginia.

"—— ——,
"Second Auditor of Virginia."

Under the foreging act about fifteen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. These certificates do not in terms release Va. from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the

debt; but under the form of the certificate it might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only
114 because it is a duty she owes the creditor, but especially for her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certificates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February, 1892, Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as fol-
115 lows in respect to these certificates:

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued, and are outstanding in the hands of the public, certificates amounting to	$564,258.87

Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by
116 resolution of March 6, 1894, appointed commissioners for the purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January, 1895, Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and

desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been assembled and are held on deposit subject to the control of
117 the Virginia commission under an agreement with the owners of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440.642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September, 1905, unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate these facts to the governor and legislature of West Vir-
118 ginia, and invite their co-operation in a friendly adjustment and settlement of the account betwen the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your

notice the exceptional opportunity now presented to dispose finally of this vexatious question.

Is there any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you cannot dissent from the propositon that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declarations of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How then, can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this account. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount that will end the matter. We only ask that your state will, through the proper authorities, unite with Virginia in stating the account betwen the two states in order that the question of
119 her liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her liability on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly forshadowed. In the case of Hartman v. Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field had this to say:

"It appears from the statutes to which we are referred—and we

know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were obtained upon her bonds, which were issued to an amount exceeding
120 $30,000,000. Being the obligation of a state of large wealth, which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until 1871, with the exception of a few small sums remitted in coin during the war to London for foreign bondholders, or paid in Virginia in Confederate money, and a small amount paid in 1866 and 1867, no part of the interest or principal was paid. During the war a portion of her territory was separated from her, and by its people a new state, named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But, as the whole state had created the indebtedness for which the bonds were issued, and participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common." (I Com., 26.) And Halleck, in speaking of a state divided into two or more distinct and independent sovereignties, says: In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts, and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement. * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art. 8, sec. 8.)

Virginia lost by the formation of the state of West Virginia one-

third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit
121 of the whole? The Supreme Court of the United States has, as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer "No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286.

North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota-North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virgina and West Virginia to compel the statement of the account between them, and the payment of the liability apportioned to each one. We are reliably
122 informed that the governor of one of the states has already been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by complusion.

Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January1, 1861:

123	Amount of interest paid from January 1, 1861, to January, 1905		$34,551,642 85
	Bonds now held in sinking fund	$1,111,500 00	
	Bonds paid off and cancelled	8,863,994 49	
			9,975,441 49
	Total of interest and bonds paid off		$45,527,134.34
	New bonds of Virginia issued for portion of debt funded and assumed by her		26,850,820 00
	Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt		$72,377,954 34

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne her share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the

present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the account
124 between the two states. If, however, your action shall be unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can assure you that whatever may be the result of our mission, we vill recall with pleasure the considerate attention you have shown us.

125 Memorandum of agreement, made this 14th day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constitutd under the contract of July 28th, 1898, and of which John Crosby Brovn is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd, 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Asesmbly of the State of Virgina, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900 and of which John B. Moon is Chairman, and Joseph Button is Secretary hereinafter referred to as the Virginia Commisison, party of the second part:

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in acordance with the said contract of July 28th, 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it
126 was agreed that the amount realized thereon should be ac-

cepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and the the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed set-
127 tlement as set forth in the said plan so published and more than thirty days having elapsed after the said publication was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59, Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia

Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to
128 issue such certificate to the said Virginia Commission in such form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18. day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia is pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commisison, attested by the respective Secretaries thereof, are herunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*
JOHN B. MOON,
Chairman of Virginia Commission.
JOSEPH BUTTON, *Secretary.*

129 The foregoing agreement is hereby approved as having been entered into by my advice and approval.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

Dated December 14, 1904.

130 The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of Sept. 1905.

JOHN CROSBY BROWN,
Chairman Depositing Committee.

ROBT. L. HARRISON, *Secretary.*

JOHN B. MOON,
Chairman Virginia Commission.

JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved, this 9th day of September, 1905.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

131 Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding.

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the maters outstanding and unsettled between the two States in connection with the deferred certificates known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1909, and of

aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all thus leaving to the Virginia Commission
132 and Attorney General of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States.

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the first day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal
133 of the said Commission for the purpose of carrying out this agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree,

by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for a n adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said
134 Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settle-
135 ment as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in

full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certificates as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW.
WM. C. LEGENDRE.
CLARENCE CARY.
J. KENNEDY TOD.
GEO. F. BAKER.
BARTLETT S. JOHNSTON.
Depositing Committee.
JOHN B. MOON.
WM. F. RHEA.
H. D. FLOOD.
H. H. DOWNING.
H. T. WICKHAM.
RANDOLPH HARRISON.
J. THOMPSON BROWN.
Virginia Commission.

Attest:
JOS. BUTTON,
Sec'ty Va. Commission.
RO. L. HARRISON,
Secretary Committee.

136. The foregoing contract of this date was entered into by and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract state and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

137. This is to certify that we, the undersigned, Brown Brothers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities

which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to wit:

Certificates of 1871:			
Principal		$9,317,009.30	
Sterling scrip	$10,666.66		
Dollar scrip	32,387.00	43,053.66	
			$9,366,062.96
Certificates of 1879:			
Principal		$403,362.62	
Dollar scrip	$33 890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal		$716,416.07	
Scrip		545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal		$259,825.71	
		$284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

138 Brown Brothers & Co., 59 Wall Street.

West Virginia Debt Settlement. (C)

NEW YORK, *January 23rd*, 1905.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR:—Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of	1871,	to amount of	.....	$1,279,713.46
do.	1882,	do.	.....	23,477.12
do.	1892,	do.	.....	66.67
Total additional certificates				$1,303,257.25

These certificates are held by us for your Commission in like

manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

139 Brown Brothers & Co.., 59 Wall Street

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th*, 1906.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

Issued under the act of 1871, to amount of			$1,491,231.13
do.	1879,	do.	23,250.00
do.	1882,	do.	51,588.97
do.	1892,	do.	66.67
Total additional certificates			$1,566,136.77

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal	.....	$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09
Issue of 1879:			
Principal	.....	$426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61
Issue of 1882:			
Principal	.....	$757,653.05	
Scrip	.....	556,139.35	
			1,313,792.40
Issue of 1892:			
Principal	.....	$259,825.71	
Scrip	.....	284,630.60	
			544,456.31
Total deposit to January 4th, 1906			$13,173,435.41

BROWN BROTHERS & CO.

140 STATE OF NEW YORK,
County of New York, To-wit:

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia deferred Certificates, and that I have had charge of the filing of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificates filed in New York County.

141 Central Trust Company of New York.
54 WALL STREET, *January 5th*, 1906.

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia deferred Certificates to the amount of $13,173,435.41 referred to in tht communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appamatox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

(Signed) CENTRAL TRUST CO., OF N. Y.,
F. L. GRANT, *Sec'y.*

142 Virginia, Second Auditor's Office.

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public.
Act March 30, 1871	$15,281,970 47		
" " " " held by Com.			
" " " " sinking fund..	2,026,439 39		
" " " " literary fund.	552,079 29		
		$2,578,518 68	
			$12,703,451 79
Act March 28, 1879			564,258 87
Act Feb. 14, 1882		$1,775,603 48	
Held by literary fund		166,943 33	
			1,608,660 15
Act Feb. 20, 1892			605,320 78
Total amount in the hands of the public			$15,481,691 59
Total amount held by the Com. S. fund			2,026,439 39
Total amount held by the literary fund			719,022 62
Total amount of W. Va. script issued			$18,227,153 60
In hands of public		$15,481,691 59	
Held by State of Virginia		2,745,462 01	
Total issue of W. Va. script		$18,227,153 60	

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her old obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,
Second Auditor of Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

DEMURRER

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL NO. 7.

Commonwealth of Virginia
vs.)
State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justifiable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

And as in duty bound your petitioner will ever pray.

_____
Governor of West Virginia.

_____
Attorney General of West Virginia.

_____,

_____,

_____, *Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL NO. 7.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant, the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein, and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorizes, if any authority at all is given, action on the part of the Commission in said bill mentioned and said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth

to such "Certificate holders" for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer, and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof ——— day of October, 1906.

Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

AMENDED DEMURRER.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original No. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who

are the alleged owners of certain certificates in the said bill set forth and described.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

W. M. O. DAWSON,
Governor of West Virginia.
CLARKE W. MAY,
Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned, clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof this 23rd day of February, 1907.

WM B. MATHEWS,
Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

CLARKE W. MAY,
Attorney General of West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

BRIEF FOR DEFENDANT.

IN THE SUPREME COURT OF THE UNITED STATES.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE DEFENDANT.

STATEMENT OF THE CASE UPON DEMURRER.

On January first, 1861, Virginia was indebted on account of the issuance of bonds at various times prior thereto in the aggregate amount of $31,800,712.90, upon which past due interest including the interest maturing on that date amounted to $1,045,183.01.

On July first, 1863, a date ten days subsequently to the admission of West Virginia as a State into the Union, the bill shows a public indebtedness of the plaintiff, including principal of said bonds and the interest accrued and unpaid thereon, amounting in the aggregate to $39,098,922.00. Of this sum, $5,954,716.08 is interest, and the residue, $33,141,212.92, is principal, representing the entire indebtedness against the State of Virginia at the time of the formation and admission into the Union of West Virginia. This indebtedness was held by private owners of bonds which Virginia had issued and sold upon her own account.

In 1871 the Legislature of Virginia passed an act providing for the funding and payment of her public debt, in which, among other things, there is recited that the people of Virginia being anxious for the prompt liquidation of her portion of the said debt, which was estimated by said act to be two-thirds of the entire indebtedness incurred by the State of Virginia, and also suggesting that the authorities of West Virginia might prefer to pay that State's portion of the said indebtedness to the holders thereof, and to enable the State of West Virginia to settle her portion of the said debt with the holders thereof, allotted to West Virginia by her own *ex parte* and *gratuitous* act the payment of the other third of said debt. The act provides for the surrender of the old and

the acceptance of the new bonds of Virginia for two-thirds of the amount of said aggregate indebtedness, and the issuance to the owners or holders of the other one-third of the amount due upon the old bonds, certificates bearing the same date as the new bonds representing the funded debt of Virginia, setting forth the form of the bond which is not funded, and the payment thereof to be provided for in accordance with such settlement as might thereafter be had between the States of Virginia and West Virginia.

In 1879 a further act was passed by the Legislature of Virginia regarding her said debt, which provides, among other things, for the issuance of certificates on West Virginia to the holders of the old bonds who had not already received such certificates, and that the State of Virginia would aid the holders of certificates issued by Virginia, in negotiating with the State of West Virginia for an amicable settlement of all the claims of such creditors holding the certificates issued by Virginia against the State of West Virginia, and that the acceptance of such certificates for West Virginia's one-third issued under the acts of the Legislature of Virginia, should be taken and held as a full and absolute release of Virginia from all liability on account of said certificates.

In 1882 another act was passed by the Legislature for the express purpose of ascertaining and declaring Virginia's equitable share of the debt created before and actually existing at the time the State of West Virginia was formed, the design of which act was to make a full settlement of said debt, and thus present a true state of the account between Virginia and her creditors, which embodies a recital to that effect, and which provides for the issuance of certain certificates by the Commonwealth of Virginia, covering the one-third of her indebtedness claimed to be payable by the State of West Virginia, and there is recited in the form of said certificate that the Commonwealth of Virginia has discharged her equitable share of her debt evidenced by such certificate, leaving a balance with interest to be accounted for by the State of West Virginia, without recourse upon the Commonwealth of Virginia. These certificates were accordingly issued by Virginia and received and accepted by the holders of that part of the original debt represented by said certificates, all of the old bonds surrendered to the Commonwealth of Virginia and cancelled, and Virginia thereby relieved from all liability on her own account to the holders of the West Virginia deferred certificates.

The only obligation left upon Virginia after the issuance of these deferred certificates purporting to represent West Virginia's portion of the debt of Virginia gratuitously fixed *ex parte* by the State of Virginia, and accepted by the holders of that part of the original debt of Virginia in settlement thereof, was to use her offices and endeavors to effect payment thereof, or its adjustment in some way, by the State of West Virginia. By this arrangement, effected alone by the State of Virginia with her creditors, she was relieved from all substantial liability—in fact from any pecuniary liability—as to the one-third of her indebtedness created by her

prior to the formation and admission into the Union of the State of West Virginia.

This suit was instituted in part for the recovery of that portion of the debt of Virginia created prior to and existing on June 20, 1863, the date of the admission of West Virginia into the Union and is the gravamen of the complainant's bill.

Another claim asserted by said bill is an alleged indebtedness evidenced by the bonds of Virginia and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of said State, as created under her laws, amounting, the former to $1,462,993.00, and the latter to $1,543,669.00, as of the date of January first, 1861.

This cannot be treated as a debt within the meaning of that term to be asserted against the State of West Virginia, because these Commissioners were simply agents for the management and control of a part of the internal fiscal affairs of the Commonwealth of Virginia, and the use of which was and is available only to the State of Virginia for the advancement of her own peculiar State interests.

Another and further claim made by the said bill is for the collection or payment for all property, real, personal and mixed, owned by or appertaining to the said State of Virginia, and being within the boundaries of the State of West Virginia, which passed to and became the property of the latter State, and was taken and appropriated to her own use by the State under the provisions of an act passed by the State of Virginia, in February, 1863, the bill alleging that the property passing to the State of West Virginia under and by virtue of the said act, consisted of a number of items alleged to amount in the aggregate to several millions of dollars, the exact amount of which complaint, it is alleged, is unable to definitely ascertain and state.

These three classes of claims made by the complainant in her bill constitute the sum total of the demand made by her against the defendant in this suit.

The first effort of Virginia to fund her said debt was the Act of the General Assembly approved March 30, 1871, in which she declared her portion thereof to be two-thirds, and provided a plan for its funding and payment, and as to the residue thereof this Act declares:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in
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> .

accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one, and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia."

(Plaintiff's Bill, pp. 14, 15.)

Under the terms of this statute Virginia still remained liable for the payment of her entire debt including the one-third, unfunded, for which deferred payment certificates were to be issued, payable upon final settlement between Virginia and West Virginia.

The next effort of Virginia to adjust her bonded indebtedness created prior to the formation of West Virginia as a State, was the Act of her General Assembly, approved March 28, 1879, whereby she provided an abatement of the rate of interest and divided her then outstanding indebtedness into two classes, as follows:

"Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

"Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds."

(Plaintiff's Bill, pp. 17, 18.)

This act also declares as to the liability of West Virginia touching the said indebtedness of the complainant, as follows:

"The owners of all classes of bonds mentioned in this act,

who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange, and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued, under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of said certificates."

(Plaintiff's Bill, p. 19.)

Under these acts of the Legislature of Virginia, nearly if not quite all of her said indebtedness was funded on the basis prescribed by these enactments, thus relieving her of all liability upon the one-third part of her original ante-bellum obligations.

A third expression of Virginia touching her said debt, so far as the same relates to West Virginia, is that embraced in an Act of her Legislature approved February 14, 1882, which is entitled as follows:

> "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon."
>
> (Plaintiff's Bill, p. 21.)

This act contains an extended preamble setting forth what purports to be an account between the state and her creditors, showing the aggregate of principal and interest in two distinct totals in separate columns, declaring the assumption of two-thirds thereof as her equitable portion, fixing the total amount of this equitable portion as of July 1st, 1882, at $21,035,377.15, and then provides for the funding of this debt by the issuance of bonds drawing interest at the rate of three per cent.

This act also further provides as follows:

> "For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:
>
> "No. .....
>
> "The Commonwealth of Virginia has this day discharged

her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by ....., dated the .... day of ....., and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth.

"Done at the capitol of the State of Virginia, this ..... day of ..... eighteen .....

"....., *Second Auditor.*

"....., *Treasurer.*"

(Plaintiff's Bill, pp. 28, 29.)

A further act of the General Assembly of Virginia was passed, approved Febraary 20, 1892, which bears the following title:

> "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882."
>
> (Plaintiff's Bill, p. 31.)

This act provided for the issuance of nineteen millions of dollars in bonds in lieu of twenty-eight million dollars of outstanding obligations of Virginia, not funded under the act approved February 14, 1882, hereinbefore mentioned, and prescribed the form of the new bonds to be issued under this act and the coupons thereof.

This act also provides that in taking up these outstanding bonds before issuing new bonds in lieu thereof there shall be deducted "one third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as are issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's portion."

This act further provides as follows:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:
>
> "No. ..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or

coupon, as the case may be) bond for .....dollars, dated ..... day of ....., and No....., leaving a balance of ..... dollars with interest from ..... to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.

"Done at the capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

"....., *Second Auditor.*

"....., *Treasurer.*"

(Plaintiff's Bill, pp. 35, 36.)

By virtue of this act of legislation Virginia made a further considerable reduction of the principal of her debt and received a more favorable rate of interest and better terms as to its payment.

After the lapse of about two years from the approval of the act last named a joint resolution was adopted by the legislature of Virginia, entitled as follows:

> *"A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same."*
>
> (Plaintiff's Bill, p. 39.)

This resolution was approved March 6, 1894, and in its preamble refers to the acts by their titles, passed by the General Assembly of Virginia relating to her debt, concluding the preamble of this resolution as follows:

> "Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state."
>
> (Plaintiff's Bill, p. 40.)

The resolution then creates a commission "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia."

> "But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sink-

ing fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

"All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account."

(Plaintiff's Bill, pp. 40, 41.)

A further act was passed by the Virginia legislature, approved March 6, 1900, reciting the previous acts of said legislature relating to the public debt of said state, and also reciting that,

"Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to wit: One-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund, and * * *

"Whereas, it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt * * * and take upon deposit the certificates aforesaid, or have the same otherwise held or placed on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder. If at least two-thirds in amount of said certificates issued under the act of eighteen

hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney general of Virginia, to take such action and institute such proceedings on behalf of the state as may, in the judgment of said commission and attorney general, be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account."

(Plaintiff's Bill, pp. 41, 42.)

In accordance with the provisions and requirements of said act approved March 6, 1900, said commission entered into an arrangement with the duly authorized representatives of the holders of the deferred certificates issued by Virginia, without recourse upon her and received by her creditors in settlement of one-third of the original debt, whereby said commission reduced to its possession and control more than five-sixths of the entire amount of these certificates outstanding and the said commission now holds said certificates in trust for the present owners thereof, the amount of which certificates has, no doubt, largely increased since the institution of this suit, as indicated by a statement contained in the report of said commission submitted to the General Assembly of Virginia, thus placing in the possession of said commission nearly or quite all of said certificates.

The ownership of these certificates held by said commission is still in the original holders of the old debt of Virginia, and their possession by said commission is solely for the purpose of giving color to the institution of a suit in this court by the state to promote the collection of an alleged debt payable—not to the plaintiff—but to various private persons represented by the committee who assembled these certificates and turned them over to the said commission.

That this is the extent of the interest which the said commission created by the State of Virginia has in the said certificates, a demand for the payment of which constitutes the gravamen of the bill filed in this suit, is clearly apparent from the agreement entered into between the said commission and the committee representing the holders of said certificates, and the parts of said agreement relating to this feature of the case are here copied and are as follows:

"The said Virginia commission hereby stipulate and agree by and with the advice and approval of the attorney general of Virginia, that, in their judgment, it is needful and proper, in order to protect the interests of the state and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States, asking for an adjudication and settlement by that court of the matters aforesaid unsettled and undetermined between the two states, arising and growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the act of the General Assembly of Virginia of March 6, 1900, referred to in the said contract of December 14, 1904; and the said Virginia commission acting by and with the advice and approval of the attorney general of that state, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said act of the General Assembly of Virginia and the joint resolution of the General Assembly of March 6, 1894, also referred to in said contract of December 14, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia, as to the deferred certificates placed subject to the control of the commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said commission, notwithstanding the institution and pendency of such suit.

"And the Virginia commission do further undertake and agree that, in accordance with the terms and conditions of the said joint resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said commission with that State, either by means of an adjudication or a recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agree on behalf of the depositors of said deferred certificates so placed to the control of the said commission and on behalf of those entitled to the benefit of said certifi-

cates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates, and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

"It is further understood and agreed that if from any cause the said commission shall fail or be unable to bring about such adjustment or settlement, or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said commission to restore to the control of the said Depositing Committee all such deferred certificates as may have been placed subject to the control and disposal of the said commission as aforesaid."

(Plaintiff's Bill, pp. 84-86.)

We have thus given in brief outlines the material facts appearing upon the face of the record of the bill and its exhibits, and which declare the true and legal status of this suit at its very threshold.

The Propositions Raised by the Demurrer.

The case as made by the bill and its exhibits presents several vital points for consideration arising upon the demurrer interposed by the defendant, which may be thus particularized:

I. Is this a controversy between two states within the meaning of section 2, art. 3 of the Constitution?

II. Does the complainant have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her standing in a court of equity?

III. Have not the real owners of these certificates such a substantial interest and right of ownership therein as to make them indispensable parties, and whose presence would oust the court of jurisdiction in respect to this feature of the bill?

IV. Does the fact that the commissioners of the Sinking Fund and Literary Fund of Virginia have in their possession certain small portions of these certificates thus issued by the plaintiff to herself give her any cause of action against the defendant in respect thereto?

V. Does the claim for property transferred by the plaintiff to the defendant contained within the boundaries of the territory out of which West Virginia was erected into an independent state, cre-

ate any right of action on the part of Virginia against her for the value of this property?

VI. If this does afford the plaintiff a cause of action must it not be asserted at law, and not in a court of equity?

VII. Does the bill disclose any authority from Virginia directing a suit for the recovery of the value of property transferred by her and used by the defendant?

Relation of Virginia to the Old Debt.

In determining whether the bill and its exhibits present a controversy between two states within the meaning of section 2, article 3, of the Constitution, the relation of Virginia to her old debt will not be overlooked. Before the formation of West Virginia it must be conceded that Virginia was morally and legally bound for the whole debt which she had created by the issuance and sale of her bonds. At that time her entire territory was intact and all her resources unimpaired, in so far as they were not affected by the ravages of war, for which, of course, her creditors were not responsible.

In 1862, of her own accord, she parted with a portion of her territory, and gave her free consent to the creation of a new and independent state out of the territory by her thus surrendered. This, however, did not impair her liability upon this debt, nor any part thereof, to her creditors holding the bonds which she had issued, or in any manner lessen her obligation for their payment.

This must be conceded upon the well recognized principles of international law.

Higginbotham *v.* The Commonwealth, 25 Gratt (Va.) 627.
Taylor, Int. Pub. Law, pp. 203, 204, Sec. 166.
Halleck, Int. Law Vol. 1, p. 76.
Hall, Int. Law, Sec. 27.

Mr. Taylor in his recent and very able and clear treatment of the effect of a dismemberment of a state upon its obligations, presents the subject in two aspects: First, when a portion of its territory and population have been taken by conquest to form an integral part of another state; second, when the severed territory is erected into a new and independent state. We are interested in the latter feature of the subject, upon which this distinguished author says:

> "A narrower and more technical rule prevails when the parent state is deprived of a portion of its territory which is erected into an entirely distinct political community. The cogent reason in such case is that as a man who loses an arm or leg in battle is not thereby relieved of any part of his obligations, so a state that is so dismembered as to suffer no loss of identity remains bound as before for its entire general indebtedness. 'Such a change,' says Halleck, 'no more

affects its rights and duties than a change in its internal organization, or in the person of its rulers. This doctrine applies to debts due to as well as from the state, and to its rights of property and treaty obligations, except so far as such obligations may have particular reference to the revolted or dismembered territory or province.' In other words, as the old state continues its corporate life without interruption, it retains all general state property, and all general benefits resulting from treaties, with full liability for all general obligations with which the new creation taken from its side may disavow all legal connection."

The high moral obligation and legal duty on her part to meet her indebtedness still remained, with the right to treat, upon terms fair and just, with her creditors, for its adjustment and settlement. Accordingly, therefore, Virginia proposed to treat with her creditors with reference to the debt she had contracted, and submitted to them through her legislative department a proposition for its adjustment and ultimate liquidation. The terms of settlement were those which she herself proposed, and were met by her creditors in a broad spirit of liberality and compromise.

As the basis of settlement Virginia offered to pay two-thirds of her old or original debt by the issuance of new bonds by her, resting this proposition upon the consideration that one-third of her territory had passed to the new state after the debt had been contracted, proposing to issue contemporaneously with such new bonds certificates payable by West Virginia, for the other third of the debt, which Virginia did not feel inclined to pay for the reason just stated, and these certificates were accepted by the creditors without recourse upon Virginia, in payment or settlement of this one-third of her debt, thereby releasing Virginia from the payment of the one-third of her old original debt.

Thus Virginia adjusted and settled her former indebtedness contracted prior to June 20, 1863, on the basis and upon the terms fixed by herself and by negotiations to which she and her creditors alone were parties.

As a part of the consideration of this settlement with her creditors, Virginia agreed to aid them in collecting these certificates from West Virginia, amicably if she could, but by an action if necessary.

By this composition with her creditors Virginia extinguished her old debt—the one for any part of which West Virginia was, or could have been made, liable to the owners or holders thereof—and created a new debt of her own, in the creation of which West Virginia had no part or agency.

This new debt Virginia herself recognizes as her own, for which she alone is liable, and does not by this suit, or in any other manner, seek to make West Virginia liable, or for any part thereof.

This new debt, founded upon the consideration of a liability attaching to the old one, constitutes a valid and subsisting obligation

of Virginia, and her promise to aid the holders of the certificates issued by her against West Virginia is a mere collateral agreement, and does not add to or detract from the validity of the new debt.

Thus it will be perceived that Virginia has discharged her obligation to her creditors arising from the debt which she contracted before the division of her territory, and in that debt she is no longer interested pecuniarily, and that the only persons who are so interested are the owners of the certificates representing the one-third of the original debt.

The only claim which the holders of these certificates have upon Virginia, so far as these certificates are concerned, rests upon her promise to aid in their collection, which is but collateral, and can only be construed to mean that she will exert her moral influence to constrain West Virginia to recognize so much of the old debt as may be represented by the aggregate of these certificates.

The Status of West Virginia with Reference to the Old Debt of Virginia.

Initiatory to the formation of the new state, on August 20th, 1861, Virginia, through the convention which had restored the government of the State of Virginia, promulgated an ordinance to provide for the formation of a new state out of a portion of that state, in which, among other things, is the following declaration as to the debt of Virginia:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of the said debt was contracted and deducting therefrom all the moneys paid into the treasury of the commonwealth from the counties included within the said new state during said period."

This is Virginia's own declaration made as aforesaid as to how West Virginia's part or share of the old debt shall be ascertained and determined. And if the same were obligatory, the means of reaching a proper conclusion on this basis have always been within the possession and exclusive control of Virginia. They are to be found in her own archives of state, which have at all times been in the custody of her own officers.

The Constitution of the new state at the time of her admission into the Union contained with reference to said debt, the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient

to pay the accruing interest and redeem the principal within thirty-four years."

The constitution containing this clause was framed and adopted subsequently to the adoption of the ordinarce aforesaid by the State of Virginia.

The ordinance and legislation of Virginia looking to and providing for the erection of a new state out of a part of her own territory, were adopted and passed without the privity or consent of her creditors.

Then upon the division of the territory of Virginia, if the obligation of West Virginia, as claimed by some, to the creditors of Virginia became a joint liability as to which the two states were bound, and it appears to have been so regarded by Virginia, as the course she has pursued with reference thereto would seem to indicate, this suit as to said debt cannot be maintained.

Because, when the creditors of Virginia accepted new bonds in payment of the old bonds and surrendered the latter for cancellation and such cancellation was effected, all liability upon the part of West Virginia ceased and determined, and the issuance of certificates by the State of Virginia, mere *ex parte* memoranda, to be paid by West Virginia, was a mere gratuity which could not operate as a modus to give vitality to any part of the old debt which Virginia had fully discharged by her own composition with her creditors.

Here was an act of one claiming to be jointly liable with another whereby that one pays in new evidences of debt two-thirds of it, with an agreement of release as to the entire liability which must by the very act itself operate as a discharge of the other debtor. This must be the effect upon the well recognized principle of the law of contracts that the discharge of one joint obligor relieves the other from liability, in the absence of a valid stipulation to the contrary to which the parties in interest are privy.

It may be contended, however, that the principle here relied on does not apply to the transactions of sovereign states in matters of public concern. Nevertheless, when governments come into courts of justice for the determination of a controversy, they submit themselves to the ordinary rules of law which govern in such cases, and the same principles which would apply to private persons are also applicable to them. When they become suitors they no longer occupy the lofty attitude of sovereigns, so as to place themselves above and beyond the ordinary standards of right and wrong, but in the very nature and condition of things, these standards must be invoked or the courts themselves could not act as judicial tribunals.

If this were not so, the court's proceedings would necessarily be discretionary and capricious, without any established rules to govern their action. This is the principle which obtains and governs in cases of this character, even though the proceedings be by suit in equity.

United States *v.* Bank of the Metropolis, 15 Pet. 377; 10 L. ed. 774.
United States *v.* Flint, 4 Sawy., 42, Fed. Cas. No. 15,121.
United States *v.* Union Nat'l Bank, 10 Ben. 408, Fed. Cas. No. 16,597.
Rhode Island *v.* Massachusetts, 12 Pet. 657, 738, 743. 9 L. ed. 1233, 1266, 1267.

This is Not a Controversy Between Two States.

As already shown, Virginia has been released from the payment of one-third of her debt contracted before the formation of West Virginia, and has arranged for the payment of the two-thirds thereof by new bonds issued by her, and that she has no substantial interest in the third thereof for which she issued her own certificates without recourse upon herself, to be paid by West Virginia, the old bonds having been surrendered and canceled.

The record discloses that she has no interest in these certificates, as they impose no obligation upon her, and leave the creditors without any right of action or demand against her upon the failure or refusal of West Virginia to assume their payment. It also appears from the record of the bill and its exhibits that upon the failure of the commission into whose hands these certificates were placed to collect these certificates, that they are to be surrendered to the committee representing the owners thereof, and in the event that suit should be brought by Virginia against West Virginia, that the owners are to defray all expenses including the fees of counsel, and that no decree can be entered in this cause that will inure to the benefit of the plaintiff.

No one can examine the bill and its exhibits in this suit without being satisfied beyond all doubt that it is in legal effect commenced and now prosecuted, so far as said certificates representing the old debt are concerned, solely by the owners thereof and for their benefit and not for the State of Virginia. No decree as to these certificates can inure to the benefit of Virginia. Her only relation to them is her assurance to their holders that she will aid them by bringing suit in reference thereto at the expense of the owners. She is the merest nominal plaintiff carrying on the suit in her own name with an immunity from all costs of any character whatsoever.

This suit is governed, so far as the demand respecting the old debt of Virginia is concerned, by the well settled principles already laid down by this Honorable Court in the following cases:

New Hampshire *v.* Louisiana, and New York *v.* Louisiana, 108 U. S. 76, 27 Law. ed. 656.
See also in this connection *Re* Hartung, 98 Wis. 140, 73 N. W. 988; People *v.* General Electric Ry. Co., 172 Ill. 129, 50 N. E. 158.

To create a controversy between two states, it seems to us that there must be an assertion of a substantial right of one state as such which is denied or repudiated by the other, and which relates to the interests of each as states, and that the determination of the issue thus raised will promote or secure some substantial right of the one or the other of these states as states.

This may be illustrated by some of the decided cases, in each of which it was held that the contention involved a controversy between states.

> New Jersey *v.* New York, 5 Pet. 285, 8 L. ed. 127; Rhode Island *v.* Massachusetts, 12 Pet. 657, 9 L. ed. 1233; Florida *v.* Georgia, 11 Howard 293, 13 Law. ed. 702; Virginia *v.* West Virginia, 11 Wall. 39, 20 L. ed. 67 were cases in equity and all involved state boundaries; Pennsylvania *v.* Wheeling Bridge Company, 9 How., 657; 13 L. ed. 294; S. C. 11 How. 528, 13 Law. ed. 799; S. C. 13 How. 518, 14 Law. ed. 249; S. C. 18 How. 429, 15 Law. ed. 436, was a case in equity involving the free and unobstructed navigation of the Ohio river which caused a special damage to the plaintiff state for which there was no adequate remedy at law.

These cases just cited present an exercise of jurisdiction in cases directly affecting the property rights and interests of a state and that over lands and their inhabitants claimed by the states themselves.

> Missouri *v.* Illinois, 180 U. S. 206, 45 L. ed. 497, involved a case in which the health and comfort of the inhabitants of a state were threatened.
>
> South Dakota *v.* North Carolina, 192 U. S. 289, 48 L. ed. 488, was a suit in which the plaintiff sought the enforcement of the payment of a debt belonging exclusively to the plaintiff and no one else had any interest therein, and the jurisdiction was sustained by a majority of the court.

In the suit now before the court what interest can Virginia claim against West Virginia in certificates that do not belong to her and in which she can assert no interest? She cannot maintain a suit to vindicate her integrity in the matter of the issuance of these certificates. This is entirely too flimsy to constitute the basis of a controversy, and besides this, the act or its motives has not been assailed or questioned by West Virginia.

The conclusion is irresistible that Virginia has no interest in this suit so far as it is designed to enforce payment of the debt represented by said certificates, that it is being prosecuted for their owners and that as to such matters there is no controversy between the two states, and that the bill as to this matter must be dismissed.

III.

THE COMPLAINANT HAS NOT SHOWN SUCH INTEREST IN THE DEFERRED CERTIFICATES AS GIVES HER ANY STANDING IN A COURT OF EQUITY.

Does the Commonwealth of Virginia have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her any standing in a court of equity in relation thereto?

As we have already seen, the former owners of the old debt are the present owners of these certificates; that they were placed in the hands of a committee whose members these owners had chosen, and this committee delivered the certificates to a commission selected under a joint resolution of the General Assembly of Virginia, who were empowered to collect these certificates for the owners at the sole expense of such owners.

The right of Virginia to maintain a suit as sole plaintiff therein, must be determined by the well settled rules of equity practice as recognized and enforced by the English Court of Chancery, and as understood and applied by this Court.

Virginia has no interest in these certificates, nor can her interests be in any manner affected by a decree in relation to these certificates.

She is not a guarantor because their issuance is based upon the condition of her non-liability in any event, and as a consideration of her release from all liability upon these certificates, and the portion of the debts represented by them, she issued new bonds for her old debt, and was acquitted from all obligation as to these certificates. In what way can she be interested in this suit so far as it relates to these certificates? Does her interest at most exceed that of a mere committee representing the holders thereof? Has she any connection with them except by her agreement to aid their holders in an effort to enforce their collection? Has she not constituted herself a mere medium for the institution of this suit in her own name for the use and benefit of the holders and owners of these certificates?

If she has any connection with this part of the suit it is as its mere promoter, by virtue of her promise to the holders of the certificates—an agent for them—only an instrumentality for the institution of this suit.

This is not such interest as to support a suit in equity. The

plaintiff's interest must be as substantial and certain as that of the defendant.

A person having no interest, legal or equitable, in land, beyond a mere possession, cannot maintain a bill in respect thereto.

Smith *v.* Hollenbeck, 46 Ill. 252.

Smith *v.* Brittenham, 209 Ill. 549.

> "A complainant in chancery must have an interest in the subject matter of the controversy. Unless a complainant has some interest in the property in controversy his bill cannot be maintained."
>
> Smith *v.* Hollenbeck, *supra*.

In Smith *v.* Brittenham *supra*, the court in its opinion, discusing the insufficiency or want of interest in the plaintiff to maintain the suit, says:

> "It is a well recognized rule that in equity the party having the beneficial interest in the subject matter of suit must sue in his own name for any invasion of his rights in respect thereto, although the legal title thereto may be in another. (Frye *v.* Bank of Illinois, 5 Gilm. 332; Elder *v.* Jones, 85 Ill. 384; Moore *v.* School Trustees, 19 *id.* 83.) It is also settled that no one, in the absence of statute authorizing it, can maintain a suit in chancery with respect to real estate to which he has neither the legal nor equitable title. (Bowles *v.* McAllen, 17 Ill. 30; Horace *v.* Harris, 11 *id.* 24.) If such an interest in the plaintiff is indispensable to the commencement of this suit, as will be conceded, the conclusion would seem to follow that where a party having such interest commences a suit, and before any hearing or disposition of the cause upon the merits, voluntarily transfers his interests to another, and the same is made to appear of record, as is the case here, the whole proceeding will become so defective for want of proper parties, that no valid decree can be entered in the cause until the complainant's assignee, by supplemental bill or otherwise, makes himself a party complainant to the suit—and this, indeed, is the well recognized doctrine and practice in such cases. Mason *v.* York & Cumberland R. R. Co., 52 Me. 82."
>
> *"Where the wrong complained of is one in which the State has no direct interest, any more than it has in an ordinary controversy between individuals, the State is not a proper party plaintiff, and the suit should be instituted by the particular individual who will be injured."*
>
> *10 Enc. Pl. & Pr. 903, 904, and the very numerous cases cited in note 1.*
>
> *"The rule is fundamental that no person can maintain a*

suit respecting a subject matter with reference to which he has no interest, right or duty, either personal or fiduciary."
Bigg's Equity Procedure, sec. 37, p. 40, citing Baxter v. Baxter, 43 N. J. Eq. 82, 10 Atl. Rep. 514; Ashby v. Ashby, 39 La. Ann. 105, 1 So. Rep. 282.

In Ashby v. Ashby, *supra*, the syllabus of the case is as follows:

"An action can only be brought by one having a real and actual interest which he pursues. So, where one claiming to be a judgment creditor of another seeks to annul a mortgage executed by the latter in favor of his children on the ground of fraud, and the record shows that the judgment on which the suit is founded is not in favor of the plaintiff, but in favor of her minor children for whom she was tutrix, and who had attained their majority before the action of nullity was brought, and they did not join in the action, the suit must be dismissed."

"Where a bill is filed for relief, it must be prosecuted in the name of the real party in interest."
Oakley v. Bend, 13th Edw. Ch. (N. Y.) 482.

The doctrine here cited is supported by numerous authorities, among which are the following:

Field v. Maghee, 5 Paige (N. Y.) 539; Rogers v. Traders' Ins. Co., 6 *id.* 583; Sedgwick v. Cleveland, 7 *id.* 267.

It cannot be contended that because the State of Virginia has constituted herself an agent or representative of the holders of the certificates mentioned in the plaintiff's bill that this gives her any right to maintain the suit in her own name.

From the opinion delivered in Oakley v. Bend, *supra*, we take the following:

"A person who is a mere agent to sue for and collect money under a power of attorney, can not be a party to a bill for an accounting in his own name, nor be joined as a co-plaintiff with his principal. King of Spain v. Machado, 4 Russ. 225, 240, recognized in Clarkson v. Depeyster, 3 Paige, 337, as good ground of demurrer. As a general rule, if an agent institutes a suit under an authority from his principal, he must do so in the name of his principal. Lee v. Thomas, 2 Ves. 313. And see Calvert, Parties, 229, 232, for the authorities on the subject."

The doctrine set forth in these authorities and cases is so firmly settled that further discussion or citation would seem superfluous,

and an annoyance to, and tax upon the time and patience of the court required for their notice or examination.

III.

THE REAL OWNERS OF THE DEFERRED CERTIFICATES HAVE SUCH A SUBSTANTIAL INTEREST AND RIGHT OF OWNERSHIP THEREIN AS TO MAKE THEM INDISPENSABLE PARTIES, WHOSE PRESENCE WOULD OUST THE COURT OF ITS JURISDICTION.

The practice in this court in cases in equity is regulated by the former practice of the courts of chancery in England. And in cases of original jurisdiction it will frame its proceedings according to those which had been adopted in the English courts in analogous cases, and follows the general rules of that court in conducting a cause to a finality.

California *v.* Southern Pacific Railroad, 157 U. S. 229, 249, 39 L. ed. 683, 690.

The only instance wherein the court will deviate from or refuse to follow this practice is when it impairs the case by unnecessary technicalities, or defeats the purpose of justice.

California *v.* Southern Pacific Ry. Co., *supra*; citing Florida *v.* Georgia, 58 U. S., 17 How., 478, 15 L. ed. 181.

The general rule as to parties in equity as followed in English chancery practice, was well settled at the time the jurisdiction of the Supreme Court of the United States was created, and is thus laid down by Mr. Daniell:

> *"It is the constant aim of a court of equity to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, so as to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and to prevent further litigation. For this purpose all persons materially interested in the subject ought, generally, either as plaintiffs or defendants, to be made parties to the suit, or should have served upon them a copy of the bill, or notice of the decree, to have an opportunity afforded of making themselves active parties to the cause if they should think fit."*
>
> 1 Daniell's Ch. Pl. & Pr. (4th Am. Ed.) 190.

This rule under some circumstances, not important to be considered here, may be dispensed with when its application becomes extremely difficult or inconvenient.

Equity Rule 48.

This court, in Caldwell v. Taggart, 4 Pet. 190, 7 L. ed. 828, says:

> "The general rule is that however numerous the persons interested in the subject of the suit, they must all be made parties plaintiff or defendant, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of the suit; to make performance of the order perfectly safe to those who have to obey it, and to prevent future litigation."

In Barney v. Baltimore, 73 U. S., 6 Wall., 280, 18 L. ed. 825, speaking with reference to the subject of parties, the court decides as follows:

> "Courts of chancery will refuse to make a decree where, by reason of the absence of persons interested in the matter, the decree would be ineffectual, or would injuriously affect the interests of the absent parties."

In Shields v. Barrow, 58 U. S., 17 How., 130, 15 L. ed., 159, the subject of parties to suits in equity received a very thorough consideration at the hands of the court, whose opinion was delivered by Mr. Justice Curtis, and in which he classifies parties to a bill in equity as follows: Formal parties; second, necessary parties; third, indispensable parties. Those under the second class include all persons having an interest in the controversy, and who ought to be made parties in order that the court may act upon that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. If the interests of this class of parties are separable from those of the parties before the court, so that the court can proceed to a decree and do complete and final justice without affecting other persons not before the court, then the latter are not indispensable parties.

Those coming under the third class are those persons who not only have an interest in the controversy, but an interest of such a nature that a final decree can not be made without either affect-

ing the interest, or leaving the controversy in such condition that its final determination may be wholly inconsistent with equity and good conscience.

This well considered opinion, which has been followed in many subsequent cases, contains several illustrative cases of the rule here announced as to the classification of parties to a bill in equity.

One of the points in the syllabus of the last case cited states the rule as follows.

> "Persons having rights which must be affected by the decree cannot be dispensed with."

In the case before the court the holders of the deferred certificates, who own both the legal and equitable title thereto are not made parties. The only plaintiff seeking relief is the State of Virginia, who has brought the suit in her own name without any title to this part of the subject matter of the suit, and without any direct or substantial interest in the result thereof. The purpose of this suit is to settle the liability of West Virginia on these deferred certificates to the owners and holders thereof, and any decree which is rendered in this case must relate solely to their rights. The court can not enter any decree with reference to these certificates which must not necessarily affect the interests of these outstanding owners and holders, who are not before the Court either as plaintiffs or defendants.

The purpose of the bill is not only to fix a liability on the State of West Virginia for the payment of these certificates, but also for an accounting to determine the extent of this liability. So it is clearly and at once perceivable that the holders of these certificates are vitally interested as to both of these purposes of the suit.

Therefore, as these persons have no opportunity to be heard, and as the decree can not bind them, the court cannot, for that very reason, afford any relief to the nominal plaintiff, the Commonwealth are vitally interested as to both of these purposes of the suit.

Suppose it be contended that these bonds are now held by the Commission created by the State of Virginia, apparently possessing powers to act as a corporate body, to negotiate with reference to these certificates, and that this commission holds the bonds in trust, as it evidently does, for the bond holders. Would not the Commission at least, acting in its fiduciary capacity, be an indispensable party to this suit? Could the State of Virginia, divested of all interest in these certificates, sue in her own name both for this com-

mission and the beneficiaries, who are the owners of these certificates? This Commission being a creature of the legislature of Virginia, endowed with corporate capacity to act in furtherance of the objects of its creation, is evidently interested in carrying into effect the steps which it has taken to secure the payment of these evidences of indebtedness.

But defect of parties may ordinarily be remedied by an amendment of the bill in such a manner as to cure this defect, and thus avoid the effect of a demurrer for want of parties. This is the general or ordinary rule—the one usually observed by the courts. Indeed, a court ought not to dismiss a bill and deny relief where the only obstacle to the granting of relief is the want of essential parties, when the bill may be relieved from this objection by amendment.

This case, however, constitutes an exception to this rule. It must be clearly apparent that the relationship of the owners or holders of the certificates, to the suit, if brought into the case, must be that of plaintiffs; and as they are numerous, a few could join, suing on behalf of themselves, and all others similarily situated, and thus avoid the inconvenience of large numbers appearing on the record as plaintiffs in the suit. They would be the real plaintiffs, with the State of Virginia as a mere nominal party, thus creating a suit by individuals against a state of the Union, which is prohibited by the Constitution.

If an amendment were thus permitted so as to bring the Commission as the Trustee into this case as a party plaintiff, or this Commission together with the owners as co-plaintiffs with the State of Virginia, there would be presented a case in which the real parties in interest as individuals are the plaintiffs, in which a state with no interest and as a mere nominal party would be joined, thus allowing an individual to do by indirection associated with the state as a nominal party what he would be prohibited from doing in his own name. An evasion of this sort will not be permitted by the court, and the bill in this regard is not amendable, and the court on this consideration alone has no jurisdiction of that part of the bill seeking to establish the liability of West Virginia on these deferred certficates, and the extent of such liability.

If, however, the State of Virginia should ask to amend her bill by making the Commission as Trustee and holder of these certificates a party defendant, in order to give these owners and holders representation in the suit, if this could be done in the absence of

the real parties in interest, then the court would have no jurisdiction under the principles laid down by this court in numerous cases which are cited and reviewed in the opinion announced in California *v.* Southern Pacific Co., 157 U. S. 229, 39 L. ed. 683. So, we perceive that as to this feature of the bill now under consideration, the court has no jurisdiction in any aspect of the case, nor can any amendment be made so as to give this court jurisdiction.

IV.

THE FACT THAT THE COMMISSIONERS OF THE SINKING FUND AND LITERARY FUND OF VIRGINIA HAVE IN THEIR POSSESSION COMPARATIVELY SMALL PORTIONS OF THE SAID CERTIFICATES ISSUED BY THE PLAINTIFF DOES NOT GIVE THE PLAINTIFF ANY CAUSE OF ACTION AGAINST THE DEFENDANT.

The commissioners of these two funds are mere state agencies or instrumentalities created by the Commonwealth of Virginia, to care for and preserve certain of her own financial resources, available for specific purposes, and which belong exclusively to Virginia. A few of the old bonds of Virginia issued prior to 1861 were by her converted into immediately available money by being deposited with these commissioners, and were therefore never sold and the title transferred from her so as to create a liability against the State herself, and hence at no time was there ever any right of action or liability on account of these old bonds so deposited with the said commissioners which could properly be asserted against the old state. In other words, these few old bonds deposited with these commissioners did not create any debt against the State of Virginia. At no time or under any circumstances could these bonds have been made or become a legitimate subject matter of controversy or suit against the Commonwealth of Virginia. To make them such, would present the grotesque spectacle of a sovereign state suing herself, for an accounting and payment to herself of her own funds, already under her absolute control.

Again there can be no liability in favor of the State of Virginia against the State of West Virginia on these bonds so held. The moneys in the sinking fund which purchased these bonds previous to the first day of January, 1861, were raised by the revenues of the entire State before the division, and they were therefore the property of

such entire State, and being in the ownership of the State itself, the debtor, they were a dead asset both as to that portion of the State which passed into the new State and the State of Virginia as she remained, and Virginia claiming to be such owner has no more right to institute and prosecute a suit thereon against West Virginia than would West Virginia if a similar bond had fallen into her possession. If there is any liability in respect to said bonds it is a liability of the State of Virginia to the State of West Virginia for a portion thereof.

Then if this were the status of Virginia as to the old bonds held by the commissioners of her Sinking Fund and Literary Fund, prior to 1861, and which remained unchanged at the time of the formation of the State of West Virginia, could their refunding and the issuance of the deferred certificates as to the one-third of them alter this status with reference to her right of suit thereon, or any part of them? The very propounding of the question must evoke a negative answer.

The idea of debt necessarily implies an obligation payable by the debtor to some third party—a creditor existing independently of the debtor, and over whom, as to the obligation asserted, the debtor can have no control, and in the use or disposition of which the debtor has no right or interest whatever.

How then—upon what principle—upon what ground or reason—can Virginia claim that the old bonds placed by her with her Commisioners of the Sinking and Literary Funds, were or are now any part of her *ante bellum debt?* We are wholly unable to perceive any. In fact, there is none.

If it be contended that the commissioners of the Sinking and Literary Funds are distinct entities from the State, persons clothed with an existence distinct and separate from the Commonwealth, with the right to assert a liability against Virginia on account of these old bonds acquired by them prior to the erection of the territory contained within the boundaries of West Virginia into a state, then and in that event this court cannot entertain jurisdiction of the suit, because these commissioners are necessary parties thereto, and the commission having been created and existing under and by virtue of the laws of Virginia, must be a citizen of Virginia, and if a distinct entity, it must necessarily be a corporation having its domicile in Virginia, where it was created.

Thus, we perceive that in any aspect of the case, the court has no jurisdiction of this suit so far as the certificates belonging to these

commissioners are concerned. In fact, this feature itself of this cause constitutes no ground of controversy between the parties to the bill.

V.

THE CLAIM FOR PROPERTY TRANSFERRED BY THE PLAINTIFF TO THE DEFENDANT CONTAINED WITHIN THE BOUNDARIES OF THE TERRITORY OUT OF WHICH WEST VIRGINIA WAS ERECTED INTO AN INDEPENDENT STATE CREATES NO RIGHT OF ACTION ON THE PART OF VIRGINIA FOR THE VALUE OF THIS PROPERTY.

In February, 1863, the General Assembly of the State of Virginia passed the following Act, declaring:

> "That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the President and Directors of the Literary Fund, or the Board of Public Works thereof, or any person or persons for the use of this state, to the extent of the interest and estate of this State therein and shall also include the interest of this state, or of the president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries and all stocks of any other company or corporation, the principal office and place of business whereof is located within the said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any other person or persons for the use of this state.
>
> "That if the apropriations and transfers of property, stocks and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state provided that no such property, stocks and credits shall have been obtained since the organization of the state government."

The bill of complaint relating to this property makes the following allegation:

> "Your Oratrix is informed, believes, and so charges that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate to several millions of dollars, the exact amount your oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this act, the State of West Virginia realized and received into her treasury, from the sale thereof, about six hundred thousand dollars, and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

It will be observed that all the property mentioned in this act was located within the territory comprised within the boundaries of West Virginia, and was designed for the use of the latter in the formation of a state government and in promoting the purposes of its establishment. The parent state parted with certain of her own territory and resources to create a new state within her own boundaries and to exercise over a part of her own people the powers of government, to be thereafter created by them, and to assume all the burdens and responsibilities incident to a state, and to erect for themselves all public institutions necessary to conduct the operations of the government of the new state, thus proposed to be created. Virginia in this act proposed new duties and obligations for a part of her own citizens, and at the same time declared in her own halls of legislation what should be done by the new state which then had no existence, but which she, by her own act and that of the general government, designed to bring into existence, by parting with the very property which she intended should be used by the new government and a part of the people of Virginia would share in the benefits and advantages thus afforded.

Now can Virginia by her own act create an obligation to be assumed by a state not then in existence and which she by her own acts aids in creating? Can she, in this act, declare that a creature not then in being, shall account to her for property which she herself really bestows upon a part of her own citizens, and who, in the true sense of the term, are the real owners thereof, and when she has thus freely bestowed her own bounty upon her own citizens,

make a demand thereafter upon the new government when it has been established, and that too when this new government is to extend to a large part of the citizens of Virginia full protection in the enjoyment of all their absolute and social rights? If so, upon what legal or moral principles can such a claim be predicated? The parent thus transfers all the burdens of her own government to a new state, created in her own boundaries, divesting herself of all responsibility for the conduct and safety of a large part of her former population and impose upon another sovereignty these very obligations which she herself had borne, and that, too, by her own act, and now seeks indemnity and compensation from this sovereignty for performing a duty which she herself has been relieved by her own act and concession.

By this act Virginia simply declared to a part of her own citizens that they could organize themselves into a government in a part of her own territory and thus become an independent state. These citizens of Virginia were the promotors and she co-operated with them to the end that a new state might be formed.

It will not be overloked that the territory of Virginia was divided in 1863 while she retained her own identity and institutions, and out of the territory which she surrendered, and within it, a new state arose.

This is not the case wherein one state is treating with another, whereby one state cedes a part of her territory to be added to the domain of the latter. In such case she could stipulate the terms of the cession, which would constitute a compact between the two states enforceable as a binding obligation. Their attitude towards each other would be that of two independent and competent contracting parties.

Here the attitude of Virginia is very different. She, on the one side, proposes that a new state may be organized if the National Government will assent to its admisison into the Union. She cannot propose conditions in advance of the creation of the new state, and enforce them against it as the price of property within its own territorial limits. This would constitute a mere *nudum pactum*. It would be without consideration because whatever is within the boundaries of a new state belongs to it, both upon reason and authority.

> "The new State on its part carries with it only local obligations, and whether contracted for local objects or secured by a lien on local revenues, and such local duties as arise out of

> agreements to maintain the channel of a river or to levy no more than certain tolls along its course. As a compensation for such burdens the new state is entitled to property within it of a local character, or to such, not within it, as belongs to state institutions localized there, and to the privileges arising from treaties specially contracted for the benefit of its territory, such for instance as contain demarcations of its boundaries, and such as secure to its inhabitants, or a part of them, the right to navigate streams running through other countries from its frontiers." Taylor, International Public Law, p. 204, citing Hall's Treaties on International Law (4th Ed., Oxford.) Sec. 27.

So if the new state is entitled to property within it of a local character, or to such not within it, as belongs to state institutions localized there, upon what principle can Virginia base a claim for the value of property within the territory of the new state of West Virginia? She cannot found it upon the doctrine of public international law. Neither can she found it upon an act of her own legislature, nor can she do so upon any act or agreement upon the part of West Virginia, for West Virginia did nothing, nor has she done anything to authorize it, as the new state was not a party to the agreement. Virginia has no claim and can have no claim for property, real or personal, localized or pertaining to or belonging to institutions localized in the territory out of which West Virginia was formed. She cannot base this claim upon treaty or compact, because at the time she declared by her own act of assembly that this property was to be taken by the new state when it came into being, there was no representative to act on behalf of the proposed new state so as to accept a cession of property upon terms proposed by the owner. This act of assembly could not be construed as a treaty between the state of Virginia and the proposed new state, as this was a mere *ex parte* act emanating from Virginia alone, and a treaty in its humblest and narrowest aspect, "is a mere agreement between states for the settlement of their current interests or controversies, made either with a tacit admision of the existence of the common law of nations, or with the express stipulation that some principle of that law shall be changed or modified in a particular case." Taylor, International Law, p. 93.

Hence the making of a treaty necessarily presupposes and assumes the presence and participation in its negotiations of two sovereign powers capable of acting. Another reason why it could not be referable to treaty is that one state cannot enter into a treaty

with another state without the consent of Congress. In February, 1863, when this act of assembly was passed, upon which Virginia rests her claim as presented by this feature of the bill, West Virginia had not been fully created and organized. Now, then, shall Virginia passing the title of property by her own act and imposing terms both unfair and unfounded upon the principles of public law, assert a claim to the value of this property when conditions have changed and the new sovereignty finds herself in possession of this property which is within her own territory, and actually necessary for the legitimate purposes of the new government? But it may be said or contended that if West Virginia is liable for her equitable portion of Virginia's public debt, is she not also liable for the public property of Virginia localized in the territory of the new state, or belonging to any of the public institutions localized there? This admits of plain and satisfactory answer in the negative.

West Virginia's attitude as to the public debt of Virginia was provided for by the ordinance of Virginia and the constitution of West Virginia, and in the absence of such provision, it can scarcely be contended that the State of Virginia could assert any liability against the State of West Virginia as to any part of said debt.

Furthermore, there is nothing in the record to show that Virginia, either by her Act of Assembly or by any act on the part of her governor, has authorized any demand upon the state of West Virginia for compensation for property situated in the territory now comprising the State of West Virginia.

The bill sets up a further claim for property predicated upon the Act of the General Assembly of Virginia passed on the 4th day of February, 1863, and which, according to the bill, is in the following language:

> "1. That the sum of One Hundred and Fifty Thousand Dollars be and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the United States.
>
> "2. That there shall be, and hereby is, appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated that may come into the treasury, up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United

> States, it shall be the duty of the auditor of the State to make a statement of all the moneys that up to that time have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the poperty of this state."

After reciting this act the bill avers:

> "And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid."

The same reasons and principles apply to this item demanded by Virginia from West Virginia, because of personal property located within the territory comprised within the State of West Virginia, that is applicable to the demand of a similar character made in the bill by reason of the Act already quoted passed by the General Assembly of Virginia on February 3, 1863.

It does seem to us that this claim of Virginia, which she rests upon the two acts passed by the General Assembly of February third and fourth respectively, in the year 1863, is not only without foundation upon any principles of law or equity, but is most unjust and unreasonable.

It is quite apparent that Virginia demands that West Virginia shall pay one-third of the old debt of Virginia upon the sole ground that she parted with one-third of her territory, and therefore, on that ground alone, West Virginia should be made to bear that portion of her *ante bellum* debt to the holders thereof, while Virginia should meet and discharge the other two-thirds of this obligation.

Has it occurred to the authorities of Virginia that when she parted voluntarily with one-third of her territory, she at the same time retained all of her institutions, or nearly so, intact, with the means in her own control of continuing the operations of her state government, while the territory she parted with had to be erected into a state government, all the institutions necessary to its operation to be constructed, and great expense incurred in order to bring the territory into the status of an independent state and put her machinery of government into operation? In this aspect of the case, Virginia cuts off about one-third of her domain, containing a large

percentage of her citizenship, sets them adrift without the means of government, and now demands not only that the new government erected out of this territory shall bear the burden of one-third of her public debt, but also pay to her compensation for "all lands, buildings, roads, and other internal improvements, or part thereof, situated within said boundaries, and vested in this State (Virginia), or in th president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this State (Virginia), to the extent of the interest and estate of this State (Virginia) therein," and all other property within the boundaries forming said new state, as well as all money properly belonging to the institutions of the state of Virginia localized in these boundaries.

On the other hand Virginia refuses to recognize any liability for the one-third of this debt on the very arbitrary basis assumed by her for its adjustment, still retains intact all property and institutions of every kind and character within her own domains, demanding compensation also for every article of property of any value with which she parted, and that too by her own act of legislation. She cannot in equity and good conscience make this two-fold demand. She must forego her claim upon West Virginia for the liquidation of any part of her public debt, or she must concede to West Virginia the absolute ownership in all the property localized within her boundaries. But she cannot now deal with the one-third of her old debt, because she is practically released from any liability thereon by reason of the acts and course pursued by her with the creditors themselves. The only parties that are now asserting any demand against West Virginia as to the one-third of the old debt of Virginia are the creditors themselves—the true and legal owners and holders thereof. The right to look to West Virginia for the payment of this one-third, if the right exists anywhere, necessarily resides in the creditors, and not in the State of Virginia. She, therefore, has left the demand as to one-third of the debt against West Virginia, so far as she herself is concerned, in the hands of the creditors, and no act of hers can now affect their substantial rights. She cannot, therefore, do anything at this time to release West Virginia from any part of the demand which the creditors are asserting against her through the medium of this suit nominally instituted by Virginia.

She is therefore referred to the only alternative in *fro conscientiae aut legis*, and that is, a relinquishment of her own demand for

compensation for property left by her within the boundaries of the territory out of which the state of West Virginia was created. She can only, therefore, stand upon that feature of her bill which relates to her old public debt, and as to this feature of the case, as we have already shown, she is without standing in a court of equity.

VI.

THE PLAINTIFF CANNOT ASSERT THE CLAIM WHICH SHE SETS FORTH IN HER BILL IN A COURT OF EQUITY.

In considering the proposition that the plaintiff cannot assert the demand contained in the bill in a court of equity, we must keep in mind the relation which Virginia bears to that portion of her *ante bellum* public debt which is sought to be made the subject of controversy in this suit. She disclaims at this time all liability to her creditors on account of the so-called equitable proportion thereof which she insists shall be borne by the state of West Virginia, at the same time averring that she has adjusted and settled two-thirds of the original debt by agreement and contract between herself and its owners.

It is patent upon the face of the bill and its exhibits, as hereinbefore stated, that the prosecution of this suit by Virginia is solely in the interests of the owners and holders of the deferred certificates issued by Virginia herself without recourse upon her, and set apart as a liability of West Virginia to the holders of the old obligations, which have been surrendered to the state of Virginia and by her cancelled in accordance with her own acts of legislation.

She therefore cannot come into a court of equity to assert a right of contribution against West Virginia. There are two clear and cogent reasons for this:

(*a*) First, the decree which she seeks to obtain cannot inure to her benefit, but only to that of the holders of the deferred certificates.

(*b*) Second, she must have paid everything for which she and the new state were jointly liable so as to relieve the new state from all liability before she can seek contribution from her joint obligor.

That this is the principle upon which rests the equitable right of contribution is the recognized and well settled doctrine of the courts.

Springer *v.* Foster, 21 Ind. App. 15, 60 N. E. 720.
Kirkpatrick *v.* Murphy, 3 N. J. Law 506.
Grove *v.* O'Brien, 1 Md. 438.
Rooker *v.* Benson, 83 Ind. 250, 256.
Zook *v.* Clemmer, 44 Ind. 15.
Pegram *v.* Riley, 88 Ala. 399, 6 South. 753.
Screven *v.* Joiner, 1 Hill Ch. 252, 26 Am. Dec. 199.

The rule is universal that the party seeking contribution must have paid more than his share in order to maintain a suit for contribution.

9 Cyc. 699; 3 Am. & Eng. Dec. in Eq. 163.

The demand made by Virginia which she claims arises out of the acts of her General Assembly, passed February 3rd and 4th, respectively, in the year 1863, whereby she transferred certain real and personal property belonging to her to be used by the new state when created and organized, if it has any validity, which is not conceded here, is purely a legal demand and one which cannot be asserted under any circumstances in a court of equity.

If it be an equitable demand, upon what principle or doctrine of equity does it rest? It is not secured by any lien; it is not in the nature of a trust; it rests upon no equities to be asserted in order to enter a decree or to make the claim available. It is simply a money demand for the value of property which the plaintiff claims was used and appropriated by the defendant for which payment should be made.

This court has declared in Scott *v.* Neely, 140 U. S. 106, 117, 35 L. ed. 358, that,

> "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple contract, or as damages for injury to person or property, are legal actions and can be brought in the federal courts only on their law side."

This principle is based upon the seventh amendment to the Constitution of the United States, which declares that,

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

In the federal courts this right cannot be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Such aid in the federal courts must be sought in separate proceedings, to the end that the right to a trial by jury in a legal action may be preserved intact.

Scott *v.* Neely, *supra,* in the opinion of the court.

Pursuing this provision of the organic law of the United States, the sixteenth section of the judiciary act of 1789, enacted that such suits "shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law;" and this prohibition is carried into the revised statutes of the United States.

Section 723.

This provision of the revised statutes "is simply declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in this country. And so it has been often adjudged that whenever, respecting any rights violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional right to a trial by jury, but because of the prohibition of the Act of Congress to pursue his remedy in such cases in a court of equity."

Scott *v.* Neely, *supra,* citing Hipp *v.* Babin, 60 U. S. 19 How., 271, 278, 15 L. ed. 633, 635; Lewis *v.* Cox, 90 U. S. 466, 470, 23 L. ed. 70, 71; Killian *v.* Ebinghaus, 110 U. S. 568, 573, 28 L. ed. 246, 248; Buzard *v.* Houston, 119 U. S. 347, 351, 30 L. ed. 451, 453.

As already stated, the demand asserted by Virginia for money and property localized within the boundaries of West Virginia is simply for a debt predicated upon the transfer of property by Virginia and appropriated by West Virginia after her creation and organization as a state.

The demand made by the bill in this respect is for the money mentioned in the Act of February 4th, 1863, and the value of the property designated in the Act of February 3rd of the same year.

On the common law side of the court this demand may be made the subject of an action of debt, or even of an action of assumpsit

on the implied promise, if any legal liability exists, which is not here conceded, on the part of West Virginia to repay Virginia the money which she used and to compensate her for the property appropriated and used, the amount of which would depend upon its value.

Therefore, the demand in the case now before the court is the alleged debt due the complainant for this property which in no respect differs from any debt upon contract; it is the subject of legal action only in which the defendant is entitled to a jury trial in this court.

But it may be contended that there is no precedent for the trial of an action at law in this court, in which a jury may be empaneled as in ordinary trials in actions at law instituted in the Federal Circuit Court. It may also be contended that this is an exceptional case to be tried in a court exercising exceptional original jurisdiction, and that therefore the ordinary distinction between law and equity ought not to be observed and followed. If there were no precedent for this, there is no assignable reason why such a precedent should not now be made.

But this court has already declared that it will not entertain a suit in equity brought by a state where an adequate remedy at law exists.

In Georgia *v.* Brailsford, the fourth case entered upon "the original docket" of the Supreme Court, a definition was first given of the original jurisdiction of this court. During the pendency in the circuit court OF the district FOR Georgia between Brailsford and others and Spradling, to which the State of Georgia was not allowed to be made a party, this state, in February, 1792, filed its bill in equity in this court seeking the aid of its original jurisdiction for an injunction, in behalf of the state, to stay the payment to others of a certain debt in controversy in the said circuit court, which the State of Georgia claimed had been vested in her by the Act of Confiscation passed May 4, 1782.

The judges of the Supreme Court were divided in their opinion on the question of granting an injunction upon the ground that Georgia had a complete and adequate remedy at law.

Therefore, in 1793, a motion was made to dissolve the injunction and dismiss the bill, and upon this motion the following order was indicated by the chief justice: "The bill, however, was founded in the highest equity; and the ground of equity for granting the injunction continues the same, that the money ought to be kept for

the party to whom it belongs. We shall therefore continue the injunction until the next term, when, however, if Georgia has not instituted her action at common law it will be dissolved."

Acting upon this statement of the court Georgia brought an action on the common law side of the original jurisdiction, perfecting her pleadings therein during February, 1794, a jury was empaneled for the trial of the case, and the court charged the jury in effect that the act of the state of Georgia did not vest the title to the debt in the state at the time of its passage, and that by the terms of the act the debt was not confiscated but only sequestered, and the right of the obligees to recover it revived on the treaty of peace.

The record then recites that "the jury retired for a few minutes, and, on their return to the bar, by their foreman, Reynold Keen, say they find a verdict for the defendant."

Taylor, Jurisdiction and Procedure of the United State Supreme Court, pp. 52, 53.

Mr. Taylor, in his very estimable work just cited, considering the matter now under discussion, says:

> "No more emphatic assertion could have been made of the immemorial distinction between law and equity, or of the fact that the equity side of the original jurisdiction cannot be invoked when there is a plain and adequate remedy at law."
> *Idem*, 53.

This same distinguished author, quoting from Carson's History of the Supreme Court, page 169, note 7, further says:

> "It has been aserted that this is the only instance of trial by jury in the Supreme Court. This is an error. The minutes of the court discloses that in the case of Oswald *v.* New York, a jury was sworn and witnesses called, and a verdict found for the plaintiff of $5,315.06. This was in February, 1795. Two years and a half later a writ of enquiry of damages in the case of Catlin *v.* South Carolina was executed at the bar of the Supreme Court, and a verdict was given for plaintiff for $55,002.84. Although judgments were entered there is no record of any steps to enforce them."

At the time of the formation of the Constitution of the United States the distinctions existing between law and equity were well defined, and these distinctions were familiar to the framers of this instrument, and they considered it a wise policy to carry them into

the federal tribunals, and they have ever since been observed and enforced.

Therefore, Virginia's claim for a judgment against West Virginia for money and property located within the boundaries of the latter must be asserted at law.

It may be contended, however, that equity does have jurisdiction of that part of the bill which relates to the public debt of Virginia created prior to the formation of West Virginia, and that the court having jurisdiction of this feature of the case on equitable ground, which however is not conceded by West Virginia for the reasons hereinbefore stated, and though the other part of the demand may be legal in its nature, the court will entertain jurisdiction of the entire bill and grant full relief if the bill can be sustained upon any equitable ground whatsoever.

Be this as it may in some of the state courts, no such rule is observed in the federal courts.

It has long been a settled doctrine of the federal courts that legal and equitable claims cannot be blended together in the same suit.

In Scott *v.* Armstrong, 146 U. S. 499, 36 L. ed. 1059, the court, speaking through Mr. Chief Justice Fuller, in the course of its opinion says:

> "Section 914 of the Revised Statutes, in providing that the practice, pleadings and forms, and modes of proceeding in civil causes in the circuit and district courts shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record in the state within which such circuit or district courts are held, in terms excludes equity causes therefrom, and the jurisprudence of the United States has always recognized the distinction between law and equity as, under the Constitution, matter of substance, as well as of form and procedure, and, accordingly, legal and equitable claims cannot be blended together in one suit in the circuit courts of the United States, nor are equitable defenses permitted."

In support of this doctrine thus so clearly announced, the learned Chief Justice cites a number of decisions of this court, together with some of the decisions of the circuit courts.

The same principle is announced in Scott *v.* Neely, 140 U. S. 106, 35 L. ed. 358, and from this case we here quote points five and six of the syllabus as follows:

> "5. Remedies in federal courts at law or in equity, are not

according to the practice of State courts, but according to the principles of the common law and equity.

"6. A federal court has no jurisdiction of a suit in equity in which a claim, only cognizable at law, is united with a claim for equitable relief."

These principles have been fully adhered to in all of the federal courts, and are always applied in strict conformity to the well marked distinctions here laid down.

Now what is the status of the case at bar from any standpoint of its consideration? If it be conceded that the bill states a claim in equity relating to the *ante bellum* debt of Virginia, it cannot admit of argument that the claim for compensation for property used by West Virginia within the territory constituting her own boundaries formerly belonged to Virginia, is a pure legal demand, which has been united in the bill, and therefore the court will not entertain jurisdiction in this suit.

But we earnestly insist, upon reason and authority, that the plaintiff has no standing, even in a court of equity, with reference to that part of the bill relating to her public debt created prior to the formation of West Virginia; that as to this feature of the cause there is no ground for the assertion of any claim by the plaintiff against the defendant either at law or in equity; that this part of the bill is without merit, and that upon no consideration can this part of the plaintiff's claim be entertained by this court. This then leaves the naked legal claim of the plaintiff undisposed of, and the court being without jurisdiction in equity will not hear the cause as to this feature of the bill. The entire bill is without equity, and the demurrer interposed by the defendant ought to be sustained.

VII.

THIS COURT HAS NO JURISDICTION TO SETTLE OR DETERMINE THE PRINCIPLE UPON WHICH WEST VIRGINIA SHALL BE MADE LIABLE FOR ANY PORTION OF THE OLD DEBT OF VIRGINIA, BECAUSE THIS WAS MATTER OF CONTRACT BETWEEN VIRGINIA AND WEST VIRGINIA UPON THE ADMISSION OF THE LATTER INTO THE UNION.

The constitution of the new state, as prepared and formulated, looking to its admission into the union, contained the following provision as to the old debt of Virginia:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

On May 13th, 1862, the Legislature of Virginia passed an act entitled "An Act giving the consent of the Legislature of Virginia to the formation and erection of a new state within the jurisdiction of this state."

The first clause of said act is as follows:

"*Be it enacted by the General Assembly*, That the consent of the Legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia to include the countjes of Hancock, Brooke, * * * according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

The third clause of said Act is as follows:

"*Be it further enacted* that this Act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with a certified original of the said Constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."

It was thus provided by said Constitution that the Legislature should ascertain the same as soon as it was practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years; that is, it provided for the ascertainment of such equitable proportion by the Legislature of the State of West Virginia independently of the State of Virginia, and further made provision as to how the State of West Virginia should pay the same, and having provided that the Legislature of West Virginia itself should ascertain such equitable proportion, and Virginia having consented that it should ascertain such portion, it is respectfully submitted that

neither Virginia nor any court can intervene and perform this legislative duty.

When West Virginia framed her constitution and inserted in it the provision concerning the public debt of Virginia created prior to 1861, and the State of Virginia through her Legislature accepted the Constitution of West Virginia as the basis of her consent, this created a compact between the two States and was absolutely binding both upon Virginia and West Virginia.

It is matter of history that the vote on the adoption of the Constitution of the new State was held on the first Thursday in April, 1862; that this vote was taken and the Constitution ratified by the people; that the act of the Virginia Legislature was passed on the 13th of May, 1862, shortly after the vote on the adoption of the said Constitution was taken. This act was directed to be sent to the senators and representatives of Virginia in Congress, with instructions to obtain the consent of congress to the admission of the State of West Virginia into the Union. Accordingly on the 31st day of December, 1862, Congress acted on the matter, reciting the proceeding of the convention of West Virginia, and that of Virginia, and the act of the Legislature of the State of Virginia requesting that the new State should be admitted into the Union, and it then passed the act for the admission of said State.

These matters are fully recited in the opinion of this court delivered in the case of the Commonwealth of Virginia against the State of West Virginia, decided in 1870, and reported in 11 Wall. 39-65.

The action of the proposed new state in adopting her constitution by popular vote, the consent of Virginia through her Legislature given to the formation of the new State composed of the counties recited in the act giving her consent, and the deliberate consent of Congress, as required by the Constitution, consenting to the formation of the new State and admitting her into the Union, constitute a compact between Virginia and West Virginia, the terms of which, with reference to the said debt, form a part of this compact and are inviolable under the Constitution of the United States.

Biddle *v.* Green, 5 Wheat. 1, 5 Law. Ed. 547.

By this compact between Virginia and West Virginia, the former State referred to the Legislature of the latter the matter of ascertaining "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and therefore this "proportion" cannot be otherwise ascertained or de-

termined than by the consent of the State of West Virginia; nor can its liquidation be otherwise provided for than by a sinking fund sufficient in amount to pay the accruing interest and redeem the principal of whatever sum may thus be ascertained as the equitable proportion that West Virginia agreed to assume. Virginia referred this matter absolutely to the judgment of the Legislature of West Virginia and tacitly agreed to abide by the action of this legislative body.

This stipulation or compact between Virginia and West Virginia, with reference to the public debt of the former, is a valid and binding contract, and Virginia can do nothing, either by legislation or otherwise, to impair this obligation. West Virginia has the undoubted moral and legal right to stand upon its terms; and if in the exercise of its judgment exercised upon a basis just and equitable, it should be ascertained by the Legislature of West Virginia that the State owes nothing to the bondholders of the old debt of Virginia, then there is no obligation whatever subsisting which can be enforced by the holders of any part of the old debt of Virginia, and especially has Virginia herself no cause of action against this State.

VIII.

THE EFFECT OF THE COMPACT BETWEEN VIRGINIA AND WEST VIRGINIA ARISING FROM THE ADMISSION OF THE LATTER INTO THE UNION AS A STATE UPON THE CLAIM OF VIRGINIA TO PROPERTY LOCALIZED OR PERTAINING TO INSTITUTIONS LOCALIZED WITHIN THE BOUNDARIES OF WEST VIRGINIA.

We have already presented to the court our considerations relating to this feature of the case upon grounds independently of that which is here presented, and have shown that Virginia cannot sustain this part of her claim in this suit. It seems to us, however, that there is a further and conclusive reason why this part of her demand is without foundation.

In the initiatory convention held by Virginia on the 20th of August, 1861, having as one of its objects the consideration of the matter of the formation of a new State out of a part of the territory within her then existing boundaries, the representatives in that convention did not consider any condition touching the formation of a new State other than the one that the new state should

take upon itself the payment of "a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and this was made the ultimate condition as expressed in the Constitution of West Virginia ratified by popular vote in April, 1862. This condition was, with some modification in the language employed to express it, inserted in the Constitution which West Virginia adopted. And Virginia, in May, 1862, signified her consent through her Legislature that the new state should be formed with the constitution which she had theretofore in April, 1862, adopted as her organic law, and with no other or additional burdens or liabilities touching the new state soon to be brought into existence, and needed only therefor the consent of Congress which was given in December, 1862.

When Virginia had given her consent properly expressed, as was done in this case, she could not revoke it, and the only other body whose action was essential to the creation of a new state that could impose other or further conditions touching her admission into the Union, was the Congress of the United States. Congress did give her consent in December, 1862, and it only remained for West Virginia to provide against slavery within her boundaries, and when this measure was adopted in the manner provided by the act of admission, West Virginia then became an independent and sovereign State of the Union.

After Virginia gave her consent to the formation of West Virginia in May, 1862, and the act of Congress was passed in December of the same year, providing for her admission as a state, all property localized in West Virginia, or belonging or appertaining to institutions localized there, passed to and became absolutely the property of West Virginia.

Therefore the acts of the Legislature of Virginia subsequently passed on the 3rd and 4th days of February, 1863, respectively, seeking to create a liability against West Virginia by an *ex parte* act, are without any force or effect to create any debt against West Virginia because of the matters in any of them to which the acts respectively relate. All of the property formerly belonging to Virginia located within the boundaries of West Virginia became and constituted a part of her public domain, and over which her territorial sovereignty extended as fully and efficiently as if no part of this property had ever belonged to the old state.

This necessarily results from the relation of the states to each other and to the general government. If it were otherwise and the

property and sovereign interests belonging to West Virginia, after her admission as a state into the Union, could be made the subject of disposal through a legislative act of Virginia efficient for the purpose for which such act was passed, then it would be within the sole power of Virginia to annihilate, by her own acts, all the instrumentalities and means necessary to uphold the integrity of West Virginia as a state. It would defeat her own avowed purpose as well as that of the national government.

Furthermore, if force and effect be given to these acts of legislation passed by the General Assembly of Virginia in February, 1863, it would necessarily impair the obligation of a contract existing between Virginia and West Virginia growing out of the terms of admission of the latter as a State into the Union. Because the only liability which she in any wise agreed to assume, and thereby did assume, was an "equitable proportion" of the public debt of Virginia.

It is now respectfully submitted that the State of Virginia has no claim against West Virginia with reference to her public debt, nor any valid demand against her for property localized within the boundaries of West Virginia; that it clearly appears upon the face of the bill that it is without equities to support it; and therefore the demurrer filed by the State of West Virginia ought to be sustained, and the plaintiff's bill dismissed.

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Supreme Court of the United States.

OCTOBER TERM, 1906.

Brief for Defendant on Demurrer.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL. NO. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF ON DEMURRER.

The bill in this case sets up at least two separate and distinct causes of action, one in behalf of Virginia in her own right to have an accounting with the State of West Virginia for the value of certain property and money alleged to have been transferred to and received by the defendant State under two acts passed by the legislature of Virginia on the 3d of February, 1863, and the 4th of February, 1863; and the other in the name of Virginia as trustee, suing for the use and benefit of the owners of certain certificates set out and described in the bill and exhibits.

The first act under which it is alleged property was transferred provided as follows:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads,

and other internal improvements or parts thereof situated within said boundaries, and vested in this State, or in the president and directors of the Literary Fund, or the board of public works thereof, or in any person or persons for the use of this State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State."

And by the fifth section it was enacted:

"That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

It is then charged in the bill that the property which was transferred to the State of West Virginia under this act was received and enjoyed by that State, and consisted of a number of items the value of which amounted in the aggregate to "several millions of dollars," the bank stocks alone having realized to the State about "six hundred thousand dollars."

(R., pp. 4, 5.)

The second act is as follows:

"1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

"2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; *Provided, however*, That when the said State of West Virginia shall become one

> of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."
>
> (R., pp. 5, 6.)

It is alleged that the sum of one hundred and fifty thousand dollars, "together with other sums belonging to the State of Virginia," were received or collected by the State of West Virginia after its formation.

Again it is alleged that:

> "The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia."
>
> (R., p. 10.)

It is alleged in the bill that on the 20th day of August, 1861, the Commonwealth of Virginia, in convention assembled, at the city of Wheeling, adopted an ordinance "to provide for the formation of a new State out of the portion of the territory of this State," and that the ninth section of the ordinance was as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."
>
> (R., p. 4.)

It is then alleged that the new State was admitted into the Union on the 20th day of June, 1863, under a constitution which contained the folowing provisions:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."
>
> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."
>
> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."
>
> (R., p. 6.)

It is shown by the bill that the State of Virginia has settled with the holders of the old public debt by issuing new bonds for two-thirds of the principal and interest, which was decided by the State herself to be her equitable proportion of the debt, and issuing certificates for the other one-third which was assumed by the State of Virginia and by her creditors to be the portion for which West Virginia was liable, and it is stated that—

> "By each of the acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your oratrix, should be surrendered to and held by your oratrix, who either by the express terms of the settlement provided for by said acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, *in trust*, for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your oratrix to each creditor whose old Virginia bond was so surrendered to her."
>
> (R., p. 8.)

And it is also alleged that—

> "All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstand-

> ing and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto."
>
> (R., p. 9.)

It is averred in paragraph one of the bill that on the 1st day of January, 1861, the State was indebted "in about the sum of $33,000,000," and that in addition to this "there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the commissioners of the sinking fund and the literary fund of the State," the former amounting to $1,462,993.00 and the latter to $1,543,669.05, as of the same date.

(R., p. 1.)

The several acts of the legislature under which the debt was adjusted and the contracts under which the certificates issued by the State have been deposited with a commission, *in trust* for the purpose of bringing this suit, are exhibited with and made part of the bill, and it is aleged that "this suit has been instituted at the request and direction of the said commission and in strict conformity with the provisions of the said act of March 6, 1900," which act will be hereafter referred to in this brief.

In the preamble to the act of March 30, 1871, which was the first one passed by Virginia to provide for the funding and payment of two-thirds of the debt, it was recited, among other things, that—

> "Whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof *and not to this State, as the constitution of this State provides;* now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore be it enacted," etc., etc.
>
> (R., pp. 13, 14.)

The third section provided that—

> "Upon the surrender of the old and the acceptance of

the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, *in trust* for the holder or his assigns."

(R., p. 15.)

It appears from one of the exhibits attached to and made part of the bill that the certificates issued to the creditors under the provisions of this act were as follows:

"This is to certify that there is due unto ——— ——— ——— heirs, executors, administrators or assigns $———, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled, 'An act to provide for the funding and payment of the public debt,' namely, bond No. —, with interest, amounting to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded *in trust* for the holder hereof or his assigns."

(R., pp. 47, 48.)

The fourth section provides, among other things, that—

"The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, *cancel the same,* and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law."

This act provided for funding two-thirds of the public debt and interest in bonds bearing interest at the rate of 6 per cent.; but subsequently, on March 28, 1879, another act, prescribing a plan of set-

tlement, was passed, which provided for the issue of twenty-year bonds bearing interest at the rate of 4 per cent. and ten-year bonds bearing interest at the rate of 5 per cent.

The sixth section of that act provided that—

> "The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, *cancelling* and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act. * * * But in *cancelling* and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so *cancelled* shall be filed for reference."
>
> (R., pp. 18, 19.)

And in the seventh section of that act it is provided that—

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held *as a full and absolute release of the State of Virginia from all liability on account of said certificates.*"

February 14, 1882, another act was passed entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory, resources," etc., etc. This act again provided for refunding only two-thirds of the old debt and interest at 3 per cent., and it was enacted that—

> "For all balances of such indebtedness, constituting West

> Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:
>
> "No.—.
>
> "The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ——— dollars, held by ——— ———, dated the —— day of ———, and numbered ———, leaving a balance of ——— dollars, with interest from ——— ———, to be accounted for by the State of West Virginia, *without recourse upon this commonwealth.*"

In section 8 it was provided that—

> "All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be *canceled* by the treasurer in the presence of the board of the commissioners of the sinking fund as the same are required (acquired), and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled, from time to time, shall be certified by said board and filed with the treasurer for preservation."
>
> (R., p. 29.)

This act also provided that after its passage "no bonds, certificates, or other evidences of indebtedness, shall be isued for any portion of the debt of this State, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided."

(R., p. 30.)

February 20, 1892, an act was passed to refund at least $23,000,000 of the outstanding debt which had not been presented in exchange for new bonds under the act of February 14, 1882. Like the others, this act provided for only two-thirds of the principal and interest of the debt, then outstanding, and by the sixth section it was enacted that—

> "For all balances of indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

"No. —.

"The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for ——— dollars, dated —— day of ———, and No. ——, leaving a balance of ——— dollars, with interest from ——— ——, to be accounted for to the holder of this certificate by the State of West Virginia, *without recourse upon this Commonwealth.*"

(R. p. 35.)

In the ninth section it was provided that—

"All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be *cancelled* by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the General Assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation."

(R., p. 37.)

In the tenth section it is enacted, among other things, that—

"All bonds of the State issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act be *cancelled* by said commissioners and preserved in the office of the treasurer of the Commonwealth."

(R., p. 37.)

March 6, 1894, the legislature of Virginia passed a joint resolution, the preamble to which, after reciting the titles of the acts to which we have heretofore referred, declared:

"Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking and literary fund; and

"Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original State; now, therefore, be it resolved," etc.

(R., p. 40.)

This resolution provided for the appointment of a commission of seven members, which was—

"authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia.

"But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. *But said commission shall in no event enter into any negotiation thereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof.*

"All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the State to any expense on this account. And their action shall be subject to the approval or disapproval of the General Assembly, and shall not be binding on the State until approved by the General Assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia."

(R., pp. 40, 41.)

Commissioners were appointed under this resolution, but, no adjustment having been made, the act of March 6, 1900, was passed, entitled—

"An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the

due protection of the Commonwealth of Virginia in the premises."

The preamble to the act, after reciting the titles of acts previously passed, is as follows:

"Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit: one-third of the amount of said obligations, of which certificate this State holds a large amount, through the agency of the commissioners of its sinking fund; and

"Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

"Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt *which she assumed*, yet it is possible that complications will arise with respect to said certificate which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now therefore, be it enacted," etc.

The first section provided—

"That the commission created and appointed under a joint resolution of the General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited *will accept the amount realized on such settlement*

from West Virginia on said certificates as a full settlement of all their claims thereunder."
(R., p. 42.)

The second section provided that —

"If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings, on behalf of the State, as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the State shall not be subject to any expense on that account."
(R., p. 42.)

The holders of a large amount of certificates issued by Virginia for what she claimed was West Virginia's just proportion of the debt, had deposited their certificates with a committee for collection or adjustment, and on the 20th of July, 1898, the depositing committee through its chairman, made the following propositon to the Virginia commission:

"Whereas your commission was constituted as set forth in said joint resolution and act of assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proposition of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

"And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders

of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and contract aforesaid, then your commission should be authorized, by and with the approval of the attorney-general of Virginia, to take action in the premises as might be needful to protect the interests of the State and bring about and carry into effect a settlement as aforesaid.

"And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit as far as practicable of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the advisory board named in said agreement and as should become effective thereunder it being further stated in said agreement that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

"And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to wit, $8,565,095.70 and a majority of all the other certificates aforesaid, to wit, $1,782,475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, bankers of New York city, N. Y., the depository named by said committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

"In view of the premises the undersigned, the committee aforesaid, do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission, acting for the State of Virginia under the said joint resolution and act of assembly aforesaid, that your commission will enter into negotiations

with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said attorney-general take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon *shall be accepted in full satisfaction of all the claims of the certificate holders thereunder* and the undersigned committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

"If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said committee under said agreement of July 28th, 1898."

(R., pp. 54-56.)

This proposition was accepted by the Virginia commission, with the approval of the attorney-general, on the 18th of September, 1902.

On the 3d of December, 1902, the advisory board of the depositing committee promulgated the following plan of settlement, which was approved by the committee:

"Under an agreement of July, 1898, a committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an advisory board was constituted whose functions were also specified in the agreement.

"In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the committee and advisory board, which among other things, contained the following provision:

" 'The committee may surrender to either State (Vir-

ginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their *pro rata* of such an amount in State bonds, or cash as may be agreed upon between the committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State.'

"Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her attorney-general, to take such action and institute such proceedings as might, in the judgment of the commission and attorney-general, be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the holders of such certificates that if the commission would secure a settlement with West Virginia with respect to said certificates, *they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder.*

"On the 18th of September, 1902, the committee held on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof (*) as above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the committee accordingly on that day entered into a contract with the Virginia commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the commission upon the agreement and arrangement on the part of the commission that they would enter into negotiations with the State of West Virginia for the purpose of effecting a settlement with respect to said certificates, and would by and with the advice and approval of said attorney-general, take such action as they might deem needful in the premises; *the amount realized on such settlement to be accepted in full of said certificates* as above stated, which contract was duly approved by the attorney-general of Virginia on September 29th, 1902.

"In view of this act of the Virginia assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended more definite with respect to the matters now involved; and to

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

this end the following is hereby formulated, approved and recommended by the committee and the advisory board by way of supplement and addition to the original plan:

"I. The above named committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia commission, in conformity with the act of March 6, 1900, *for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the attorney-general of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided;* such pledge or deposit to be such length of time as may be agreed on; and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the committee may enter into such further agreements with the said commission as may be deemed needful to bring about a settlement in the premises.

"II. In the event that no settlement shall be effected by the Virginia commission either under the agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the committee and the said commission within such time as may be limited therein, the committee may, after any and all such agreements with the said commission shall have expired, take such other and further proceedings and make such other and further agreements and settlements in the premises as the committee may deem judicious.

"III. The committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

"The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows: one member thereof to be appointed by the committee, one member by the advisory board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and con-

verted into money for the purpose of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

"New York, December 3d, 1902."

This agreement was signed by the members of the advisory board and the chairman of the committee.

On the 14th day of December, 1904, an additional agreement was made between the depositing committee and the Virginia commission, which extended indefinitely as to time by contracts made September 9, 1905 and November 24, 1905. The said contracts are as follows:

"Memorandum of agreement, made this 14th day of December, 1904, between the depositing committee of the securities known as the Virginia deferred certificates as constituted under the contract of July 28th, 1898, and of which John Crosby Brown is chairman, and Robert L. Harrison, secretary, acting under the plan of settlement approved on December 3rd, 1902, by the advisory board referred to in the said contract hereinafter referred to as the depositing committee, party of the first part, and the commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900, and of which John B. Moon is chairman, and Joseph Button is secretary, hereinafter referred to as the Virginia commission, party of the second part:

"Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the depositing committee aforesaid to the said Virginia commission, and were placed subject to the control of the said commission upon the agreement and arrangement on the part of the said commission acting for the State of Virginia under the said joint resolution and act of assembly aforesaid, that the said commission should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, *in accordance with the said contract of July, 28th, 1898*, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said commission would, by and with the advice and approval of the attorney-general

of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it was *agreed that the amount realized thereon should be accepted in full satisfaction of all the claims of the certificate-holders thereunder*, and that the said committee would surrender to the said commission, in exchange for such amount, the certificates so placed subject to the control of said commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September, 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and

"Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, attorney-general of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

"Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the advisory board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said committee and the advisory board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed settlement as set forth in the said plan so published and more than thirty days having elapsed after the said publication was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the committee having been duly made to the only depository under the said contract, to wit, Messrs. Brown Brothers & Company, of 29 Wall street, New York, the said plan of settlement thereupon became effective and final; and

"Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modifica-

tion thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said attorney-general under the said act of the General Assembly of Virginia March 6, 1900:

"Now therefore this agreement witnesseth: that the aforesaid depositing committee does hereby authoriz and direct their said depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia deferred certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission *in pursuance of the said joint resolution and act of the General Assembly of Virginia;* and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such certificate to the said Virginia Commission in such form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said commission:

"But this agreement shall continue in force only until the said 18 day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said depositing committee, unless a settlement shall have been before that time negotiated with West Virginia in pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable basis which has been agreed to by said commission and the authorities of West Virginia aforesaid. *Provided, however,* That it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon or at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be

taken or instituted by the said commission in the premises, as may hereafter be agreed upon by the parties and then indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

"In testimony whereof the signatures of the chairman of the said depositing committee and of the Virginia Commission, attested by the respective secretaries thereof, ar hereunto affixed on the day and year first above writter

"JOHN CROSBY BROWN, *Chairman.*

"ROBERT L. HARRISON, *Secretary.*

"JOHN B. MOON,

"Chairman of Virginia Commission.

"JOSEPH BUTTON, *Secretary.*"

"The foregoing agreement is hereby approved as having been entered into by my advice and approval.

"WILLIAM A. ANDERSON,

"Attorney-General of Virginia.

"Dated December 14, 1904."

"The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of September 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before December 1st, 1905, in all respects as therein specified.

"Given under our hands this 9th day of September, 1905.

"JOHN CROSBY BROWN,

"Chairman Depositing Committee.

"ROBT. L. HARRISON, *Secretary.*

"JOHN B. MOON,

"Chairman Virginia Commission.

"JOS. BUTTON, *Secretary.*"

"The above extension of the contracts above referred to is hereby approved this 9th day of September, 1905.

"WILLIAM A. ANDERSON,

"Attorney General of Virginia."

"Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47

were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said commission; thus placing subject to the complete control and disposal of the commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding.

"Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted subcommittee acting with the attorney-general of Virginia, made to the governor and attorney-general of West Virginia, and to the finance committees of the legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the legislature of West Virginia would, at least, appoint a committee or other public functionary with authority to take up the questions involved for the purposes of discussion and negotiation, but the commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all; thus leaving to the Virginia Commission and attorney-general of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the court having jurisdiction of controversies between States.

"Now, therefore, it is hereby stipulated and agreed by and between the depositing committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said commission acting in this behalf by and with the advice and approval of the attorney-general of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

"1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the 1st day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

"2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said commission and

shall remain in full force and effect without regard to time limit; and the said Brown Bros. & Co. shall issue and give to the said commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of the said commission for the purpose of carrying out this agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the commission; and the said Virginia Commission are hereby given and *invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co. as aforesaid.*

"3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the attorney-general of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, *that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that court* of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the attorney-general of that State, do hereby undertake and *agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid,* as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said act of the General Assembly of Virginia and the joint resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said

commission, notwithstanding the institution and pendency of such suit.

"4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said joint resolution and act of the General Assembly of Virginia, *they will account for, pay over and deliver such amount, either in cash or securities,* as may be realized from West Virginia through any settlement made by the said commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, *to the said depositing committee in full settlement and satisfaction of all claims under said certificates;* and the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, *in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned,* and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

"5th. It is further understood and agreed that if from any cause the said commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said commission to restore to the control of the said depositing committee all such deferred certificates as may have been placed subject to the control and disposal of said commission as aforesaid.

"RICHMOND, VA., *November* 24th, 1905."

This contract was signed by all the members of the depositing committee and the Virginia Commission, and approved by the attorney-general on the day of its date.

It appears from one of the exhibits attached to and made a part of the bill that the total amount of certificates issued by Virginia on account of West Virginia's alleged proportion of the public debt was as follows:

Under the act of 1871	$15,281,970.47
Under the act of 1879	564,258.87
Under the act of 1882	1,775,603.48
Under the act of 1892	605,320.78
Total	$18,227,153.60

(R., p. 90.)

It appears that on January 4, 1906, certificates to the amount of $13,173,435.41 had been deposited by the committee with Brown Brothers and Company, and that they have been withdrawn by the Virginia Commission and are now in its custody or under its exclusive control.

For the owners of the whole amount of certificates issued, whether they have or have not been deposited with the committee or with the commission, Virginia sues as trustee in this case under the contracts and statutes to which we have referred.

The prayer of the bill is as follows:

> "Forasmuch, therefore, as your oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her governor and attorney-general, with a copy of this bill, your oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right *and as trustee as aforesaid*; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by the State of West Virginia in the premises; and that

all such other and further and general relief be granted unto your oratrix in the premises as the nature of her case may require or to equity may seem meet."

The bill has been demurred to on the following grounds:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and aslo, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the attorney-general has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain cer-

tificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

The first question to be considered in the case is whether this court has jurisdiction to hear and determine the causes of action, or any of the causes of action, alleged in the bill, for if no cause of action is alleged upon which the plaintiff is entitled to a judgment or decree in this court, it will not decide any of the other questions presented by the demurrer. Jurisdiction is the power to hear and determine a cause between the parties to the action who are before the court, and to render a final judgment or decree and enforce its execution by judicial process. Judicial tribunals cannot take cognizance of controversies merely for the purpose of ascertaining and declaring what the legal or equitable rights of the parties are. They must render judgments or decrees which remedy the wrongs complained of, or enforce the rights ascertained in the case; in other words, their powers are remedial, not merely declaratory.

Jurisdiction is defined by Bouvier as "the authority by which judicial officers take cognizance of to decide causes. Power to hear and determine a cause (3 Ohio, 494; 6 Pet., 591). The right of a judge to pronounce a sentence of the law on a cause or issue before him acquired through due process of law. It includes power to enforce the execution of what is decreed. (8 Johns., 239; 3 Met., Mass., Thach., 202), (2 Bouvier Law Dic., 26).

In defining jurisdiction, Black says:

> "The power and authority constitutionally conferred upon or constitutionally recognized as existing in a court or judge to pronounce the sentence of the law or to award the remedies provided by law upon the set of facts proved or admitted,

referred to the tribunal for decision and authorized by law to be the subject of investigation or action by that tribunal, and in favor or against persons (or a *res*) who present themselves, or who are brought before the court in some manner sanctioned by law as proper and sufficient. Jurisdiction is a power constitutionally conferred upon the judge or magistrate to take cognizance of and determine a cause according to law and to carry a sentence into execution (6 Pet., 591; 9 Johns., 239; 2 Neb., 135)."

Black's Law Dictionary, page 63. See also Anderson's Words and Phrases, page 3877-813; also Am. & Eng. Ency., vol. 17, page 1041; *Daniels v. Tearney*, 102 U. S., 418; *Applegate v. Lexington, etc.*, 117 U. S. 267; *Simmons v. Saul*, 138 U. S. 454; *Holmes v. Oregon*, 5th Fed., 534; 9th Fed., 32; 6 Sawyer, 385; *Grignon v. Aston*, 2 How. 385; *U. S. v. Arredondo*, 6 Pet., 691; *Decatur v. Paul*, 14 Pet., 599; *In re Bogart*, 2 Sawyer, 401; 3 Fed. Cases, No. 596; 1 *Le Roy v. Clayton*, 2 Sawyer, 499; 15 Fed. Cases, No. 8258; *Riggs v. Johnson County*, 6 Wall., 187; *McNitt v. Turner*, 6 Wall., 366; *Cornett v. Williams*, 20 Wall. 240.

The bill, so far as it relates to the old debt of Virginia, although it sets up all the provisions of the compact, seems to be framed upon the theory that West Virginia is liable for one-third of the debt as it existed prior to the first day of January, 1861, upon the alleged ground that the formation of the new State diminished the territory and population of the original or parent State to that extent. It is evident, however, that no such rule can be applied here, for this is not a case in which West Virginia's "just proportion" of the debt is to be determined upon such rules or principles as a court may decide to be fair and equitable, but is to be ascertained and paid according to a method agreed upon by the parties; and that method must be observed, whether the action is prosecuted at law or in equity. The liability of the defendant State, if any exists, is founded entirely upon a compact entered into between the two States with the consent of Congress, and the adjustment must therefore be made according to its terms. No rule, or supposed rule, of international law can be applied in such a case.

By the ordinance of the Wheeling convention, which represented the State of Virginia, consent was given to the formation of a new State out of a part of her territory, and it was provided, as we have already seen, that it should take upon itself a just proportion of the public debt of Virginia existing prior to the first of January, 1861, which, according to the ordinance, was to be ascertained by charging

to the new State all the State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of the State of Virginia during that period from the counties included within the new State.

It was also provided that all private rights and interests in lands within the proposed new State derived from the laws of Virginia prior to the separation should remain valid and secure under the laws of the proposed State and should be determined by the laws then existing in the State of Virginia. At the time of the passage of this ordinance there was, of course, no State of West Virginia, and therefore no second party to the proposed compact or agreement. Subsequently the people inhabiting the counties proposed to be included in the new State held a sovereignty convention and adopted a constitution preparatory to admission into the Union. This was the first time the new State, or proposed new State, had the capacity to assent to, or dissent from, the proposition submitted by Virginia, and it assented to it with the qualification, or addition, that its equitable proportion of the debt should be ascertained by its own legislature as soon as practicable, and that the legislature should provide for its liquidation by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years. But this did not complete the compact, for Congress had not yet given its consent, which was necessary under the Constitution of the United States.

Afterwards application was made by the proposed new State for admission to the Union under the Constitution containing the provisions above recited; and, on the 31st day of December, 1862, an act was passed by Congress providing for its admission upon certain conditions, none of which had any reference to the indebtedness of the old State (12 Stat., 633). This act of Congress recited that the "Legislature of Virginia, by an act passed on the 13th of May, 1862, did give its consent to a formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia," etc., etc. The Virginia act of May 13, 1862, was passed while the application o fWest Virginia for admission into the Union was pending, and its first section provided that the consent of the legislature of Virginia is given to the formation and erection of the State of West Virginia within the jurisdiction of that State, to include certain counties which are mentioned in the act, "according to the boundaries *and under the provisions set forth in the Consti-*

tution for the said State of West Virginia and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

It was further provided that—

> "This act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."
>
> *See Constitution and Statutes of Virginia and West Virginia, 1861-66, page 3, Acts of Extra Session, May, 1862.*

The schedule attached to the constitution of West Virginia and referred to in the act declared that "when the General Assembly of the State of Virginia and the Congress of the United States shall severally give their consent to the formation and erection of the State of West Virginia as proposed, the commissioners hereby appointed shall forthwith issue their proclamation," etc., etc.

Finally, on the 20th day of June, 1863, the State of West Virginia was admitted into the Union under the constitution framed by its convention, approved by the State of Virginia and the Congress of the United States. And thus the consent of that body was given to all the provisions of the agreement and it became a legal and constitutional compact between the two States.

Virginia v. West Virginia, 11 Wall., 39.
Green v. Biddle, 8 Wheat., 1-86.
Virginia v. Tennessee, 148 U. S., 503.

West Virginia having agreed to the proposed compact, upon the conditions that her own legislature should ascertain the amount of the debt and provide for its liquidation in a certain manner and the reconstructed State of Virginia having been authorized by Congress to elect delegates to frame a constitution, proceeded to do so, and in 1867 adopted a constitution, the 19th section of article 10 of which contained the following provision:

> "The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia proper to be borne by the States of Virginia and West Virginia, and shall provide that such sum

as shall be received from West Virginia shall be applied to the payment of the public debt of the State."

In 1902, after Virginia had settled with her creditors, a new constitution was adopted, which omitted this section and contained no provisions upon the subject of a settlement with West Virginia.

It appears plainly from the foregoing that essential parts of the compact as agreed to by West Virginia were that the legislature of that State should ascertain what was her just proportion of the debt; that it should provide for its liquidation by the establishment of a sinking fund; that the State of Virginia assented to this condition by consenting to the admission of the new State "under the provisions set forth in the constitution of the said State of West Virginia and the schedule thereto annexed," and that Congress admitted the State under that Constitution, thereby consenting to the compact with the conditions constituting part of it.

The two States have therefore, by compact between themselves, and with the consent of Congress, as required by the Constitution, designated a tribunal to ascertain and settle West Virginia's share of the debt. This tribunal still exists and is unquestionably competent to discharge the duties imposed upon it. And, moreover, but most important of all, it is the only tribunal existing or that can be established, possessing the power to provide for the payment of West Virginia's share of the debt when the same has been ascertained in accordance with the terms of the compact. It cannot be coerced by any judicial or other civil process known to the Constitution or laws of this country. No court can compel it either to adjust the debt or to provide a sinking fund, or impose taxes, issue bonds, or appropriate money.

Conceding, for the sake of the argument, that Virginia might maintain a suit in this court as trustee, the question must be considered whether the bill states a good cause, or good causes, of action in favor of the plaintiff, either in her own right or as trustee for the parties. Clearly there is no cause of action shown against West Virginia under the provisions of the act of February 4, 1863, which is embodied in the bill (R., p. 4). The first section of that act appropriates $150,000 to the State of West Virginia when it shall be organized and admitted into the Union; but it does not provide that the new State shall account for it in any way. Whether the whole of the sum appropriated, or, if not the whole, what part of it, had been paid into the treasury by the counties located within the boundaries of the proposed new State does not appear from the act, and is not

alleged in the bill. As there was no provision that it should be accounted for or repaid to Virginia, the presumption is, especially in the absence of an allegation upon that subject, that it was in fact collected from the West Virginia counties, or that it was intended as a gratuity to the new State. The bill being silent upon the subject and every presumption being against the pleader in such a case, the court cannot infer a cause of action in favor of the plaintiff. The second section of the act shows plainly on its face that it appropriated no money except what had been actually collected from the counties within the proposed boundaries of the new State, and as it was not required to account, and never agreed to account, no cause of action, legal or equitable, can be based on that part of the statute.

The other act under which a claim is made in this action was passed February 3, 1863 (R., p. 4). In brief, the first section of that act transfers to West Virginia certain public property "within the boundaries of the proposed new State of West Virginia when she becomes one of the United States," and declares that the title shall pass without any other assignment, conveyance, transfer or delivery than is therein contained. The second section provides that if the appropriation of the property, stocks, and securities made by the act shall take effect, the State of West Virginia "shall duly account for the same in the settlement hereafter to be made with this State." The bill alleges that the plaintiff "is informed, believes, and so charges" that the property transferred under this act consisted of a number of items, and that its value amounted to "several millions of dollars," but that the plaintiff is "unable to state at this time the exact amount." It is then alleged that the State of West Virginia realized from the bank stocks alone "about six hundred thousand dollars;" but there is no allegation as to their value at the time of the transfer.

It is evident that the "settlement hereafter to be made with this State" means a settlement of West Virginia's just proportion of the old public debt which had been provided for by the ordinance of the Wheeling convention and by the constitution of West Virginia, which was then before Congress on her application for admission into the Union. In the adjustment provided for in the compact West Virginia was to be charged with "all the State expenditures within the limits thereof," since any part of the debt was contracted, and consequently the State of Virginia, in order that it might not thereafter be claimed that the expenditures on account of the

public property transferred by the act of February 3, 1863, were not to be included in the settlement under the compact, expressly provided that they should be. The bill therefore shows an attempt to make two causes of action out of one—a separate cause of action based upon the compact for the recovery of the amount of money originally expended by the State of Virginia in paying for the property so transferred, and another cause of action founded on the statute. The State of Virginia of course retained all the public property situated within her own boundaries after the separation, and it was the intention of Virginia that West Virginia should become the owner of all within her limits and should, in the settlement made under the compact, account to the old State for the expenditures made by that State in procuring it.

We think enough will be said, and suggested, in other parts of this argument to establish the proposition that the State of Virginia has not alleged, and cannot allege, either in her own right, or as trustee, a good cause of action against the defendant State on the compact. Before she could possibly sue the defendant State, either at law or in equity, to recover for contribution, she must have paid the whole debt, or at least she must have paid more that her own legal or equitable share of it. As the case is now presented, neither Virginia nor her creditors have been injured in the slightest degree by the fact that West Virginia has not paid her proportion of the debt. Virginia has not been injured, because she has herself paid, or extended, only that part of the debt which, according to her own judgment, she would have been justly required to pay if West Virginia had fully complied with her alleged obligations, and she has been released from all the remainder; and the creditors have not been injured by any alleged default on the part of West Virginia, because they never had any claim, legal or equitable, against her and have voluntarily discharged their only debtor from liability. It is elementary law that if one owes a debt and another agrees with him—not with the creditor—that he will furnish a part of the money to pay it, or that he will reimburse the debtor as to a part of it, the original debtor cannot sue for contribution until he has paid the debt, and certainly not until he has paid his own share and some part of what the other agreed to furnish or reimburse; and in the latter case he could sue only for what he had paid in excess of his own share. The applicability of this legal and equitable rule is the same whether the liability to contribute is founded on an express

contract between the parties or is implied, as in the case of cosureties.

It is not alleged in the bill that the State of Virginia has ever made an account or statement of her claim under the compact and presented it for payment or adjustment. On the contrary, it is shown by the bill and exhibits that as early as 1871, if not before that date, Virginia repudiated the compact and arbitrarily decided that West Virginia was liable for one-third of the debt, and has always, at least up to the time of the institution of this suit, insisted upon an adjustment on that basis only. This is shown by the preambles and provisions of every act passed providing for an adjustment with her creditors; and in the joint resolution of March 6, 1894, creating a commission to settle with West Virginia, it was declared:

> "But such commission shall in no event enter into negotiations hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof."
>
> (R., p. 40.)

This restriction upon the power of the commission has never been repealed, and that body has now no power to negotiate with the defendant State upon any other basis. It is a mockery, however, to characterize such a proceeding as a "negotiation." An ultimatum was presented at the very beginning, and West Virginia was distinctly informed that she must recognize her liability to pay one-third of the debt, or have no adjustment. Under this proposition no accounts were to be presented or examined, no vouchers or other documents were to be considered, except such as would show the amount of the debt prior to January 1, 1861; the terms of the compact were to be wholly ignored and nothing was to be done except to divide the amount of the debt by three. West Virginia was perfectly justifiable in declining to "negotiate" upon such a basis as this.

If the allegations contained in paragraphs fifteen and sixteen of the bill (R., p. 9) are to be regarded by the court as setting up a cause of action for West Virginia's equitable proportion of the debt, the plaintiff is claiming in this case a double liabilty upon the part of that State—a lability for her equitable proportion, or for one-third, of $33,000,000, the alleged amount of the whole public debt on the 1st of January, 1861, and also a liability for her equitable proportion, or one-third, of the $25,000,000 alleged to have been paid

by Virginia, which is a part of the $33,000,000. We do not think, however, that the court can regard the general and indefinite allegations in the paragraphs to which we have referred as even a serious attempt to state a cause of action; but if it is, then the bill contains three separate claims instead of two.

But it is clear that Virginia could not under the ordinance, or upon any principle of law or equity, have a cause of action against West Virginia for contribution to the payment of her (Virginia's) own equitable share of the debt, either before or after she had paid it; nor can that State recover against West Virginia any part of the old debt from which she has been released and discharged by her creditors.

We have endeavored to show that if Virginia, either in her own right or as trustee, ever had a cause of action against West Virginia on account of the old debt, it was founded on the compact, and the sum she had a right to demand was to be ascertained and paid in the manner prescribed in the compact; but that State and her creditors have, without consulting West Virginia, created a situation which renders it impossible for this court, or any other tribunal, now to adjust the liability of the latter State in the manner therein prescribed without doing great injustice to her. An examination of the Wheeling ordinance shows that the amount of the Virginia debt as it existed prior to January 1, 1861, is not a factor to be taken into consideration in ascertaining West Virginia's just proportion. It is alleged in the bill that the debt at the time of the separation amounted to "about $33,000,000." When Virginia passed the ordinance, and when West Virginia accepted it with the modifications as to the manner of ascertaining and paying the debt, both parties knew what the amount of the indebtedness was; and it was agreed between them that if West Virginia was charged "with all the State expenditures within her limits and a just proportion of the ordinary expenses of the State since any part of the debt was contracted, and credited with the moneys paid into the treasury of the Commonwealth from the counties included within the proposed new State durring the same period," the result would show what was her just portion of the debt; that is, her just proportion of $33,000,000. If Virginia had repudiated the entire debt, or had admitted her liability for only $5,000,000, or for any other sum less than the $33,000,000, and her creditors had settled upon such a basis, it could scarcely be seriously contended that West Virginia would still be liable to her for exactly the same amount as if she had paid, or adjusted, the

whole $33,000,000; and yet that will necessarily be the result if the mode of settlement provided for in the compact is applied to a situation which Virginia and her creditors have now created. The State of Virginia has not paid the debt, but has extended two-thirds of it, which she decided for herself was her equitable share, and has been released from all the remainder; but she now asks that West Virginia may be compelled to pay to her in her own right, or as trustee, the same amount precisely as if the whole debt had been paid or settled by the issue of new bonds.

It is important to bear in mind throughout the consideration of this case that West Virginia's obligation to pay a just proportion of the debt was to Virginia alone, not to the bondholders. As to the bondholders, Virginia was legally the sole obligor and has always remained so. Neither changes in her constitution of government nor in her territorial area could affect in any degree her liability under her previous obligations. Notwithstanding such changes in either of these respects, the State continued to be the same political entity which incurred the obligation, and the compact by which West Virginia agreed to pay her just proportion of the obligations was made between the two States alone, not between them and the bondholders, and the settlement was to be made between the two States. We doubt whether, in the absence of a compact on the subject, the State of West Virginia would have been legally liable to pay any part of it to Virginia, or to reimburse the parent State on account of any part of it; but as there was a compact, the discussion of these propositions would be purely academic in this case.

If the court has any power to render and enforce a judgment or decree in this cause which would afford to the plaintiffs effective and final relief, it must be a judgment or decree for a definite sum of money found to be due to the State of Virginia on a settlement made in the mode provided by the compact, or else the solemn compact entered into with the consent of Congress, thereby becoming, as this court said in *State of Pennsylvania v. Wheeling Bridge Co.*, 13 How., 185, "a law of the Union," must be wholly disregarded and the amount of the judgment or decree must be ascertained according to some other rule or principle, adopted by the court, to which the parties refused to assent when the compact was made. The adoption of the latter method is not even supposable, for the compact is either valid or invalid; and if it is valid, it cannot be disregarded by the court, while if it is invalid the consequence would

be that West Vrginia was unconstitutionally admitted and is not now a State of the Union, and therefore cannot be sued as such.

In *Green v. Biddle*, 8 Wheat., 1-85, 86, this court said:

> "Now, it is perfectly clear that although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State without the assent of Virginia *or upon terms Variant from those which Virginia* had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed by a solemn act the consent of that body to the separation. The terms and conditions, then on which alone the separation could take place, or the act of Congress become a valid one, were necessarily assented to; not by a mere tacit acquiescence, but by an express declaration of the legislative mind, resulting from the manifest construction of the act itself. To deny this is to deny the validity of the act of Congress, without which Kentucky could not have become an independent State; and then it would follow that she is at this moment a part of the State of Virginia, and all her laws are acts of usurpation. The counsel who urged this argument would not, we are persuaded, consent to this conclusion; and yet it would seem to be inevitable, if the premises insisted upon be true."

In *State of Penna. v. The Wheeling Bridge Co.*, 13 How., 518, 566, the court, speaking of this same compact, declared (p. 566):

> "This compact, by the sanction of Congress, has become a law of the Union," citing *Green v. Biddle, supra.*

In the case of *Poole v. Fleger*, 11 Pet., 185, 209, the court construed the compact between Kentucky and Tennessee, consented to by Congress, determining a matter of boundary, and it held that—

> "The compact, then has full validity, and all the terms and conditions of it must be equally obligatory upon the citizens of both States."

If the court is to found its judgment or decree upon the compact, it must take the place of the legislature of West Virginia in the determination of the amount due, and then it must also disregard the terms of payment provided for in the constitution of that State, which is a part of the compact, or it must in some way establish a sinking fund sufficient to discharge the interest and principal of the

debt at the end of a series of years. It may be observed here that the sinking fund contemplated by the constitution of West Virginia was not intended to be, and in fact could not be, established until the amount of that State's proportion of the debt had been ascertained by the legislature, for until that had been done it was not possible to know what sum would be required to produce the necessary accumulation.

Leaving out of consideration the untenable proposition that the compact is to be disregarded and the adjustment made according to some rule or principle not recognized in it, the demand of the plaintiffs is, in substance and effect, that the court shall decree and enforce a specific performance of the compact, for if that is not the object of the suit, it presents only a moot question which the court will not decide. A mere declaration of the principles upon which an accounting shall be had and the taking of the account accordingly, to be followed by no enforceable judgment or decree, affords no relief and would therefore be an idle and useless proceeding. Besides, it is wholly unnecessary for the court to declare the principles upon which the adjustment shall be made; that is plainly done in the compact.

We have said that this court could not compel the legislature of West Virginia to levy a tax or appropriate money or issue bonds to provide for the payment of any judgment or decree which might be rendered in this case; and we may add that it could not even appoint a receiver or commissioner to collect a tax or to issue bonds for that purpose even if the tax had been imposed by the proper legislative authority, or the issue of bonds had been duly authorized.

The authorities upon this and analogous questions are numerous and conclusive. In *Rees v. City of Watertown* (19 Wall., 107), which was a suit in equity to enforce the collection of certain judgments upon the bonds of the city of Watertown, the court said:

> "We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest tribute of sovereignty, and is exercised, first, to raise money for public purposes only; second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important."

And after referring to the statute, the court said:

> "But independently of this statute, upon the general principles of law and of equity jurisprudence, we are of opinion that we cannot grant the relief asked for. The plaintiff invokes the aid of the principle that all legal remedies having failed, the court of chancery must give him a remedy; that there is a wrong which cannot be righted elsewhere, and hence the right must be sustained in chancery. The difficulty arises from too broad an application of a general principle. The great advantage possessed by the court of chancery is not so much in its enlarged jurisdiction as in the extent and adaptability of its remedial powers. Generally this jurisdiction is as well defined and limited as is that of a court of law. It cannot exercise jurisdiction when there is an adequate and complete remedy at law. It cannot assume control over that large class of obligations called imperfect obligations, resting upon conscience and moral duty only, unconnected with legal obligations. Judge Story says: 'There are cases of fraud, of accident, and of trust which neither courts of law nor of equity presume to relieve or to mitigate,' of which he cites many instances. Lord Talbot says: 'There are cases, indeed, in which a court of equity gives a remedy where the law gives none, but where a particular remedy is given by law, and that remedy bounded and circumscribed by particular rules, it would be very improper for this court to take it up where the law leaves it, and extend it further than the law allows.' "

Again the court said:

> "A court of equity cannot, by avowing that there is a wrong and no remedy known to the law, create a remedy in violation of law, or even without the authority of law. It acts upon established principles not only, but through established channels. Thus, assume that the plaintiff is entitled to the payment of his judgment, and that the defendant neglects its duty in refusing to raise the amount by taxation, it does not follow that this court may order the amount to be made from the private estate of one of its citizens."

Again the court said, in the course of its opinion:

> "The want of a remedy and the inability to obtain the fruits of a remedy are quite distinct and yet they are confounded in the present proceedings."

In *Heine v. The Levee Commissioners* (19 Wall., 655) the court said, speaking of the right to give a party the relief demanded:

"If sustained at all it must be on the very broad ground that because the plaintiff finds himself unable to collect his debt by proceedings at law, it is the duty of a court of equity to devise some mode by which it can be done. It is, however, the experience of every day and of all men, that debts are created which are never paid, though the creditor has exhausted all the resources of the law. It is a misfortune which in the imperfection of human nature often admits of no redress. The holder of a corporation bond must in common with other men submit to this calamity, and the law affords no relief.

"The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or national. In the case before us the national sovereignty has nothing to do with it. The power must be derived from the legislature of the State. So far as the present case is concerned, the State has delegated the power to the levee commissioners. If that body has ceased to exist, the remedy is in the legislature either to assess the tax by special statute or to vest the power in some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any federal court. It is unreasonable to suppose that the legislature would ever select a federal court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an evasion by the judiciary of the federal governmnet of the legislative functions of the State government. It is a most extraordinary request, and a compliance with it would involve consequences no less out of the way of judicial procedure, the end of which no wisdom can foresee."

In *The State Railroad Tax Cases* (92 U. S., 575), speaking of the want of authority in judicial tribunals to interfere with the process of collecting taxes, the court said:

"It is a wise policy. It is founded in the simple policy derived from experience of ages that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully other instrumentalities and other modes of enforcing it are necessary than those which belong to courts of justice. See *Cheatham v. Norvell*, decided at this term; *Nickoll v. United States* (7 Wall., 122); *Dow v. Chicago* (11 Ill. 108)."

In *Merriweather v. Garrett* (102 U. S., 472), the court said on page 501:

"The power of taxation is legislative and cannot be exer-

> cised otherwise than by the authority of the legislature. * * * Taxes can only be collected under authority of the legislature. If no such authority exists the remedy is by appeal to the legislature which alone can grant relief."

And Mr. Justice Field, for himself and Mr. Justice Miller and Mr. Justice Bradley, in a concurring opinion, said, on page 515:

> "The courts cannot continue in force the taxes levied, nor levy new taxes for the payment of the debts of the corporation. Levying taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity and the public welfare. In a distribution of the powers of government in this country into three departments, the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare and to provide the revenues for the support and due administration of the government throughout the State in all its subdivisions. Having the sole power to authorize the taxation, it must equally possess the sole power to prescribe the means by which the tax shall be collected and to designate the officers through whom its will shall be enforced.
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> "It is the province of the courts to decide cases between parties and in so doing to construe the constitution and statues of the United States and of the sovereign States and to declare the law, and when their judgments are rendered, to enforce them by such remedies as legislation has prescribed or as are allowed by the established practice. When they go beyond this, they go outside of their legitimate domain and encroach upon the other departments of the government, and all will admit that a strict confinement of each department within its own proper sphere was designed by the founders of the government, and is essential to its successful administration."

In *Heine v. The Levee Commissioners* (1 Wood, 247), in the United States circuit court, the opinion was delivered by Mr. Justice Bradley, and, speaking of taxation, he said:

> "The judicial department has no power over the subject. If the officers who are charged with the duty of laying or collecting taxes refuse to perform their functions, the court, in a clear case of failure, and at the instance of a party directly interested, can, by the prerogative of the writ of mandamus, compel them to perform acts which are ministerial as distinguished from those which are judicial or discretionary. This is all that the judicial department can do on the subject

unless the legislation has expressly conferred upon it further powers.".

Louisiana v. Jumel (107 U. S., 711) was a bondholders' bill against the State board of liquidation, alleging that the State had impaired the obligation of an express contract, and there was also a petition for a mandamus against the board and the State auditor and trueasurer. The object of the proceedings was to compel the State officers to pay from the general funds of the State the repudiated bonds and coupons held by the complainants. The court said:

> "In neither of the suits was any inquiry to be instituted in respect to the particular bonds and coupons held by the plaintiffs, or any special relief afforded as to them. All that is asked will inure as much to the benefit of the other holders of similar obligations as to the particular parties to these suits. So that the remedy sought implies power in the judiciary to compel the State to abide by and perform its contracts for the payment of money, not by rendering and enforcing a judgment in the ordinary form of judicial procedure, but by assuming the control of the administration of the fiscal affairs of the State to the extent that may be necessary to accomplish the end in view.
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> "In *United States v. Lee*, 106 U. S., 196, it was held that the officers of the United States, holding in their official capacity the possession of lands to which the United States had no title, could be required to surrender their possession to the rightful owner even though the United States were not a party to the judgment under which the eviction was to be had. Here, however, the money in question is lawfully the property of the State. It is in the manual possession of an officer of the State. The bondholders never owned it. The most they can claim is that the State ought to use it to pay their coupons, but until so used it is in no sense theirs.
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> "Little need be said with special reference to the suit for *mandamus*. In this no trust is involved; but the simple question presented is, whether a single bondholder, or a committee of bondholders, can, by the judicial writ of *mandamus*, compel the executive officers of the State to perform generally their several duties under the law. The relators do not occupy the position of creditors of the State demanding payment from an executive officer charged with the ministerial duty of taking the money from the public treasury and handing it over to them, and, on his refusal, seeking to compel him to perform that specific duty. What they ask is that the auditor of State, the treasurer of State, and the board of

liquidation may be required to enforce the act of 1874, and 'carry out, perform, and discharge each and every one of the ministerial acts, things, and duties respectively required of them, * * * according to the full and true intent and purport of that act.' Certainly no suit begun in the circuit court for such relief would be entertained, for that court can ordinarily grant a writ of mandamus only in aid of some existing jurisdiction. *Bath County v. Amy*, 13 Wall., 244; *Davenport v. County of Dodge*, 105 U. S., 237. Our attention has been called to no case in the courts of Louisiana in which such general relief has been afforded; and the jurisdiction of the circuit court was, therefore, in no way enlarged through the operation of the removal acts, even if this is a case which was properly removed,—a question we do not deem it necessary to now decide. The remedy sought, in order to be complete, would require the court to assume all the executive authority of the State, so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question until the bonds, principal and interest, were paid in full, and that, too, in a proceeding in which the State, as a State, was not and could not be made a party. It needs no argument to show that the political power cannot thus be ousted of its jurisdiction and the judiciary set in its place. When a State submits itself, without reservation, to the jurisdiction of a court in a particular case, that jurisdiction may be used to give full effect to what the State has by its act of submission allowed to be done; and if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the courts, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them as against the political power in their administration of the finances of the State. In our opinion, to grant the relief asked for in either of these cases would be to exercise such a power."

And in the case of *Thompson v. Allen County*, etc. (115 U. S., 550), the whole subject was again reviewed by this court, upon a certificate of division from the circuit court. Two of the questions certified were:

1. Whether taxes levied under judicial direction can be collected through a receiver appointed by the court of chancery, if there is no public officer with authority from the legislature to perform the duty.

2. Whether taxes levied by State officers under judicial direction can be colected through a receiver appointed by the United States court where the legislature has provided an officer to collect, but there is a vacancy in office and no one can be found willing to accept the office.

This court answered these questions in the negative. (See also the same case reported in 13 Fed. Rep., 97, Mr. Justice Matthews delivering the opinion.)

It is evident that a judgment or decree in this case must be for money only and must be enforced, if enforced at all, either by a sale of the State's property or by taking control of its legislative and executive authorities and compelling them, by some process not heretofore known to our jurisprudence, to appropriate money from the State treasury for the satisfaction of the debt, or to levy taxes or issue and sell bonds for that purpose. The question whether any of these remedies can be afforded must, it seems, be directly met and finally settled in the present case if there is any good cause of action shown; for, as before said, there is no allegation that there is a lien or trust or any other element involved in either of the alleged causes of action to require the application of any remedy except a judgment or decree for money.

The jurisdiction of this court in an action brought by one State against another to settle a question of boundary, or to secure redress for wrongs and injuries perpetrated by another State upon the territorial rights of the complaining State, or upon the rights of large communities of its people, has been definitely settled by a long series of cases, beginning with *Rhode Island v. Massachusetts* (12 Peters, 657) in one class, and ending with the other class in the two cases of *Kansas v. Colorado* (185 U. S., 125) and *Missouri v. Illinois* (180 U. S., 208, and 200 U. S., 496). But when this court decides a question of boundary between two States, or the boundary between a State and a Territory of the United States, no judicial process is necessary to carry its judgment or decree into effect. When the facts as to the true location of the line of separation has been found by the court, the political departments of the Government, as well as the courts of the States concerned, are bound to recognize its adjudication as conclusive of the question, and the territory formerly in dispute must be thereafter treated as part of the State to which it has been awarded. It will be included by the legislative department of the United States in the congressional and judicial districts of the State, and its people will be recognized as qualified electors in the choice of members of the

House of Representatives, and their representatives in the State legislature will be recognized as qualified electors in the choice of members of the United States Senate for that State. The executive department of the United States, in the exercise of its authority under the Constitution, in the execution of its powers concerning the constitutional and legal relations between the State and the general government, will also treat the territory as part of the State to which it has been adjudged to belong. No State which has lost part of its territory by such adjudication could, therefore, prevent the practical execution of the judgment or decree by legislation or otherwise; for every attempt to continue the exercise of its own jurisdiction over it would be defeated, not only by the political departments, but by the courts as well. So far as we have been able to ascertain, no judicial process has ever been issued or applied for to carry such judgments or decrees into effect, except an order directing the established line to be surveyed and properly marked.

In the other class of cases, where trespasses or nuisances are complained of, and where the acts complained of are done by or under the authority of the defendant State, a decree of this court enjoining the continuance of the wrongs would be binding upon all the officers and agencies of the State, and upon all other persons who might thereafter knowingly participate in the violation of the decree, and they would all be punished for contempt. A power to make and enforce a decree in such a case is very different from the power to make and enforce a decree requiring the legislative or executive authorities of the State to take affirmative action in regard to matters which their own constitution and laws, and the plan and theory of our dual system of government, have committed to their own exclusive judgment and discretion.

There is no fact alleged that would authorize a court of equity to take jurisdiction for the enforcement of such claims as are set up in this case. But, waiving that subject for the present, we propose to confine ourselves in this part of the argument to the question whether this court, under that provision of the constitution which confers upon it jurisdiction over cases in which a State shall be a party, has the power, either in equity or at law, to hear and determine a case in which the final relief demanded is the rendition and enforcement of a simple judgment for money against a State. In *United States v. North Carolina*, 136 U.S., 127, which is one of the cases relied upon to show the jurisdiction of this court in an action against a State for the recovery of money, not only was there no objection made to the jurisdiction at any stage of the proceedings,

but the whole case, which involved no question of fact and only a single question of law, was, by the written consent of the parties, submitted to the court for its decision. It has been decided by this court that a State may waive its privilege and submit itself to the jurisdiction of any court at the suit of another State, or at the suit of an individual.

Beers v. Arkansas, 20 How., 527.
Clark v. Bernhard, 108 U. S., 115.

In the case last cited the court said:

> "The immunity from suit belonging to a State which is respected and protected by the Constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure; so that a suit otherwise well brought, in which a State had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction while of course those courts are always open to it as a suitor in controversies between it and citizens of other States."

We do not think, therefore, that the case relied upon can be properly considered as a conclusive adjudication that this court has jurisdiction of an action against a State for the recovery of a money judgment when the State has not consented to be sued but is protesting. Besides, the court, after considering the question submitted by consent of the parties, found that nothing was due from the State and therefore was not required to render a judgment against it. What it would have done if it had found against the State, whether it would have decided that it had power to render and enforce a judgment for the payment of the money, cannot, of course, be known; but from what was subsequently said and done in the case of *South Dakota v. North Carolina,* 193 U. S., 286, we are at liberty to say that the question of power in the court to render and enforce such a judgment is at least still open.

In the case last referred to the court said:

> "But we are confronted with the contention that there is no power in this court to enforce such a judgment, and such lack of power is conclusive evidence that, notwithstanding the general language of the constitution, there is an implied exception of actions brought to recover money. The public properly held by any municipality, city, county or State, is

exempt from seizure upon execution because it is held by such corporation, not as a part of its private assets, but as a trustee for public purposes *Meriwether v. Garrett*, 102 U. S., 472, 513. As a rule no such municipality has any private property subject to be taken upon execution. A levy of taxes is not within the scope of the judicial power except as it commands an inferior municipality to execute the power granted by the legislature."

The court then refers to the cases of *Rees v. City of Watertown* (19 Wall., 107) and *Heine v. The Levee Commissioners* (19 Wall., 655) and says:

"In this connection reference may be made to *United States v. Guthrie*, 17 How. 284, in which an application was made for a mandamus against the Secretary of the Treasury to compel the payment of an official salary, and in which we said (p. 303):

"'The only legitimate inquiry for our determination upon the case before us is this: Whether, under the organization of the federal government, or by any known principle of law, there can be asserted a power in the Circuit Court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or controverted claims against the united States? This is a question, the very question presented for our determination; and its simple statement would seem to carry with it the most startling considerations—nay, its unavoidable negation, unless this should be prevented by some positive and controlling command; for it would occur, *a priori*, to every mind, that a treasury, not fenced round or shielded by fixed and established modes and rules of administration, but which could be subjected to any number or description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the nation. The government under such a *regime*, or, rather, under such an absence of all rule, would, if practicable at all, be administered, not by the great departments ordained by the constitution and laws, and guided by the modes therein prescribed, but by the uncertain and perhaps contradictory action of the courts, in the enforcement of their views of private interests.'

"Further, in this conection may be noticed *Gordon v. United States*, 117 U. S., 697, in which this court declined to take jurisdiction of an appeal from the Court of Claims, under the statute as it stood at the time of the decision, on the ground that there was not vested by the act of Congress pow-

er to enforce its judgment. We quote the following from the opinion, which was the last prepared by Chief Justice Taney (pp. 702, 704):

"'The award of execution is a part, and an essential part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggreived party without a remedy. * * Indeed, no principle of constitutional law has been more firmly established or constantly adhered to, than the one above stated—that is, that this court has no jurisdiction in any case where it cannot render judgment in the legal sense of the term; and when it depends upon the legislature to carry its opinion into effect or not, at the pleasure of Congress.'"

The court also cited *In re Sanborn*, 148 U. S., 222, and *La Abra Silver Mining Company v. United States*, 175 U. S., 423, 456, and proceeded to say:

"We have, then, on the one hand the general language of the constitution vesting jurisdiction in this court over 'controversies between two or more States,' the history of that jurisdictional clause in the convention, the cases of *Chisolm v. Georgia*, *United States v. North Carolina*, and *United States v. Michigan* (in which this court sustained jurisdiction over actions to recover money from a State), the manifest trend of other decisions, the necessity of some way of ending controversies between States, and the fact that this claim for the payment of money is one justiciable in its nature; on the other, certain expressions of individual opinions of justices of this court, the difficulty of enforcing a judgment for money against a State, by reason of its ordinary lack of private property subject to seizure upon execution, and the absolute inability of a court to compel a levy of taxes by the legislature. Notwithstanding the embarrassments which surround the question, it is directly presented and may have to be determined before the case is finally concluded, but for the present it is sufficient to state the question with its difficulties."

The decision of the question never became necessary, for the reason that the parties afterwards settled the matter between themselves, so that all the court actually did in that case was to enforce a lien.

In *United States v. Michigan*, 190 U. S., 379, the opinion of the court was delivered upon a demurrer which, of course, admitted all

the material allegations of the bill, and the court decided that the State of Michigan held certain funds and certain tools and machinery appertaining to the Saint Mary's River canal in trust for the United States, and that on the face of the bill the United States had a right to demand an accounting and a payment of the sum found due.

In the opinion it was said:

> "In the consideration of this case, the controlling thought must of course be to arrive at the meaning of the parties, as expressed in the various statutes set forth in the bill. While that meaning is to be sought from the language used, yet its construction need not be of a narrow or technical nature, but in view of the character of the subject, the language should have its ordinary and usual meaning.
>
> "Whether, under these circumstances, technical words were used to express the thought that the State was to be trustee, is not important if, upon a reading of the statutes and a survey of the condition of the country when the acts were passed, it is apparent that the intent was that the State should occupy the position of trustee in the construction and operation of the canal. *Winona &c. R. R. Co. v. Barney*, 113 U. S., 618, 625."

And after an examination of the question the court held that the State was a trustee for the United States as to the money and propery in its possession, and it overruled the demurrer and gave the defendant leave to answer.

In *Kentucky v. Dennison*, 24 Howard, 66, where a law had been constitutionally enacted by Congress making it the duty of the governor of a State to surrender fugitives from the justice of other States, the court held that the suit was against the State, although the governor was the only party made defendant on the record, and in the course of the opinion it said:

> "But the language of the act of 1793 is very different. It does not purport to give authority to the State executive to arrest and deliver the fugitive, but requires it to be done, and the language of the law implies an absolute obligation which the State authority is bound to perform. And when it speaks of the duty of the governor, it evidently points to the duty imposed by the constitution in the clause we are now considering. The performance of this duty, however, is left to depend on the fidelity of the State executive to the compact entered into with the other States when it adopted the Constitution of the United States and became a member of

the Union. It was so left by the constitution, and necessarily so left by the act of 1793.

"And it would seem that when the constitution was framed, and when this law was passed, it was confidently believed that a sense of justice and of mutual interest would insure a faithful execution of this constitutional provision by the executive of every State, for every State had an equal interest in the execution of a compact absolutely essential to their peace and well being in their internal concerns, as well as members of the Union. Hence, the use of the words ordinarily employed when an undoubted obligation is required to be performed, 'it shall be his duty.'

"But if the governor of Ohio refuses to discharge this duty, there is no power delegated to the general government, either through the judicial department of any other department, to use any coercive means to compel him" (pp. 109, 110).

In *Missouri v. Illinois*, 200 U. S., 496, in which no judgment or decree for money was demanded, the court said:

"In the case at bar, whether Congress could act or not, there is no suggestion that it has forbidden the action of Illinois. The only ground on which that State's conduct can be called in question is one which must be implied from the words of the constitution. The constitution extends the judicial power of the United States to controversies between two or more States and between a State and citizen of another State, and gives this court original jurisdiction in cases in which a State shall be a party. Therefore, if one State raises a controversy with another, this court must determine whether there is any principle of law, and, if so, what, on which the plaintiff can recover. But the fact that this court must decide does not mean, of course, that it takes the place of a legislature. Some principle it must have power to declare. For instance, when a dispute arises about boundaries, this court must determine the line and in so doing must be governed by rules explicitly or implicitly recognized (*Rhode Island v. Massachusetts*, 12 Pet., 657-733). It must follow and apply those rules even if legislation of one or both of the States seem to stand in the way. But the words of the constitution would be a narrow ground upon which to construct and apply to the relations between States the same system and municipal law in all its details which would apply between individuals. If we suppose a case which did not fall in the power of Congress to regulate, the result of a denial of rights by this court would be the establishment of a rule which would be irrevocable by any power except that of this court to reverse its own decision, an amendment of the con-

stitution, or possibly an agreement between the States sanctioned by the legislature of the United States.

"The difficulties in the way of establishing such a system of law might not be insuperable, but they would be great and new."

In every case since the adoption of the eleventh amendment to the Constitution where the court has found that the effect of granting the relief sought by the plaintiff would be to enforce the claim of an individual, whatever may be its nature, against a State, it has denied its power, or the power of any other court of the United States, to do so. It can make no difference what means or devices the parties may have resorted to for the purpose of getting the case into the court, if it appears that the real object of the action and the effect of the judgment or decree would be to conclude the State itself, and not merely its ministerial officers or agents, the court has refused to exercise jurisdiction for that purpose.

See *Hollingsworth v. Virginia*, 3 Dall., 378; *Osborn v. Bank*, 9 Wheat., 738; *Briscoe v. Bank*, 11 Pet., 257; *Jumel v. Louisiana*, 107 U. S., 710; *N. H. v. Louisiana*, 108 U. S., 726; *Poindexter v. Greenhow*, 114 U. S., 270; *Marye v. Parsons*, 114 U. S., 325; *Hagood v. Southern*, 117 U. S., 52; *In re Ayres*, 123 U. S., 443; *Christian v. Atlantic & N. C. R. R. Co.*, 133 U. S., 233; *Louisiana*, etc., *v. Steele*, 134 U. S., 230; *Penoyer v. McConnaughy*, 140 U. S., 1; *In re Tyler*, 149 U. S., 164, *Reagan v. Farmers' Loan and Trust Co.*, 144 U. S., 362; *Scott v. Donald*, 165 U. S., 58; *Tindel v. Wesley*, 167 U. S., 204; *Smith v. Ames*, 169, U. S., 466; *Fitz v. McGhee*, 172 U. S., 516.

This being the law, it is not possible to see how the State of Virginia can maintain an original action as trustee in this court for the avowed use and benefit of individuals on claims in which she as a State has no interest. To sustain such a proceeding would be a palpable evasion of the eleventh amendment, and would establish a precedent which would practically nullify that provision of the organic law by conferring original jurisdiction upon the court in every case where an individual might choose to thansfer his real property or his goods and chattels, or choses in action, to a State as trustee, even if it were done, as in this case, for the sole purpose of conferring jurisdiction on this court. Certainly it cannot be held that a controversy between two States, justicible in this court, can

be created by the transfer of a claim on behalf of an individual to one of the States as a mere trustee to sue and collect it, whatever may be the law in a case where the complaining State is itself the real and beneficial owner of the claim sued on. But this precise question was presented in the case of *Kansas v. United States*, decided February 25, 1907, and not yet reported, and the court disposed of it in a single sentence. After finding that the State was suing as trustee for the Missouri, Kansas and Texas Railway Company, the court said:

"In these circumstances we think it apparent that the name of the State is being used simply for the prosecution in this court of a claim of the railroad, and our original jurisdiction can not be maintained;" and the court held that as the United States has not consented to be sued the bill must be dismissed.

We cannot see how the provision of the Constitution which confers upon this court jurisdiction in cases in which a State shall be a party can be properly so construed and applied as to destroy, or disarrange, the distribution of powers between the federal government and the States, which that instrument establishes. To hold that the judicial tribunals of the United States, whether the case be in equity or at law, can seize and sell the property of a State or direct money to be paid out of its treasury, or assume control over its legislative and executive departments and decree when and how, and for what purpose, they shall exercise their constitutional authority, would be destructive of the independence of the several States in the management and control of their own internal affairs. Yet it is indisputable that if such tribunals possess the power to render valid judgments and decrees in such cases, they must be enforced by some one of the means we have stated.

Some other interpretation must therefore be given to the constitutional provision, some interpretation which will be consistent with the character of our political institutions and at the same time invest this court with original jurisdiction to hear and determine all controversies between States which affect their rights as States—that is, as political organizations clothed with the authority and charged with the duties of government. It is the duty of a State as such to preserve and protect its territorial area against the encroachments of another State; to see that the lives, health, and safety of its citizens are not impaired or endangered by the action of another State or by its authority; and when controversies arise concerning these matters, or others of like character, this court has original jurisdiction to hear and determine them. There is, in fact,

no other way to settle them except by negotiations or war, and the latter is prohibited by the constitution. To confine the jurisdiction to controversies of the character indicated and decline its exercise in cases where the enforcement of a judgment or decree would destroy or impair the sovereign authority of the States, would establish a reasonable construction of the constitution and accomplish all its real beneficial purposes.

There are many controversies between individuals which no judicial tribunal can take cognizance of, notwithstanding the comprehensive terms in which their jurisdiction is conferred, many rights which cannot be enforced, and many wrongs which cannot be redressed by the courts. Although they were established for the purpose of administering justice, it often happens that they are incapable of doing so by reason of the character of the questions involved or the character of the remedies required.

It is safe to say that if the framers of the constitution had expressly provided that this, or any other tribunal of the United States, should have power to seize and sell the property of a State or control the legislative and executive authorities of a State in any matter concerning its financial or other internal affairs, their work would have been rejected, and we do not think such an extraordinary power should be now applied from the general grant of original jurisdiction to this court in cases where a State is a party.

While it appears from the quotations made from the opinion of *South Dakota v. North Carolina* that in the judgment of this court the question as to its jurisdiction to render and enforce a judgment or decree against a State in a suit on a contract for the payment of money, where no lien or trust exist, is still an open one, yet, in view of the facts that it has been elaborately discussed at the bar and much considered by the court in previous cases, we do not propose in this brief to repeat the arguments or cite further authorities. Some questions have been, we think, definitely settled by former adjudications. They are:

1. That the public property of a State cannot be seized and sold to satisfy a judgment or decree.

2. That a court has power in a case properly made to compel the municipal authorities or ministerial officers of a State to comply with the laws of the State in the matter of imposing and collecting taxes.

3. That no court can appoint a receiver, commissioner, or other official with power to collect taxes and apply the proceeds to the satisfaction of a judgment or decree, even after they have been imposed by the proper authorities of the State.

4. That no court can by its judgment or decree order the payment of money out of the State or national treasury when it has not been appropriated by the proper legislative authority.

5. That no court can compel the legislature or executive authorities of a State to impose a tax or issue bonds or appropriate money for any purpose, or to exercise any other authority vested in them by the constitution of the State. Unless the numerous cases establishing these propositions shall be overruled in whole or in part, or unless the present case can be in some way distinguished from them, it is plain that no enforceable judgment or decree can be rendered by the court on any one of the alleged causes of action; and if that is so, it has, according to all the authorities on the subject, no jurisdiction to hear and determine the controversy.

We confidently submit that the outline of the bill heretofore given and the exhibits made part of it shows conclusively that it is multifarious, and that the demurrer ought to be sustained on that ground, if any good cause of action is shown over which this court has jurisdiction.

Virginia suing in her own right upon a separate and independent cause of action alleged to belong exclusively to her is not the same party as Virginia suing as trustee upon a different cause of action for the use and benefit of others who have no interest in her claim. Moreover, the State could not sue in equity in her own right, in one bill, upon two causes of action so entirely separate and distinct from each other as the claim for money and property alleged to have been delivered to the defendant under the acts of the legislature, and the claim founded upon the compact for the defendant's just proportion of the old public debt, even if she had paid that debt and was entitled to contribution. The foundations of the two causes of action are wholly different, and they are of a wholly different nature and require different judgments or decrees. They involve different questions of law and fact, and a defense which would be good against one would be wholly inapplicable to the other.

"Multifariousness," says Foster, "consists in the joinder of two or more distinct and unconnected grounds for equitable relief each

of which might be the foundation for a separate bill. This may occur in three ways—by misjoinder of plaintiffs, by misjoinder of defendants, and by misjoinder of grounds for equitable relief held by and against the same parties."

Foster, Fed. Prac., sec. 71; *Calvert on Parties, Book I*, ch. VII.

Story says:

> "By multifariousness in a bill is meant the improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several of a distinct and independent nature against several defendants in the same bill."
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> *Story's Equity Pl.*, sec. 271.

Again it is stated by Story:

> "The result of the principles to be extracted from the cases on this subject seems to be that where there is a common liability and a common interest, a common liability in the defendants, and a common interest in the plaintiffs, different claims to property, at least if the subjects are such as may without inconvenience be joined, may be united in one and the same suit" (sec. 533).

In Daniel's Chancery Practice, page 335, it is said:

> "It may be that the plaintiffs and defendants are parties to the whole of the transactions which forms the subject of the suit and nevertheless those transactions may be so dissimilar that the court will not allow them to be joined together, but will require distinct records."

In *Brown v. Guarantee Trust Co.* (128 U. S., 404) this court said:

> "To support the objection of multifariousness because the bill contains different causes of suit against the same person, two things must occur: First, the ground of suit must be different; second, each ground must be sufficient as stated to sustian a bill. *Bedsole v. Monroe* (5 Iredell Eq., 313); *Larkins v. Biddle*, (21 Ala., 252); *Nail v. Mobley* (9 Ga., 278); *Robinson v. Cross* (22 Conn., 171)."
>
> See also *Shields v. Thomas*, 59 U. S., 253 (18 How.).

In *Walker v. Powers* (104 U. S., 245), a case analogous to the present, there was a misjoinder of plaintiffs and a misjoinder of causes of action. The opinion was delivered by Mr. Justice Miller, and the cases of *Emals v. Emals* (14 McArthur [N. J. Eq.] 114) and *Sawyer v. Noble* (55 Me., 273) were cited and approved.

See also *Dial v. Reynolds* (96 U. S., 340).

Doggett, etc., v. Florida R. R. Co. (99 U. S., 72).

In Salvidge v. Hyde (Jac., 151; Mad., 158) the Vice-Chancellor said:

> "In order to determine whether a suit is multifarious, or, in other words, contains distinct matter, the inquiry is not, as this defendant supposes, whether each defendant is connected with every branch of the case, but whether the plaintiff's bill seeks relief in respect of matters which are, in their nature, separate and distinct."

In *Church v. Citizens' Street Railway Company*, 78 Fed., 529, the court said:

> "Multifariousness consists in stating against the same party two or more independent causes of action in the same bill; or it may consist in stating one or more causes of action against a portion of the defendants and another cause of action against another portion of the defendants."

In that action the plaintiffs, who had purchased stock in a corporation, attempted to secure relief for themselves in their own right on one cause of action, and also to secure relief against the same defendants for themselves and all other stockholders on another cause of action. The court held the bill multifarious.

C. Zeigler v. Lake City Elevated Railroad Company, 76 Fed., 662; *First National Bank v. Sioux City*, 75 Fed., 154; *Price, receiver, etc., v. Coleman*, 21 Fed., 557; opinion by J. Grey; *Central Bank v. Fitzgerald et al.*, 94 Fed., 16; *Lewarne v. Mexican Internal Improvement Co.*, 38 Fed., 629; *Aetna Insurance Co. v. Smith*, 73 Fed., 318.

In *Metropolitan Trust Co. v. Columbus & Hocking Ry. Co.*, 93 Fed., 689, Judge Taft said:

> "It is also true that a cause of action in favor of one in his own right is as distinct from a cause of action in favor of the same person as trustee as it is from that of a different

> person. And therefore that a defendant against whom a trustee attempted to unite in the same bill with a cause of action asserted by him as trustee a wholly distinct cause of action in his individual right might object on the ground of multifariousness. In the case before us the defendant railway company might therefore be heard to urge this defect in the bill, because it asks for an enforcement of two different liens held in different rights."

But the court held that the objection to the bill for multifariousness could not be taken by Zohorst and the Second National Bank, "for," said the court, "as to that issue made by the complainant as trustee the right is the same." And again the court said:

> "Upon that issue the complainant as trustee and in its own right has precisely the same interest. And the union of the two causes of action does not embarrass Zohorst or the bank in the slightest; for as to them, the causes of action raised but one narrow question" (page 691).

The difference between that case and the case at bar is obvious at a glance. In the case at bar the bill alleges two entirely separate and distinct causes of action arising out of two unconnected transactions, in one of which it alleges an interest in the plaintiff State, and in the other an interest as trustee, and thus presents two distinct series of issues to be investigated and decided. And, besides, it is perfectly clear that the State of Virginia has not the same interest in the cause of action alleged in her own right and in the one asserted as trustee; nor can the State of West Virginia make the same defense to both.

In *Moss v. Cohen*, 158 N. Y., 240, the plaintiff entitled the action as by himself individually and as executor, but there was only one cause of action alleged, and that was wholly for the benefit of the estate he represented. The court said:

> "There is no pretense or allegation that the plaintiff claimed more than a single right of recovery and that he brought to enforce as executor and for the benefit of the estate he represents";

and it held that there was consequently no improper joinder of parties.

In *Hall v. Fisher*, 20 Bard. (N. Y.), the plaintiff sued in its own name and also as administrator, alleging that he and his intestate during the lifetime of the latter tenants in common, the intestate

owning three-fourths and the plaintiff owning one-fourth of a lot of land; and his claim was that the defendants should account to him individually and to him as administrator for their shares of rents and profits. The court held that the cause of action should have been separately stated. It said:

> "How else can the defendant, if he has a defense of a different character as to each cotenant, avail himself of such defense? He might in this case have one defense against the plaintiff as to his personal claim and another defense as to the interest whose rights he claims to represent as administrator. It cannot be regular for a plaintiff to include in the same action claims in his individual right and as administrator of another. It was never allowed at common law and is not sanctioned or allowed by any statute, not even the Code."

It is evident that the State of Virginia, having been by contract with her creditors discharged from all liability for the one-third of the old debt represented by the certificates, has no pecuniary interest whatever in the alleged claim against West Virginia for which she sues as trustee; and it will be contended, we presume, that the owners of the unfunded one-third of the ante-war debt, whether it is represented by the canceled bonds held in trust by the State or by the certificates, have any interest whatever in the claim of Virginia for money and property alleged to have been transferred to West Virginia under the acts of 1863. The unfunded one-third of the old bonds formerly held by the Virginia Commissioners of the Sinking Fund and the Literary Fund is in the same position as that belonging to the other creditors. Virginia has solemnly and repeatedly declared that she was not liable for the one-third, has refused to pay it or any part of it, and has canceled the bonds and issued to the Sinking Fund and Literary Fund precisely the same kind of certificates issued to other creditors. The fact, if it be a fact, that the Commissioners of the Sinking Fund and the Literary Fund are agencies of the State, would simply show that the State owed that part of the debt to herself. But the State has released herself from the obligation for one-third of the bonds originally held by these funds and has thereby withdrawn from them that proportion of the sum which she originally intended they should have. Unless, therefore, the two funds, as agencies of the State, now have a valid claim against West Virginia, their demands have been fully satisfied and extinguished. In any aspect, the claim is asserted by

Virginia to recover from West Virginia for contribution on account of money which she (Virginia) has never paid.

The claim against West Virginia under the compact cannot be divided into separate parts, so that Virginia can sue in her own right or for the Commissioners of the Sinking Fund and the Literary Fund for the part represented by the certificates held by those two funds, and also sue as trustee for another part held by different parties. The claim is an entirety and the amount is to be ascertained *in solido*, in the manner provided by compact, and is to be paid in the manner provided by the compact. Whatever the amount might be, it was all payable to Virginia herself, and not to the bondholders, who never had a cause of action against West Virginia, even if the State had been suable; and they cannot create a cause of action for their own benefit, in the name of the State, by the process of having Virginia transfer the indebtedness, or part of it, to them by the enactment of statutes or the issue of certificates or otherwise, and then transferring it back to the State as trustee. But whether the State is, or could be, legally a trustee, or whether, if she be legally a trustee, she could maintain an action in this cause in that capacity, makes no difference in the decision of the question of multifariousness, for the bill and exhibits show that for nearly, if not all, of the unfunded one-third of the debt she actually sues as trustee in this action and not otherwise; and that is sufficient to sustain the contention that there is a misjoinder of parties and a misjoinder of causes of action. Even, therefore, if it should be held that the State is suing in her own right for a judgment and recovery of the amount represented by the certificates held by the two funds, and as trustee for the holders of the other certificates, it would furnish another substantial reason for holding the bill to be multifarious. Besides, it would show that there is a conflict between the personal interests of the trustee and the interests of the *cestuis que trust*, for whatever the trustee might receive in her own right in the distribution of the sum recovered would, to that extent, diminish the portions of the other beneficiaries; and it is a well established rule that plaintiffs whose interests are conflicting cannot unite in the same action—a rule which ought to be rigidly enforced, especially when one of the plaintiffs sues as trustee for the others, and consequently controls the entire proceeding.

Walker v. Powers, 104 U. S., 245.

In view of her own statutes and the agreement she has exacted

from the other holders of certificates, it is difficult to see how Virginia can consistently claim in this action to be suing in her own right to recover any part of the alleged indebtedness of West Virginia on account of the ante-war debt, or, for that matter, on account of any other claim. By statutes she has required her creditors to enter into contracts to defray all the expenses of this proceeding, to release her absolutely, and to accept whatever may be received from West Virginia—whether it be much or little or nothing at all—in full satisfaction and discharge of their claims, and this suit, as alleged in the bill, is being prosecuted under those statutes and agreements.

The bill wholly fails to show a case which entitles the plaintiff to an accounting against the defendant. There are no mutual accounts between the parties, no trust or lien alleged, no fraud, mistake, or concealment, no discovery asked or shown to be necessary, no multiplicity of suits to be avoided, no question as to the application of payments, and no question of apportionment or contribution except upon a basis which is expressly and plainly stated in the compact between the States, and which, therefore, calls for no exercise of the powers of a court of equity. In all its branches, the action is founded on contracts evidenced by the ordinance, and by statutes and constitutional provisions, easily interpreted and involving no question not cognizable in a court of law; and the only possible remedy is a simple judgment for money which a court of law is fully competent to award, if it can be awarded at all in such a case.

In a case where there are no mutual accounts, and no discovery is necessary, the court will not decree an accounting. Story says:

> "One of the most difficult questions arising under this head (and which has been incidentally discussed in another place) is to ascertain whether there are any, and if any, what are the true boundaries of equity jurisdiction in such matters of account as are cognizable at law; we may say cognizable at law, for wherever the account stands upon equitable claims or has equitable trusts attached to it, there is no doubt that the jurisdiction is absolutely universal without exception, since the party is remediless at law" (Sec. 454.)

And again he says:

> "But in cases where there is a remedy at law, there is no small confusion and difficulty in the authorities. The jurisdiction in matters of this sort has been asserted to be maintainable upon two grounds, distinct in their own nature and yet often running into each other. In the first place, it has

been asserted that where in a matter of account the party seeks a discovery of facts, and these appear upon his bill to be material to his right of recovery, there, if the answer does in fact make a discovery of such material facts (for it would be no ground of jurisdiction if the discovery failed), the courts have at once a rightful jurisdiction of the cause and may proceed to give relief in order to avoid multiplicity of suits" (Sec. 455).

The authorities in suppore of the propositions we have stated are substantially uniform.

In *Russell v. Clark* (7 Cranch, 89), this court said:

> "It is true that if certain facts essential to the merits of a claim, purely legal, be exclusively within the knowledge of the party against whom that claim is asserted, he may be required, in a court of chancery, to disclose those facts, and the court, being thus rightly in possession of the cause, will proceed to determine the whole matter in controversy. But this rule cannot be abused by being employed as a mere pretext for bringing causes properly from a court of law into a court of equity. If the answer of the defendant discloses nothing, and the plaintiff supports his claim by evidence in his own possession unaided by the confessions of the defendant, the established rules, limiting the jurisdiction of courts, require that he should be dismissed from the court of chancery, and permitted to assert his rights in a court of law."
>
> See *Fowle v. Lawson*, 6 Pet., 495; *Dowell v. Mitchell* and *Mitchell v. Dowell*, 105 U. S., 430 (and the authorities therein cited); *Consolidated Safety Valve Co. v. Ashlan*, 26 Fed., 369; *Lord v. Whitehead*, 24 Fed., 421; *Gunn v. Brinkley*, etc., 66 Fed., 382.

French v. Hay, 22 Fed., 231-237, was a bill for an accounting, and the court said:

> "And where it conceded that by the instrument through which he claims, French became the owner of the judgment, as between himself and Hay, we do not perceive how the concession could aid him in this case. If, as the bill avers, Hay collected the judgment and now holds the money for the use of the complainant, there is a complete remedy at law. This is not a bill for discovery and the aid of the court of equity is not needed."

It is shown by the bill in this case that the State of Virginia has in her own possession all the accounts, vouchers, and documents relating to the amount of the old indebtedness, and all the charges and

credits that should be made against and in favor of West Virginia on the settlement provided for in the compact, and she offers to produce them before the master. The prayer of the bill asks that the defendant State "may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth," etc., etc.; but it is not alleged anywhere in the bill that the State of West Virginia has in her possession, or under her control, any such entries, documents, reports, or proceedings.

There is no semblance of a ground for the intervention of a court of equity in this case unless it be the fact that the jurisdiction of such a court can be invoked merely because the accounts necessary to be examined in deciding the controversy between the parties are voluminous or tedious; but in the case of *Brown v. Chase*, 94 U. S., 81, the court said:

> "If the evidence is merely voluminous or tedious, that circumstance is not sufficient cause for transferring a case from a court of law to a court of equity" (p. 824).

But it is unnecessary to discuss this question at length, for the distinction between the common law and equity jurisdiction of the courts of the United States under the constitution has been so often stated and explained in the decisions of this court that it would be tedious to repeat them here.

For cases in which this distinction is stated, see—

Fenn v. Holmes, 21 How., 491;
Robinson v. Campbell, 8 Wheat., 221;
Strather v. Lucas, 6 Pet., 768;
Parish v. Elkins, 16 Pet., 453;
Bennett v. Butterworth, 11 How., 669;
Galt v. Galloway, 4 Pet., 432.
Young v. Porter, 3 Woods, 342;
Scott v. Seely, 140 U. S., 106;
Hipp v. Robbins, 19 How., 271.
Parker v. Winnipiseogee et al., 2 Black, 545;
Grand Chute v. Winniver, 15 Wall., 373;
Lemon v. Coches, 23 Wall., 461;
Killian v. Ebbinghaus, 110 U. S., 468.

There is no allegation in the bill that any authority has been given for the prosecution of this action on behalf of the State of Virginia, except for the single purpose of securing an adjustment of the proportion of the old debt proper to be borne by the State of West Virginia. The plaintiff State has already determined for herself what her just proportion of the debt is, and neither asks nor is willing to have that question reopened. The only authority for the institution of the suit is found in the act of March 6, 1900, which relates exclusively to the ascertainment of West Virginia's proportion of the debt represented by the certificates deposited with the commission, and provides that "the said commission shall be authorized and empowered by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings in behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement as aforesaid." This is the whole extent of the authority given for the use of the name of the State in this action, and it is expressly limited to an action or proceeding on her behalf as trustee for the certificate-holders; and, as we have already shown, this court cannot entertain that part of the bill.

It was held by the court in *Texas v. White* (7 Wall., 700) that the governor of a State had the power to authorize the institution of an action by the State in a case where the interests of the State itself were involved; but no such rule can be applied where the suit is not for the assertion of a claim or the protection of a right belonging to the State, but for the sole benefit of individuals, and she sues as their trustee. In such a case the legislature possesses the sole authority to direct its institution. But, whether this is the general rule or not, the fact in this case is that the legislature, the supreme authority of the State, did assume and exercise control over the subject, and by an act which was approved by the governor, specifically defined the purpose for which the name of the State might be used.

Ordinarily the objection that the suit was brought without authority from the party named as plaintiff should be taken by a plea in abatement, but where the lack of authority appears on the face of the bill of complaint, the question can be raised by demurrer. For instance, in a case where diverse citizenship is necessary to confer jurisdiction, and it appears on the face of the bill or complaint that the plaintiff and defendant are citizens of the same State, or even where it does not appear that they are citizens of different States,

no plea in abatement is necessary, and a demurrer to the jurisdiction will be sustained.

The demurrer in this case calls the attention of the court to the fact that the bill contains no prayer for a judgment or decree or any other final relief. (*See Equity Rule* 21.) It merely asks that the principles upon which an accounting shall be had "may be ascertained and declared;" that an accounting may be had, and that the plaintiff may be granted such other and further general relief as the nature of the case may require or to equity may seem meet. We do not suppose a decree or judgment for the recovery of money or property can be rendered upon a mere proyer for general relief; but this is not a matter of great importance, because the bill might me amended in this particular.

We respectfully submit that the demurrer should be sustained and the bill dismissed.

J. G. CARLISLE,
For West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Brief for Plaintiff

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

Statement of Facts as Shown by the Bill.

I.

On the 20th of June, 1863, West Virginia became a State of the American Union pursuant to an act of the United States Congress approved December 31, 1862, and in accordance with a proclamation of President Lincoln made April 20, 1863, under the act of Congress, upon the terms and conditions prescribed by the Commonwealth of Virginia in an ordinance adopted in convention and in the acts passed by the General Assembly of the restored government of the Commonwealth giving her consent to the formation of the new State out of her territory, with the constitution adopted for the new State by the people thereof, and which was sanctioned by Congress.

II.

Prior to the formation of the new State, the Commonwealth of

Vrginia had contracted an indebtedness approximating, as of the first day of January, 1861, the sum of $33,000,000, evidenced by the contracts and obligations of the undivided State.

This large indebtedness had been created in constructing a system of public highways, turnpikes, canals, railways, and other public internal improvements, begun in the first quarter of the nineteenth century and designed to fairly develop every part of her territory, and to afford means of communication between the different sections of the Commonwealth and the seashore, and to give to the people in all the various portions of the State access to the best available markets.

The "vast potentalities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for years prior to the date named (1861), and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation." Accordingly the costly system of highways, canals, and railways thus projected were designed, begun, and in very great measure constructed, *for the purpose of developing the resources of the region afterwards embraced in the State of West Virginia*, and of giving to its people adequate facilities of communication with other portions of the Commonwealth and access to the seashore and to the markets of the country.

This system of internal improvement and the large indebtedness contracted in carrying it into execution received the sanction of the people of the counties subsequently constituting West Virginia, through their representatives in the General Assembly of the undivided State, and a very large portion of that indebtedness would not have been created but for the votes of the members of the General Assembly representing those counties; and little or none of that indebtedness would have been contracted had the representatives from the counties subsequently forming the State of West Virginia voted against its creation. Several millions of dollars of said indebtedness were contracted on account of the works of internal improvement constructed in the territory now constituting West Virginia.

III.

The 9th section of the ordinance adopted by the people of the restored State of Virginia, in convention assembled in the city of Wheeling, Virginia, on the 20th day of August, 1861, entitled "An

ordinance to provide for the formation of a new State out of the portion of the territory of this State," provided as follows:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

Upon this stipulation and condition, afterwards accepted and acted upon by the people of West Virginia, the consent of the Commonwealth of Virginia was given to the formation of the new State.

IV.

Before the creation of the State of West Virginia, and while the territory and the people afterwards constituting the State still formed a part of the Commonwealth of Virginia and were subject to its jurisdiction and laws, the General Assembly of the restored State of Virginia, on the 3d day of February, 1863, enacted the following law:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the literary fund, or the board of public works thereof, or in any persons or persons for the use of the State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch

doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

And by another act of the General Assembly of the restored State of Virginia, passed February 4, 1863, it was enacted as follows:

"1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United Statets.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

These two statutes of the restored government of Virginia validly prescribed the terms and conditions upon which the property and money therein mentioned should be transferred to the new State, when it should be formed; and, pursuant to their provisions, money and property amounting to and of the value of several millions of dollars were, after the formation of the new State, paid over and transferred to and accepted by West Virginia.

The constitution of the State of West Virginia, which became effective when she was admitted into the Union pursuant to the said

act of Congress and proclamation of President Lincoln, contained the following provisions:

By section 5 of article VIII of said Constitution it was provided:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

And by section 7 of article VIII it was provided:

> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of article VIII it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the constitution containing these provisions was adopted by West Virginia that State did not owe, and could not have owed, any "public debt" or "previous liability," except for her just contributive portion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the acts of the General Assembly of the restored State of Virginia as above set forth, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia.

The provisions of sections 7 and 8 of article VII of said constitution were embodied therein by the people of West Virginia, or their representatives, for the purpose of complying with and carrying out in good faith the stipulations and conditions upon which the consent of Virginia was given to the formation of the State of West Virginia, and to the transfer of the money and property aforesaid to said new State.

VI.

After the formation of the State of West Virginia and after the restored government of Virginia had become the only government of the Commonwealth and its authority recognized and established throughout her limits, at intervals after the years 1865 down to and including the year 1905, various efforts were made by the Commonwealth of Virginia, through its constituted authorities, to bring about and effect an adjustment and settlement with West Virginia of the equitable proportion of the public debt of the undivided State proper to be borne and paid by the State of West Virginia. All of these efforts proved unavailing and abortive; and for years West Virginia has refused or failed to take any action or do anything for the purpose of bringing about any adjustment or settlement with this State.

Only after exhausting every means of amicable negotiation and having her overtures to that end repeatedly refused, and as a last resort, has Virginia been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to her and to all of her people.

VII.

Without waiting for a settlement with West Virginia, the Commonwealth proceeded, fully recognizing her liability for an indebtedness, all of which stood in her name, soon after the establishment of its restored government at Richmond, to make provision for the settlement and payment of the portion of the common debt of the undivided State which she could be fairly expected to assume and pay, under the circumstances then existing and the conditions which confronted her.

Several efforts were made to effect such an adjustment and settlement, the most important of which was that embodied in the act of March 30, 1871, mentioned at page 7 and copied at pages 13 to 16 of the bill.

By reason of the then impoverished condition of her people, occasioned by disasters which had destroyed their resources and paralyzed their productive energies, it was soon apparent that Virginia, in assuming and capitalizing, and again recapitalizing, the accrued interest upon the debt of the original State, and undertaking to pay, with 6 per cent. interest, two-thirds of the aggregate sum thus

ascertained, had assumed a heavier burden than she was able to bear. Accordingly other plans for the settlement of the State debt were adopted, and a final adjustment made under the act of February 20, 1892, set forth in the bill.

As a result of this, it will be seen that Virginia has assumed and already actually paid off and retired, exclusive of the large amounts she has paid on account of interest, *a principal sum* aggregating as much as, or more than, the entire principal sum of the debt of the undivided State as of January 1, 1861.

The facts in regard to these various transactions and the adjustment made by Virginia with the common creditors of the old State are recited in the bill merely for the purpose of showing the present status of the public debt of the original State and the precise relation of this Commonwealth at the present time in respect thereto.

Of course, the rights of West Virginia cannot be affected by any of these transactions between Virginia and the common creditors, of the undivided State, except to the extent that Virginia's rights and action therein may entitle her to contribution from West Virginia.

VIII.

As indicating the character of the efforts and sacrifices which Virginia, notwithstanding the disasters and losses which her people have endured, has made, in order to bear and to discharge her just obligations on account of the common debt of the undivided State, and as showing something of the strength of her equitable claim against West Virginia, it must be remembered that she has actually paid off, retired, and discharged and satisfied, so far as West Virginia is concerned, as of the date of the institution of this suit, over $71,000,000, including principal and interest, on account of said common indebtedness.

While Virginia has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof.

IX.

Since January 1, 1861, the arbitrary date fixed by the Wheeling ordinance as of which the adjustment and settlement between the two States shall be made, Virginia has actually paid off and retired, and now holds in her own hands and for her own benefit, exclusive of the sums represented by the certificates issued under the funding acts aforesaid, obligations of the undivided State amounting in the

aggregate, including the interest to be fairly computed thereon to date, to a sum in excess of $25,000,000. For all of the obligations and indebtedness of the original State, so taken up and retired or paid off by her, Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

X.

As a part of the adjustment which Virginia from time to time has made with the holders of the bonds and obligations of the undivided State and as a proper stipulation in connection with the partial settlements thereof made by her, it was agreed between them and Virginia that upon giving to them respectively her obligations for the respective portions of each of the old bonds of the undivided State agreed to be assumed and paid by Virginia, these old original bonds should be deposited with Virginia, and so far as not thus funded by her in her own obligations should be held by her as trustee for the holder or his assigns; and to each of these parties thus entitled she has given her certificate to this effect.

By the terms of the settlements authorized by the acts of 1879, 1882, and 1892, set forth in the bill, no liability rests upon Virginia on account of the certificates given by her pursuant to the terms of those acts, for the bonds deposited with her, and to be held by her, to await a settlement with West Virginia, as to the portion thereof not assumed or paid by Virginia. But it has been suggested that, although there is no liability assumed by Virginia by reason of issuing said certificates or upon said certificates, that there may still be a liability upon her *as to the unfunded portion of the bonds deposited with her under the acts of 1879, 1882, and 1892.* This, however, is a matter of minor importance, because a comparatively small portion of the old debt of the State was funded under the acts of 1879, 1882, and 1892, as will appear from the circumstance that there are in all only $1,609,600.15 of the certificates issued under the last-mentioned three acts outstanding in the hands of the public, as shown by the exhibit at page 73 of the bill.

The great bulk of the debt of the old State was funded under the act of 1871, and the unfunded portion of the bonds deposited with Virginia by the public creditors under the terms of that act, amounted to $12,703,451.79, upon the principal interest-bearing sum of which there is interest due from July 1, 1871. (See Exhibit No. 1, page 13 of the bill, and statement of Second Auditor of Virginia,

embodied in the address of Mr. Randolph Harrison, found at page 73 of the bill.)

The arrangement under the funding act of 1871 was very different from that provided for by the subsequent acts of 1879, 1882, and 1892.

By the acts of 1871 Virginia undertook to be the custodian of the bonds of the undivided State deposited with her, so far as they were unfunded; and that payment should "be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

Whatever may have been the purpose of the General Assembly of Virginia in the enactment of this law and in authorizing such contracts to be made, it would seem that Virginia's legal liability on account of said unfunded portion of said bonds is not released or affected by the transaction, but still exists.

However, under all the circumstances of the case and in view of the underlying equities suggested by the facts stated in the bill, it would seem that Virginia has already unquestionably done as much as she could be fairly expected to do towards paying off the common public debt of the old State. The great mass of the holders of the certificates issued by her under the act of 1871, and under the other acts above recited, who are the persons entitled to the said unfunded bonds deposited with her and now held by her, recognizing the justice of this view, have, through their authorized representatives, entered into the agreement printed at pages 83 to 86 of the bill.

XI.

By joint resolution of the General Assembly of Virginia, printed as Exhibit No. 5, beginning at page 39 of the bill, entitled—

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same,"

approved March 6, 1894, a commission was created for the purposes set forth in the title to the resolution.

The Virginia Debt Commission mentioned in the bill was created pursuant to that resolution, and made earnest efforts to bring

about a settlement with West Virginia, without any satisfactory result.

Accordingly the General Assembly of Virginia afterwards passed the act approved March 6, 1900, printed as Exhibit No. 6 of the bill, beginning at page 41 thereof, the object of which is stated in its title as follows:

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises."

By this act, as plainly appears from its terms, additional powers and authority were conferred upon this commission, and it was made its duty, and power was conferred upon it, by and with the advice and approval of the Attorney-General of the State, to take such action and institute such proceedings on behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

After again making an earnest effort to bring about an amicable settlement with West Virginia, by which the proportion of the debt of the original State of Virginia proper to be borne by West Virginia should be ascertained, and after having had their overtures to that end rejected by West Virginia, the said commission deemed it to be its duty, with the advice and approval of the Attorney-General of Virginia, to cause this suit to be brought in strict conformity with the powers conferred upon them by the acts aforesaid, the commission and the Attorney-General considering such action to be needful and proper to protect the interest of the State and bring about and carry into effect such a settlement.

Accordingly, and in strict conformity with the authority conferred by the act of March 6, 1900, this suit was instituted.

BRIEF OF ARGUMENT UPON THE QUESTIONS OF LAW PRESENTED BY THE DEMURRERS.

(1.)

As to the first ground alleged in the amended demurrer, namely, that there is a misjoinder of parties plaintiff and a misjoinder of causes of action, we cannot see that this objection is well taken.

The definitions of misjoinder under English chancery practice, as well as the practice in this country, show that there is no such vice in the bill.

(*a*) As to the misjoinder of parties: This does not arise unless—

> "Complainants actually have or may have conflicting interests in regard to the object of the suit, or if any or either of them have no interest in the subject-matter of the suit."
> Mitf. Pl., p. 399, note.

The rule as to misjoinder of plaintiffs, as laid down by Mr. Daniell, is that—

> "persons who have no interest in the litigation cannot be joined as coplaintiffs in a suit with those who have."
> 1st Daniell Chy. (5th Am. ed.), m. p. 301.

Example given by Mr. Daniell of what is not misjoinder; Auctioneer can be joined as coplaintiff with the vender in a bill against the purchaser.

Id., m. p. 302.

Again: Want of interest by a coplaintiff in the subject matter is ground for demurrer.

Story's Eq. Pl., sections 231, 232, 508, and 509.

Mitf. Pl., 160, 161.

Again: Plaintiffs who have no common interest, but assert distinct and several claims against one and the same defendant, cannot be joined.

Story's Eq. Pl., section 279.

On the other hand, where there is a community of interests among coplaintiffs desiring the same relief against a common defendant, they may be joined.

It was held in Ware *vs.* Duke of Northumberland. 2 Anstruther's Rep., p. 469, that:

> "Unconnected parties might be joined in one suit *where there was a common interest among them all, centering in the point in issue in the cause.*"

This doctrine is strongly approved by Chancellor Kent in Brickenhoff *et als. vs.* Browns, where different judgment creditors united in one bill for discovery and account to set aside impediments to their remedies at law caused by the fraudulent acts of their common debtor.

6 Johnson Chy., 139, 151, 152.

Chancellor Kent says at page 151:

> "It is an ordinary case in this court, for creditors to unite or for one or more, on behalf of themselves and the rest to sue the representative of their debtor in possession of the assets, and to seek an account of the estate.
>
> "This is done to prevent a multiplicity of suits, a very favorite object with this court; and this principle so far controls the other rule, which preserves, in some degree, an analogy between pleadings in chancery, and the simplicity of declarations at common law. *There is no sound reason for requiring the judgment creditors to separate their suits, when they have one common object in view, which, in fact, governs the whole case.*" (Italics here and elsewhere ours.)
>
> Story's Eq. Pl., section 286; see also 2d Story's Eq. Jur., sections 853, 854.

(*b*) Nor is there any foundation whatever for the objection that there is a misjoinder of causes of action.

Considering together the two grounds of objection which are jointly presented in the first assignment of grounds of demurrer made in the amended demurrer in the light of the established doctrines and definitions, we beg leave to say that they are both founded upon an utter misapprehension of the meaning, scope, and purpose of the bill.

It is impossible that there can be any misjoinder of parties plaintiff, because there is only one party plaintiff. Virginia, in her corporate capacity, is the only plaintiff in the suit. She does not sue in any representative capacity, though the bill discloses the fact that, by reason of the arrangements which she has made with the great mass of the holders of the bonds of the old State, she does

hold in her possession nearly all of those bonds as a depository, and *quoad* the custody thereof that she holds them in a fiduciary capacity; but she does not sue as trustee, but sues in her own name, for the purpose of obtaining the equitable relief to which the bill shows that she is fairly entitled.

In so far as said bonds have been funded in her own obligations and discharged by her, she holds those bonds as vouchers and evidence of her satisfaction of the same against the State of West Virginia, who is, as a proposition of public law and of equity, bound jointly with her to the public creditors to pay the same, and, as between her and West Virginia, is bound by contract to pay West Virginia's equitable proportion thereof.

If Virginia had no personal interest in respect to the bonds so deposited and held by her in a fiduciary capacity, we would cheerfully concede that she would have no standing to maintain this suit in respect *to these bonds;* but Virginia not only has an interest, but a very great interest, in respect to the unfunded and unsatisfied bonds of the old State, which, confiding in her fair dealing, the public creditors have entrusted to her custody, and in the settlement by West Virginia of her fair equitable proportion of the indebtedness of the undivided State represented by these bonds; *and that interest is that she shall be exonerated, at least to the extent of West Virginia's liability therefor, from any obligation to pay the same.*

To obtain such just exoneration she has invoked the equitable jurisdiction of this court.

Not only is she entitled to maintain and prosecute this suit, in order to obtain the exoneration which, according to the general principles of equity she is entitled to be decreed, but, by the special contract between her and the parties entitled to these bonds, she has, without any prejudice to the rights of West Virginia or any violation of any duty she owes to West Virginia, and without doing anything of which West Virginia has any ground whatever for complaint, acquired a still greater interest and right, namely, to be entirely exonerated from any liability on account of the unfunded portion of the common debt represented by the bonds so deposited with her and by the certificates which she has issued therefor.

This interest is given to her by the express terms of the contract which she has made with these certificate-holders, who are the owners of the bonds of which she is the custodian, and who, recogniging the enormous contributions which she has made from her limited

means to the satisfaction of the common debt, have cheerfully agreed to accept whatever amount this court shall ascertain to be the just and equitable proportion of the common debt of the old State to be borne by West Virginia, in full discharge and satisfaction of any claim they may have against Virginia and in full acquittance of all demands against her. (See 4th clause of contract, p. 85 of bill.)

It will be observed that, as has been already suggested, this stipulation, though it inures to the protection and to the interest of Virginia, in no sense and by no possibility is or can be prejudicial to any right of West Virginia; for under no circumstances could or will this agreement operate to add one cent to the liability of West Virginia.

We respectfully submit that her equitable right to exoneration from liability as to these unsatisfied and unfunded bonds, of which she is the custodian, alone gives her a standing to maintain this suit to have West Virginia's liability, not only for the whole indebtedness of the undivided State, but for the bonds so deposited with her, ascertained, determined, and adjudicated; and that her contractual right to exoneration under her agreement with the parties equitably entitled to those bonds increases her interest and confirms her right to have such exoneration decreed.

An authority of respectability and of proven merit has said:

> "It was not necessary to wait till some one was damnified by having paid, or having claim made against him for the whole; a bill might be filed to settle the amount due from each individual of a body liable to a common burden, and to compel the payment by each, of his share."
>
> 2 Spence Equitable Juris., marginal p. 662.

This suit is brought, as appears plainly from the bill, for the purpose of obtaining a *complete settlement* with West Virginia and an adjustment of a controversy which has vexed both States for a generation past; and as a part of this settlement and as a necessary incident to it, and in accordance with the manifest equitable rights of Virginia to have that settlement decreed—

First, in respect to some $25,000,000, including principal and interest, of the obligations of the original State, which have been paid off or retired by the Commonwealth of Virginia since her dismemberment and the vouchers for which transaction she now holds in her treasury; and as to this she invokes the equitable jurisdiction of this court for *contribution* from West Virginia to the extent of

West Virginia's liability on account of the common obligations which Virginia has thus paid off and retired; and,

Second, to obtain the *exoneration* to which she is entitled in respect to the unsettled and unfunded one-third of the debt of the undivided State, the obligations evidencing which have been deposited with her.

There is no possible conflict between or inconsistency in the two kindred and associated rights of contribution and of exoneration thus possessed by Virginia, or in the assertion of the same in one common suit. Indeed, it is proper and right that they should be asserted and united in one suit, and it would be ground of objection not to include them in one suit.

This would be true, even if there were more than one party, who had such rights, plaintiff to the bill; but, in the nature of things, there is and can be but one party plaintiff here, because there is only one Commonwealth of Virginia; and, as to her, "there is a common interest centering in the point of issue in the cause," and, in every phase and aspect of the cause, a common right in her capacity as a creditor of West Virginia in respect to so much of the common debt as Virginia has settled and paid off in full, and in her capacity of co-obligor of West Virginia as to so much of the common debt as remains unsatisfied, to have a settlement and ascertainment and adjudication of the equitable proportion of the debt of the undivided States which West Virginia should pay.

The effect and logical consequence of such an ascertainment and adjudication will necessarily be to obtain contribution to Virginia by West Virginia to the extent of West Virginia's equitable liability to make such contribution, and to obtain exoneration of Virginia from any farther liability on account of the common debt of the old State; and this is the ultimate relief to which Virginia is justly and equitably entitled, upon the showing made by her bill..

Again, the two causes of complaint united in this bill, and on which relief is prayed, are:

1. The liability of West Virginia to Virginia for her reasonable and just contributive share of the public debt of Virginia as of the 1st of January, 1861.

This liability rests upon several distinct and evident grounds:

(*a*) On the principle of public law, that "where a State is divided into two or more States, in the adjustment of liabilities between

each other the debts of the parent State should be ratably apportioned among them" (Hartman *vs.* Greenhow, 102 U. S., 877.

(*b*) On the ordinance of the convention of Virginia of August 20, 1861, "to provide for the formation of a new State out of the portion of the territory of this State," by section 9 of which ordinance it was provided that " the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

(*c*) On the constitution formed by the State of West Virginia and submitted to Congress, and on which West Virginia was admitted into the Union (Virginia *vs.* West Virginia, 11 Wall, 43).

By section 8 of article 8 of said constitution it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

2. Under and by virtue of the act of the General Assembly of the restored government of Virginia, passed February 3, 1863, property of the Commonwealth of Virginia, to the amount in value of several millions of dollars, was transferred from Virginia, and was delivered to and received by West Virginia, on the express condition that "the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the organization of the State government."

And by act of the same General Assembly, passed February 4, 1863, the sum of one hundred and fifty thousand dollars ($150,000) was appropriated and subsequently paid over to West Virginia, and by the same act all moneys and balances in the treasury of Virginia not otherwise appropriated were approiated to the said State of West Virginia.

It is too plain and obvious to be questioned, that both of the two above-recited grounds of complaint grew out of and formed material parts of the same transaction, viz, the generation of the new State of West Virginia and its necessary sustenance and support while in

her infancy. By her very birth, West Virginia incurred the liability for her just proportion of the public debt of Virginia. It was in fact and in law her debt as much as it was the debt of Virginia. She inherited it. It was congenital. Then, at her birth, West Virginia was wholly without resources or means for maintaining herself and continuing her political existence twenty-four hours save by the money and property of Virginia which fell into her hands. The appropriation of this money and property to the uses of West Virginia created a debt of so high an obligation that, even without the express condition on which it was given and received, she would be compelled to account for it.

Can there be doubt, then, for one moment that these two grounds of complaint are so intimately and essentially connected as that, had this complainant brought her separate bill on each ground, this court would, to avoid so useless multiplicity of actions, have consolidated or caused them to be heard together? The people who appeared as the citizens of the restored governmnt of Virginia and who formd the conventions and General Assemblys by which ordinances were framed for the creation of the new State of West Virginia—and consent was given in the name of Virginia for the creation of such new State—and who appropriated millions of dollars in value of the property of Virginia for the use of West Virginia were, it may be, in legal contemplation, citizens of Virginia up to the 20th day of June, 1863; but on that day these same people became citizens of West Virginia and thenceforth sat in conventions of her people and in her halls of legislation. But before this transformation took place, and in contemplation of its assured coming, they, as citizens of Virginia, appropriated all her property within their reach and gave it to the embryo State.

So it appears by the allegations of this bill, which must be taken here to be true, that West Virginia is justly liable on many grounds for a just proportion of the public debt of her parent State, Virginia; that West Virginia has not only repudiated and openly disavowed all such liability, but that she has appropriated to her own use a large amount in value of the public property of Virginia, which Virginia might properly have applied, as part of her public assets, to the payment of her public debt; and now, when by this bill in equity Virginia calls on West Virginia to account for the property which she has appropriated and applied to her own uses, and to come in before this court and have her propertion of the public debt ascertained, West Virginia, by her demurrer, protests that the part

of the public debt which she owes and the part of the public assets which she has appropriated to her own use are two subjects of complaint so distinct and unconnected as should relieve her from making answer to the bill.

Counsel for the defendant rely upon the decision of this court in the cases of New York *vs.* Louisiana and New Hampshire *vs.* Louisiana, 108 U. S., 78; but, as has already been made apparent, this case is entirely different in fact and in principle from those cases; indeed, there is no analogy between them.

Neither the State of New York or New Hampshire had any direct or personal interest in the bonds of Louisiana or in the subject-matters of controversy in those suits, but were mere volunteers, self-constituted trustees, without sustaining any relation, or interest, or obligation, or liability in regard to the bonds, or to any question presented in those causes.

While it may be true that, as to the custody of some of these unsatisfied bonds, Virginia sustains the relation of trustee, she has an enormous interest as to those bonds—an interest as substantial and as real, if not in fact as great, as if she had actually paid these bonds in full.

(2.)

The next ground of demurrer assigned by the defendants is:

> "That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree therein."

This ground of objection is based upon two postulates, each of which, we respectfully submit, is fallacious as applied to this case.

The first is, as we understand the position of defendant's counsel, that the judicial power of the United States and the jurisdiction conferred by section 2 of article III of the Constitution of the United States upon the Supreme Court over "controversies between two or more States" does not embrace a controversy such as is presented here, or any other controversy which, like the one here, is based upon any pecuniary obligation or liability of a State; that while it does

not confer jurisdiction upon the Supreme Court of the United States over certain controversies between States, the word "controversy" as used in that section of the Constitution, does not embrace any controversy in regard to any pecuniary matter.

This second postulate which defendant's counsel must maintain to support the above objection is necessarily that the language of the Constitution referred to does not confer jurisdiction in any case in which the court has no power to render or enforce and make effective its final judgment thereon, and that this court cannot render or enforce its final judgment or decree making effective the relief sought by the plaintiff.

We will now consider this two fold ground of objection:

(*a*) Can it be true that the word "controversy" as thus used in section 2 of article III of the Constitution can be fairly given any such narrow construction and confined by any such forced and restricted limitations?

It will be observed that precisely the same word defines the jurisdiction of this court as to "controversies between citizens of different States."

Judge St. George Tucker, in discussing the judiciary clauses of the United States Constitution, says, in his appendix to Tucker's Blackstone, vol 1, p. 120, edition of 1892:

> "The word 'controversies,' as here used, must be understood as relating to such as are of civil nature. It is probably unknown in any other sense, as I do not recollect ever to have heard the expression 'criminal controversy.' As here applied, it seems particularly appropriate to such disputes as might arise between the United States and any one or more States, respecting territorial *or fiscal matters;* or between the United States and their debtors, contractors and agents. This construction is confirmed by the application of the word in the ensuing clauses, where it evidently refers to disputes of a civil nature only, such, for example, as may arise between two or more States, or between citizens of different States, or between a State and the citizen of another State, none of which could possibly be supposed to relate to such as are of a criminal nature."

It is to be presumed that the framers of the Constitution did not design by the use of the same identical expression to confer one jurisdiction upon the federal courts as to matters of dispute between States and another jurisdiction as to matters of dispute between cit-

izens of different States. In other words, if the words "controversies between two or more States" do not embrace, under any circumstances, in the one case controversies growing out of contracts or liabilities for the payment of money, the words "controversies between citizens of different States" cannot be fairly construed to embrace any controversies of a pecuniary character; and yet we are surely within the limits when we say that a large majority of the "controversies between citizens of different States" of which the federal courts have from their foundation taken jurisdiction have been controversies arising out of contracts for the payment of money.

But it is urged that it is derogatory to the dignity of a State to have it impleaded in any court upon any contract, or obligation or promise which a State may have made.

Whether this be true or not is immaterial, if it be true (and as to this there can be no question) that the States, by coming into the Union and accepting the Constitution of the United States as their supreme law, have agreed to submit their controversies to the supreme tribunal created by that Constitution and clothed by it with jurisdiction of just such controversies.

And is it any more derogatory to the dignity of a State for it to be impleaded in this impartial tribunal in a controversy involving such important and far-reaching questions of public obligation and of public right as are presented in this cause than it would be to be impleaded in this court upon the question as to whether one State had encroached upon the territorial limits of another State; or as to whether it was improperly allowing its citizens to pollute the waters flowing through its territory and by the territory of another State, or that it was in violation of the rights of a neighboring State, diverting, dissipating, and absorbing streams of water rising in one State and preventing their natural flow in the territory of another State; or that it was doing any one of the things for which States have been impleaded under jurisdiction recognized and approved by this Court?

We are unable to see that there is any surrender of the dignity of a State in that it submits, or, if recalcitrant, is compelled to submit, its controversies to the adjudication of a tribunal of its own creation and selection for the settlement of any question of controversy involving property rights, or any other direct interests of a State in its corporate capacity, or of the people of a State represented by the government of the State.

It is urged that a State cannot be sued without her consent; but, as has been repeatedly decided by this court, all of the States have, in most solemn form, given their consent to the jurisdiction of this court over all civil controversies which may arise between them.

A careful review of all the decisions of this court which throw light upon this subject, we think, justifies us in the view that this is no longer a debatable question.

The word "controversy" as used in this section of the Constitution has been repeatedly passed upon and intrepreted by this court. Not only has its meaning been fixed by this court in approving the jurisdiction taken by the circuit courts of the United States of hundreds of controversies of a pecuniary character "between citizens of different States," but it has been repeatedly given a similar significance and interpretation, and the jurisdiction of this court sustained in respect to controversies to which States were parties and in respect to controversies to which the United States has been a party, as to which the definition and limitation of the jurisdiction conferred by the Constitution is defined by precisely the same word, "*controversies.*" And so we say that, if this court has jurisdiction of any controversies arising out of demands for money, or obligations for the payment of money, between States, then neither this court nor any other federal court could have jurisdiction of any such pecuniary "controversy between citizens of different States," or of controversies to which a State is a party, or of a controversy to which the United States is a party, for in each case the jurisdiction is conferred by precisely the same language.

And such we understand to be the doctrine established by the decisions of this court.

The first case in which this question arose was that of Chisholm, ex'r, *vs.* Georgia, 2 Dal., p. 419, in which this court held that the judicial power of the United States and the original jurisdiction of the Supreme Court, as conferred by section 2, article III of the Constitution, embraced a demand for money asserted against a State by a citizen of another State in an ordinary action of assumpsit, and that such a case presented a "controversy" within the meaning of that section of the Constitution.

Mr. Justice Iredell alone dissented, not as to the construction given by the majority of the court to the word "controversy," but as to the decision of the majority of the court in construing section 2 of article III so as to extend the jurisdiction of the federal courts to a pecuniary demand asserted by a citizen of one State *against*

another State. He held and argued that the language used in the Constitution, taken as a whole and construed in the light of the historical facts which he mentioned, was not designed to give the federal courts jurisdiction of a suit by any *individual* against a sovereign State upon any merely pecuniary demand; but it is an exceedingly significant circumstance that Mr. Justice Iredell was constrained to hold, and he did declare, that—

> "The Supreme Court hath, therefore, first, *exclusive jurisdiction in every controversy of a civil nature; 1st. Between two or more States.* 2nd. Between a State and a foreign State. 3rd. Where a suit or proceeding is depending against ambassadors, other public ministers, or their domestics, or domestic servants. Second. Original, but not exclusive jurisdiction, 1st, between a State and citizens of other States. 2d. Between a State and foreign citizens or subjects. 3d. Where a suit is brought by ambassadors, or other public ministers. 4th. Where a consul or vice-consul, is a party."
> *Id.*, p. 431.

Had that suit, like this, been a suit between two States; had that been a suit by South Carolina *vs.* Georgia, upon a demand for money, there cannot be a doubt but that this court, as then constituted, would have unanimously maintained its jurisdiction. And such is the meaning and effect of the decision of all the Judges.

It may be fairly claimed that the ruling of the majority of the court in Chisholm, ex'r, *vs.* Georgia has been questioned, if not overruled, as to the suability of a State by any private citizen independently of the eleventh amendment, and the opinion of Mr. Justice Iredell in that case affirmed by the opinion of this court, as formulated by Mr. Justice Bradley in Hans *vs.* Louisiana, 134 U. S., p. 1; but it will be seen that Mr. Justice Bradley, in the interesting opinion referred to, affirms and approves the opinion and the views of Mr. Justice Iredell in the Chisholm case; and Mr. Justice Iredell, in his opinion so unqualifiedly affirmed, as we have seen, held that this court had jurisdiction *"in every controversy of a civil nature between two or more States,"* though he held that jurisdiction was not conferred upon it of a controversy between an individual plaintiff suing a State upon a pecuniary demand.

There can be no doubt that the decision and reasoning of all the judges in the case of Chisholm, ex'r, *vs.* Gerogia confirms every contention made for the plaintiff in this case as to the rightful and necessary jurisdiction of this court over a controversy of the kind

presented here between the Commonwealth of Virginia and the State of West Virginia.

The question of the nature and extent of the jurisdiction conferred upon this court by article III of the Constitution in respect to controversies to which a State is a party, and also as to controversies between two or more States, was exhaustively discussed by Chief Justice Marshall in Cohens *vs.* Virginia, 6 Wheat., pp. 364, 375-440.

In considering the effect of the adoption of the 11th amendment upon that jurisdiction the Chief Justice, at pages 405-6, says:

> "This leads to a consideration of the 11th amendment.
>
> "It is in these words: 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.'
>
> "It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a state may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. *There was not much reason to fear that foreign or sister states would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases,* because it might be essential to the preservation of peace. *The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.*"

And at page 378, in defining the jurisdiction of this court in this

class of cases in which its jurisdiction by the terms of the Constitution is determined by the character of the parties, the Chief Justice uses this language, which would seem to be conclusive as applied to this case:

> "In the second class, the jurisdiction depends *entirely* on the character of the *parties*. In this are comprehended 'controversies *between two or more States*, between a State and citizens of another State, and between a State and foreign States, citizens or subjects.' *If these be the parties, it is entirely unimportant what may be the subject of controversy.* Be it what it may, these parties have a constitutional right to come into the courts of the Union."

It has been argued that these rulings of the Chief Justice were *obiter dicta*. They were entirely pertinent to the great question which he was considering and had a direct bearing upon it. The question which the court had to review was what was the character of the controversies over which it had jurisdiction under article III of the Constitution, after the adoption of the 11th amendment; and it was necessary in that connection for the court to construe the word "controversy" as used in that article.

The opinion was one of the most lucid and ablest which ever came from the mind of the great Chief Justice. It was evidently well and carefully considered.

Under such circumstances a conclusion which he so deliberately reached and so clearly expressed ought to have the greatest weight.

It may also be justly claimed that the expressions in opinions in two or three later cases, which are claimed to be inconsistent with the views of Chief Justice Marshall, are all of them far more emphatically *obiter* than were his conclusions as above quoted.

It is to be presumed, of course, that the controversies to which the Chief Justice referred were controversies in a judical sense; that is to say, justiciable controversies; but where has it ever been held by any court anywhere that a controversy arising out of a contract for the payment of money was not *justiciable?*

Since money supplanted barter in the dealings and contracts of mankind, and since courts for the adjudication of civil controversies have been established, a great part of the disputes which have grown out of the contracts of mankind have been controversies about the payment of money. They have not been "solvable" by the courts but they are generally more really "solvable," for principles of justice and right and more edequate relief can usually be admin-

istered in respect to them than in respect to some other descriptions of controversy which have been held to be justiciable by this court. For instance, the prevention of the flow of polluted water from the State under whose authority it has been contaminated, along the borders of another State, the health of whose inhabitants is prejudiced by the flow of such polluted water by their shores, as in Missouri *vs.* Illinois, 180 U. S., p. 208; or the prevention of the undue retarding and diminution of the natural flow of rivers by the State in which they have their source into the State through which they have their natural exit, as in Kansas *vs.* Colorado, 185 U. S., p. 125; or, indeed, the establishment of a disputed boundary line between co-terminous States, as in Rhode Island *vs.* Massachusetts, and a number of later cases where this court has taken jurisdiction of such controversies.

In Missouri *vs.* Illinois, 180 U. S., 240, Mr. Justice Shiras, after reviewing at great length the cases decided under the constitutional provision giving this court original jurisdiction in controversies between two States, says:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases *directly affecting the property, rights and interests of a State.* But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court."

This question has been directly passed upon by this court and its jurisdiction over controversies arising upon pecuniary demands has been sustained in—

Georgia *vs.* Brailsford, 2 Del., p. 402;
Texas *vs.* White, 7 Wal., p. 700;
Florida *vs.* Anderson, 91 U. S., p. 667;
Alabama *vs.* Burr *et als.*, 115 U. S., p. 413;

and even more emphatically and conclusively in—

United States *vs.* North Carolina, 136 U. S., p. 211;
United States *vs.* Texas, 143 U. S., p. 621; and
United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406.

The three last cases would seem to be entirely decisive of the question.

The very language under which this court took jurisdiction of these cases, all involving pecuniary demands of the United States against the several defendant States, is used in the Constitution to confer jurisdiction upon this court of controversies between States; and if that language in the one case gave this court jurisdiction of a controversy arising out of, or asserted upon, a pecuniary demand, by a logical and inevitable consequence it gives this court jurisdiction of a similar controversy between States.

It may possibly be contended that the question of jurisdiction was not raised in United States vs. North Carolina, 136 U. S., p. 211, but such contention would be idle, because this court, and no other federal court, according to the uniform decisions of this court, can, even by consent of parties, exercise jurisdiction in any case in which such jurisdiction has not been conferred upon it by the Constitution or by valid act of Congress.

This question arose in United States *vs.* Texas, 143 U. S., p. 621, *supra,* where, at page 642, this court, through Mr. Justice Harlan delivering its opinion, said:

> "The cases in this court show that the framers of the Constitution did provide, by that instrument, for the judicial determination *of all cases in law and equity between two or more States,* including those involving questions of boundary. Did they omit to provide for the judicial determination of controversies arising between the United States and one or more of the States of the Union? This question is in effect answered by United States *v.* North Carolina, 136 U. S., 211. That was an action of debt brought in this court by the United States against the State of North Carolina, upon certain bonds issued by that State. The State appeared, the case was determined here upon its merits, and judgment was rendered for the State. *It is true that no question was made as to the jurisdiction of this court, and nothing was therefore said in the opinion upon that subject. But it did not escape the attention of the court, and the judgment would not have been rendered except upon the theory that this Court has original jurisdiction of a suit by the United States against a State.*"

And it unquestionably arose and was passed upon in United *vs.* Michigan, 190 U. S., pp. 379, 396, 406, which was a suit for the recovery of money, in which this court, Mr. Justice Peckham delivering its unanimous opinion, at page 396, held:

"By its bill the United States invokes the original jurisdiction of this court for the purpose of determining a controversy existing between it and the State of Michigan. This court has jurisdiction of such a controversy, although it is not literally between two States, the United States being a a party on the one side and a State on the other. This was decided in United States *v.* Texas, 143 U. S., 621, 642; 36 L. Ed., 285, 292; 12 Sup. Ct. Rep., 488."

Such was also the effect of the decision of the majority of the court in South Dakota *vs.* North Carolina, 192 U. S., p. 268; and there is nothing in the dissenting opinion of the minority of the court in that case inconsistent with the views for which we contend.

Again, we say that it seems to us the question is no longer a debatable one in this court.

(*b*) Is there anything in the contention that this court cannot hear and determine the questions presented in this case because it has, as is alleged, no power to render or enforce any final judgment or decree therein?

Let us see, first, what is the precise character of this suit and what is the relief sought, a total misconception of which must have occasioned the assignment of the ground of demurrer now being considered.

The main and real object of the suit is a settlement with West Virginia, and to this end a determination and adjudication by this court of the amount due by that State to Virginia, upon the state of facts set forth in the bill.

West Virginia having refused to have any accounting, or even to negotiate with Virginia upon the subject, it became necessary to invoke the equitable jurisdiction of this court in order that it might ascertain, determine, and adjudge the proportion of the debt of the original State which it would be equitable for West Virginia to pay.

The Commonwealth of Virginia would be loth to believe that any State of the American Union would disregard or disobey any decree of this, the tribunal selected and empowered by all of the States as the final arbiter of all civil controversies which may arise between them, and did not consider it necessary in any such case, or proper under the circumstances of this case, to insert in her bill a special prayer asking this court to summarily enforce its decree against West Virginia.

She cherishes the hope that there would never be any occasion to

ask the court to award any execution or take any action for the purpose of enforcing such judgment as it shall render.

If such occasion should ever arise, it will be for the court to then decide by what process or further action it would proceed to execute its decree.

It will be time enough when the proper accounts have been taken, and the balance ascertained, and the sovereign State against whom such balance may be found has repudiated the liability and refused to pay such balance, to consider and decide whether the power resides in this court and the means are at its hand to enforce the payment of the amount so found to be due.

It is enough for present purposes to know that all the States in the Union have, by the Constitution of their general Government, covenanted and agreed in the most solemn form that "the judicial power shall extend to controversies between two or more States," and that "in all those cases in which a State shall be a party the Supreme Court shall have original jurisdiction."

> "The Constitution of the United States, with all the powers conferred by it on the General Government and surrendered by the States, was the voluntary act of the people of the several States deliberately done, for their own protection and safety against injustice from one another."
>
> Ableman *vs.* Booth, 21 How., p. 521.

> "Some tribunal exercising such authority, is essential to prevent an appeal to the sword and a dissolution of the Government."
>
> 2 Story on Constitution, sec. 1681.

The Supreme Court hath exclusive jurisdiction in every controversy of a civil nature between two or more States.

Chisholm *vs.* Georgia, 2 Dall., 2d ed., p. 430.

These cases hold that questions of boundary, territorial right, and property rights of all kinds are proper for this jurisdiction.

2 Tucker's Constitution, p. 784.

Indeed it may be needless to consider at all the question of whether, when a decree shal ble made ascertaining the amount due by West Virginia, on a full adjustment and accounting between the two States, how such an amount can be obtained from the debtor State. We may accept as sound and true the statement made by Mr. Webster in his letter to Baring Brothers (Webster's Works, vol. 6, p.

539), that "the security for State loans is the plighted faith of the State as a political community, resting on the same basis as other contracts with established governments; that is to say, the good faith of the government making the loan, and its ability to fulfill engagements." We may admit that this is the only sanction and security on which an individual who is a public creditor may rely; that this arises on the creation of the debt and continues so long as the debt exists. We recognize that no sovereign State, of whatever form of goverment, can clothe an individual or another State with power to seize by force upon its treasury and appropriate its resources without regard to the needs, policies, or will of the debtor State.

Every day judgments are rendered by this court against the United States for money demands on appeals from the Court of Claims; but nowhere is power given to this court to award execution of *fiere facias* against the United States. Awards are made by high tribunals and commissioners to whose arbitrament claims for money against empires, kingdoms, and republics have been submitted, but never has power been given to these courts to enforce by judicial process or physical force the payment or satisfaction of the amounts which they may ascertain to be due.

Only by appropriation, regularly made by the legislative branch of the Government, is provision ever made for the payment of claims, whether ascertained by judgment, award, or other legal form. To that branch of the Government alone may we look for the fulfillment of "the good faith of the Government."

We here invoke the exercise of a long established ground of equitable jurisdiction when, on the case stated in the bill, we ask that an accounting be had, and that such other and further relief be granted as the nature of the case may require and in equity may be meet.

It is true that in the case of Gordon *vs.* United States the Supreme Court declined to take jurisdiction of the case on appeal from the final action of the Court of Claims, on the ground that no power had been conferred upon the court to enforce its judgment, Chief Justice Taney in the opinion saying:

> "nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised and where its judgment would not be final and conclusive on the rights of the parties, and process of execution awarded to carry it into effect.
>
> "The award of execution is a part, and an essential part,

> of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy," &c.
>
> Gordon *vs.* United States (Appendix), 117 U. S., p. 697.

(Although a grave doubt exists as to the authenticity and accuracy of this alleged opinion.)

This language was used in considering and deciding a question of jurisdiction of the Court of Claims where the judicial power of the United States had not been conferred on it by Congress. It is not applicable to the question presented here, which is not as to the jurisdiction of the court, but as to its power to enforce its writ of execution against a State. The question here is not as to the power of the arm to strike, but as to the immunity of the object from wounds.

Whether property or funds of West Virginia within the jurisdiction of this court, other than property used distinctly for governmental purposes, would be liable to seizure, levy, garnishment, or sale in execution of or for the purpose of coercing compliance with any such decree in a question which we trust will never arise; for we are persuaded that any decree which this court shall render will be accepted by both parties as final and binding and will be respected and obeyed. But if a decree shall be rendered against West Virginia, and that State shall fail or refuse to respect it and to comply with its terms, it will be time enough then for this court to decide what farther action shall be taken in the enforcement of its decree.

The supreme court of Louisiana, in the case of *Carter vs. State*, 42 La. Annual, 930, in an opinion delivered by Judge Fenner, has shown why, from the character of the party, a writ of *fieri facias* should not be awarded, and cannot be enforced against a State.

> "Legislative acts authorizing individuals to sue the State upon claims which the Legislature, for any cause, does not see fit to recognize and pay, have been of common occurrence in this and in other States. Their purpose and effect, as commonly understood, are undoubtedly nothing more than to refer to the judiciary the settlement of the question of law and fact involved in the claims, and the determination, in the form of a judgment, of the rights of the parties. It is implied, as a matter of course, that the legislative power,

after making such a reference, will accept and abide by the judicial determination, will recognize the judgment rendered as final and conclusive, and will, in due and ordinary course, make provision for the satisfaction thereof.

"That such was the interpretation of his remedy, adopted by the plaintiff himself, is evinced by his applications to successive General Assemblies for an appropriation to satisfy his judgment.

"But to assume that, by consenting to be sued, the Legislature intended to abdicate its constitutional function of controlling and administering the public funds and property and of appropriating them to such lawful purposes as it may deem best, and to delegate to the judicial department the power of seizing such property and applying it to the payment of a particular debt, would be, beyond measure, rash and unjustifiable. No such intention is expressed in the act or can be fairly implied from its terms; and we consider it beyond question that no such ever entered into the mind of any member of the legislative body. The incidents and appurtenances of ordinary jurisdiction have no application to a case like this. Undoubtedly jurisdiction granted to render judgments between parties subject to judicial power and control implies power to execute such judgments. But the sovereign is not subject to judicial power and control except just so far as it has consented thereto; the moment the limit of that consent is reached the judiciary must instantly halt. Satisfied as we are that the Legislature has not consented and did not intend to consent to the execution of this judgment by writ of *fieri facias*, we are bound to deny such remedy.

"Counsel asks, of what use is the power to render judgment against the State, if the court is powerless to execute the judgment? That question was anticpiated by Mr. Hamilton in the discussion of the Constitution of the United States before its final adoption. 'To what purpose,' he asked, 'would it be to authorize suits against sovereign States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State.' Federalist, No. 81. He never dreamed that authorizing suit against a State would imply the right to issue *fieri facias* on the judgment.

"Puffendorff says: 'And if the prince gives the subject leave to enter an action against him in his own courts, the action itself proceeds rather upon natural equity than on municipal laws. For the end of the action is not to *compel* the prince to observe the contract, but to *persuade* him.'

"In England claims against the Crown might be prosecuted before certain courts, in the form of petitions of right, with the consent of the King, but it was held by Lord Mans-

> field that 'if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year.' "
>
> Macbeth *vs. Haldimand*, 1 Durn. & East., 172.

We have examined all the authorities quoted by counsel, and find none of them to support his contention. We are quite certain that no precedent exists sustaining the issuance of a *fieri facias* on a judgment against a sovereign State in her own courts, though rendered with her own consent.

The only recourse for satisfaction is by application to the Legislature, with whom the judgment should surely have great *persuasive force*, but none *compulsive*.

In United States *vs. North Carolina*, 136 U. S., p. 211, *supra*, this court took jurisdiction of a suit brought by the United States against that State for money due upon bonds held by the United States.

In United States *vs.* Michigan, 190 U. S., pp. 377-406, already referred to, this court again took jurisdiction of a suit against Michigan for the recovery of money. At he conclusion of its opinion, at page 406, this court unanimously decided that—

> "There must be a judgment overruling the demurrer; but as the defendant may desire to set up facts which it might claim would be a defense to the complainant's bill, we grant leave to the defendant to answer up to the first day of the next term of this court. *In case it refuses to plead further, the judgment will be in favor of the United States for an accounting, and for the payment of the sum found due thereon.*"

Every writ, process and remedy which would be available for the enforcement of such a judgment, or for the decree prayed for by the plaintiff in Unitel States *vs.* North Carolina, 136 U. S., p. 211, *supra*, would be available for the enforcement of a decree in this case adjudicating the amount of West Virginia's equitable contributive share of the ante-bellum debt of Virginia.

If such decree in United States *vs.* North Carolina, or the judgment directed in United States *vs.* Michigan, could not be summarily or effectively enforced, then it may be that a final decree in this case cannot be so enforced.

But it is equally true, and it is a truth which should conclusively dispose of this ground relied upon in the demurrer, that if the inability of this court to award any execution or frame any writ

which would enable the United States to enforce any such decree or judgment against North Carolina or against Michigan did not defeat the jurisdiction of this court in the suits against those States, a similar inability to summarily enforce a decree in this case against West Virginia by execution, levy and sale cannot defeat the jurisdiction of this court in this suit against that State for a settlement, ascertainment, and adjudication of the state of the accounts between the two States.

It is impossible by any conceivable process of right reasoning to apply any principle to the case at bar which would defeat the jurisdiction of this court, upon the ground here discussed, which would not have deprived this court of its jurisdiction in each of the cases just considered.

And so upon this alleged ground of demurrer we conclude that the bill presents a controversy between the plaintiff and defendant States justiciable and solvable in this court, and that the jurisdiction of the court will not be defeated because it may be that the plaintiff may not be able to collect from the defendant, or this court may be unable to compel the defendant to actually pay such sum as the court may adjudge and decree to be due by the defendant.

(3)

To the third ground assigned in defendant's demurrer, namely,

> "That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificatets in the said bill set forth and described,"

our reply is that this assignment is founded upon mistake. It is not true that Virginia sues as trustee for the individuals mentioned or for any other persons. She sues in her own name and for her own benefit, in vindication of her own rights and for her own protection.

It is true that if the relief which she seeks is accorded her it will not only enure to her benefit, but necessarily to th benefit of all of the creditors of the undivided State, as well those who have deposited their unsatisfied bonds in her keeping as those who have never funded the bonds of the original State held by them; as well also those whose bonds and certificates are represented by the "depositing committee," who made the contract which is copied in the bill, as those whose bonds and certificates have not been so deposited.

It is true that the amount of the unfunded bonds and of said certificates which are not represented by said "depositing committee" is comparatively small, but they aggregate over a million dollars. Whether their holdings are large or small, this suit must necessarily enure to their benefit, as it must also to the benefit of all of the unsatisfied creditors of Virginia, for the reason that Virginia cannot obtain the exoneration to which she is entitled unless West Virginia's equitable share of liability upon every bond and obligation of the undivided State shall be ascertained and adjudicated.

Indeed, a little reflection will show it to be true, that the amount and extent of West Virginia's liability in respect to any one of the original bonds representing Virginia's ante-bellum debt could not be ascertained without at the same time by the same token ascertaining her aliquot liability as to all of the others of those bonds.

It will be seen at once that this is true, for under the Wheeling ordinance and the first constitution of West Virginia, framed and adopted in pursuance and effectuation of that ordinance, and under the contract thereby created between Virginia and West Virginia it would be impossible to determine what part of any particular bond West Virginia is legally and equitably bound to pay without first ascertaining what is the equitable proportion of the entire ante-bellum indebtedness of the undivided State.

And so no suit could be brought by Virginia against West Virginia; and, indeed, if an individual could legally institute and prosecute such a suit, no suit could be brought by any individual holder of a single one or any larger number of the bonds of the original State against West Virginia for a settlement and be prosecuted to a finality without an ascertainment of West Virginia's share of the entire indebtedness.

But Virginia's status in reference to this suit and her relation to the bonds deposited with her and the relief she seeks, and to which the bill shows her to be entitled in respect to those bonds and to the whole case, have been already fully discussed in the foregoing part of this brief and they need not be further treated here.

It is true that in the prayer for general relief Virginia asks that—

> "all proper accounts be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee as aforesaid."

But this, we submit, does not convert the suit which she has

brought in her own name and right into a suit by her *as trustee;* for, in the settlement of the accounts which this court may hereafter direct to be taken between Virginia and West Virginia it will be convenient, if not necessary, in the ascertainment of West Virginia's contributive proportion of the original public debt of the Commonwealth of Virginia to show the amounts due to Virginia in her own right and also as trustee. Indeed, the prayer of the bill for the ascertainment of the amount due by West Virginia upon the bonds held by Virginia as trustee might be omitted without impairing the character and effect of the bill.

The paramount and controlling equity which Virginia asserts and relies on, is her right to have a settlement and accounting between West Virginia and herself of all the matters growing out of the partition of her territory and the adjustment and determination of the respective rights and liabilities of the two States. This, we submit, is Virginia's right, and it is not affected by any questions that may be suggested as to the disposition she may make of whatever amount may be decreed by this court to be due to her.

It may be true that she has pledged in advance the full amount of any such recovery to the payment ratably of certain of her old debts, or even that she has made a declaration of trust as to such amount in favor of those creditors; but those are matters which cannot be considered on this demurrer. They are in nowise involved in the ground of equitable jurisdiction invoked by this bill. Virginia's right to compel contributions from West Virginia to the satisfaction of a common liability cannot be impaired or at all affected by the fact that Virginia has declared her purpose to apply the amount recovered to the payment of her debts.

They are matters which may, and doubtless will, be laid before the master to whom the settlement and statement of the account is intrusted, or they may have to be considered and passed on by this court, in the directions it may give to the master for his guidance in the execution of the order of reference; but they form no proper subject for consideration or action by the court at this stage of the case. The only question presented for decision now is, Has Virginia shown by her bill a proper case for the relief asked, of an accounting and for contribution from West Virginia?

(4)

The fourth assignment of grounds of demurrer is so general in

its terms that it is difficult to make to it a specific reply. It is as follows:

> "That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described."

This contention rests largely upon the same grounds upon which the second assignment is based, and the reply to it is very much the same, which is a conclusive answer to that assignment, and the importance of the case will justify some iteration in stating this reply.

The case stated in the bill must on this demurrer be taken to be true as to the facts charged. Among the facts charged are the following, viz:

1. That the restored State of Virginia, in convention assembled, did, on the 20th day of August, 1861, adopt an ordinance:

> "To provide for the formation of a new State out of the portion of the territory of this State."

That section 9 of that ordinance was as follows, viz:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, &c., as above quoted."

2. That on the 31st of December, 1862, the Congress of the United States, by act, provided that the new State, thus formed in pursuance of said ordinance, should be admitted into the Union by the name of West Virginia.

3. That on the 20th of June, 1863, the State of West Virginia was accordingly admitted.

4. That by act of the General Assembly of the restored State of Virginia, passed February 3, 1863, all property—real, personal and mixed—owned by Virginia, but situated within the proposed boundaries of West Virginia, was granted and transferred to West Virginia upon the condition, viz, that—

> "The State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State," &c.

5. That under and by virtue of said act there was actually received and enjoyed by the State of West Virginia property of the Commonwealth of Virginia amounting in value to several millions of dollars.

6. That by act of the General Assembly of the restored State of Virginia, passed February 4, 1863, there was appropriated to the State of West Virginia from the public moneys of Virginia the sum of $150,000; and there was further appropriated "*all moneys* not otherwise appropriated then" and that may come into the treasury up to the time when the State of West Virginia shall become one of the United States.

7. That by section 8 of article 8 of the constitution framed and adopted by the State of West Virginia, and under and in accordance with and by reason of which she was admitted into the Union of States, it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and the legislature shall ascertain the same as soon as may be practicable—and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

8. That the legislature of West Virginia never ascertained the amount of West Virginia's "equitable proportion" of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861; that the State of West Virginia has never accounted for the property of the Commonwealth of Virginia which was turned over to and received by her, amounting in value to several millions of dollars; that the State of West Virginia has failed and refused through a period of forty years, and in the face of repeated solicitations on the part of Virginia, to enter upon any settlement of the accounts between herself and Virginia, but has oftentimes and but recently, through one or the other of the two houses of her legislature, declared that she would not recognize any liability whatever as resting upon her to the Commonwealth of Virginia.

Wherefore, and by reason of the matters of fact aptly charged in the bill, it is manifest that a controversy is presented between the Commonwealth of Virginia and the State of West Virginia to

which the judicial power of the United States extends and as to which this court has original jurisdiction.

West Virginia obtained the consent of the restored State of Virginia to the erection upon the territory of Virginia of this new State, and she procured the aid of the Senators and Representatives of Virginia in Congress in having her invested with sovereignty and admitted into the Union upon the express terms of the "Wheeling ordinance," which bound her to "*take upon herself a just proportion* of the public debt of the Commonwealth of Virginia."

West Virginia obtained admission into the Union of States on an express undertaking in her constitution that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State."

West Virginia received and applied to her own uses property belonging to the Comonwealth of Virginia to the amount in value of several millions of dollars, on the express condition that she would "*duly account for the same in the settlement hereafter to be made with this State.*"

Hence it is evident that the "demand" referred to in this branch of the first ground of demurrer is not, as there assumed, "a simple demand for money," but it is a prayer that the *accounting*, so solemnly promised, may now be had, under the direction of this court.

The bill presents a state of facts from which it appears that the case is one for the exercise of the equitable jurisdiction of account upon some of the most important grounds upon which that jurisdiction can be invoked, according to the authorities and precedents.

(*a*) There have been in the first place complicated transactions running back to the creation of this new State, and back of that for about thirty years, embracing numerous loans made by the original State of Virginia and a large number of expenditures of the money thus borrowed in the construction of internal improvements outside and inside the territory now constituting West Virginia.

Any such settlement would necessitate, first, an ascertainment of the amount of the public debt of Virgiia as of January 1, 1861, a matter which in itself would require the services of a skillful and painstaking accountant.

There would also have to be an ascertainment of a great multitude of items of expenditure made by the old State within the

limits of what is now West Virginia, and of a vast number of payments made in the shape of taxes by the people living in that territory towards the suport of the State government, in each case from the date of the inception of the State debt down to the 1st of January, 1861.

There would have to be, moreover, a determination of what wes the proportion of the general expenses of the State government equitably chargeable against the counties and cities now constituting West Virginia during the same period. All of this, and more than is indicated here, would have to be ascertained in order to furnish the data upon wihch to ascertain the just proportion of the debt of the Commonwealth which West Virginia can be required or expected to pay upon the basis prescribed in the Wheeling ordinance.

These complicated statements, and the accounting necessary to evolve from them accurately, fairly, and justly the share of the common indebtedness which can be equitably assigned to West Virginia, alone would furnish an amply sufficient justification for a resort to a court of equity for an account.

But, in addition to this ground, there are others which even more emphatically call for the equitable relief to which the bill shows the plaintiff to be entitled.

(*a*) Prominent among these is the plaintiff's right to contribution. The basis of this right has been already fully stated in this brief, and in the bill. (See paragraph XVI, p. 16 of the bill.)

As to the right to invoke the aid of a court of equity to establish the right to contribution, see

1 Madd Chy., 233, star page 234.
Ex parte Gifford, 6 Ves., p. 808.
Lawson *vs.* Wright, 1 Cox, p. 276.
Collyer on Partnership, secs. 2-3, ch. 8.
1 Story's Eq., sec. 504.
Wright *vs.* Hunter, 5 Ves., p. 792.
Wills *vs.* Hubbell's Adm'r, 2 Johns. Chy, R., 401.

(*b*) Another ground for equitable jurisdiction recogniezd by all of the authorities upon equitable jurisprudence and practice is the plaintiff's right to exoneration upon the facts stated in the bill and already fully stated in the former part of this brief.

(*c*) Another ground for equitable relief shown by the bill is the accounting necessary to ascertain what money and property, stocks, and other assets of Virginia were transferred to and received by

West Virginia under the acts of the General Assembly of Virginia of February 3 and 4, 1863. (See pp. 4, 5, and 6, paragraphs VIII and IX of the bill.)

(*d*) Another ground for the exercise of equitable jurisdiction shown by the bill is the avoidance of a multiplicity of suits. Virginia sustains, as appears from the bill, various associated relations in respect to West Virginia, all affecting the property and pecuniary rights of the two States, all growing out of the formation of the new State, closely related to the partition of the territory and property and the apportionment of the common indebtedness of the undivided State, and all necesarily factors to be considered in making any satisfactory or final settlement between the two States.

First, Virginia holds obligations and evidences of indebtedness of the undivided State great in number and large in aggregate amount, paid off or retired by her, doubtless, at different times and under variant circumstances, but each of them giving her a claim against West Virginia to be reimbursed to the extent of West Virginia's liability therefor.

Second. She is entitled to have West Virginia make proper remuneration to her or give her proper credit for the money and property of Virginia which West Virginia received under the acts of February 3 and 4, 1863.

Third. She is entitled to exoneration to the extent of West Virginia's equitable liability upon the various transactions set forth in the bill, hereinbefore fully stated.

It is not only proper, but it is alike West Virginia's and Virginia's right and to their interest, to have the settlement of all of these associated claims and transactions made in one suit, instead of the parties being harassed by a number of suits for the equitable adjustment of matters which can be far more satisfactorily, intelligently, and fairly considered and adjudicated in one suit.

(5.)

The fifth ground assigned in the amended demurrer—

> "That it does not appear by said bill that the Attorney-Gentral has ever been authorized to institute and prosecute this suit in the name of the Comomnwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of

> March 6, 1900, which is referrtd to and made part of said bill,"

is refuted by the bill. In support of this statement it is only necessary to refer to the following parts of the bill.

The act of the General Assembly of Virginia approved March 6, 1900, printed at pages 41-42 of the bill, entitled

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth in the premises,"

in the second section thereof authorized the Virginia Debt Commission, apointed under the joint resolution of March 6, 1894, upon certain conditions mentioned in that section,

> "by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings on behalf of the State as may in the judgment of the commission and the Attorney-General be needful and proper *to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid.*"

The bill avers (paragraph xx, p. 11) that—

> "This suit has been instituted at the request and direction of said commission, and in strict conformity with the provisions of said act of March 6, 1900."

The exhibits filed with and as part of the bill, and particularly the report made by said commission to the General Assembly of Virginia on the 9th of January, 1906, Exhibit No. 8, pages 43-50 of the bill, prove the truth of this allegation. though its truth, of course cannot be questioned by the demurrant.

(6.)

The sixth ground of demurrer assigned in the amended demurrer is:

> "That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely (*sic*) and uncertain that no proper answer can be made thereto."

The bill, with as much exactness and particularlity as is possible under the circumstances, sets forth with much detail the facts upon which the plaintiff claims to be entitled to relief.

It is as full and precise in asserting the demands which it asserts against the defendant as it is reasnably practicable to make those allegations without first having had the accounting with the defendand which is the primary relief for which the bill prays.

If Virginia could, without such an accounting with West Virginia, state with definiteness just what is the sum West Virginia should pay to Virginia, an action of assumpsit might have sufficed; but no remedy at law could give her the relief to which she is entitled by way of exoneration, nor is there any adequate remedy at law by which the complicated and more or less intricate accounts can be so digested and stated upon equitable principles as to reach a result which will be just to the parties.

(7.)

The seventh assignment made by defendant's amended demurrer is:

> "That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an acocunt or to a discovery from this defendant."

This has already been answered in the answers made to other alleged objections to the bill. The plaintiff's right to an account is unquestionable upon any one of the several grounds already discussed; and a plaintiff is entitled to discovery in any case in which any right to equitable relief exists, and the defendant is in possession of any information, documents, or records which may throw any light upon the questions at issue or facilitate a just solution of those questions.

(8.)

The eighth and last ground of demurrer assigned is:

> "That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

This objection is possibly even more technical than some of the others presented in the demurrers.

It was not necessary under the English chancery practice, adopted

by this court in 1792 for the guidance and direction of suitors and practitioners therein, to have any prayer at all for special relief.

Under the prayer for general relief the plaintiff could obtain all such relief as he was found by the chancellor to be entitled to upon the state of facts alleged in his bill and established by his proofs.

> "The old bills in chancery did not contain any special statement of relief, but only what is called the prayer for general relief." * * *
>
> Adams' Eq., m. p. 309.
> Mitford's Pleading, m. p. 39..
> Cook *vs.* Martin, 2 Atk., p. 141.

Under later practice in England, the prayer for general relief was still held to be sufficient, though it became the universal practice to insert a special prayer, and to conclude with the prayer for general relief.

Adams' Eq., m. p. 309.

But there are prayers in the bill for special relief, namely,

> "that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by the State of West Virginia in the premises;'

These prayers not only ask for the specifice relief stated, but that

"the court will adjudicate and determine the amount due to your oratrix by the State of West Virginia."

An adjudication is a solemn judgment of a court. The word "adjudicate" is defined to mean:

> "To determine in the exercise of judicial power; to pronounce judgment in a case" (Anderson's Dict. of Law).
> "Synouymous with adjudge in its strictest sense" (Abbott's L. Dict.).
> "To determine judicially; try and decide; adjudge" (Standard Dictionary).

So a prayer for an adjudication by the court is a prayer for a judgment.

But such a prayer is unnecessary in a bill invoking the chancery jurisdiction of account.

The judgment or decree upon the account when taken and confirmed by the court is a necessary incident to the relief sought:

> "for it is implied if not expressed in the decree to account that the balance shall be paid to the party entitled."
> 1 Madd Chy. Pr.; title, Account, p. 86.

But where there is a prayer for special relief which does not adequately define *or even inaccurately state* the relief to which the plaintiff is shown upon the case presented to be equitably entitled, such relief as is adequate and appropriate to the case can and should be granted by the court.

I Daniell's Chy. Pr., ed. 1846, p. 434.

The modern English practice is

> "to pray particular relief, though if the particular relief prayed for in the bill cannot be given exactly as prayed, the court will assist the particular prayer under the general prayer; but relief inconssitent with the specific relief prayed cannot be given under the general prayer."
> 2 Madd Chy., m. p. 172.
> Beaumont *vs.* Beaumont, 5 Ves., p. 495.
> Muckleston and Brown, 6 Ves., p. 52.

The proposition asserted in this eighth assignment is negatived by repeated decisions of this court.

It will be noted that the bill contains prayers for special relief

and also a prayer for "all such other, further and general relief as the nature of the case may require and to equity may seem meet."

In English *vs.* Foxhall, 2 Peters, p. 612, this court declared that—

> "There is no doubt but that, under the general prayer, other relief may be granted than that which is particularly prayed. But such relief must be agreeable to the case made by the bill."

And in Watts and others *vs.* Waddle and others, 6 Peters, pp. 389-403, this court said:

> "Although there is no specific prayer in the bill to be paid the rents and profits, yet the court think that under the genal prayer this relief can be granted. *Under this prayer any relief may be given for which the basis is laid in the bill.*"

And in Walden, &c., *vs.* Boley and others, 14 Peters, pp. 164-5, this court decided that—

> "A court of equity cannot act upon a case which is not fairly made by the bill and answer. *But it is not necessary that these should point out in detail the means which the court shall adopt in giving relief.* Under the general prayer of relief, the court will often extend relief beyond the specific prayer, and not exactly in accordance with it."
>
> See also, to same effect—
> Boone *vs.* Chiles, 10 Peters, p. 177.
> Stevens *vs.* Gladding, 17 How., p. 455.
> Georgia *vs.* Stanton, 6 Wall. p. 50.
> Texas *vs.* Hardenburg, 10 Wall., p. 86.
> Jones *vs.* Van Doren, 130 U. S., p. 692.
> Hayward *vs.* Eliot Nat. Bank, 96 U. S., p. 611.
> Lockhart *vs.* Leeds, 195 U. S., pp. 427-437.

In the case cited this court decided that—

> "There is nothing in the intricacy of equity pleading that prevents the plaintiff from obtaining the relief under the general prayer, to which he may be entitled upon the facts plainly stated in the bill. There is no reason for denying right to relief, if the plaintiff is otherwise entitled to it, simply beacuse it is asked under the prayer for general relief, and upon a somewhat different theory from that which is advanced under one of the special prayers."

These authorities would seem to unquestionably establish the suf-

ficiency of the prayers for relief in the bill, and to effectively dispose of the eighth ground of objection laid in the amended demurrer.

The grounds of objection to the bill alleged in the original demurrer have not been noticed, for the reason that they are all merged in or covered by the amended demurrer.

Upon the whole case presented, it is respectfully submitted that the demurrers should be overruled, and the defendant required to answer the plaintiff's bill.

MARCH, 1907.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
HOLMES CONRAD,
Of Counsel for Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Argument of Mr. Chas. E. Hogg, for Defendant.

MONDAY, MARCH 11, 1907.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

ARGUMENT OF MR. CHAS. E. HOGG, FOR THE DEFENDANT.

MONDAY, MARCH 11, 1907.

MR. HOGG. May your Honors please: This is a suit in equity instituted in this Court by the Commonwealth of Virginia as sole plaintiff against the State of West Virginia as sole defendant.

To put the Court in possession of the essential facts of this case upon which the plaintiff rests its claim for relief, it is sufficient to say, (these facts appearing from the face of the bill and its exhibits, and matters of which the Court will take judicial notice), that in 1820 or 1825 the State of Virginia entered upon a work of internal improvement within its boundaries, having for its object the projection of a canal from James River to the Ohio for the purpose of connecting its seaboard with the western waters; the building of certain railroads projected in the same direction and in certain other directions; the construction of highways and bridges, and certain public buildings. To carry on this work it became necessary to raise funds on the credit of the State of Virginia by means of the sale of bonds, which were made from time to time during the period intervening between 1820 or 1825 and 1861. At that time the indebtedness of Virginia contracted in this way approximated $30,000,000.

JUSTICE DAY. In 1861?

MR. HOGG. In 1861, the beginning of that year.

During the progress of this work nearly all of the proceeds derived from the sale of these bonds were expended within the present limits of Virginia, very little of those proceeds being expended within the limits of the territory of what is now the State of West Virginia.

In 1861 a convention assembled at Richmond and adopted an ordinance declaring the intention of the State to withdraw from the Union. That ordinance was submitted to popular vote, and it was claimed by the authorities at Richmond that it had been ratified.

The great masses of the people in the territory now composing the State of West Virginia, and other sections of Virginia, did not believe that the State had the right to take steps looking to its withdrawal from the Union, and delegates assembled, representatives from that part of Virginia composing West Virginia, in convention in June, 1861, to take steps to restore the status of the State to its former relations with the General Government. That convention adopted an ordinance having in view the formation, ultimately, of a new state. In that ordinance all of the machinery of state government was provided for, including the various co-ordinate branches of the government, and the legitimate status of Virginia by that convention was restored. Virginia was then recognized by all the Departments of the National Government, and her delegates as representing the people of Virginia in that convention as the State Government of Virginia. That convention in its ordinance provided for the steps to be taken for the creation of a new state out of a part of the territory then lying within the bounds of Virginia west of the Appalachian Range of Mountains. It was also provided in that ordinance for the election of delegates to frame a constitution, in convention to be assembled for the proposed new state. In the ordinance they also provided for the assumption of West Virginia's just proportion of the debt created by Virginia prior to January, 1861, as already mentioned. The language of the ordinance with reference to the debt is as follows:

> "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included in the said new State during said period."

This is the declaration of Virginia herself, made on the 20th day of August, 1861.

In accordance with the other provisions of this ordinance, the convention to frame the constitution of the proposed new state assembled, the constitution was framed, and in that constitution with reference to this public debt, the following provision was embodied:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this state, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This constitution was ratified by the people within the territory of the proposed new state in April, 1862; and in May, 1862, the General Asembly of Virginia gave its consent to the formation of West Virginia out of the portion of the territory described in the ordinance and the constitution for the new state. That part of the Act of the General Assembly of Virginia, enacted in May, 1862, and giving its consent to the formation of the new state, reads as follows:

> "Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia to include the counties of Hancock, Brooks, * * * * according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed proposed by the convention, which assembled at Wheeling on the 26th day of November, 1861."

Subsequently, in December, 1862, an Act of Congress was passed authorizing the formation of a new state out of a portion of the territory of Virginia as set forth in the ordinance of 1861 and the constitution of 1862; and but for one matter which had not been embodied in the constitution of the new state she would have been admitted into the Union by that Act. Congress, in the Act passed in December, 1862, recites the holding of the convention of August, and the adoption of the ordinance of 1861—recites the fact of the holding of a convention for the framing of the constitution for the proposed new state in 1862; also the consent of Virginia, as evidenced by her act of May, 1862, and admits West Virginia by that Act into the Union with this proviso: That slavery shall be exclud-

ed from its boundaries. And when that was done, proclamation thereof should be made, and thereafter the proposed new state should be admitted into the Union. And on the 20th day of June, 1863, West Virginia, under this compact, composed of these various documents and acts, became a new state of the Union.

Recess until 2:30 P. M.

After Recess, 2.35 P. M.

MR. HOGG. In the convention which adopted the ordinance of August, 1861, when the matter of assuming a portion of the public debt arose, the basis of its adjustment also came up. It was known by Virginia that nearly all of the proceeds derived from the sale of the bonds had been expended within her present limits, and it was also known that the work of internal improvement had not as yet reached the West Virginia line, and that if the new state were formed it would be impossible for Virginia to go on and prosecute the work as a state enterprise after the new state had been severed and a new state government organized. It was also known to the representatives of the people of the proposed new state that if they were to undertake to meet that improvement and complete it that it would have to be done out of their own public resources, or by private enterprise. Therefore, when it became necessary to adopt, in connection with the new state, a just proportion of the public debt, the method of determining that necessarily arose. They therefore decided, and embodied it in the ordinance, that Virginia should be credited with all of the money expended within the limits of the proposed new state, and charged with all the taxes paid into the public Treasury of Virginia from the time of the creation of the debt, less the ordinary expenses of government; and that the difference between those two matters would constitute West Virginia's portion of the public debt. Therefore the basis had been adopted by Virginia herself in her own convention.

JUSTICE HARLAN. You say "Convention of the State of Virginia." What convention do you refer to?

MR. HOGG. The convention which met to restore the status of the state government, and maintain the relationship of Virginia as a state to the National Government after the Ordinance of Secession.

JUSTICE HARLAN. That was known as the Pierpont?

MR. HOGG. Yes, and is so designated in the bill.

When the subject came up in the convention which met to frame the constitution of the new state, there was another question that was open, and that was the tribunal in which the just proportion of the public debt of Virginia should be determined. The basis had already been promulgated, which was acceptable to the new state, and therefore to settle that matter, the convention framing the constitution of the new state declared that the legislature of West Virginia should ascertain the same as soon as might be practicable, and provide for the liquidation by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years. That was satisfactory to Virginia, as evidenced by the Act giving her consent for admission, for the constitution of the new state was before the legislature when the Act was passed, and with that provision in the constitution, Virginia gave her consent. Congress passed the Act giving the consent of the National Government to the creation of the new state, with all of these provisions in the constitution as to the bases upon which, and as to the tribunal by which, this just proportion should be determined.

Now your Honors will preceive that after the creation of the new state, it became obligatory upon her to ascertain that just proportion as soon as was practicable, and in the manner designated by the ordinance. After the restoration of peace between the states, Virginia brought suit in this Court, assailing the integrity of the territorial limits of the new state, claiming certain counties, which were recognized by the new state as being a part of her territory, were not in fact a part of her territory, but really belonged to the old state. Pending that suit, West Virginia, on the basis agreed upon between the two states, could not proceed to act because the determination of her just proportion depended upon whether or not the certain counties in controversy, were actually within the territory. That suit in this Court remained undetermined until the 6th of March, as I now recollect, 1871; and on that day it was determined that West Virginia's territory, as she had claimed it, was intact, and the case was determined in favor of the defendant.

Now then, up to that point of time, neither state, owing to the condition of affairs, could act with reference to this debt. The first expression of Virginia with reference to her public debt was that contained in an Act of her General Assembly approved March 30th, 1871, in which Virginia by her own act proposed to make settlement with her creditors of the old *ante-bellum* debt.

JUSTICE BREWER. After the decision in the case?

MR. HOGG. After the decision of the Supreme Court. She, in that Act, proposed to assume two-thirds of that debt, issue new bonds for it, and to receive to herself in trust, the surrender of the old bonds, the settlement of the other one-third to await a settlement to be thereafter had between West Virginia and Virginia. Accordingly, after this enactment, the creditors of Virginia did avail themselves of the provisions of that Act, and a great deal of the old debt was funded upon that basis.

The next expression of Virginia with reference to her public debt was that contained in an Act of the General Assembly of Virginia approved March 28th, 1879, by which she provided an abatement of the rate of interest and divided her then outstanding indebtedness into two classes, which it is not necessary to mention here in the statement of the facts, but this Act of 1879, proposing the abatement and new terms of settlement of the two-thirds which she had assumed, provides that, "The owners of all classes of bonds mentioned in this Act, who shall exchange their securities for the bonds created under this Act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March 30th, 1871, when they make such exchange, and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued, under this Act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this Act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of said certificates."

Under these two Acts, the Act of 1871, and that of 1879, nearly, if not quite all, of her old indebtedness created prior to 1861 was funded on the basis prescribed by these enactments, thus relieving her of all liability upon the one-third part of her original *ante-bellum* obligations. So the matter rested until a third expression of the State of Virginia touching her said debt, so far as it related to West Virginia, was made, which was an Act of her legislature approved February 14, 1882.

JUSTICE BREWER. Up to that time was there any adjustment of the one-third?

MR. HOGG. There was no adjustment up to that time of the one-third.

Now, under this Act of 1882, containing an extended preamble setting forth what purports to be an account between the State and her creditors, and showing the aggregate of principal and interest in two distinct totals in separate columns, and declaring the assumption of two-thirds thereof as her equitable portion, fixing the total amount of this equitable portion as of July 1st, 1882, at $21,035,377.15, and then provides for the funding of this sum by the issuance of bonds drawing interest at the rate of 3 per cent., Virginia obtained a very considerable reduction of the two-thirds which she had agreed with her creditors to assume by the Acts of 1871 and 1879, better terms for its settlement, and a reduction of the rate of interest.

When she funded her debt again under the Act of 1882, this provision in that Act appears:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this Act, the said share having been heretofore determined by the Commonwealth of Virginia, the said Commissioners shall issue certificates, substantially in the following form, viz: No. .... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... Dollars, dated .... day of ....., and No. ....., leaving a balance of ..... dollars, with interest from ..... to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth."

And it is then signed by the Second Auditor, and the Treasurer.

Now a further Act of February, 1892, was passed, which bears the following title: "An Act to Provide for the Settlement of the Public Debt of Virginia, not Funded under the Provisions of an Act Entitled An Act to Ascertain and Declare Virginia's Equitable Share of the Debt created before and actually Existing at the time of the Partition of her Territory and Resources, and to Provide for the Issuance of Bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882." This Act of 1892 provided for the issuance of $19,000,000 in bonds in lieu of $28,000,000 of outstanding obligations of Virginia, not funded under the Act of February 14, 1882, hereinbefore

mentioned, and prescribed the form of the new bonds to be issued under this Act and the coupons thereof. This Act also provides that in taking up these outstanding bonds before issuing new bonds in lieu thereof there shall be deducted, "One-third of the principal and interest of such obligations as were issued prior to the 30th day of March, 1871, and also deducting one-third of the principal and interest of such obligations as are issued under the Act approved the 30th day of March, 1871, as do include West Virginia's portion." This Act then provides that all balances of the debt of Virginia shall be borne by the State of West Virginia, and issues a certificate similar in form and character to that issued under the Act of 1882. By virtue of this act of legislation Virginia made a further reduction of the principal of her debt and received a more favorable rate of interest and better terms as to payment. That was in 1892. About two years after that a joint resolution was adopted by the Legislature of Virginia providing for the adjustment with the State of West Virginia of the proportion of the public debt of the original State of Virginia, proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same. This resolution was approved March 6th, 1894, and in its preamble refers to the acts by their titles, passed by the General Assembly of Virginia relating to her debt, concluding the preamble of this resolution as follows: "Whereas, the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state." The resolution then creates a commission "Authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia." But in creating this Commission, to which she confided the duty of negotiating a settlement with West Virginia, it is provided: "But said Commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof. All expenses incurred by said Commission and said Board of Arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the State to any expense on this account."

Now a further Act was passed by the Virginia Legislature and approved March 6th, 1900, reciting the previous acts of said Legislature relating to the public debt of said State, and also reciting that "Whereas, in each of said Acts provision is made for issuing to the creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligations surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit: One-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the Commissioners of its Sinking Fund and Literary Fund." In accordance with the provisions and requirements of the Act approved March 6, 1900, the Commission entered into an arrangement with the duly authorized representatives of the holders of the deferred certificates issued by Virginia, without recourse upon her and received by her creditors in settlement of one-third of the original debt, whereby this Commission by and with the advice of the Attorney General, was to institute suit in the name of Virginia in this Court, and these deferred certificates issued upon West Virginia, without recourse upon Virginia, should be assembled and placed in the hands of the Commission. The Commission created by the State of Virginia and the Committee representing the holders of the deferred certificates met and entered into an agreement whereby they surrendered to the then Commission all of these deferred certificates representing, as claimed by Virginia, the one-third part of the debt which was to be borne by West Virginia, and in that agreement it was stipulated that Virginia should incur no expense on account of any suit instituted in this Court in her name against West Virginia for the purpose of enforcing payment of these deferred certificates owned by the original holders or assignees of the old debt, and that the bondholders should bear all expenses. After that arrangement had been consummated, suit was brought in this Court, in which the facts as I have stated them essentially appear, and the bill prays for an accounting between the States of Virginia and West Virginia, and also prays that the principles upon which such an accounting shall be had may be ascertained and declared, and that a true and proper statement be made of the matters and things above set forth, such accounting to be had and statement made under the provision and direction of this Court, by such auditor or means as may be by the Court selected, and that proper and full reports of such accounting and settlement may be

made to this Court; and that the State of West Virginia may be required to produce before such Auditor and persons selected, such books and proceedings as may be among her public records which may aid and show the facts and actual state of the accounts growing out of the matters and things above recited and set forth, in order that a full and correct settlement and adjustment of the account between the two states shall be had. And that this Court shall adjudicate and determine the amount due, and so forth.

At the October term of this Court, 1906, a demurrer was filed by the State of West Virginia which was subsequently amended, and in that demurrer was set forth the grounds upon which it is contended that no liability to Virginia or right to maintain this suit appears upon the face of the bill or its exhibits. Without going into detail with reference to the points of argument, I desire to say that this demurrer raises the first proposition in this form: That the State of Virginia has asserted here in this bill a pure money demand, and seeks a personal decree for that amount against the State of West Virginia. Before calling your attention briefly to the reasons why we think this point ought to prevail upon this demurrer, I desire to state that there is also embodied in this bill a claim for these certificates issued by Virginia representing West Virginia's one-third part of the old debt in the hands of the Literary and Sinking Funds of Virginia; and also a claim for property localized within the State of West Virginia consisting of roads, lands, bridges and so forth. And also $150,000 appropriated by the General Assembly of Virginia in February, 1863, which is also made a part of the demand. It may be insisted that the right to maintain a suit by one state against another for a purely personal demand is not an open question, but we think that this case presents the proposition as to whether this Court can take cognizance of a purely personal claim on the part of a state and assert it against another so as to make this tribunal available for purposes of a controversy of that character. In this particular case there is nothing to make it an equitable case unless it be on the ground of an accounting, and that if a decree were entered in this case it would be unavailing because it could not be enforced. But I do not desire, if your Honors please, to argue that, because I have not the time.

JUSTICE BREWER. The resolution of the Convention was that the West Virginia Legislature should ascertain the amount, and that was postponed until after 1871. Has West Virginia done anything since then?

MR. HOGG. West Virginia has not been able to do anything for this reason, that Virginia undertook to settle it; and began in 1871 upon the basis that she only owed two-thirds, and when she provided a Commission to settle with West Virginia, it was upon the arbitrary basis that West Virginia must assume one-third.

JUSTICE BREWER. She settled with the bondholders. Did she make any proposition of settlement to West Virginia?

MR. HOGG. None whatever, excepting the proposition that the Commission might arrange it, provided it did not undertake to settle upon any basis excepting that West Vriginia was liable for the one-third.

Now then the next ground against the exercise of the jurisdiction of the Court in this case to determine the principles upon which this adjustment should be made, is this: That when the ordinance that Virginia adopted in 1861 providing how the accounting should be had, and when the Constitution of West Virginia, to which Virginia assented, and upon which the Act of Congress was predicated, admitting her into the Union, provided that that amount should be ascertained by the Legislature of West Virginia as the body to act, it was a solemn compact entered into between the two states under which that just proportion should be determined; and that no Department of the General Government, no Department of either of the State Governments, could change that compact except by agreement.

JUSTICE WHITE. Your argument is that an agreement was made for the adjustment on a particular basis?

MR. HOGG. That Virginia never did observe and never would observe.

JUSTICE WHITE. Then there was no agreement to compel?

MR. HOGG. That was not the exact position. The exact position was this, that Virginia undertook herself, beginning with 1871 and extending down to 1882, to settle this upon her own terms, and that Virginia, when she proposed to settle with West Virginia, put restrictions upon the Commission authorized to act, fixing the basis at absolutely one-third of the debt, so that West Virginia was precluded from meeting Virginia upon any terms of adjustment, except those which she has prescribed in violation of the compact.

JUSTICE HARLAN. Does West Virginia admit that she owed anything?

MR. HOGG. West Virginia has expressed herself in her Legislature as, on the basis adopted, owing nothing.

JUSTICE HARLAN. Does she admit that she owes anything on any account?

MR. HOGG. West Virginia disclaims any liability to Virginia on any account.

Now then, if your Honors please, another proposition arises in this case, and that is whether this is a controversy between two states within the meaning of Section 2, Article 3, of the Constitution. Your Honors will perceive from the bill and its exhibits that this suit has been brought for a settlement of the deferred certificates issued by Virginia to the bond holders; that these certificates were issued without recourse upon Virginia, and that they were assembled by the owners and their Committee into the hands of the Commission, and that this suit has been brought by Virginia for the benefit of the holders of these certificates; and that if a personal decree were rendered in favor of Virginia, it could not inure to her benefit.

Furthermore, if it be argued that the obligation which West Virginia assumed, and which was a just proportion of the old debt, was really payable to Virginia, when Virginia settled her part of the old debt with the creditors and transferred to them all deferred certificates representing the other third, and was released from all liability on account of it, her interest in this debt, excepting what she had assumed, ceased and determined, and therefore having settled her proportion as declared in her own Legislature, and no more than her proportion, and having disposed of the other third by her own certificates without recourse upon her, that her interests ended and that she could not be heard to prosecute a suit in this Court for relief on account of those certificates, because the Court could grant none.

Furthermore, if it is assumed on the other hand that when the two states were divided the obligation of West Virginia became a joint one with Virginia to the creditors, and Virginia by her own Act settled in entirety for her own proportion, being released by the surrender of the old debt to her, that would release West Virginia unless she had been privy to the arrangement by which that debt was settled.

JUSTICE BREWER. The effect of that adjustment was simply to reduce the amount of indebtedness.

MR. HOGG. The effect of that was then your Honor, as understood by Virginia, that she simply determined by her act what part

Virginia should assume, leaving the one-third unsettled and represented by these deferred certificates which Virginia had issued against West Virginia.

JUSTICE BREWER. Was one-third released also?

MR. HOGG. No, sir, the one-third still stands out.

MR. McCLINTIC. The bonds were cancelled.

MR. HOGG. Yes, they were. The old bonds, when they were surrendered and the certificates issued, were cancelled so that the debt was destroyed; and Virginia is not asserting in this case any claim for contribution, and if she were she could not maintain it, because no court of equity would decree contribution until the plaintiff had made it appear that she had paid more than her just share. Virginia only claims to have paid her just share, and has been released entirely from the one-third which she has allotted to West Virginia, ignoring entirely the compact, saying that the holders must come into this Court through the State of Virginia as the plaintiff and compel West Virginia to account, for what? Not to Virginia; she gets no benefit; she is entirely released. For no person except the owners of these deferred certificates issud by Virginia without recourse upon herself, against West Virginia.

The other claim that is made in the bill is for certain parts of the old debt represented by deferred certificates that were transferred by the State of Virginia to the Commissioners of her Literary and Sinking Funds. These were mere state agencies created for the fiscal purposes of the state, and any bonds or deferred certificates held by them could not be regarded as a debt against Virginia within the meaning of the compact of August, 1861, or of the Constitution of West Virginia of 1862; in other words, as to that part of these bonds and the deferred certificates representing one-third of them in possession of the Commissioners of her Literary and Sinking Funds Virginia had never become a debtor, she still held them by her own fiscal agents, and therefore it constitutes no debt against the State of West Virginia.

Now as to the third claim made by Virginia against West Virginia, that is asserted under an Act of the Legislature of Virginia passed on the 3rd and 4th days of February, 1863, after Congress had given her consent to the creation of West Virginia, and when Virginia ceased to have any absolute control over West Virginia, so far as imposing any additional burdens upon her as a condition of coming into the Union is concerned. This act of February 3rd, 1863,

relates to property localized within the territory of the new state, and declares that she shall account for it upon a settlement between the two states thereafter to be had. Our contention is that when Virginia gave her consent to the formation of the new state, the only obligations which she imposed upon the new state were those stated in the constitution of the new state, the sole ground upon which she gave her assent; and that the fact that she passed subsequently an act of her legislature seeking to make the new state responsible for the property within her limits could not act as a modus to give vitality or force to that act, because it was done without the consent of the new state, and the new state, under well settled principles of law, would be entitled to all the public property localized within her territory; because it will be recollected that Virginia's government at the time she gave her consent to the formation of the new state was already provided with the instrumentalities and means of carrying on the operations of government. She had everything necessary to equip her. The new state according to that contention would not only have to bear her just proportion of the public debt, but it would have to make compensation to Virginia for all public property left within her domain at its fair value, and then assume all the burdens of government in the protection of her citizens and the carrying on of her relations as a state. That cannot be enforced against the new state.

There is another objection to this feature of the bill, your Honors. When Virginia by her act of legislation authorized the institution of this suit in her name against West Virginia, she restricted in the act the matters to which that bill should refer, and that was to determine a just proportion of the public debt to be borne by West Virginia that had been created on the part of the old state prior to January, 1861; and Virginia by her own showing, by the exhibits filed with her bill, in effect restricted her officer of the law instituting this suit to confine it to her demand on the score of the public debt created before the war, the proceeds of which suit, if any obtained, were to inure to the benefit of the holders of the certificates.

Now another objection to these two additional matters, and to the whole suit, is this: If it be conceded that the claim asserted by Virginia with reference to her public debt be one of equitable jurisdiction, it does not admit of argument that the claim for property localized within the boundaries of the new state, and the $150,000 mentioned in the bill which was used by West Virginia as a part of the personal property pertaining to local institutions in the state,

does not constitute a subject of equity contest. This Court has expressed itself with reference to the principle which is to distinguish an equity cause from a law cause. Wherever the demand is for a simple judgment for money, or wherever it is simply a claim for damages and does not involve any sort of trust or lien or equitable doctrines to be applied, it must be asserted on the law side. The amount of the demand in this case, if Virginia has any claim against West Virginia for this property localized within her territory, would be its value. If she obtained any money pertaining to local institutions in West Virginia, it would be that amount. Therefore, in this case, Virginia has sought to blend in one suit an equitable claim with a legal demand, which would oust this Court of its jurisdiction, whatever the rule may be in many other jurisdictions to the contrary. If your Honors please, in many jurisdictions, where a court takes cognizance of a suit in equity, on one well recognized principle of equity, it will hold it for all purposes. This is not the rule in the federal courts. It is the policy of the Courts of the United States not to permit a party to be deprived of the right of trial by jury by blending a legal cause with an equitable one. And on that score this Court would not have jurisdiction of this case. We therefore contend that this demurrer ought to be sustained; as all the facts which I have recited appear upon the face of the bill and its exhibits, and the matters of which this Court will take judicial notice, the pleading of which is unnecessary; and that this Court will not take jurisdiction to enforce a simple money demand, because it is without power to make it effective.

Secondly, that the parties to this suit, by their compact embodied in the ordinance of 1861 and the constitution of 1862, the Act of the Legislature of Virginia of 1862 and the Act of Congress admitting the state into the Union, have already appointed and provided a tribunal, to-wit, the Legislature of West Virginia, by which this amount shall be determined. The states have already provided the basis upon which it will be determined, and it cannot be changed by judicial action.

In the third place, we contend that the State of Virginia has no such interest in this suit as will authorize her to maintain it; that it is a suit brought in her name for the benefit of holders of the deferred certificates alone. No decree can be pronounced upon this bill that will inure to the benefit of Virginia.

In the next place we contend that these holders are so directly interested in this suit, being represented by the Commission created

by the State of Virginia, and the Committee acting for them, that this Court cannot, as a matter of justice and equity, undertake to determine the amount that West Virginia should be liable for, nor the method by which that is to be arrived at in the absence of these parties so vitally interested; that if the bill were sought to be amended by bringing them upon the record as parties, they would necessarily in the very nature of things occupy the position of the real plaintiffs in the cause, and being individuals, under the Eleventh Amendment to the Constitution, they would not be permitted to do in conjunction with the state as a nominal party that which they would be prohibited from doing as sole plaintiffs, and that they cannot be heard on that ground. And on the further ground, if your Honors please, that this suit, even if it be conceded for the sake of argument that the debt is a proper subject of cognizance on the part of this Court—that the plaintiff has blended with it these legal demands, and they are simply legal demands without doubt; and therefore the jurisdiction of this Court cannot be exercised, and the plaintiff on any of these grounds mentioned cannot maintain this suit.

JUSTICE HARLAN. Suppose the State owns the bonds of another State; really owns them themselves. What would you say as to the jurisdiction of this Court of a suit by one state against another?

MR. HOGG. To enforce their payment?

JUSTICE HARLAN. Suit to get judgment.

MR. HOGG. Your Honors have never decided that question.

JUSTICE HARLAN. It was decided against one ————.

MR. HOGG. That was a proceeding wherein you executed a decree without embarrassment by the officer of your own Court. You did not disturb the state government; did not ask anything from the State government. You simply ordered a sale of personal property, a power which the Court could properly exercise. But I would not like to answer that question because I would do so on a point that I do not think I ought to express myself upon, as it does not necessarily arise in this case. But it is a serious question as to whether it can be enforced; and it is conceded I believe in the briefs of Counsel for the Plaintiff in this case, that there is no power in the judiciary of a state or the National Government that can control the power of taxation by a state for the purpose of obtaining satisfaction of judgment, rendered against a state or the National Govern-

ment; and that the judiciary has only the power to compel tribunals or courts to do that which the Legislature has prescribed they shall do, and which may be done by mandamus. It must be a pure ministerial duty not embodying the exercise of discretion. And that the matter of levying for taxation, and carrying on the various instrumentalities of the government, is a duty exclusively confined to the legislative branch of the government, and with which the judiciary will not interfere.

It is apparent from the bill in this cause, with the exhibits made a part of it, that its decision does not necessarily involve a determination of the question whether this Court may render a judgment or decree in *personam* against a state. No case has ever been before this Court making it necessary to decide this point in order to a rendition of the judgment of the Court. It is clearly apparent that there is no such state of facts set forth in the bill as to bring this cause within the constitutional provision authorizing the maintenance of a suit in this Court by one state against another. The whole tenor of the bill goes upon the theory that Virginia is suing in her own name on behalf of the holders of the deferred certificates issued by her without recourse upon herself, against the State of West Virginia. She is a self-constituted champion in this Court of the rights of those persons who have already released her from any liability to them, and have accepted her promise to institute this suit as a full guarantee of satisfaction of any and all claim which they ever pretended to have against her. That she cannot maintain this attitude in a suit as plaintiff, for the purpose of obtaining substantial relief, has been repeatedly decided by this Court, and to argue the question is unnecessary, as the authorities supporting this position are fully set forth in the written brief filed in the cause, and the principles upon which the decisions rest are familiar to the Court.

It is respectfully submitted that each ground of demurrer assigned by the defendant presents an unanswerable objection to the maintenance of this cause, and that the bill ought to be dismissed by this Court upon demurrer alone, without subjecting the defendant to the expense and delay of further controversy by means of an answer and the taking of proof in support of it. Indeed, the essential propositions of law necessarily arise upon the face of the bill, and the decisions of this Court show that their determination must be in favor of the defendant.

Supreme Court of the United States.

OCTOBER TERM, 1096.

Argument of Mr. Holmes Conrad, for the Plaintiff.

MONDAY, MARCH 11, 1907.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

ARGUMENT OF MR. HOLMES CONRAD, FOR THE PLAINTIFF.

MONDAY, MARCH 11, 1907.

MR. CONRAD. If the Court please, The Commonwealth of Virginia comes before this Court and asks its equitable aid in the ascertainment of the contributive share of West Virginia to a common burden which rests now upon both States, which was never a joint debt, but was an obligation which West Virginia inherited by her birth.

We are told in the briefs that the State of Virginia cannot maintain this proceeding, and cannot ask equitable aid here until she has paid off and discharged the entire debt; that one cannot come into a Court of Equity for contribution until that one has paid off the debt upon which he seeks aid.

For the purpose of correcting an error in our brief—the light colored brief—and also asking your attention to the authority, page 18 of the brief for the Commonwealth of Virginia gives a citation to "2nd Spence, Equitable Jurisprudence." It should be 1st Spence instead of 2nd.

The authority is this: 1 Spence Equitable Jurisdiction of Court of Chancery, page 662. The author is considering those cases in which

the Court of Chancery has enforced obligations arising out of certain relations in which the parties stand to each other, on principles of equity independently of contract, and after referring to the practice in the English Courts, he says:

> "It was not necessary to wait till some one was damnified by having paid, or having a claim made against him for the whole; a bill might be filed to settle the amounts due from each individual of a body liable to one common burden, and to compel the payment by each of his share."

That is, a Court of Equity, in the exercise of its preventive jurisdiction, will not require that a burden of debt, resting upon two or more, shall be absolutely paid off and discharged by one of the number, before it will extend to that one the relief, which this court alone can afford, of fixing the liability upon those on whom it must ultimately be fixed, and doing by one decree, what must otherwise be done by successive suits, that is, apportion the liability among those who must in the end sustain it, and requiring each to contribute the amount which equitably and fairly should be borne by him.

I shall not array before you the cases in which this doctrine has been enforced, or the text writers who have recognized and sustained it by reason and authority, nor shall I stop now to consider the question suggested by Mr. Carlisle, that no such relief can be granted in this cause because our Bill nowhere alleges that Virginia has paid off the entire public debt evidenced by the bonds of the old Commonwealth. I may take occasion later on to call your attention to the fact that so far as Virginia and her creditors are concerned, she has paid all that in equity and good conscience they are entitled to demand of her in a court of Equity. She has issued to them her new bonds for two-thirds of the aggregate of the principal and interestest of the old Public Debt, up to January 1861. She has paid the interest, and reduced the principal of that new debt. She has paid off and discharged other liabilities of the old Commonwealth for which West Virginia was liable with her. Meanwhile West Virginia, having received and appropriated to her sole uses public assets of the old Commonwealth to the amount of millions of dollars, has paid nothing on the common debt, and declines to account for the funds she has received and appropriated.

I want to ask your attention now, while I recite briefly, what is alleged in the Bill as to the history of this Public Debt. You have been told by Prof. Hogg, that Virginia created this debt back in the

20's, in providing a system of internal improvements. You are doubtless familiar with the admirable article by Mr. B. R. Curtis published sixty odd years ago, in which he discusses the history of our State debts, the policy that led to their creation, and the ethical questions involved in the judicial ascertainment and enforcement of their liability. But there is a feature involved in this case, that is quite peculiar, but which my learned brother Prof. Hogg did not advert to. It is a matter of public history, clearly established by contemporaneous public records, specifically stated and charged in the Bill, and susceptible of instant proof, it is this: The public debt for which these bonds were issued, was indeed created for the construction of works of internal improvement in Virginia, viz: turnpike roads, canals, railroads, bridges &c., and, as an instrument adapted to the end in view, banks, in which Virginia subscribed for three fifths of the capital stock. Why were these internal improvements entered upon at so great cost? Not for the improvement of Eastern Virginia, but solely for the development and betterment of Western Virginia. It had come down to us as a tradition that the domestic peace of the old Commonwealth had been greatly disturbed, by the dissensions that had marked the first half of the 19th century, between the cis-montane and the trans-montane sections of the State. The published Debates in the Convention of 1829-30 are treasured as priceless monuments of the ability, patriotism and courage that marked the actors on that stage. We have caused the journals of the Senate and House of Delegates of Virginia, during the period in which this debt was being created, and bonds isued therefor, to be examined and the votes for and against the creation of each portion of this debt to be accurately noted, and we are prepared to show this significant result. On each vote taken it appears from the record that the members of both Houses, from the region now constituting West Virginia, advocated, urged, insisted on and voted for the creation of the Debt and the issuance of the bonds, while the members from the remaining parts of the State, in very large part voted against it. The significance of this fact lies in this, that it appears that this public debt to the payment of which we are asking that West Virginia shall contribute, was in fact and in truth created and incurred for the benefit of this very section of Virginia,—for the benefit of these very people who are here as defendants today, resisting this attempt to make them contribute towards the payment of this debt.

This public debt would not have been created, these railroads,

turnpikes and canals would not have been builded, but for the purpose of developing in the Western parts of Virginia those vast stores of mineral and vegetable wealth which were seen and known, though not yet ascertained and developed more than a hundred years ago by the people of Virginia. I might, if it were proper, and my time allowed, mention to you the names of men familiar in the history of Virginia, and in the history of this country, who more than a centrry ago had explored all this western region, and had then taken up large bodies of these lands, which they held through their own lives and transmitted to their posterity as an heritage of priceless value.

Now, one more feature of this public debt. In 1861—the period arbitrarily fixed—it was a burden resting upon the Commonwealth of Virginia, of which commonwealth the region now known as West Virginia, constituted, not a—part—not a section, not even a—member, but Virginia herself, just as much as the James River Valley, the Shenandoah Valley, or the city of Richmond the capital of the State. The debt was contracted by the people of West Virginia, through their Delegates and Senators in the General Assembly of the State. The Commonwealth of Virginia was the debtor, the obligor in the bonds, her Governor signed them, and her seal attested them, and this was the governor and this was the Seal of the people who resided then, where they reside now in the territory now called West Virginia. It was then the very Commonwealth of Virginia which issued the bonds. Can the change of name rid them of their self imposed liability? If this be so, suppose that the Shenandoah Valley had been added to West Virginia, and then that the Blue Ridge and eastern piedmont region had been added, and then that all that part of the State north of the James river had been added, until nothing was left but the narrow strip lying south of James river. Could the entire burden of the old public debt be cast upon that narrow and impoverished region? Suppose, indeed that by degrees and, it may be for the very purpose of evading the liability for this just and reasonable debt, the entire State of Virginia had acceded to West Virginia and merged her political and physical existence into the State of West Virginia, would a Court of Equity have lent its aid to the success of such iniquity?

Now one other salient feature, briefly: You have heard much of the "Restored State of Virginia"——the restored state. Let me ask your attention to a bit of history. The people of Virginia assembled in convention in Richmond in 1861.—every county in the State being represented in that convention. A majority of the people of

Virginia were opposed to the exercise of the right of secession—a majority of the members of that convention were opposed to it, but a time came when it was no longer an open question, and they adopted an ordinance that had for its purpose the separation of Virginia from the Union. In the end, it failed. A large majority of the people residing west of the North Mountain—which is the eastern barrier of the present State of West Virginia, and the eastern barrier of Virginia,—were opposed to the action of the Virginia Convention,—they were opposed to secession; All of the members of the Virginia Convention from that region, withdrew from the convention, and returned to their homes. In May or June 1861 a mass meeting, of 25 or 30 men was held in Clarksburg, and they called a convention to meet in Wheeling, that convention in turn, called another convention, the members of which were elected in their respective counties, and it called itself a Convention of the people of Virginia, *Stat magni nominis umbra*. They organized a state government, which they called the "restored State of Virginia". Now what was their object? From the outset it was to create a new State. They found out that it required the consent of Congress, and further, that the Constitution forbade the erection of a new State within the territory of an existing State without the consent of such State. "Therefore" they said, "we must first form a new state government of Virginia, here, of our own people, of Western Virginia people, and then, we, as Virginians, will consent to the erection within our territory, of the new State. We will consent that we, man by man, shall convert this territory, foot by foot, into a new State, which we will call West Virginia. So, it came to pass, that the very same men that one day sat in convention as the people of Virginia, on the next day sat in the same hall, as the loyal people of West Virginia. The same men that one day voted millions of dollars of the public assets of the Commonwealth of Virginia, as a benefaction to the coming state of West Virginia, to be accounted for in a settlement thereafter to be had with Virginia, on the next day sat as the representatives of West Virginia, and with extended hands received the money and property which, as the representatives of Virginia, they had voted to bestow.

Now it is well to bear this in mind, because you have been told already, and it will be directly more earnestly pressed upon you, that Virginia has fully consented to all that has been done. Two large and valuable counties, have since the close of the civil war, been torn from the body of Virginia, on the cruel pretense that she

had consented to her own undoing. When, in truth and in fact the only party who consented, was this same body of people, who on one day sat in convention as the people of Virginia, and the next day sat in convention as the people of West Virginia. "Virginia has really consented" my learned friend says in his brief, has "freely consented to all this" In the name of Heaven, will you pervert and misapply a legal fiction, one that this Court did employ, years ago to sustain its action in wresting the counties of Jefferson and Berkeley from Virginia, and holding that they formed part of West Virginia, in order to relieve West Virginia from its just and reasonable share of the public debt. In the case in 11th Wallace, it was said that the political department of the Government had recognized the action of the restored State of Virginia, as valid and binding, and therefore this court could not review that action.

A little while ago, a demurrer was filed to our Bill, on four grounds, and a month or six weeks ago you were asked to extend the time for hearing this case, in order that what was called, "an amended demurrer" might be filed. We made no objection, and it was done. Now, to day, what is the aspect of the case. The grounds of demurrer are practically abandoned, or ignored, by Mr. Carlisle, and you are asked to sustain the demurrer on a ground not hitherto assigned or indicated, save in the brief of counsel. We are now told that this court cannot entertain jurisdiction of this case, because, forsooth, the parties here, have, more than forty years ago, selected an arbitrator to decide the case.—that forty five years ago, they chose the legislature of the State of West Virginia, and clothed it with power to hear and determine that while the power thus conferred has never been exercised,—indeed has not at any time heretobeen asserted, or claimd to exist, that nevertheless it has never been revoked or surrendered and is therefore a valid, subsisting power to day; that this cause is in fact so far pending before that chosen tribunal as to defeat any jurisdiction in this Court to take cognizance of it. My learned friend, Mr. Carlisle, in his brief, pages 37-38, uses this language in asserting this claim:

> "The two States have heretofore, by compact between themselves and with the consent of Congress, as required by the Constitution, designated a tribunal to ascertain and settle West Virginia's share of the debt. This tribunal still exists, and is unquestionably competent to discharge the duties imposed upon it. And, moreover, but most important of all, it is the only tribunal existing, or that can be established, possessing the power to provide for the payment of

West Virginia's share of the debt, when the same has been ascertained, in accordance with the terms of the compact. It cannot be coerced by any judicial or other civil process known to the Constitution and laws of this country. No court can compel it either to adjust the debt or to provide a sinking fund, or impose taxes, issue bonds, or appropriate money."

The argument is that the two States of Virginia and West Virginia, did forty five years ago covenant together that the debtor State alone should be clothed with power to ascertain and determine the fact and the amount of her liability, and that while it was charged with doing that "as soon as may be practicable" yet that it alone was to be the judge of such practicability, and though more than four decades have passed and nothing done, yet are you powerless, despite your broad jurisdiction in such controversies, despite the large powers with which you are clothed, you are impotent to spur this derelict arbitrator to due activity, or reach forth your hand and shear him of the authority which he claims to hold, yet refuses to exercise. That once an arbitrator it is always an arbitrator, immune from all judicial supervision or control. Is not the folly of such contention stamped upon its face. That Virginia, being *sui juris*, did, in fact and in truth, consent that West Virginia should be the sole arbiter of her own liability, did invest her with infallibility, and clothe her with irrevocable authority, and allow her to the end of Time in which to act.

Could anything be more preposterous than the suggestion that even if such a compact had been entered into, and forty five years had elapsed during which period nothing had been done or attempted by the arbitrator, that no presumption would be allowed from such long inaction, that the arbitrator had declined, or had repudiated or abandoned the undertaking. You cannot infer, according to my brother Carlisle's argument, that the chosen arbitrator had never accepted the task or entered upon its duties, that notwithstanding forty five years of unbroken silence, and absolute inaction, you are not warranted in the conclusion that the powers conferred upon the arbitrator have become somewhat impaired, if not altogether extinct.

Let us now consider briefly, what this alleged "compact" is.

It is set up here as the ground of a demurrer to the Bill filed in this cause. Surely it forms no ground of demurrer. It is nowhere asserted or claimed in the Bill. If it could be availed of as a defence

in any form here, it must be as a Plea, of "another suit pending", for its contention is that there is another tribunal, of competent jurisdiction, chosen by the parties hereto, to which this present cause of action has been referred, and before which it is now pending. That solely is no ground for a demurrer. The fact relied on to sustain the objection is not a fact apparent on the Bill. There is no pretense that the Bill sets up any such compact, or submission to arbitration. The defendant, straining after this impracticable defence, reaches out and seizes upon something that is not in the Bill, and seeks to read it into the text of the Bill that thereby he may make for himself a ground of demurrer.

How was the compact formed, and how is it now shown to have had existence?

It is said that the State of West Virginia, by its Constitution, assented to what is known as the "Wheeling Ordinance", which provided that the new State to whose formation it then consented, "should take upon itself a just proportion of the public debt of Virginia existing prior to the first of January 1861". But that "it assented to it with the qualification or addition, that its equitable proportion of the debt should be ascertained by its own legislature as soon as practicable, and that the legislature should provide for its liquidation by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty four years". (Mr. Carlisle's brief, pages 34-35.) It is further stated that the Act of Congress providing for the admission of West Virginia into the Union recited that Virginia had consented to the formation of the new State, by an act of her Legislature passed on the 13th May, 1862, which act provided that certain counties therein named, were admitted "according to their boundaries and under the provisions set forth in the Constitution for the State of West Virginia. The Convention of the Restored State of Virginia, which adopted the Wheeling Ordinance, asembled on 20th August 1861. The Convention which framed the constitution for the State of West Virginia, assembled on November 26, 1861, and this constitution was submitted to the people for adoption on the 3d of May 1862. The Act by which it is said Virginia gave her consent, is alleged to have passed on the 13th May 1862. The Act of Congress under which West Virginia became a State, became a law on the 31st December 1862. West Virginia was admitted into the Union on the 20th June 1863.

Now let us briefly consider these events and the dates on which

they occurred, and see, if we may, how this compact theory will work out.

Virginia, by a Constitutional provision, consents to the formation of the new State within her territory, but on the expressed condition that the new State "should take upon herself a just proportion of the public debt of Virginia &c" The people of Virginia in convention assembled, three months later, frame a scheme of a constitution for the proposed new State, and they, in such scheme of a constitution, assented to Virginia's plan, but, with a radical qualification thereof. Assuming for the moment that West Virginia was then an organic entity, speaking through her organic law, we have a plan proposed by one sovereign, and assented to conditionally, by another sovereign. Assented to only as radically qualified and amended. Has Virginia at any time ever accepted to such qualification and amendment? It must be admited that such acceptance could be made and manifested only through and by the same organ that had originally proposed the plan; that is, a Convention of the people of Virginia. It is not pretended that any Convention of Virginia has ever agreed or assented to the qualification or condition annexed by West Virginia. How then has Virginia accepted? Through her Legislature, and by the Act of May 13, 1862. That is the Legislature of Virginia has by its action, repealed, annulled and set aside this provision of her Constitution. Further; if need exists, or propriety allows that we go any further. This act of the Virginia Legislature of May 10, 1862, which was in defiance of her Constitution, and by which it is said Virginia assented to the West Virginia Constitution, was enacted more than a year before the State of West Virginia was created. Cases are cited by Mr. Carlisle to show that the terms of an instrument framed as a Constitution of a State not yet created and endowed with political organs and existence, become valid and binding upon the State out of whose territory such new State is formed, after Congress has consented to the erection of the new State, but the conditions in those cases, differ widely from those which control here. Here, the new State embraced, substantially the whole of the territory of the old State, and all of the people of the old State. Here the people who consented to give up their territory to the new State, were themselves the people of the new State to whom such territory was given. They were both the donors and the donees, and beside them there were no others. It is but trifling with the truth and mocking our own reason to talk of the people of Virginia consenting, or having any hand or voice in this matter. The

people of Virginia, the real and only people of Virginia resided east of the North mountains, and they knew—as all honest and true men knew, that Virginia had her seat of government in the city of Richmond, that there were her flag and her seal and symbols of her sovreign authority, and that this tragic farce that was being enacted west of those mountains, was being carried on under the protection of the war then raging, and that its sole reliance was the abuse of the power by those in whose hands, for a season, the powers of the general government had then passed. I deny that the Legislature of Virginia had the lawful power to assent to or to accept the qualifications which the West Virginia convention had attached to the plan proposed by the Constitution of Virginia. I deny further that the Act of May 13, 1862 had any validity whatever, so far as is disclosed by the public records to which I have had access. I am aware that this Court relied on that Act in its opinion and judgment in the case of Virginia *vs.* West Virginia, 11 Wallace....but I have ever believed that had that case been prepared by certain Virginia lawyers, and had come before this Court at a more propitions period, the decision would have been in accordance with the views of the dissenting Justices.

The public records show that the Regular Session of the Legislature adjourned *sine die*, on the 13th February, 1862. The Act of May 13, 1862, could then have been enacted only by the Legislature in Extra Session. The Constitution of the State provided that the Legislature could assemble in Extra Session, only on the call by proclamation of the Governor. I have examined the Journals of the Senate and House at this session, and I nowhere find any reference to any call by proclamation or otherwise of the Governor. I have tried to learn by diligent and searching enquiry, and I cannot ascertain from any quarter that this Extra Session was legally and properly convened.

The fact of this Act of May 13, 1862, is alleged only by and in the demurrrer, so that no opportunity has been allowed us to deny that allegation and put the matter of this alleged Act in issue.

MR. CARLISLE. If that act is invalid West Virginia constitutes no part of the Union.

MR. CONRAD. As my friend, Brother Hogg, said "there are a great many delicate questions that you may propound to me, but which I can answer properly, only out of Court, for it might be very unsafe or imprudent for me to answer here. I am required

now to meet the question of the validity of West Virginia. A child born through a Cæsarian operation is as valid a child as one that comes into the world in the usual and ordinary way. As to West Virginia's genesis, and the legitimacy of her birth, you perhaps had better—

> Make no deep scrutiny
> Into her mutiny
> Rash and undutiful.

MR. JUSTICE HARLAN. What was the lawful state of Virgina?

MR. CONRAD. The first public act of my life, was to vote in 1861 against secession but I was a Confederate soldier, thank God, and I recognized as the lawful State of Virginia, that one in whose service I was engaged, and which I thought was a part of the Union.

MR. JUSTICE HARLAN. Part of the United States?

MR. CONRAD. Yes; and represented in Congress, while it was there.

I say this compact that is relied upon now, should not be considered, because it is properly no part of the Demurrer. Not only is it not assigned as one of the grounds of the demurrer, but it depends for its very existence upon a matter of fact which is not alleged in the Bill, and which we are warranted in denying ever had validity and legal effect, viz., the Act of May 13, 1862. Now let us pass rapidly on. Taking up the four grounds of demurrer, as they have been assigned and set out, I venture to say that the Bill cannot be held to be insufficient in law on either of the grounds assigned. There is but one special prayer in this Bill. There is but one ground on which this Bill prays relief., There is but one ground for equitable relief on which we have invoked the aid of this Court, and that is that you ascertain here the just and reasonable contributive share of West Virginia, of this common burden of the old Public Debt of the Commonwealth of Virginia. That is all; and now because it appears that while West Virginia shares with Virginia this common liability it also appears that West Virginia has received a large portion—amounting in value to many millions of dollars, of the public assets of Virginia, has received and applied them to her own exclusive uses and enjoyment, therefore accounts must be taken. To what may be ascertained to be West Virginia's share of the

debt, there should be added so much of the public assets appropriated by West Virginia, as exceeds her proper interest therein. Such accounting must be had, and in the taking of such accounts many questions must arise, and it is manifest that every element that enters into these separate grounds of demurrer, is really only but a matter of account that will have to be taken into consideration and dealt with by the Master to whom this cause may be referred for an accounting.

Let us look at some of the grounds briefly. The first one is because of misjoinder of parties plaintiff. In Bank of United States *vs.* Osborn, Chief Justice Marshall said that the only way by which to determine whether a State was a party to the record, was to inspect the record and see if it was there as a party. Try this objection by this simple test. Inspect this record. See who, and how many are the parties plaintiff whose names appear in the Bill. The Commonwealth of Virginia, sole and simple in her own right; in no other capacity or character. She alone files this bill, and she asks against the sole defendant, West Virginia, that this relief be accorded her. But it is said that while she files the bill in that way, yet she prays relief as a trustee. My brother, Professor Hogg, attempted to read the prayer for relief; but he began too low down on the page and missed that part where Virginia does pray that in her own right and as trustee this account may be stated.

What does she mean by that? That requires a very brief reference again to the history of this case. In 1871 the Legislature of Virginia, having waited in vain for some proffer from West Virginia, having been discouraged by the rejection of the proffers that she made, by West Virginia to come into a friendly adjustment and settlement—in 1871 Virginia issued a call to her creditors, her bondholders, all that would come in, and then she took this debt that existed there, evidenced by her long outstanding bonds, and she added six per cent interest to the principal of that debt up to the date 1871; and she says, "This is my debt." She might have claimed an abatement on account of war by which her revenues were depleted. She might have said that "during the period of war and reconstruction I owe no interest." But she did not. She added six per cent interest to the principal, and said, "I owe all that. I want to pay it." She says, "I can get no estimate from West Virginia of what her share is; but looking at her territory, looking at her wealth, it is reasonable that at least one-third of this debt should belong to her. I have no power to fix it upon her. It is only my estimate—an in-

telligent estimate, a fair and honest estimate; but it is not contractual with West Virginia. It does not bind her." So she said to these creditors, "Come in now and surrender your bonds, and I will give you my new bonds for two-thirds of this aggregate of principal and interest. I will give you my new bonds at six per cent interest, and as far as two-thirds of this debt is concerned, while I regard *it* as paid, what shall we say as to the other third?"

Let me ask your Honors to turn for a moment to the act of 1871.

MR. JUSTICE DAY: What is the date of that?

MR. CONRAD: It is printed in the bill. Look now at the bottom of page 15 of this bill, section 3 of the act. Permit me to read it:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of this dismemberment,"

and now note:

> "And that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees."

My friend, Professor Hogg, tells you that Virginia wiped out this debt; that now she is maintaining this bill for strangers, lending her name to the suit for them. What does she do? She says to these people, "Give me your bond for a thousand dollars, the old bond of Virginia that you hold, for $666.66. I give you my new bond with six per cent interest. For the remaining $333.33 I will hold your old bond in trust for you. You have surrendered it—you, the bondholders; you, the creditor, you have put your evidence of debt back into the hands of your debtor. At law it would be a presumption of payment, but to repel that presumption I declare to you expressly by law that I hold that bond *in trust for you* to the extent of that one-third."

Now what will happen? Suppose this fails, and suppose we get nothing from West Virginia? The owner of the bond comes and says, "You are a trustee. You hold a bond as trustee for me to the amount of one-third of the face value of the bond. I demand it from you." Virginia, as trustee, would have to surrender this bond back into the hands of the holders from whom she received it, and he would hold it as an abiding claim against her until it was paid. So I would have you understand, despite the statements that have been made here, that Virginia is a trustee only to this extent. The bond could not be cut into three pieces and two-thirds of it held by Virginia and a third of it given to the creditor. The only way that Virginia could do was to say, "While this physical bond is surrendered into my hands, it is not surrendered for cancellation it is not surrendered in evidence of its satisfaction and payment. Two-thirds of it is discharged, but as to one-third, I hold this bond in trust for you."

MR. JUSTICE HOLMES. What do the words, "So far as unfunded" mean? That is not material, is it?

MR. CONRAD. I will explain in a moment. They used that word "funded" because they took the principal and interest and made a new fund of it, and treated it as a new capital, and made a bond for two-thirds of that new capital and gave that bond to the creditors, and took up the old bond from them.

MR. JUSTICE HOLMES. Then it means the total bonds to the extent of about one-third of their value, or something like that, does it not?

MR. CONRAD. It appears it does, as the bonds now stand; as the result of it, yes. These bonds are in the hands of Virginia now, held by her Treasurer.

MR. JUSTICE HOLMES. If I may put my question in a little different way, it does not mean a certain portion of the bonds selected out of a larger number, but a certain portion of all the bonds?

MR. CONRAD. Yes; You are right about it. It means that one-third of each bond is held by Virginia in trust for the owner of that bond, and this little certificate that my friends have talked so much about, both orally and in their brief, is nothing more than a memorandum. It is not an evidence of debt. In the Act of 1879 Virginia expressly says "the acceptance of this certificate shall not be taken or construed as imposing any liability of debt upon me."

What she meant by that was, "I am not going to have two evidences of the same debt outstanding, bonds and certificates. I want it understood that this certificate is nothing in the world but a memorandum of the declaration of trust, the trust upon which I hold one-third of this bond for you". That is what it meant. It has had the effect of a ware house receipt. It is not carried on the stock lists. It has no intrinsic value. It is not an evidence of indebtedness. It is just like a warehouse receipt that one may sell. A creditor receives one of these certificates and examines it, and asks What is it? and is told "Virginia acknowldges by this Certificate that she holds your bond, surrendered by you. Two thirds of it is satisfied and extinguished by her new bond for two thirds of the amount, and the remaining one third remains a subsisting debt of Virginia to you, evidenced by the bond now in her hands, and which she will hold in trust for you, to the extent of such one third of its amount.

MR. JUSTICE WHITE. Do you construe that this was not an assent to the creditors that they would discharge the debt of one third, and look for recovery to West Virginia.

MR. CONRAD. I think not. I was a member of that Legislature and I did not then, or since, understand that to be the construction which it was intended to bear.

MR. CARLISLE. I contend otherwise.

MR. JUSTICE WHITE. Your idea then is, then, that the State of Virginia meant that the holder of these bonds would say to the State of Virginia "Nothing has been done with this trust. I gave up one third of what you owed me and put in your hands the evidence of the debt. I want my bond back against you, because I have not been paid by the State of (West) Virginia, although it was in honor bound to pay it"

MR. CONRAD. Yes; not only in honor bound, but legally bound, because according to her expressed declaration she said "I hold this bond in trust for you to the extent of one third." Let me answer that further. There is no contractual relation between Virginia and West Virginia. None between West Virginia and these bond holders. They could not sue her as West Va. land passes by descent to two heirs, free from liens, but charged with the ancestors debts. This is not a joint debt of the heirs. It is a common debt There is no liability upon them except to the extent of assets descended, but to the extent of the estate inherited by them they remain liable.

What are the general creditors to do? If the heirs have come in and taken possession of the land that has descended, they might be

held, but could not be held on a bill at the suit of the creditors more than to the extent of the assets descended; but there is no contractual liability. So it was with Virginia. This was a congenital liability. I would liken it to what one member of the bench would recognize as original sin, but in the preparation of our brief my colleagues made me strike it out, because he said there might be some members of the bench who did not believe in original sin. But that is just the likeness. That is just where West Virginia stands, and sometimes her attitude has induced me to suspect that she regards it as original sin. [Laughter.]

This is the first time that I have heard an open, explicit, undisguised repudiation of her debts. Heretofore, through the mouths of her governors, she has come forward and never denied it. She has come forward with alluring and illusory proffers and overtures of settlement; but when we approached her she receded and receded, until like the Cheshire Cat in Alice in Wonderland, there was nothing left of her but the grin. [Laughter.]

I say that when they talked about there being a misjoinder of parties there is no foundation. The bill itself repels it. When they talk about there being a misjoinder of the causes of complaint, what are they? I beg your attention to this. They come in and say, "You are suing us here for a contribution to this debt." Then you show that the State of Virginia, this "restored State," turned over to us millions of dollars worth of property, in the last paroxysm of maternal solicitude before this child was born. They gave millions and millions of dollars, and these gentlemen say you cannot unite those two things in the same bill. A and B are in partnership, involving millions of money and long transactions, and A goes to the coffers of the firm and takes out all the money, and B files a bill for an accounting, and in the cross bill he says, "A, my partner, the defendant, has appropriated all the available assets;" and A comes in with a demurrer on the ground of a misjoinder of the cause of action, saying, "I am perfectly willing to settle the partnership account, but it is unkind of you to call on me for the assets of the firm that I have appropriated."

Here were millions of dollars' worth of property that Virginia might have taken and applied to the payment of her public debt; $600,000 worth of bank stock, property of all descriptions, running up into millions, that Virginia could have taken and converted into money and applied to this debt. West Virginia has taken that property. She holds it now, and when we come and ask that she

come into a settlement in order that it may be ascertained and determined what is her contributive share of a common burden she says, "You must not call upon me to account for these state assets that were turned over to me by Virginia because that is a misjoinder of causes of complaint." But further than that I have not the breath left to go into it much now, but in the bill you will find it plainly stated that when the restored Government of Virginia turned over $150,000, turned over all the property belonging to Virginia within the limits of the state, she added this: "To be accounted for in the settlement hereafter to be had between the two states."

To each one of these acts where money was appropriated by the "restored government" that express condition was annexed: "I will give it to you, but it is to be accounted for in the settlement hereafter to be had between the two States;" and mark you, please, that was after the alleged compact. This was after the alleged compact that took place May 13, 1862. But here in 1863, not once nor twice, but many times, does this "restored State" of Virginia, standing upon the ragged edge of her own dissolution, seeing death right before her—she, in contemplation of her instant extinction, gathered up all the available property of Virginia that was within her reach and turned it over to the Treasury of a State that had not yet been born!

Now they say that "While we will come into a settlement of account, we do not think you have got the right to embrace in your bill praying for that settlement, the public assets that were turned over to us and received by us, and which are at this moment in the Treasury of West Virginia." I want your Honors, please, when you come to construe this Act of the West Virginia Constitutional Convention that calls upon the Legislature of West Virginia to ascertain the amount of the debt and pay it, to decide whether that really means, by any just, fair, and reasonable construction, that they intended to clothe the legislature of the debtor State with the judicial power of hearing and determining that question of liability.

When was this done? When was this debtor empowered to act? "As soon as practicable." In my early professional life a bond was sent to me, payable "when convenient." When convenient—I did ask my father for advice about it, but as usual he told me to find it out and work it out for myself. With the aid of a court I did. The court held that a bond payable "when convenient" was payable within a reasonable time, and construed it to mean payable on demand, and it was paid. Here is an obligation that is to be fulfilled

when it may be practicable. Who is the judge of the practicability? My learned and distinguished opponent here says that there is no power on this earth that is able to determine that matter and exclude this arbitrator from the exercise of his function; that you cannot say that "as soon as may be practicable" means within a reasonable time, and that a reasonable time has long since passed, and that this alleged arbitration is *functus officio*.

CONCLUDING ARGUMENT OF MR. HOLMES CONRAD.

TUESDAY, MARCH 12, 1907.

MR. CONRAD. If the Court please, at the hour of adjournment yesterday I was about to call the attention of the Court to a statement that had been made by Professor Hogg in his oral argument, and it is stated also in the briefs of counsel at great length; and that was that the State of Virginia had no interest in this litigation; that the creditor had absolved her from liability, and that this, if anything, was but a suit prosecuted here in the interest of persons who are strangers to Virginia now, but who were holders of evidences of her indebtedness. I called your attention yesterday to a passage in the act of 1871, known as the first funding act, by which it was provided that these bonds of Virginia, surrendered by the holders and held by Virginia, were held by her in trust for the owners of the bonds, and I stated that if this attempt at a settlement failed, which was the trust upon which Virginia took them, that those owners of bonds could come forward and demand the restoration of them from Virginia and hold them as subsisting evidences of her indebtedness.

Let me ask your Honors now to look at the certificate that was issued, on page 47, at the bottom of page 47 and on page 48. This is the certificate that was issued by Virginia as a memorandum or token or declaration of the trust upon which she held those bonds:

> "Treasurer's Office, Richmond, Va.
>
> "This is to certify that there is due to ———— heirs, executors, administrators, or assigns, ———— Dollars, being one-third of bond surrendered under the provisions of an Act approved March 30, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. ————, with interest, amounting to ————, payment of said one-third with interest thereon

at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns."

Now the State of Virginia holds those bonds in trust. Why? Because the State of Virginia alone had the right to come into a court of equity and demand that West Virginia should exonerate her by contributing a just and equitable part of the common burden that rested upon both.

Now it was stated further that under the act of 1881 a different form of liability was created. It is not improper for me to remind your Honors of a fact in history. There was a time when a tide swept over Virginia, a piratical crew seized the ship, headed by General Mahone and one Riddleberger, and they did essay to repudiate every dollar of Virginia's liability. The property owners, the debt payers, the respectability of the State, opposed it; but these two leaders summoned their cohorts from the masses of the people, and they did succeed in obtaining control of this Legislature, and they did attempt to repudiate the debt. But behind them stood the vested rights of the creditors under the act of 1871, and a score of cases came before this Court, in every one of which the liability of the State of West Virginia was recognized. In the case of Hartman and Greenhow your Honors laid down the doctrine of public law that the mere fact of separation placed by the operation of public law a liability upon both these divided, discordant, and belligerent sections, a common burden that each must contribute to.

Now in 1881 and 1882 they passed another act. I will ask your Honors to look for a moment at the certificate. You will find it on page 29, at the top of the page:

"No.....

"The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by....., dated the ..... day of ..... and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth."

Such a fulmination coming from a debtor in his private capacity, that he had equitably discharged the debt that was held by his creditor, and evidenced by a bond, would be equally ineffectual. The clamor of the debtor, his avowed purpose to repudiate, the expression of his willingness to do it, and the statement in this formal manner that he had done it, was a mere *brutum fulmen* in the air. It amounted to nothing.

But what is the meaning of that statement that it was "without recourse upon this Commonwealth?" Did that mean as a proposition of law that the creditor could sue West Virginia, that the act of Virginia in setting apart one-third arbitrarily was binding upon West Virginia so as to create a cause of action against her, enforcible by the creditor? If it meant that, it would not be recognized by any court. What it meant really was what it elsewhere says on page 19 under the act of 1879. It was really meant to express the same thought, where the same repudiating legislature controlled by the same melancholy influences made this first essay at repudiation by the act of 1879. They said:

> "The acceptance of the said certificate for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability."

Did it rest there? No; it says:

"From all liability *on account of the said certificates.*"

There was no legal liability resting upon Virginia on account of those certificates. If they had said, "The acceptance by the creditor of this certificate shall be taken and recognized as an agreement upon his part to release Virginia from all liability upon her bonds," it might well be argued that the creditor had the right to release the debtor and that the acceptance of the new bonds operated as a release. But they were careful not to say so. They said, "It shall operate to release Virginia from all liability on these certificates."

I said yesterday that these certificates were no evidences of debt. They could not support an action. They were mere memoranda, mere declarations of trust, affording in a court of equity a basis for the recognition of the trust; but they went no further.

Now it was said yesterday that there was no evidence of liability anywhere. May I ask you to look at page 90 of our record? There is a statement made by the second auditor of Virginia on the 17th of September, 1902,—a tabulated statement which shows that the

total issue of what he calls West Virgina scrip was $18,277,000 and odd dollars. Those are the bonds that are owned now, to-day, by the creditors of the old Commonwealth of Virginia; bonds which the creditors placed in the hands of Virginia upon the solemn trust, which she undertook, that she would hold them to abide a settlement with West Virginia and dedicate the proceeds of them to those creditors.

Now he says this is a suit for those people. Pardon an illustration. A mortgagor mortgages his property for $10,000. The mortgagor has his unhappy day; creditors are pursuing him, and his mortgage is not yet due and cannot be enforced. He picks out certain of his creditors and executes a declaration of trust, and says that "the net proceeds of this mortgage, when foreclosed and recovered, I hold in trust for A, B and C, my creditors." Now suppose a bill of foreclosure is brought by the mortgagee against him: Can he come in, as West Virginia comes in here, on a demurrer, and say, "I as mortgagor no longer have any interest in these things; I have assigned the net proceeds of them?" There has been no assignment of the mortgage. The legal title is in him. The right of action and recovery is in him. He has merely dedicated the proceeds, when recovered and when received, to the payment of certain designated debts. These people who have a claim in morals and a claim in equity under this equitable assignment, would they be proper parties as defendants to a bill? Could they come in, or could the suggestion of their names be brought in, between an action of the mortgagee against the mortgagor to arrest the proceedings of foreclosure?

That is what Virginia has done. She says, "West Virginia owes in equity and good conscience a part of this common burden. I say to you creditors, who surrendered your bonds, that when that is recovered I hold it as a sacred trust fund, to be applied to the payment ratably on your debt."

One other point, and I conclude my share of this duty. There is a fourth assignment of error here in these words: It is the second in the course of the order followed:

"That this Court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this

Court, and this Court has no power to render or enforce any final judgment or decree thereon."

What are the controversies? The Constitution says that the controversies between two or more States are justiciable in this Court. It says that this Court has exclusive jurisdiction over such controversies. The Constitution sets no limit to the character or class of the controversies. It is broad and ample in its terms. It excludes, perhaps, criminal cases, but where resides the authority to say that thus far shall you go in the definition of a controversy under the Constitution, and beyond that you shall not proceed? What class of cases or controversies are you going to say are justiciable here under the Constitution, and what classes are excluded? There is no defination, no limitation. All civil controversies, money or other. If any are, these are justiciable here. But they say, "you cannot proceed here; a state cannot proceed as a trustee." Why, you have proceeded against a State as a trustee, the State of Michigan. In an opinion delivered by Mr. Justice Peckham, he says "Michigan is liable because she holds the money as a trustee." I use his language. Can it be claimed that the United States shall be sued as a trustee and yet not sue?

Suppose some benevolent person by grant or devise gives to the State of Massachusetts a hundred thousand acres of land lying within the limits of West Virginia, to be held by her in trust for three designated institutions of learning. It cannot be controverted that Massachusetts can take that trust. Since Vidal *vs.* Guard's Exrs. it has never been questioned that a corporation can take and hold, for any objects that are germane to the objects of its government, property as trustee.

Cannot Massachusetts take and hold on these trusts? Suppose West Virginia claims one half of that land, under some of her tax titles, and the Attorney General of Massachusetts advises that State that the claim of West Virginia is not well founded; that the claim is not a valid one, and cannot be maintained, and that it is the duty of Massachusetts, having accepted the trust, to protect the trust fund: How can she protect it? Can it be questioned that she can come into this Court, holding the legal title, and by her bill ask that you brush away the legal clouds that obscure her title? Where can you put your fingers on the fallacy of the reasoning? Where can you say the trust is not valid? The trustee may take; she may take, but cannot sue? In what character cannot she sue? Can she not come in here and state her claim and case? Can

she not come in here as the Commonwealth of Massachusetts, using the term or words trustee as a mere description of her person, or leaving it out, to set out the cause in the bill and will not your court as a court of equity make a decree according to the equity of the case?

So I say, by any analogy that is fair, you may find that a State may take and hold on trust; and if she can take and hold, what a mockery it would be to say that the courts of the land are not open to her to protect the trust funds that are in her hands?

But they say you cannot render a judgment, you cannot enforce a judgment. The argument is that a court will not do a vain thing. It will not proceed to judgment, there to be halted, if the court knows in advance that the judgment, if rendered, is an impotent judgment and cannot be enforced. It will not go through the mockery of a suit, will it? Judge Marshall, in one of his great judgments, called attention to a class of cases that received the court's jurisdiction by reason of the *subject-matter*, and another and wholly different class of cases that attracted the jurisdiction of the court by reason of the *parties*. You cannot enforce a judgment against a State? Why not? Because it did not enter into the contract in the beginning? Mr. Webster, in the well known letter to Baring Brothers, said that credit was given to a State on the faith one had in the sovereign. What sanction or security has the bond holder of a State? Has it ever been pretended, when this Court day after day renders judgment to the amount of millions of dollars against the United States—that it could award a writ of *fieri facias?* Has it ever been asked that you put a writ of *fieri facias* into the hands of your marshal and send him with a posse at his heels to the Treasury, where that writ would be an "open sesame" to fling open the doors of the Treasury to him, and allow him there to satisfy the judgment? What becomes of the sovereignty of the State— not in the ridiculed sense of that much abused word, but of a State that maintains its own existence, a State that keeps its own life in its body? What becomes of it if every creditor can come with his execution and subject to seizure the assets of that State, notwithstanding the obligations that rest upon it infinitely superior to those which it owes to its creditors? In that Parliament of Man which the poet looked forward to, we have erected a tribunal before which empires, kingdoms and republics come and submit to its jurisdiction. Has it ever been suggested by the boldest that power should be put into its hands to award a

writ, backed by physical power, to enforce the execution of the judgment that it rendered? May I commend to your notice the most philosophical, the most satisfactory exposition of this that I have been able to find? It is an opinion sirs, of the Supreme Court of Louisiana, delivered by one well known to some of you, in the case of Carter *v.* The State, in the 42 La. Annual. I have made quite a copious quotation from the case in my brief. You will pardon me if I read but the closing sentence on page 40. I ask you to look at it, at the closing of it:

> "Counsel asks, of what use is the power to render judgment against the State, if the court is powerless to execute the judgment? That question was anticipated by Mr. Hamilton in the discussion of the Constitution of the United States before its final adoption. 'To what purpose,' he asked, 'would it be to authorize suits against sovereign States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State.' Federalist, No. 81. He never dreamed that authorizing suit against a State would imply the right to issue *fieri facias* on the judgment.
>
> "Puffendorff says: 'And if the prince gives the subject leave to enter an action against him in his own courts, the action itself proceeds rather upon natural equity than on municipal laws. For the end of the action is not to *compel* the prince to observe the contract, but to *persuade* him.'
>
> "In England claims against the Crown might be prosecuted before certain courts, in the form of petitions of right, with the consent of the King, but it was held by Lord Mansfield that 'if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year.'"
>
> Macbeth *vs.* Haldimand, 1 Durn. & East., 172.

By the way, that latter part is a part of the quotation, and the marks indicating it were left out by the printer. Then we add:

> "We have examined all the authorities quoted by counsel and find none of them to support his contention. We are quite certain that no precedent exists sustaining the issuance of a *fieri facias* on a judgment against a sovereign State in her own courts, though rendered with her own consent.
>
> "The only recourse for satisfaction is by application to the Legislature, with whom the judgment should surely have great *persuasive* force, but none *compulsive*."

If this demurrer is to rest upon the proposition that you have no

jurisdiction because you cannot constrain a State, or constrain the United States, by the menace of a *fieri facias*, then it needs no further argument from me. We need not go any further.

Have I occupied thirty minutes this morning?

MR. CARLISLE: Twenty-five minutes.

MR. ANDERSON: Take as much time as you like.

MR. CONRAD: Let me ask your attention, your Honors, a moment to the reasons that are given why this jurisdiction must exist. In the case of Ableman *v.* Booth the court says:

> "The Constitution of the United States, with all the powers conferred by it on the General Government and surrendered by the States, was the voluntary act of the people of the several States, deliberately done for their own protection and safety against injustice from one another."

That is the reason that is given for the erection of this Court itself, to prevent injustice being done by one State to another. Judge Story says:

> "Some tribunal exercising such authority, is essential to prevent an appeal to the sword and a dissolution of the government."

This Court said, in Chisholm *vs.* Georgia, that in every controversy of a civil nature between the States this Court has exclusive jurisdiction, and it was held by Mr. Randolph Tucker that these cases affecting boundaries and property rights and territorial rights of all kinds are proper cases for this jurisdiction.

We come here and rest our case upon three distinct grounds. They are stated here. They are rested upon the principles of public law quoted from the opinions of this Court, that "where a State is divided into two or more States, in the adjustment of liabilities between each other the debts of the parent State should be ratably proportioned among them." That is in Hartman *vs.* Greenhow.

MR. JUSTICE HARLAN: Please read that again.

MR. CONRAD: "Where a State is divided into two or more States, in the adjustment of liabilities between each other the debt

of the parent State should be ratably proportioned among them." That is an opinion of this Court that has received no dissent.

MR. CARLISLE: You do not claim that as a part of the opinion? There is no question of that sort in the case.

MR. CONRAD: I quote the language of Mr. Justice Field. He was speaking of this very Virginia debt. West Virginia was not a party to that suit, but the Court is here laying down a doctrine of public law which I do not understand can ever be *obiter dictum*. If the Court was rendering an opinion there on a state of facts involved in that case, in the absence of a party in interest, it would be *obiter*. But I do not understand that when this Court in any case announces without qualification a doctrine of public law or municipal law, that that would be taken to be *obiter*, because, if it is law, like the law of gravitation, it must be true in one case as in another. You cannot have law, public law, or the principles of public law, for one case, and the same principle with a modification for another case. So you cannot by an *obiter dictum* create law.

We rest again upon this ordinance of the convention of Virginia —"Restored Virginia"— to provide for the formation of a new State out of a portion of the territory of this State. That was the object of the ordinance, by which it was provided that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st of January, 1861;" and when this new-born State of West Virginia came to Congress for admission, she came with a constitution in her hands which, she said, laid down principles upon which she claimed to be a republican State—I mean republican in the broad constitutional sense— a republican form of government. And upon the faith of that constitution she was admitted into the Union.

That Constitution provides that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

MR. JUSTICE HARLAN: What page of your brief is that on?

MR. CONRAD. Page 20. West Virginia demanded reinforcements in this case. The reinforcements came, and found a condition

already existing. The reinforcements were not satisfied. They created a new ground of complaint, and I want my distinguished friend, when he stands here, to point out to you upon which ground of demurrer or under which ground of demurrer he finds this creation of his own fancy, this compact. He says that that provision which I last read to you, that the Legislature of West Virginia should ascertain the amount of the debt and pay it, created West Virginia an arbiter, a judge in its own case, to determine the fact and the amount of its liability, and to pay it. Shall I dignify that proposition by any argument to show that the word "ascertain" is to find out—learn from some auditor, learn from somebody erected and designated and empowered to ascertain this amount—learn what it is, and when you have learned it, provide by a sinking fund for its payment in thirty-four years? I ask you if that is not the strict, honest, fair meaning of the word "ascertain" as it appears there? Even taking the restored government of Virginia as it was, even assuming what was the actual fact, that although the same people, head by head, as the people of West Virginia, that their metamorphosis, their transition, their Jekyl-and-Hyde performance, that converted them from loyal Virginians into loyal West Virginians in 24 hours—even that would not have emboldened them to come forward and say that Virginia, by whatever appellation she might be known, had consented that a debtor should be the judge of the facts and the liability and the amount of the liability.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Argument of Hon. William A. Anderson, Attorney General of Virginia, for the Plaintiff.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ARGUMENT OF HON. WILLIAM A. ANDERSON, Attorney General of Virginia, for the Plaintiff.

MR. ANDERSON: If your Honors please, from the statements of this case which have been made by the counsel for the defendant and the plaintiff, the court, I hope, has already apprehended the salient facts out of which the issues presented here arise. Some of the most important of those facts are matters of public history, of which the Court will take cognizance.

Whether *in invitum* or not—whether as a result of a legal fiction or not, Virginia was dismembered and partition made of her territory, and out of that territory, as it existed in 1861 and in 1863, a new State was created. Prior to the creation of the State of West Virginia, an indebtedness enormous, considering the then resources of the Commonwealth of Virginia, had been created for the purpose of carrying out the system of internal improvements, begun in the early 20's, in large measure, as the bill states, designed to develop and furnish access to the territory which now constitutes the New State. A significant fact in connection with the history of the creation of this debt is that a large portion of it, as the bill states, was placed upon the Commonwealth of Virginia by the votes of the Representatives of that portion of her territory which now constitutes the State of West Virginia, and against

the votes of a majority of the representatives of that portion of her territory which now constitutes the Commonwealth of Virginia; and that, as to nearly the whole of that indebtedness, it received the sanction of the representatives in her General Assembly from the region now constituting West Virginia, and would never have been contracted but for the authority and sanction thus given.

I mention these circumstances as constituting not only a part of our equitable claim, but of our just legal claim, against West Virginia.

There can be no question, I suppose, that, as a proposition of public law, this indebtedness which amounted at that date to about $33,000,000, bound the entire people of the undivided State.

MR. JUSTICE BREWER: You say that these improvements were made partially for the benefit of West Virginia. Does the record show what the improvements were?

MR. ANDERSON: The record shows only general terms, not in detail, if your Honor pleases; They were canals, railways, turnpikes and other internal improvements. The record shows that several million dollars of the public moneys obtained by loans authorized by the laws of the Commonwealth were actually expended within what is now the territory of West Virginia, and that in larger measure these improvements were designed for the purpose of connecting West Virginia with the markets of the world and in developing the resources of what is now the territory of that State, in coal and iron and timber. The bill does not go minutely into the history of all these loans, because it would have unduly encumbered the record with a vast mass of statistics which could not throw any light whatever upon the principles to be decided by the Court.

Now if your Honors please, I suppose it will be accepted as a well settled principle of public law and public justice and public right that, on the 20th day of June, 1863, when West Virginia became one of the States of the American Union, that debt, independently of any stipulation between the parent state and her daughter, constituted an equitable and a moral claim, against the people and the property both of West Virginia and Virginia, and that, as has been decided by the Supreme Court of Virginia, in more than one case, and as has been held by this Court, both States and the people of both States were bound for the payment of those obligations.

As between the States this liability was limited by agreement, or by ordinance of convention, by provisions in the constitution and laws of the two states, which constituted an agreement, providing that as between the two States, the portion of the debt to be borne by West Virginia should be ascertained upon a prescribed basis.

But independently of this, according to recognized authorities, the debt should be ratably proportioned between the two states.

The most just, and a moment's consideration will show the most equitable, and having reference to the facts of this case, the fairest, basis of adjustment would have been to extend precisely the same rate of taxation upon the property of the people of both States until the whole debt should have been satisfied, principal and interest; and at the same time to have divided the public assets of the two States between the two States in proportion to their respective property values. That would have been a fair and just and equitable basis of settlement: Or else, the debt should have been divided, as of June, 1863, and not as of the arbitrary date fixed by the Wheeling ordinance, in proportion to the taxable values and with reference to the existing and prospective property conditions of the two States, because the debt was based upon the property both present and prospective of the original State. But by what is termed the Wheeling Ordinance, adopted by a convention, a revolutionary convention most irregularly assembled in the city of Wheeling, in August, 1861—

MR. JUSTICE HARLAN: There was a revelution all around, then, in the country.

MR. ANDERSON: There was, at that time revolution in the air, if your Honor pleases.

It was however a revolutionary convention, although its acts have been made *de jure* since, by recognition by the political departments of the United States Government, and of the government of Virginia and their validity can be no longer questioned.

I suppose there is no disagreement between counsel on that question.

This convention met at the city of Wheeling in August, 1861, and the circumstances that were referred to by my colleague as to that convention are worthy of consideration when you come to view its action. That convention gave the consent, and as we shall see, the only consent ever given by the Commonwealth of Virginia to the formation of the new State of West Virginia.

But the circumstance which has already been mentioned by my colleague, and which is a matter of fair consideration here now, that convention was elected by the same constituency which afterwards constituted the convention of the people of West Virginia, and in its personnel it was substantially the same as what was afterwards the convention of West Virginia, and to a large extent the same with the legislature of West Virginia; that the members of that Virginia convention went across the street to another hall and met subsequently in the same hall as the Legislature of West Virginia—

MR. CARLISLE: As the convention of West Virginia, not as the legislature.

MR. ANDERSON: Yes, as the convention of West Virginia; That is a circumstance to be considered in viewing the action of these conventions, and as justifying us in claiming that those stipulations shall not be construed rigidly against Virginia; that they should be construed liberally, as to her, the grantor, though she may be regarded as being, and strictly against a grantee who under these circumstances formulated the contract, which was to bind both parties.

MR. JUSTICE PECKHAM: Has this Court decided upon that point in the 11th Wallace case?

MR. ANDERSON: In the 11th Wallace case it was established that the Wheeling government was the government of Virginia, and the effect of that decision was to uphold the validity of what is known as the Wheeling ordinance.

Now instead of letting these questions be settled upon the principles of equity and public law, that convention prescribed this artificial and arbitrary basis of adjustment. We have to concede that we cannot go behind this, that we must accept it.

Section 9 of the ordinance, giving the consent of Virginia to the formation of the new State, reads as follows—

MR. JUSTICE HARLAN: What are you reading?

MR. ANDERSON: From the Wheeling Ordinance quoted at page 3 of the brief of the counsel for the plaintiff. Section 9 of the ordinance reads as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period."

That is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of this new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards, in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitutes a primary obligation and lies at the very foundation of the right of West Virginia to be a State.

Subsequently, there being some delay in the formation of the new State, various statutes were passed by Virginia, two of which are cited in the bill, making contributions to the new State when it should be formed. One of them is not cited in the bill. It is the statute of 1862, appropriating $150,000 to the new State when formed. There are two statutes of the year 1863, and one of 1862.

MR. McCLINTIC: That was repealed by the act granting $150,000.

MR. ANDERSON: I was not aware that that act was repealed.

MR. CARLISLE: It was repealed.

MR. ANDERSON: I accept the statement, as I only discovered that act a few days ago in looking over a compilation of the statutes of the Restored Government of Virginia, to which I had not had access before. The other acts are cited in the bill.

MR. JUSTICE HARLAN. When you speak of "the other acts," you include the act of February 3, 1863?

MR. ANDERSON: Yes, sir.

MR. JUSTICE HARLAN: Will you turn to the other acts?

MR. ANDERSON: Certainly.

MR. JUSTICE HARLAN You say property belonging to Virginia to the amount or value of several million dollars was transferred from Virginia and was received by West Virginia on the express condition that the State of West Virginia should render an account. Does this record contain a statement of the circumstances surrounding the acceptance of that condition?

MR. ANDERSON: The record states that under that act, the act of February 3, 1863, several million dollars of the property of Virginia was turned over to and accepted by West Vriginia.

MR. JUSTICE HARLAN: You mean there is an allegation on that subject in the bill that is to be taken as true on the demurrer?

MR. ANDERSON: Yes that the property amounted to several million dollars that West Virginia received as a result of that act.

MR. JUSTICE HARLAN: You say "as the result," and the brief says "on the express condition."

MR. ANDERSON: On the express condition prescribed in that act,—that it should be accounted for in the settlement to be made between Virginia and West Virginia. Here is the quotation:

> "The State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks, and credits shall have been obtained since the reorganization of the State government."

That is to say, it should not include property that had been obtained by Virginia after the organization of the restored government.

Now, if your Honors please, by the terms of the Wheeling Ordinance, prescribing the basis upon which the debt was to be adjusted, there was no provision made for any contribution from Virginia to West Virginia by way of dowry or dot, starting the new daughter upon her career.

It was necessary that money should be provided for the maintenance of the new State, when it should be formed, until it could provide means from its own resources.

Nor did the Wheeling ordinance make any disposition of the

property distinctly belonging to the Commonwealth of Virginia and located within the State of West Virginia. The stocks of incorporated companies, particularly the bank stocks, and the other property of the State, consisting of large quantities of both real and personal property. But this act, which will be regarded, as I take it, as a constating enactment—this act was an essential part of the stipulations in reference to the creation of the new State, the partition of the common property of the old State and the assignment to West Virginia of a portion of it which the mother state was willing that she should receive, but upon a condition that it should be brought into account in the settlement to be had between the two States.

MR. JUSTICE HARLAN: The acts of 1863 are not printed in the record or in your brief?

MR. ANDERSON: No sir, they are not. There is nothing in either act inconsistent with the brief or the allegations in the bill All that is material is printed.

MR. JUSTICE HOLMES: The provision for accounting is on page 5 of the record.

MR. JUSTICE HARLAN: Those acts should be in the brief.

MR. ANDERSON: If your Honors will allow us, we will file additional briefs. The briefs for West Virginia were handed us only on Saturday, and we have not had any opportunity to reply to them. In these additional briefs we will incorporate these Acts *in extenso*, or have them printed separately.

Now when the war ended and the Restored Government of Virginia became in fact and in law the only government of Virginia and was installed at Richmond—

MR. JUSTICE HARLAN: Was that the same government? Was that the same governor?

MR. ANDERSON: Yes; Francis H. Pierpont, the governor of the Restored Government of Virginia, moved with that government to Richmond and became the only governor of the Commonwealth, and his authority was recognized by all the people of Virginia. That government took steps looking to the settlement of the debt and appointed a commission to confer with West Virginia but its efforts were abortive. No satisfactory response was made; or such response as was made was made under such conditions or at such a time that

it was impracticable for the commissioners to meet, and so the matter stood until after the reconstruction of the State.

In 1869, a new Legislature of Virginia was elected and all the officers of the State government then chosen were subsequently installed. That Legislature, on the 30th of March, 1871, enacted the first general statute looking to and providing for a settlement by Virginia with the creditors of the common State. That statute is copied in full in the bill at pages 13 to 16.

Your Honors will observe that by that statute the Commonwealth of Virginia, then just emerging from the war, with her fields devastated and many of her homes in ashes, nearly all of her personal property destroyed, her real estate depreciated enormously in productiveness and in value, actually assumed not only two-thirds of the principal of the original debt, but assumed also two-thirds of all the interest which had accrued upon it including the war interest, and assumed two-thirds of the interest upon eight million dollars of that interest which had been already capitalized, and issued new bonds at six per cent interest for this two-thirds, which amount thus assumed aggregated more than the entire funded debt of the State as it existed on the 1st of January, 1861.

It was soon discovered that she had undertaken a burden which she was unable to bear, and various negotiations were had between her and her creditors looking to a farther adjustment of the debt; and there was litigation between her and her creditors, occasioned by efforts on their part, under the act of 1871 to intercept her revenue as it was flowing into her treasury.

As a result of those negotiations and controversies, both financial and political, various attempts at adjustment were made, all of which are set forth in the bill, until on February 20, 1892, a final settlement was made, which has been accepted by the creditors, and which is being carried out by the Commonwealth.

Now these matters are merely set forth in the bill, if your Honors please, for the purpose of showing the present relation of Virginia to these transactions, and giving frankly and fully a history of all her dealings in regard to the public debt. It is not pretended for a moment by the counsel for Virginia that West Virginia's rights could be affected or modified by these negotiations and contracts between Virginia and the common creditors, except in so far as payments under them might give Virginia an equitable claim to contribution from West Virginia.

In that connection I desire to call the attention of the Court to

facts which go far to show that Virginai, taking everything into consideration, has done as much, has made as great efforts, and as great sacrifices in order to satisfy the common indebtedness, as an exacting creditor could expect of her. I desire to call your Honors' attention to the statement furnished by the bill as to payments which she has actually made on account of that indebtedness. That statement is found on page 79 of the record, and is a part of the admirable address of Mr. Randolph Harris, made before the authorities of West Virginia, the joint finance committee of the Senate and House of the legislature of that State, in the winter of 1905. Its figures are taken from the records of the State.

It will appear from that statement that Virginia has paid, or has assumed and issued obligations for, and therefore satisfied, so far as West Virginia is concerned, the enormous sum of $71,377,904.34, in principal and interest. And yet while Virginia has done so much, West Virginia has not paid one dollar on account of that debt.

MR. JUSTICE WHITE: Is this statement on page 79 exclusive of the one-third?

MR. ANDERSON That is exclusive of the one-third represented by the certificates of Virginia, but it is not exclusive, as I understand it, of certain obligations of the old State, which Virginia has paid in full. It includes all of her contributions from her treasury and her property in settlement of the common debt of the undivided State.

Now various efforts were made by Virginia to effect an amicable settlement with West Virginia at intervals from 1866 down to 1905, by proposing a reference of the matter to joint commissions, by a proposition of arbitration, and finally by the creation of what is known as the Virginia Debt commission under the Joint Resolution of 1894. Under that resolution an effort was made to bring about a conference between the representatives of Virginia and West Virginia, and an accounting, but the proposal then made by Virginia was declined, and West Virginia refused—failed and refused—to have even a conference with her for the purpose of endeavoring to ascertain by a free interchange of views whether some amicable settlement could not be reached.

It is true that in adopting that resolution the General Assembly prescribed as one of the limitations of the powers of that commission that not more than two-thirds of the debt should, as a result of that settlement, be assumed by Virginia. But there was no such

stipulation, as I understood my learned brother to contend for on yesterday; namely, that West Virginia should assume one-third of the debt. It was recognized that there would inevitably be some loss which would fall upon the holders of the securities of the original State. It was not contemplated or expected that West Virginia would undertake to pay one-third of the debt with the interest upon it from the first day of January, 1861, but it was hoped that she would meet her obligations to such an extent as would satisfy the common creditors and relieve Virginia from further liability in regard to the debt.

Those overtures failed—in fact they never reached the stage of a negotiation, because West Virginia refused to entertain the proposition at all.

In 1900 Virginia still endeavored to bring about such an adjustment, not only in her own interest but in the interest of her creditors, of all the common unsatisfied creditors of the two States.

Accordingly; the Act of March, 1900, was passed by the General Assembly of Virginia and approved by the Governor, which conferred upon the Commission additional powers, plenary and unrestricted powers, to make a settlement of this debt upon any terms which would be approved by the Commission, by the public creditors and by the Attorney General of the State, subject only to the qualification that the creditors should accept whatever might be recovered for them from West Virginia in satisfaction of their claims. There was no limitation in that Act at all, as to the proportion which West Virginia should pay, or the proportion which Virginia should pay. The whole matter is referred to the Commission with the absolute discretion and power to make a settlement which should be binding upon all parties, subject only to the qualification above stated. As appears from the bill and exhibits made a part of it, that Commission acting for the public good, and repressing the natural pride which men would feel under such circumstances, pocketed that pride, made a pilgrimage to the capital of West Virginia and solicited from the executive officers of that State and from its General Assembly an opportunity to be heard, which was courteously granted. Thereupon Mr. Randolph Harrison, one of the members of that Commission and its authorized mouthpiece, in an address which was made a part of this bill, and which conservatively and within the limits of truth presents Virginia's case, appealed to the authorities of West Virginia to have an accounting, an amicable adjustment, and frankly informed them that if that overture was de-

clined the only alternative would be a resort to the courts of the country for the redress of wrongs and for the vindication of rights which this record shows to exist. And so this suit was brought and a bill setting forth these facts was filed; and to this bill our friends come here and demur upon grounds which I shall now, very rapidly review.

It is not necessary to discuss the original demurrer, because that is merged in, and all points made in it substantially covered by the amended demurrer.

The first of those grounds is as follows:

> "That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the Legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the 1st day of January, 1861."

It is impossible that there can be a misjoinder of parties plaintiff here, because there is only one plaintiff; as it would be equally impossible that there could be a misjoinder of parties defendant, because there is only one defendant.

If this ground of demurrer means anything it means, strictly speaking, that the bill is multifarious, because it joins different causes of action.

The demurrer assumes as true what the bill negatives.

It assumes it to be true that the bill is brought by Virginia not in her own right, but as trustee for certain holders of certificates whose names are not disclosed. The fact is that the bill is brought by Virginia in her own right only; only in her capacity as a state, her corporate capacity. It is not brought as trustee; it is not brought for the purpose of administering or executing any trust. She might possibly have been heard to maintain this suit as trustee, but she does not sue in that capacity. She sues only in her own right, and in the assertion of equities which I shall discuss later on.

This is a mistake which counsel have made from a too careless reading, or too superficial consideration of the bill. The learned counsel, our brethren from West Virginia, in their brief, actually

assert that the suit is brought for the certificate holders, that is, the holders of these receipts which irginia has given to the holders of the obligations of the Old State.

The suit is brought by Virginia, and the rights which she asserts, and the remedies which she craves at the hands of this Court are apparent on the face of the bill. That objection, as your Honors will see, is founded entirely upon misapprehension.

But the counsel make another mistake. In arguing that point, the learned counsel who opened the case for West Virginia assumed, what is not true, that Virginia has been released as to the bonds of the old state represented by these certificates, and for which the certificates were given. They are mistaken as to that. The bill recognizes that certain obligations, legal obligations, still rest upon Virginia in reference to that unfunded portion of the common debt. Nor is that an open question, nor can it be a question in this case, for in the case of Antoni *vs.* Wright, in 22 Grattan, pages 864-5—

MR. JUSTICE WHITE. Is it referred to in the brief?

MR. ANDERSON. No sir, it is not referred to in the brief.

In a dissenting opinion, Judge Staples states in that case in concise terms the relations of Virginia in reference to that unfunded debt. The question was not directly presented in that case, but the views expressed by Judge Staples were not at all in conflict with the principles enunciated by the decision of the majority of the Court. The doctrine as laid down by him was afterwards approved by that Court in an unanimous opinion in Greenhow *vs.* Vashon, in which the Court, in its opinion quotes from Judge Staples' opinion and approves it.

MR. JUSTICE WHITE. What case is that?

MR. ANDERSON. That is the case of Greenhow *vs.* Vashon, reported in 81st Virginia, pages 336, *342* and *343*. The Court will pardon me for reading briefly from that decision. In delivering the opinion of the Court Judge Richardson quoting Judge Staples' language and adopting it, says:

"I am therefore unable to perceive that the State has derived any advantage from the creditor's acceptance of the provisions of the Funding Act. The contract, if such it be, is wanting in the essential element of a valuable consideration, so much relied on in the opinion of the Supreme Court of the United States." "The creditor surrenders his bond and obtains a new one for two-thirds of his

debt, and coupons for the interest. For the remaining third the bond is held in trust by the state, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her, the creditor will receive the other third also. On the other hand, if she repudiates these obligations, there is no agreement or understanding absolving the state from the payment of such third. It is as much bound for the payment of the whole debt as before the passage of the Funding Bill."

Your Honors will see from the statement filed with the bill at page 73 of the Record, that $12,703,451.79 of these certificates issued under the Act of 1871 are still outstanding, leaving only about $1,600,000 of the certificates issued under the subsequent acts in the hands of the public.

Again, our friends charge that the bill is multifarious because they claim that it unites several causes of action; and they base their argument chiefly upon the averment of the bill, that, under circumstances which are to be equitably considered in connection with the adjustment of this entire matter, Virginia has a right to bring into the account the money and property which, under the Acts of February 3rd and 4th, 1863, she voted to West Virginia.

There were large sums of money and several million dollars of property of the undivided State turned over to West Virginia under those acts upon condition that they should be accounted for in the settlement which was to be made between Virginia and West Virginia. Our friends say that that allegation makes the bill obnoxious to the objection of multifariousness, because it unites a legal demand with an equitable demand. In their argument they call it multifariousness; and if their objection made in their demurrer means anything, it is that the bill is *multifarious*, though they charge that it is a *misjoinder* of parties plaintiff and a misjoinder of causes of action.

Now, in the first place, if your Honors please, we deny that this demand set out in regard to the accounting for the money and property which were turned over to West Virginia under the Acts of February, 1863, is an independent and separate demand, or disconnected with the other demands made in this suit.

These transactions are all parts of one great transaction, the dismemberment of the State, the partition of her territory, and the apportionment of her debt and assets. West Virginia has received, as the bill avers, several million dollars of assets of the Undivided

state; and when Virginia states that fact in her bill brought for the purpose of bringing about a settlement with West Virginia, objection is made that that renders the bill obnoxious to the charge of mulfariousness because it is an independent and separate transaction, and is uniting a legal demand with an equitable demand.

MR. JUSTICE MOODY. Mr. Attorney General, do I understand, by the course of your argument, that you understand that when one state comes into this Court and presents a statement of its controversy with another state, that that statement is to be adjudged by the rules of common law or equity pleading. Do you state that?

MR. ANDERSON. I do not state that. This Court is governed by the rules of pleading adopted by the Chancery Courts of England.

MR. JUSTICE HARLAN. Why is it governed by them?

MR. ANDERSON. This Court has adopted them under its rule as a guide only, but it is not of course absolutely bound by them.

MR. JUSTICE HOLMES. May it not be that when you come to controversies of this nature that somewhat more liberal dealings should be the guide?

MR. ANDERSON. It is not necessary to ask for indulgence at the hands of this Court upon this question. The authorities without exception justify just such pleading as we have resorted to, and the assertion of just such claims as we have blended together.

MR. CHIEF JUSTICE FULLER. You are willing to have the bill sustained on any grounds, are you not?

MR. ANDERSON. On any grounds (laughter).

But I want to meet the objections of my friend, the learned counsel who opened this case for West Virginia.

I am grateful that our learned friend has written a book, an admirable book upon the subject of Equitable Proceedure and Practice. At Section 136 of the first volume of Hogg's Equity Proceedure, published in 1903, the learned author lays down the principles and doctrines which govern this question in language which I would not change if I had been dictating it for the purposes of this case. It seems to be an excellent treatise on this subject.

"Courts of equity," he says, "have declined to announce a general rule applicable to all cases of multifariousness, being guided by considerations of convenience in each particular case rather than by any absolute rule. But there are certain cardinal principles which have been established by repeated and numberless decisions in the courts of equity, and, if borne in mind, it will seldom, if ever, be found difficult to determine whether multifariousness exists in the particular case." And now the learned author, who is the learned counsel in this case for West Virginia, states what those principles are:

"First, a bill will always be deemed multifarious where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite in his answer and defend different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delay might be occassioned respecting matters ripe for hearing by waiting for proofs as to some other matter not ready for hearing.

"Second. It will be treated as multifarious where there is a demand of several matters of a wholly distinct and independent nature, in the same bill, rendering the proceedings oppressive because it would tend to load each defendant with an unnecessary burden of costs by swelling the pleadings with the statements of the several claims of the other defendant or defendants, with which he has no connection.

"Third: A bill against two or more defendants will be regarded as multifarious which also embodies a separate and distinct claim against one of the defendants only.

"Fourth. A bill will not usually be regarded as multifarious where the matters joined in the bill, though distinct, are not absolutely independent of each other, and it will be more convenient to dispose of them in one suit.

"Fifth. A bill against several defendants who have a common interest centering in one point will not be held multifarious."

Now we are willing to rest this case as to this ground of demurrer upon those propositions, thus aptly expressed by the counsel for West Virginia; but the learned author goes further, and states a principle that he says is settled by all the decisions, and which absolutely disposes of his demurrer upon this ground, and that is:

"Sixth. A blending of two causes of action in the same bill, one

of which is of equitable cognizance and the other legal, will not render the bill multifarious, as the latter will be treated as mere surplusage and stricken from the bill and the cause retained as to the equitable ground of suit."

I need make no other reply, and could make none more conclusive, to the argument of the learned counsel, or the briefs filed in this cause, upon that point.

The second ground of demurrer is that this bill does not present a controversy within the meaning of Section 2, of Article III, of the Constitution of the United States, which confers upon this Court jurisdiction to hear, try and decide all controversies of a civil character between two or more states. As we have argued in our brief, the word "controversy" has been too frequently interpreted by this Court to leave any doubt as to its meaning as applied to this case.

It is precisely the same word by which jurisdiction is conferred upon Federal courts of controversies between citizens of different states, of controversies to which a state is a party, and of controversies to which the United States is a party. Again and again, from the case of Chisholm, executor, *vs.* Georgia, to the last decision rendered involving this question—that in the case of United States *vs.* Michigan, 190 U. S., pp. 379, 396 and 406, has this Court held that it embraced every kind of civil controversy which can arise between individuals or communities. No case has ever arisen in this Court in which a state has ever before asserted a pecuniary demand against another state, but Chief Justice Marshall passed upon that question. Our friends will probably say that it was an *obiter dictum* of the Chief Justice, but in Cohens *vs.* Virginia, the great Chief Justice was defining the word "Controversy," and adjudicating the question as to the effect of the adoption of the 11th Amendment upon the jurisdiction of this Court, and his discussion of the meaning of that word, and of the effect of that amendment upon the jurisdiction of this Court as conferred by Section 2 of Article III of the Constitution, was entirely germane to the main question in the case then being considered. The Chief Justice in that celebrated case decided that jurisdiction of all controversies of whatever character between a foreign state and one of the United States, or between one of the states of the United States and another state of the Union, was not affected by the 11th Amendment, but was still conferred upon this Court.

And in the case of the United States *vs.* North Carolina, 136 U. S., 211 this Court took jurisdiction of a suit brought by the United

State against the state of North Carolina to recover interest upon bonds of the State of North Carolina.

Our friends may say that the question of jurisdiction was not raised in the case. This Court said in 143 U. S., 621, in United States *vs.* Texas, that the question of Jurisdiction was considered by this Court in United States *vs.* North Carolina; that it was necessarily considered because this Court could not acquire jurisdiction by consent, could not exercise jurisdiction nor take jurisdiction in a case without passing upon the question of its right to exercise jurisdiction. And the question was considered and finally disposed of by this Court in U. S. *vs.* Michigan, which was a suit for money, a pecuniary demand asserted by the Government of the United States against the State of Michigan, in which this Court took jurisdiction, and in which this Court held that it not only had a right to decide and adjudicate the case, but to enter up judgment. In the last paragraph of the decision of the learned Judge who gave the unanimous opinion of this Court in that case it is declared:

> "There must be judgment overruling the demurrer, but as the defendant may desire to set up facts which it might claim would be a defense to the complainant's bill, we grant leave to the defendant to answer up to the first day of the next term of this Court. In case it refuses to plead further, the judgment will be in favor of the United States for an accounting and for the payment of the sum found due thereon." 190 U. S., 406.

Now if this Court can not execute a judgment of the United States against a state; if a judgment of this Court in favor of the United States against a state is a valid judgment, although no execution of *fieri facias* may effectively issue upon it, and no process can be awarded upon it which will compel the defendant state to obey such judgment and pay the amount which it shall award, then by the same token and the same argument, a judgment of this Court in favor of one state and against another would be valid, if such a judgment of the United States against a state is valid.

The third ground asserted in the demurrer is:

> "That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described."

If your Honors please, that statement comes, as has been already pointed out, entirely from a misapprehension of the bill. The bill is not brought in the name or for the benefit of the bond holders, or of the certificate holders, whose bonds were deposited with Virginia and which she holds as trustee; but the suit is brought by Virginia in her own right, and in the assertion of two equitable grounds of relief which will be hereafter mentioned. I frankly concede that any judgment in this case in favor of the Commonwealth of Virginia must enure to the benefit of the common creditors of undivided Virginia, whether they be those who have deposited their obligations in her custody, or be those who have not, up to the present time, deposited their obligations in her keeping.

In the very nature of things, if your Honors please, no suit could be prosecuted in this Court to decree, ascertaining the liability of West Virginia upon any one, or any one hundred of the obligations of the Old State, which would not ascertain her liability upon the entire debt, and therefore necessarily operate to the advantage and benefit of all of the common creditors of the Commonwealth. So that, in that sense, the suit is for the benefit of the creditors of Virginia to whom she has given her certificates, but it is no more for their benefit than for the benefit of all the other creditors of Virginia.

Now what are the equities that Virginia is asserting? The first is the equity of contribution.

Our friends, either because they have failed carefully to read this bill, or are strangely misapprehending it, state that Virginia has paid no part of this debt excepting her own share. The fact is, and the bill shows it, that Virginia has paid in full some millions of dollars of the common obligations, the *ante-bellum* obligations, of the State. Our friends failed to note that upon the face of the bill, and in express terms, a statement was made of this claim as a basis upon which the state is entitled to contribution from West Virginia. At page 9 of the bill, paragraph 16, there is this brief statement of that claim:

> "Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia, contracted before her dismemberment, those so paid off or retired by your oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the Funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, considerably in excess of $25,000,000, by far the greater part of it

being now, of course, on account of the interest computed thereon, at the rate of 6 per cent per annum, the then legal rate in both states. For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor."

And we invoke the equitable jurisdiction of this Court for an accounting with West Virginia, in order to ascertain the amount to which Virginia is entitled to contribution from West Virginia by reason of the fact that Virginia has satisfied in full obligations of the old state aggregating, as of this date, including interest from 1861, over $25,000,000. So as to that, Virginia makes a substantive demand upon West Virginia for such amount—as shall be ascertained under a decree of this Court, after an accounting shall be had, to be West Virginia's fair and just aliquot portion of the liabilities of the common state which Virginia has paid in full. Our friends misapprehended that claim and the statement of facts made in that paragraph of the bill.

Now, if your Honors please, another and equally valid ground of equitable jurisdiction which this bill invokes is, that there shall be an accounting with West Virginia for the purpose of ascertaining her portion of this indebtedness, and having that liability of West Virginia adjudicated, not by way of contribution to Virginia, but in exoneration of Virginia. All the authorities recognize this as an equitable ground of relief, and Virginia's claim to it here is of the highest equity. As has been decided by her own Court, in the cases to which I referred, and as appears from an examination of the contracts which she made, Virginia is still bound for $12,700,000 as of July 1st, 1871, being the one-third of the bonds which were funded under the Act of March 13th, 1871, and for which one-third she gave her certificate to the common creditors. That is still a claim against Virginia, and a common burden upon Virginia and upon West Virginia, to the extent of West Virginia's equitable liability; and Virginia seeks the aid of this Court for the purpose of obtaining exoneration to the extent of West Virginia's liability therefor. Independently of any contract between her and the common creditor, and the certificate holders to whom the bonds of the undivided State belong, she is entitled to this relief and exoneration, to the extent of West Virginia's liability, from the common burden resting upon both states, it being conceded that West Virginia's portion of that liability must be ascertained upon the artificial and

arbitrary basis prescribed in the Wheeling ordinance of August 20th, 1861.

But she has a further, and for her perhaps, a more important relief to ask at the hands of this Court, by reason of her contact with the holders of more than nine-tenths of the certificates issued by her under the funding Act of 1871. This agreement was made by her creditors in recognition of the large provision which she had already made for the common creditors; namely, that those creditors would accept not merely or in fact such sum as might be recovered from West Virginia—I wish your Honors to observe the language of the stipulation.—not merely that they would accept such sum as should be recovered from West Virginia, but that they would accept the adjudication of this Court against West Virginia in full satisfaction and discharge of any claim or liability which the common creditor might have against the Commonwealth of Virginia. Now as to that stipulation, West Virginia's rights are not affected by it, nor is it prejudicial to West Virginia; nor is it a stipulation of which West Virginia has any right to complain, because it does not add one cent to and cannot increase in the slightest degree the liability or obligation of West Virginia. The contract will be found at pages 83 to 86 of the bill. It is not necessary that I shall read it, because I have stated accurately its stipulation, that the creditors to the extent of these millions, of these certificates for these deposited bonds, will accept the adjudication of this Court against West Virginia in full discharge of any farther claim against Virginia. That gives Virginia a direct personal property interest in this adjudication, an interest co-extensive with the amount of the common unsettled liability, an interest as important to her as if she had actually paid off the whole of the $12,700,000 of certificates and a right to relief because of that interest, by obtaining an adjudication against West Virginia. And it boots not, in reference to this aspect of the case, whether this Court is powerless to enforce its decree or not. Its decree will be as effective, by the stipulation between Virginia and her creditors, it will be as effective to give her immunity from further liability and exonerate her from any claim as if the the execution could be levied upon $50,000,000 of money of West Virginia in the Riggs Bank in the city of Washington.

Recess until 2:30 P. M.

AFTER RECESS: 2:30 P. M.

MR. ANDERSON: If your Honors please, in the few minutes

that are left to me, I will refer briefly to the grounds of demurrer which I have not already considered, most of which have been so satisfactorily and exhaustively discussed by my colleague as to obviate any necessity on my part for any elaborate reference to them.

The fifth ground of objection assigned in the amended demurrer is, that it does not—satisfactorily appear—that the Commonwealth has ever authorized this suit to be brought. I hope it is not necessary that I should show my warrant of attorney for appearing here for the Commonwealth, but I will say to the learned and distinguished counsel who is to follow me (Mr. Carlisle), that that warrant is as plenary and as authentic as that which authorizes him to represent West Virginia, and which I do not impeach. This suit is brought entirely within the limits of the authority conferred by the General Assembly upon the Virginia Debt Commission, and the bill avers that it is brought in strict conformity with those powers, and not only avers it, but the exhibits filed with the bill prove the allegation.

The sixth ground is that the bill does not definitely and sufficiently set forth the reasons and demands asserted by the plaintiff.

I do not understand exactly what is meant by that assignment of objection. As it could not be contended that a surviving partner who was suing for a settlement with his co-partner, after a dissolution of the partnership, should state precisely the balance of account between them—so a claim that there shall be any such particularity of allegations here, can have no foundation, for the very object of this suit is to ascertain what the parties could not ascertain, namely, what is the state of the accounts between them; and that is the very question which is referred to this tribunal which is vested with judicial power for the purpose of adjudicating all such controversies.

The seventh ground of objection assigned in the demurrer is, that the allegations in the bill are not sufficient to entitle the plaintiff either in her own right or as trustee, to an account. We have shown that our suit is for exoneration and contribution, and that an accounting is necessary to determine the respective rights and liabilities of the parties.

The eighth ground is that the bill does not contain any prayer for a judgment or decree or any other final relief against this defendant. The bill asks for an adjudication against the defendant and for general relief; and in our brief we have shown that the prayer

is ample according to English Chancery practice, and repeated adjudications of this Court.

Now in the remaining five minutes of my time I will briefly refer to the last ground of objection, made for the first time in the briefs of the learned counsel, and one upon which they seem chiefly to rely; Which is, that there was a compact between Virginia and West Virginia by which it was covenanted by Virginia and West Virginia, that the Legislature of West Virginia, should be the final arbiter of all matters in controversy between the two states with reference to the amount and payment of the common debt. The language of the instruments upon which counsel rely justifies no such conclusion. One is an alleged Act of the General Assembly of the Restored Government of Virginia, of May 13th, 1862, by which Virginia gives consent—the date is important, if your Honors please—by which on the 13th of May, 1862, Virginia gives her consent to the formation of the State of West Virginia in accordance with the provisions of the Constitution which had been proposed by a convention of the people of West Virginia which met in the month of November, 1861. Now is it a fair conclusion from the language used in that Act, and the language used in the proposed Constitution for West Virginia in regard to the public debt, that Virginia, by giving her sanction in that form to the formation of the State of West Virginia, bound herself irrevocably and eternally to abide by an adjudication or ascertainment of the amount of liability of West Virginia to be determined by West Virginia? It is incredible that sane men fairly representing the interests of the Commonwealth of Virginia should have assented to any such proposition, and the language that they used cannot be construed fairly or justly to have any such effect. The provision in the Constitution of West Virginia relied upon was designed as a mandate from the people of West Virginia to its own representatives, imposing upon them a duty, namely, as soon as practicable to ascertain the amount of West Virginia's portion of the public debt, and to provide for a fund for the payment of interest and the extinction of the principal thereof in thirty-four years. It has now been nearly forty-four years since West Virginia became a state, and she has done nothing in this regard. But, if your Honors please, the Constitution which was in fact adopted by West Virginia has never been approved by Virginia; nor has Virginia, except by the Wheeling ordinance of August 20, 1861, ever given her valid consent to the formation of West Virginia. If the Act of April 13, 1862, is a valid Act, which we deny, she has not

given any such consent by that Act, for the reason, and the conclusive reason, that the consent there given was for the formation of the new state in accordance with the provisions of a constitution which had been proposed by a West Virginia convention which first assembled in November 1861, and that is not and never was the constitution of West Virginia. Congress gave a conditional consent to the formation of the State of West Virginia, and the condition upon which that consent was given was that West Virginia would adopt an amended constitution; and it appears that West Virginia did adopt an amended constitution in 1863, which is found in the volume entitled Constitutions and Statutes of Virginia and West Virginia, 1861 and 1866, published at Wheeling, under the Act of the Legislature of West Virginia enacted in 1866. That amended constitution was proposed and submitted to the people of West Virginia, and was adopted by the people of West Virginia, long after the alleged Act of May 13, 1862, and became the constitution under which West Virginia was admitted into the Union. Virginia never approved of or gave her consent to that amended constitution. So that my friend's contention that there is any compact falls, because the constitution which was the consideration of that supposed compact and upon which it was predicated, has no existence, but was afterwards repealed and abrogated by the adoption of an amended and a different constitution.

In addition to that, if your Honors please, if there had been anything in the contention of our friends, West Virginia has repealed and repudiated any such liability or obligation. In 1872 West Vriginia adopted her present constitution, and it contains the only expression of the fundamental law of that State. From that constitution this covenant, as our friends on the other side are pleased to term it, was eliminated; and the mandate of the people of West Virginia that the Legislature of that State should ascertain and provide for the payment of West Virginia's just share of this debt, contained in the former constitution, was stricken out, thereby leaving this question where the law of the land leaves such controversies, solely within the jurisdiction of this Honorable Court.

If your Honors please, I have but one word more to say. All that Virginia asks here is that what is right shall be done; that she shall not be denied the relief to which she is entitled, either upon the narrow technical grounds of defense which are asserted here, or by reason of ingeniously contrived construction of Acts of the Legislature of Virginia, and of provisions of the former constitution of

West Virginia, which reasonably interpreted cannot possibly be given any such meaning as is contended for by the learned counsel.

I thank the Court for the kind and patient attention which they have given me.

Supreme Court of the United States

OCTOBER TERM, 1906.

ARGUMENT OF HON. J. G. CARLISLE, for the Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

ARGUMENT OF HON. J. G. CARLISLE, for Defendant.

MR. CARLISLE: If your Honors please, I thought from what was said by the Attorney General for the State of Virginia, in his address to the court before the recess, that it was conceded by him that the compact which is set up in the bill was binding upon both States, and that the settlement of the controversy between them must be made by this or some other tribunal in the manner prescribed in the Wheeling ordinance. I am somewhat surprised, therefore, to see, when he comes back since the recess, that he takes the position that there is no compact between the two States. I do not propose, however, to discuss that question at the beginning of my remarks, but I had thought that this concession upon the part of the representative of Virginia would enable me to abbreviate my argument to a considerable extent.

MR. ANDERSON: I did not use language of that kind.

MR. CARLISLE: The counsel read the ordinance, and then stated distinctly that that was the compact binding upon the parties.

Of course the ordinance itself could not constitute the whole compact; it was the act of only one party. The compact had to be made between both parties, and the State of West Virginia, when the convention assembled to form a constitution, accepted the proposition

made by Virginia in the ordinance that she should assume her just proportion of the public debt to be ascertained in a certain manner, but with the condition that her own legislature should ascertain what that proportion was, and provide for its payment by the establishment of a sinking fund.

But I pass from that for the present. The first question to be considered in this case is whether the court has jurisdiction, for if it has not, it will not decide any other question raised by the demurrer. The court, however, cannot decide whether it has, or has not, jurisdiction of the case without first ascertaining the character of the parties, the nature of the claim asserted, and the character and extent of the relief demanded. I propose first to show what Virginia has done with regard to the old public debt, and in doing that it will be made apparent to the court why we have fallen into what counsel say is a misapprehension of the bill, and why we are contending that Virginia is suing in a representative capacity as trustee for the owners of the cetificates.

In the first place, it is distinctly alleged in the bill that Virginia holds these bonds in trust. The exact language is that Virginia "received and holds said original bonds, so far as unfunded, in trust for the creditors who deposited the same with her, or his assigns"; and when we look at the prayer of the bill, we find this language: "That the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid." But if the words trust or trustee had not been used in the bill, the court, after an examination of the several statutes passed by the legislature of Virginia, and the contract made between her commission and the creditors, could reach no other conclusion than that the State is suing here, so far as the settlement of the old debt is concerned, not in her own right, but as a mere representative of the holders of the certificates. She has bound herself by contracts through her commission, appointed under her own statute and clothed with her authority, to prosecute this suit for the settlement of the certificates, and to pay over the money that may be recovered, whatever it may be, to a committee appointed by the creditors, not even allowing this court, or any other court, the power to direct the distribution of the fund among the beneficiaries when it is received, as I will show the court before concluding.

Now the first act of Virginia to provide for funding her debt was passed on the 30th of March, 1871; and I desire to call the attention of the court for a moment to some of its provisions, because it has been argued here that notwithstanding the act, and notwithstanding what was done under it, the State of Virginia still remains bound for the unfunded one-third of the public debt. I think the creditors of Virginia will be very much surprised and very much pleased when they hear that her counsel have taken that position. The act provided for the funding of two-thirds of the principal and interest of the debt, and declared that it was Virginia's full equitable share of the indebtedness; and it provided that certificates should be issued to the holders of the debt for the other one-third, to be provided for in accordance with such settlement as might thereafter be made with West Virginia. It expressly required every one of the bonds to be surrendered to the treasurer of the State of Virginia, and cancelled; so that not only was Virginia's liability for the unfunded portion released, but the evidence of the debt itself was extinguished.

MR. JUSTICE BREWER: Were all the bonds surrendered?

MR. CARLISLE: Not all under that act. I will come to that after while.

MR. JUSTICE WHITE: Was that the act referred to in the 81st Virginia case?

MR. CARLISLE Yes, sir, that was the act; and I wish to say, without disrespect to the court by which that action was decided, that the only controversy in the case related to the right of a holder of coupons to have them received in payment of taxes. They were coupons attached to bonds issued by Virginia under the act of 1871.

MR. JUSTICE WHITE: It was stated that the effect of that was not to release Virginia?

MR. CARLISLE: But there was no such question in the case. In the case of Higginbotham *vs.* The Commonwealth, 25 Grattan, 627, the court expressed the opinion that the two States were bound ratably to the creditors for the old debt as it stood in 1861, but that question was not involved in the case.

MR. ANDERSON: The Higginbotham case was directly in point.

MR. CARLISLE: I have examined that case carefully, and the only question was as to the liability of Virginia for the payment of dividends on the capital stock of the James River and Kanawha Company, and the court expressly stated that the question of Virginia's liability for the one-third of the debt not funded under the act of March 30, 1871, was not involved in the case, and that it expressed no opinion on that subject.

I will read the language of that act from my brief, though the act is printed in full in the record. I read from page 7 of the brief:

> "Upon the surrender of the old and the acceptance of the new bonds for two-thirds of the amount due, as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

Now what obligation did Virginia assume by the issue of that certificate?

MR. JUSTICE HARLAN: Your quotation reads further: "And that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assigns."

MR. CARLISLE: In trust, yes, sir; that is stated in the act, and in the certificate issued for the one-third.

MR. JUSTICE HARLAN: You said the bonds were cancelled.

MR. CARLISLE: They were. That is shown at the top of the next page. All the acts required the surrendered bonds to be cancelled, and one of them provided that they should be cancelled by punching holes through them.

MR. ANDERSON: The contract was endorsed.

MR. CARLISLE: There is no evidence of that in the record.

MR. ANDERSON: You will find it on the books, an endorsement on each bond.

MR. CARLISLE. I have seen only what the act says. It was provided in every one of the acts that the bonds should be cancelled.

MR. JUSTICE HARLAN: It says: "But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

MR. CARLISLE: Now, what was the obligation assumed by Virginia by the issue of these certificates? Was it to pay money? None of the counsel has said to the court that if Virginia should fail to provide for this additional one-third by a settlement with West Virginia, that the holders of those certificates could come back upon the State of Virginia and demand their amount in money. That has not been suggested. What the holder could do, perhaps, would be to demand his bond, but that would be of no value to him, because the bond has been cancelled, and I will also show before I get through that nearly all of the holders of the certificates issued under the act of 1871 have deposited their certificates with the commission under a contract which releases Virginia.

MR. JUSTICE HARLAN: If Virginia had a settlement, would not it be bound by these acts to contribute for payment the amount of those certificates?

MR. CARLISLE: I think under the contract with her commission she would have to pay the certificate holders whatever she might receive from West Virginia, but no more; and she is suing for that, and according to my understanding of what constitutes a trustee, this makes her a trustee just as much as the State of Kansas was trustee for the Missouri, Kansas & Texas Railway company in the case decided in this court only two weeks ago.

The next act was March 28th, 1879. It contained the same provision with regard to the cancellation of the bonds, provided that exactly the same kind of certificate which had been issued under the act of 1871 should be issued to the holders of bonds that might be surrendered under the provisions of that act, and it expressly provides in the body of the act that persons who present their bonds for refunding and accept certificates thereby release Virginia from all obligations upon the certificates.

Then the next act was in 1882, and it contained precisely the same

provision in regard to the cancellation of the bonds; and provided for the issuance of certificates. Certificates were issued in which the parties receiving them agreed that they would look to West Virginia for the one-third, without any recourse upon Virginia. Counsel says that such a certificate was merely a memorandum made by Virginia herself, and amounts to nothing; but if your Honors please, when a bondholder surrendered his bond and accepted a certificate under these provisions, he agreed to look to West Virginia for his debt, and that he thereby released the State of Virginia. And, moreover, as I have said, the act itself under which the refunding was made, provided that if he took the certificate, he should release the State of Virginia.

The act of 1902 contained exactly the same provision with regard to the cancellation of the bonds, and with regard to the certificates for the unfunded one-third, absolutely releasing Virginia from all liability on account of debt. And then, in addition to all this, in 1894 the State of Virginia passed a joint resolution providing for a commission to adjust the old public debt; but I will not stop now to read it. The preamble recites that Virginia had already settled, to the satisfaction of her creditors and her people, her two-thirds of the debt. And then the commission was authorized to negotiate with the State of West Virginia, but only upon the basis that the State of West Virginia would agree that the share of Virginia was only two-thirds; and if such was the case, of course West Virginia's share must have been one-third. Gentlemen admit in the argument that it would be impossible for the court to ascertain West Virginia's share without also ascertaining Virginia's share, because Virginia's share, as between the two States, is the whole of the debt less West Virginia's proportion.

No adjustment was made by the commission. Mr. Randolph Harrison, a member of the commission, went down, as has been stated today, to West Virginia, with this resolution in his hand, which was the only authority he had, to demand that West Virginia should acknowledge her liability for one-third of the debt.

MR. ANDERSON: I beg pardon, but that was the act of 1900.

MR. CARLISLE: I will show that the act of 1900 did not repeal that part of the joint resolution, or any other part of it, and that the commission when it went to negotiate with West Virginia, was bound by the provisions of the resolution of March 6, 1894. When it sues it may get less, or get nothing, but it could not negotiate

for anything less without violating the provisions contained in the very act under which it held its position.

Now it has been said here to-day that Virginia has made repeated efforts to settle this debt, and the statement has been made that West Virginia made no response.

MR. CHIEF JUSTICE FULLER: Has West Virginia made any effort?

MR. CARLISLE: I will show that she has, if I may be allowed to do so. The statement was made this morning that Virginia appointed a commission, and that the commission communicated with the State of West Virginia and could get no response. I have here the whole official correspondence between the authorities of the two States on that subject.

MR. ANDERSON: That was appointed in 1894.

MR. CARLISLE: I am going back to 1871. In 1871 West Virginia appointed a commission, and it promptly sent a communication to the Governor of Virginia stating that it had been appointed, and was then assembled to take up the matter and adjust it; but the Governor declined to do anything. Here is the correspondence.

MR. CHIEF JUSTICE FULLER: Had we not better have all of these facts put in?

MR. CARLISLE: I allude to it only because it was brought in here in the argument this morning.

MR. ANDERSON: But what I referred to was in 1894.

MR. CARLISLE: After Virginia had assumed only two-thirds and had declared that West Virginia was liable for one-third, that State refused to negotiate with her on that basis. But West Virginia went further in 1871, and she asked that the account be furnished by Virginia, but that State declined to do so, all of which is shown in the correspondence.

MR. CONRAD: The facts were that she asked Virginia to furnish the commissioners with copies of the record from the Auditor's and the Treasurer's offices, and Mr. Rogers told them that they had no clerical force with which to furnish those copies, but that they might send clerks there and the books would be opened.

MR. CARLISLE: That is correct. The creditor, the party alleging that other owed one-third of the debt, said: "I will not make out or furnish the evidence of my account against you, but if you are willing to send somebody here at an expense of several

thousand dollars to copy the accounts and vouchers and find out what you owe me, I will give you permission to do so.'' That is the position taken by Virginia.

Now, if your Honors please, certificates were issued under all of these acts to which I have referred, and the exhibits filed with the bill show the amount.

MR. JUSTICE WHITE: You said just now—and I am trying to get at what is in the record and what is not in the record—something about an express agreement waiving the claim against Virginia. Is that in the record?

MR. CARLISLE: It is in the statutes, in the certificates and in the contract, and I am looking now, if your Honor please, for the statement of the amount of certificates issued; but I can state it approximately from memory. There was a little over $18,000,000 of these certificates issued, which shows that the State of Virginia funded about $36,000,000 as her share of the debt and interest. There were issued under the act of 1871 certificates to the amount of about $15,000,000, and over $10,000,000 of those certificates have been deposited with the commission under the contract releasing Virginia. They were first deposited with Brown Brothers & Company, who were the custodians appointed by the holders of the certificates, and afterwards taken away from Brown Brothers & Company by the Virginia commission, and are now held by them. Over $10,000,000 of the certificates of 1871 have been deposited under the contract, which your Honors will see, as the Attorney General has said to-day, absolutely released Virginia, whether she ever gets anything from West Virginia or not. There was altogether in the hands of the commission on the 6th day of January, 1906, between thirteen and fourteen million dollars of the certificates issued under the funding acts. The others are held by Virginia herself or her sinking and literary funds, or are outstanding in the hands of the original holders of the bonds or assignees, for they have been sold in the market and speculated upon for a great many years; but Virginia sues in this case not only for the benefit of those who have deposited their certificates, but under the act of March 6th, 1900, she sues for a settlement for the benefit of all certificate holders; so that it makes no difference on the question of trusteeship how many bonds have been deposited with the commission. It might make a difference ultimately, but not in the argument on this demurrer. If there are some of the certificates of 1871 still outstanding, and the court should hold that Virginia has not been released from them,

she might have a claim in her own right for them if she could maintain action for contribution against West Virginia before she has paid more than her own share, which we think she cannot do.

Now the State of Virginia, as I think this record shows conclusively, is released from the whole of the debt, except what she has assumed to be her share. The State of Virginia, suing upon the compact, or suing to recover in accordance with the general rules and principles of equity for an adjustment and apportionment, cannot divide the claim into several parts, and sue for her own alleged share, or part, of West Virginia's liability, and sue for somebody else for another part. Whatever West Virginia's liability is in this matter must be ascertained, as we insist, in the manner prescribed by the compact, and it must be ascertained *in solido*. It is one single liability; but Virginia comes now, in the bill and in the argument, and attempts to split it into different parts, alleging that she sues in her own right on account of some certificates, and for the benefit of others in regard to other certificates. That cannot be done; this is one entire claim, not an indebtedness upon the part of West Virginia to each separate creditor. The compact was made between the two States alone, and not between them or either of them and the creditors. Virginia alone was the original creditor, whose bonds have gone into the hands of the public; and whatever changes may have taken place in her constitution or government, whatever changes may have taken place in her territorial area, she remained the same political entity, and continued to be bound by the obligations just the same as if no change had been made. West Virginia's obligation was to Virginia until that State was released, and not to the creditors. I was surprised to hear the argument made this morning and yesterday that one of the objects of this suit was to secure exoneration for the State of Virginia. So far as I am aware, this is an entirely new ground for the exercise of equity jurisdiction. Certainly it cannot constitute a ground for relief when the parties to whom the obligation is due are neither plaintiffs nor defendants in the suit. If Virginia owes the debt, or any part of it, no court has the power to exonerate her until she pays it. If she does not owe the debt, then there is no necessity for an exoneration by the court. If she has been released, she needs no exoneration; and if she has not been released, this court cannot exonerate her until she pays the debt; and even if it could, it would not do so in a case where the persons to whom she owes the debt cannot be heard except through her as their trustee.

Now, if your Honors please, a word as to the compact. And here I wish to say that counsel has fallen into singular error in the discussion of this question. They speak as if the consent of the Legislature of Virginia was necessary to make the compact valid. There are two provisions of the constitution of the United States which have a bearing upon the question. One is found in the first Article of the constitution, which provides that no State shall enter into a compact or agreement with another State without the consent of Congress. The other is found in the Fourth Article of the constitution, which provides that no State shall be created out of part of the territory of another State, or within the limits of another State, without the consent of the legislature. The legislature is not mentioned in the provision of the constitution in regard to compacts; and this compact was made by the sovereignty conventions of the two States. All the legislature did by the act of May 13th, 1862, was to comply with the provision of the United States Constitution which requires the consent of the legislature to a division of a State and the formation of a new State within the old jurisdiction. If this compact was not made by the two sovereignty conventions, it was not made at all. The legislature, when it passed the act of May 13th, 1862, however, consented to the division of the State under the constitution which West Virginia had formed and presented, and which was then before Congress on her application for admission into the Union; and Virginia in that act instructed her Senators and representatives to vote for the admission of the State. Since the recess, counsel has brought in what he calls a new constitution of West Virginia which he says was adopted in 1863. He says that West Virginia was not admitted into the Union under the constitution to which the legislature of Virginia had consented, but under the amended constitution of 1863; but if you will examine the so-called new constitution, you will find that it is, so far as this subject is concerned, identical with the constitution which was pending before Congress when Virginia passed the act of May, 1862. Congress, it will be remembered, required West Virginia, before admission into the union, to make a provision prohibiting slavery within the limits of the State; and the people of the State did that. They assembled in convention, struck out from the constitution the original provision on that subject, and inserted one prohibiting slavery in the State; and the State was admitted under that constitution by proclamation issued by Mr. Lincoln on the 20th of June, 1863, in accordance with the act of Congress.

Now let us look at the compact. I am not going to discuss the question at length, or recite the circumstances under which it was entered into. All the political departments of the government have recognized the convention assembled at Wheeling in April, 1861, as the convention of the State of Virginia. That convention proposed that a new state might be formed to be called the State of Kanawha, to include certain counties, and that the new state should assume its just proportion of the public debt of Virginia as it existed on the 1st day of January, 1861, to be ascertained, as stated in the ordinance, by charging to the new state all the money expended within her limits—within the limits of that territory—since any part of the debt was contracted, and with her just proportion of the ordinary expenses during the same time, and crediting the new state with all the money that had been paid in from that territory during the same period. That was Virginia's own proposition to the new state. Of course there was no state of Kanawha at that time, and therefore there was no second party to the proposed contract; but subsequently the people within that territory assembled in a sovereignty convention, and then for the first time they had a right, and the power, to consent or dissent from the proposition that Virginia had made. It was still open; it had not been withdrawn; and the new state accepted it with these additions: that the amount of the debt should be ascertained by the legislature of the new state as soon as practicable, and that it should establish a sinking fund sufficient to provide for the payment of the interest and the redemption of the principal within thirty-four years.

MR. JUSTICE HOLMES: Where are the words with regard to these two matters to be found? I have looked for them but I do not find them.

MR. CARLISLE: They are in my brief, if your Honor please.

MR. MAY: On pages 4 and 5 of the bill they will be found.

MR. CARLISLE: Now those two documents constituted the compact, provided the State of Virginia, through her legislature as required by the constitution of the United States, should have given, or should thereafter give, its consent to the formation of a new state. That consent was given after the name of the proposed new state was changed to West Virginia. The ordinance of the Wheeling Convention was well known; it was a public act, and it was before Congress upon the application of West Virginia for admission to the Union. The constitution of West Virginia, in which the proposition

of Virginia was accepted with the conditions I have stated, was before Congress, and that body admitted the state into the Union, and thereby, according to the decisions of this court in the case of *Green vs. Biddle,* and the case of *Virginia vs. West Virginia,* Congress affirmed all that had been done between the two States; and as said by this court in the case of the State of *Pennsylvania vs. The Wheeling Bridge Company,* the compact became a law of the Union, and it has therefore all the force and effect of a statute constitutionally passed by the Congress of the United States.

Now if your Honors please, that ordinance is binding in whole, or not binding at all; every part of it is binding or no part of it is binding. The gentleman certainly conceded before the recess that the ordinance was valid. The ordinance alone could not constitute the entire compact; for, as I said, it was completed only when the State of West Virginia, in its convention, accepted the obligation to pay a just proportion of the public debt, and provided the conditions and terms upon which she would accept and pay it. Now the gentlemen, as I infer from the arguments made here, are willing to stand on the ordinance, but they deny that the parties ever intended to allow the legislature of West Virginia to adjust the matter, or if they did, they say it was unjust and unreasonable; but that was a matter for the parties to contract about, and they did contract about it. If this ordinance is valid, and I assume that this court cannot say it is not valid, because if it does, then, as was said in the case of *Green vs. Biddle,* West Virginia is not in the Union—

MR. JUSTICE HOLMES: Would it be beyond the possibility of argument if you should say that the circumstances did not constitute such compact as you say it did?

MR. CARLISLE: I do not see how such an argument could be properly made.

MR. JUSTICE HOLMES: The question would arise in my mind: Supposing that there were no compact there, whether any and what principles could be applied; and whether or not the principle that was suggested by the Attorney General might not be applicable, that is to say, that presumably upon such a separation, your cliants should assume their proportion of the debt equal to the ratio of the taxable property in their part of the State, as compared with the taxable property of the other part of the State?

MR. CARLISLE: If the compact was not valid, I do not see how

the Court can hold that West Virginia was constitutionally admitted into the Union.

MR. JUSTICE HOLMES: I am not intimating that the compact is invalid, but it seems to me, is it not possible to doubt whether the purposes you advert to constitute a compact or contract?

MR. CARLISLE: If there is no compact—and, omitting for the purposes of the discussion the proposition that I have made that West Virginia is not in the Union—then the basis of settlement suggested by the Attorney General of Virginia would be so manifestly unjust to the State of West Virginia that I do not think the court would entertain it for a moment. His suggestion is that West Virginia should continue to impose taxes; that is the theory that the same proportion of taxes should be collected in West Virginia as in Virginia, to pay off the old public debt, leaving Virginia in possession of nine-tenths, if not more than nine-tenths, of all the public works and property of every kind procured by the expenditure of the money realized from the issue of the bonds. West Virginia, a separate and independent State, would go on and pay, along with Virginia, for all the public property, although not one-tenth of it might be located within her boundaries.

MR. ANDERSON: You misapprehend me, Mr. Carlisle. I said that as West Virginia has the assets, the property should be adjusted equitably.

MR. CARLISLE: How can West Virginia get any of the canals or turnpikes or other public works that Virginia has? They are there, and Virginia must keep them.

MR. MOLLOHAN: They have sold to the railroads.

MR. CARLISLE: It is an impossible proposition to be carried out; Virginia has got the property, and it cannot be taken away from her. Now, if your Honors please, when this ordinance was passed, and when the constitution of West Virginia was adopted, the amount of the public debt was known, approximately at least, to all the parties, and it was understood, as it is alleged in the bill, to be about $33,000,000; it was agreed between the parties that, without going into the question of the expenditure of public money for public works in Virginia, if they would charge West Virginia with the money expended in her territory during the period concerned and with her ordinary share of the expenses of the State and credit her with the money she had paid in, the result would show what

was her just proportion of the public debt existing on the 1st day of January, 1861.

All that your Honors have heard today and yesterday about how the borrowed money was expended, in the construction of turnpikes and canals and railroads leading to or over the Appalachian Range of Mountains, is utterly foreign to this case. It does not make any difference if Virginia threw this money realized from the bonds into the Atlantic Ocean. West Virginia has agreed, and Virginia has agreed, that they will make the calculation on the basis set forth in that ordinance, and that the result will show what proportion of the debt West Virginia should assume, a debt which they knew all about. The amount of the debt and the purpose for which it was created have nothing whatever to do with the settlement under the terms of the ordinance. They are not factors in the problem submitted under that agreement. The only questions here are how much money was expended within the limits of West Virginia, how much was her just proportion of the ordinary expenses of the State, and how much had she paid in. When these three items are ascertained, you will have her share of the public debt according to the agreement.

Now what have Virginia and her creditors done? Without consulting West Virginia, they have created a situation in which the plan agreed upon by the States for the ascertainment of West Virginia's just proportion of the public debt cannot be executed without the grossest injustice to that State. It was agreed, as I have said, that West Virginia's just proportion of $33,000,000, the amount stated in the bill, would be ascertained in the manner I have stated. Of course that assumed that the State of Virginia would pay the $33,000,000. But Virginia has adjusted, I think one of the exhibits here shows, about $21,000,000 principal and interest. But I do not care whether it is fifteen or twenty-five million, or any other sum less than the entire debt, for if you carry out the terms of the compact on which the parties both agreed, West Virginia will be required to pay to Virginia just as many dollars as she would have been required to pay in case Virginia had paid a hundred million dollars on her debt. This is so, because the amount of the debt cuts no figure whatever in making the adjustment. They knew the amount of the debt, and they agreed upon the basis of settlement. West Virginia will be required to pay exactly the same amount to Virginia, who has adjusted only two-thirds of the debt, as she would have been required to pay if that State had paid all of it; and that

situation has been created by Virginia and her creditors without the consent of West Virginia.

I am not able to argue this case on any theory except that the compact is valid, because I do not see how the court can ignore it entirely and undertake to adjust the matter between the two States upon the general principles of equity or international law. I cannot see what other theory the court would adopt. Virginia arbitrarily took the position that the State of West Virginia was liable for one-third upon a rule that she had established herself; and one of her commissioners, Mr. Harrison, went down and talked to the legislature of West Virginia about the debt and tried to convince it that the State was bound to pay one-third of it, and insisted that the State was equitably liable for that proportion, because, he said, the formation of the State of West Virginia had deprived the State of Virginia of about one-third of her territory and about one-third of her white population. This contention was founded upon a supposed rule of international law that the States would be liable according to the proportion of territory and the proportion of population detached from the old State; and that has been Virginia's position since the year 1871. In that year Virginia repudiated the compact by her statute, as your Honors will see, and from that time on, during a period of thirty-six years, she has constantly and persistently refused to recognize the contract or to settle with West Virginia on the terms of the contract.

MR. CONRAD: She refuses owing to her innocence of any such contract. She never heard of it. I never heard of it.

MR. CARLISLE: The compact has always been a matter of public record, and besides it was based on Virginia's own proposition. Now let us see if there is any injustice in allowing the legislature of West Virginia to adjust this matter. We were asked yesterday by one of the members of the court whether West Virginia denies that she is liable for any part of the debt. Of course I am not here with authority to speak for West Virginia as to what she will do hereafter. We are here to show the court, if we can, that there is no judicial tribunal in this country that has the power to coerce the legislature to act; that the legislature alone has the power to adjust and pay the debt, and that Virginia has no cause to complain because it has not been done. Virginia, as shown by the bill, has in her own possession and under her control, every account, every voucher, every document, every particle of evidence necessary to make the adjustment, and she has never furnished West Virginia

with a scrap of paper or made any demand on the legislature of that State to adjust the debt in accordance with the compact; and yet Virginia makes the complaint that West Virginia, the debtor, has not followed her up and endeavored to get a settlement with her, when the debtor has not a particle of evidence upon which she could ascertain the amount of the liability. Let the creditor make out her account; let her prepare the papers in her own possession and send them to West Virginia and demand a settlement as provided in the compact. If West Virginia refuses, that will be time enough to make a complaint against her.

MR. JUSTICE HOLMES: I have seen it somewhere in these papers, but I cannot keep the run of them—I have seen a statement somewhere here that the West Virginia legislature has repeatedly denied any liability whatever.

MR. CARLISLE: I think that is a fact, your Honors, since Virginia made the adjustment with her creditors and paid only her own share of the debt; but I will come to that presently.

MR. JUSTICE HARLAN: Why do you say that an adjustment if now made under the compact would be unjust to West Virginia?

MR. CARLISLE: This obligation is from West Virginia to Virginia, and under the situation that now exists a settlement under the terms of the ordinance, which prescribes the method of adjustment, would require West Virginia to pay precisely the same amount of money that she would have been required to pay to the State of Virginia if that State had paid the entire $33,000,000 of her debt and all the interest upon it.

MR. HOLMES: She could not pay more than her just share.

MR. CARLISLE: She is to be charged with certain items and credited with certain items according to the ordinance, and that is the end of it. But Virginia has repeatedly declared that she would not settle according to the ordinance, but would merely ascertain what the public debt was on the 1st of January, 1861, and divide it by three. A school boy could have made that settlement. If the debt was $33,000,000, it was declared that West Virginia's share was $11,000,000, and that Virginia was only responsible for $22,000,000. Of course West Virginia has refused to agree to that.

Now these States are not co-obligors—

MR. JUSTICE DAY: These States are not what?

MR. CARLISLE: I say these States are not co-obligors; that is conceded by the other side.

MR. ANDERSON: It is a common debt, like that of co-partners.

MR. CARLISLE: No, it is not a common debt. If one man owes a debt, and another man agrees with him, not with the creditor, that he will pay a certain proportion of the debt, or will reimburse him as to a certain proportion when the debt is paid, they are not co-obligors. That is the situation here. The State of Virginia alone owed the creditors; they never had a claim against West Virginia; they never held her bonds; they never had a contract with her; they never had any evidence of an obligation on her part that they could present and demand payment. She has agreed in the compact to assume a just proportion of the debt, but Virginia has arbitrarily settled for herself what West Virginia's portion was, one-third, and she has adjusted the other two-thirds, which she herself has declared is her own just proportion. Now she sues West Virginia and demands a contribution from her. For what? She concedes that she has paid only her own proportion; that she has paid exactly the same amount to the creditors that she would have been required to pay if West Virginia had paid everything now demanded from her; and yet she wants contribution. If they were co-obligors, one of them could not sue the other until he had either paid the whole debt or at least had paid more than his own share. That is well settled law. In the other case supposed, where one man owes a debt and another promises to pay one-third of it, or to reimburse him to the amount of one-third, and the original debtor pays only two-thirds, and has been released, he cannot compel the other to pay him the other third. That is the case we have here; Virginia has decided for herself what her just share was, and she has paid it or adjusted it, and no more. We think—and if this matter is ever adjudicated we are satisfied that the result will show—that Virginia has never paid anything like her just share.

MR. JUSTICE HARLAN: Is this bill broad enough, assuming that we have jurisdiction—with that question out of the way, is this bill broad enough to enable this court to make a decree without reference to this settlement that you speak of, to tax West Virginia for such an amount of the debt as would be a fair amount?

MR. CARLISLE: I think not, because you are bound to abide by the compact. If you disregard the compact, if the court repudiates it—of course I use that word in a respectful sense—then it can settle it upon any principles it may adopt, provided it has jurisdiction, and should find that Virginia has any claim at all; but she has paid no more than her share and has been released,—

MR. JUSTICE HARLAN: That would be a question generally whether she would be entitled to anything?

MR. CARLISLE: Yes, sir.

MR. JUSTICE HARLAN: Is the bill broad enough, if we have jurisdiction, to enable us to make a decree for such sum as would be fair and equitable?

MR. CARLISLE: Yes, if the compact can be disregarded; but we think that is not a supposable case, because the compact was undoubtedly valid.

MR. JUSTICE HOLMES: Under the general principles of equity, under that bill, if it should turn out the other way, that West Virginia was the creditor of Virginia.

MR. CARLISLE: I suppose, if the creditors were parties and should file a cross bill—

MR. JUSTICE HOLMES: I mean, any bill that prays for an amount, does it by implication submit to whichever way it may turn out?

MR. CARLISLE: The counsel on the other side concede very frankly in their brief, in express terms, that this court has no power to enforce a decree against the government of a State.

MR. JUSTICE WHITE: Is there a question here as to the power of this commission to sue?

MR. CARLISLE: The commission has not sued, and could not sue in its name, but the position we take is that there is no authority to use the name of Virginia in a suit, except for the purpose of settling the question of West Virginia's proportion of the debt, and that they have included in the bill other claims.

MR. JUSTICE WHITE: Suppose we put the compact out of the way. Suppose that, merely; let us suppose that is out of the way. You proceed on the assumption that the State of Virginia has the right to remain liable, and as the result of liquidation suppose you would find that West Virginia's share was only the one-twentieth of this debt; then the decree would be against Virginia for a much larger proportion of this debt than she assumed to pay. Does the resolution authorize the parties to accept judgment?

MR. CARLISLE: Not at all. The act under which the suit is instituted, provides expressly that Virginia shall be released, no matter how small may be the amount collected from West Virginia, or

if nothing shall be collected from West Virginia. That has been very distinctly stated in the act, and in the contract with the depositors.

MR. CONRAD: All that proceeding contemplated was a settlement with West Virginia. That failing, they have recourse to the courts. Now if we invite West Virginia here by a bill for an accounting, and an account is stated, and a balance is found to be due from Virginia to West Virginia, we proceed on the theory that inasmuch as we have invoked the jurisdiction of the court, a decision should not be given against West Virginia.

MR. JUSTICE WHITE: If, instead of a settlement between the creditors by Virginia and the commission and the issuance of certificates, it turns out that the certificates were issued for a much less proportion than Virginia owed, would not the creditors undo that settlement and make Virginia liable?

MR. CARLISLE: I think they ought to do it. Your claim (addressing Mr. Conrad) has been that Virginia has not been released.

MR. CONRAD: No, it is not.

MR. CARLISLE: Then the idea of Mr. Justice White is perfectly correct, and there ought to be a decree against Virginia for the remainder, if the adjustment was not correct, but of course that cannot be done in this case.

MR. JUSTICE HARLAN: A decree against Virginia in whose favor. The creditor is not here.

MR. CARLISLE: Certainly not, and I have not said it could be done in this proceeding, but only that the creditors ought not to be bound by the adjustment.

MR. JUSTICE HARLAN: The court has nothing to do with the bondholders?

MR. CARLISLE: No, but Virginia would have.

MR. JUSTICE HARLAN: The money would be collectible by Virginia if she got a decree in this case?

MR. CARLISLE: Yes, and she would pay it over to the committee representing the holders of the certificates, and the committee has provided for a tribunal to distribute it.

MR. CONRAD: Virginia is not suing her bondholders.

MR. JUSTICE DAY: What weight, if any, would attach to the compact if any action had been taken on it? You have stated it that way—

MR. CARLISLE: I have stated, your Honor, that West Virginia, as far back as 1871, appointed a commission to make the settlement under the compact.

MR. JUSTICE DAY: Does that appear in the bill?

MR. CARLISLE: I made that statement outside of the record in response to a statement made by the other side, which was also outside of the record.

MR. JUSTICE DAY: This stands on a demurrer to the bill?

MR. CARLISLE: Precisely.

MR. JUSTICE DAY: What weight, in your view, has this?

MR. CARLISLE: I do not suppose that the court could consider this outside matter at all, and I have merely alluded to it here—

MR. JUSTICE DAY: What weight, if any, could be given to what has been done by the Virginia legislature under the so-called compact?

MR. CARLISLE: The complaining creditor has never made any account or demand upon the legislature of West Virginia to settle according to the compact; but counsel has stated that she tried to negotiate with the alleged debtor, but could get no response, when it appears by the record in the case that the compact has been repudiated by Virginia for thirty-six years.

MR. CONRAD: We never heard of it.

MR. JUSTICE DAY: If it does not exist, then by common consent they cannot act upon it.

MR. CARLISLE: The bill alleges that Virginia has tried to negotiate; but how and when? We only know from her statutes and resolutions the terms and basis upon which she tried to negotiate, that is upon the basis that West Virginia owed one-third.

MR. ANDERSON: The last proposition was unconditional.

MR. CARLISLE: No, it was not unconditional. Mr. Harrison's speech before the legislature of West Virginia is made part of the bill, and the court can look at it. He tried to show by argument that West Virginia owed one-third. The vital question in this case is whether the court has jurisdiction. The time allowed will not enable me to argue this question fully; but I think it is not necessary to argue the question as to the jurisdiction of the court to entertain a suit brought by a State as trustee.

MR. CHIEF JUSTICE FULLER: We know about that.

MR. CARLISLE: On the other hand if it appears that Virginia has filed this bill in her own right, and has no interest whatever in the alleged claim, that would dispose of that part of the proceeding. Now, what is jurisdiction? As I understand it, jurisdiction is the power to hear and determine causes between parties who are properly before the court, and to render decrees and judgments, and enforce them. This court does not sit—no court sits—merely for the purpose of ascertaining and declaring what the legal and equitable rights of the parties are, and stop at that point. The powers of a court are remedial, not declaratory; it must render judgments or decrees; it must redress wrongs; it must enforce rights, and it can have no jurisdiction of a case in which it cannot do these things, or some of them. There has been a good deal said here today about the meaning of the word "controversy." That word does not appear in that part of the constitution which confers original jurisdiction upon this court in cases where a State shall be a party. It appears only in that clause of the constitution which defines the judicial power of the United States. When we come to the clause that confers original jurisdiction upon this court, it speaks of a case, not a controversy, where a State shall be a party. But I suppose that is not very material, because the court can take no jurisdiction of a controversy until it has assumed the form of a case. A case must be made, and there must be parties, subject to judicial process; there must be judicial proceedings, and there must be a judgment or decree and an execution.

The word "jurisdiction" as used in the constitution must be understood to mean now just what it was understood to mean when that instrument was adopted. It means, as I have said, the power to hear and determine the cause, to render judgments and decrees, and enforce them by judicial process of some kind or other. Bouvier, and Black, and all the other elementary authorities, and law dictionaries, sustain this definition. Blackstone says in the first volume of his commentaries, on page 242 of Cooley's edition:

> "All jurisdiction implies superiority of power. Authority to try would be vain and idle without an authority to redress, and the sentence of the court would be contemptible unless the court had the power to command the execution of it."

This court has said in the case of Riggs *v.* Johnson County, reported in 6 Wallace, in an opinion by Mr. Justice Clifford:

> "Want of jurisdiction in the Circuit Court was not alleged in the return, nor was any such ground assumed by the

circuit judge who refused the writ. Experienced counsel, however, have made that point in this court, and it becomes the duty of the court to determine it before examining the merits. Jurisdiction is defined to be the power to hear and determine the subject-matter in controversy in the suit before the court, and the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree.

"Express determination of this court is, that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied. Consequently, a writ of error will lie when a party is aggrieved in the foundation, proceedings, judgment, or execution of a suit in a court of record.

"Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution. Congress, it is conceded, possesses the uncontrolled power to legislate in respect both to the form and effect of executions and other final process to be issued in the federal courts. Implied concession also is, that Congress might authorize such courts to employ the writ of mandamus to enforce a judgment rendered in those courts in a case where the ordinary process of execution is inappropriate, and where the judgment creditor is without other legal remedy."

I have quite a number of authorities to cite on this point, but it is elementary that a court will not exercise, or attempt to exercise, jurisdiction unless it can enforce its judgment. Now if this claim is to be determined upon the compact, the court, in order to enforce whatever judgment it may render that will afford relief, must discover some process heretofore unknown and exercise some power heretofore not recognized, to compel the legislature of West Virginia not only to proceed to ascertain the amount of the State's obligation, but to establish a sinking fund sufficient to pay it, for that is what the parties have agreed to.

MR. JUSTICE HARLAN: Suppose a State sued another to recover a tangible piece of property, and judgment was given in its favor by the court: could the court by its process compel the delivery of that property?

MR. CARLISLE: I think that might be done, unless the property was used, or intended to be used, for public property, because that is something the court could do without disturbing the operations of the State in the least.

MR. JUSTICE HARLAN: If there is a suit to recover specific bag of money, it would have jurisdiction to do that?

MR. CARLISLE: I am not called upon to deny that, in this case; but if the money had been collected for public purposes, or was held for the public use, I do not think it would make any difference whether it was in a bag, or loose in the treasury, or deposited in a bank; no court could seize it and apply it to the payment of a judgment, unless the legislature had appropriated it for that purpose.

MR. JUSTICE HARLAN: Your contention broadly is that when the constitution was framed, the men who framed it gave extraordinary jurisdiction only in certain cases, and did not intend to give the court jurisdiction in suits to be brought by one State against another to recover money. Suppose it was a suit to get a will construed?

MR. CARLISLE: In that case the court would give all the remedy the nature of the case required. In the case of a will, the only remedy necessary would be to construe it for the instruction and guidance of the parties concerned. If a suit is brought for the recovery of a specific article of property, unless it is public property it can be seized, and its seizure would not interfere with the legislative or executive authority of the State, or with the autonomy of the State, and will not disturb the relations between the State and the general government under the Constitution.

MR. JUSTICE HARLAN: If you should find some property owned by the State, could an execution be levied upon it?

MR. CARLISLE: I suppose it probably could, unless it was public property; I would not question that. But my contention is that the court cannot enforce the compact without taking control of the executive and legislative departments of the State of West Virginia, and compelling the legislature to adjust the account; and then if the court complies with the compact, it must compel the legislature to pass an act, and the governor to approve it, establishing a sinking fund. That is the way in which the debt was to be ascertained and paid.

But suppose the compact is abandoned, what would the court do? It has been settled in so many cases that I will not undertake to enumerate them—they are recited in my brief—that this court cannot levy a tax; that it cannot compel the State authorities to issue bonds, that it cannot compel them to appropriate money, or to

exercise any other constitutional function committed to their judgment and discretion. As far as this court can go, is to compel a municipal or ministerial officer of a State to perform some duty which the proper authorities of the State have already authorized him to do, or required him to do. The cases on this subject are numerous, beginning with Rees *v.* Watertown, and coming down to a very recent period, in which this court has used the very strongest language in denying its jurisdiction to interfere with the constitutional authorities of a State. I contend that some construction must be put on the constitutional provisions which will not derange the relations between the general government and the States, which the constitution itself establishes. If you give a judgment or decree in this case for money, in what other way can it be enforced? It is conceded here that West Virginia has no property except public property; it has no private property—

MR. ANDERSON: We said we know of none.

MR. CARLISLE: But it is said that this court has heretofore decided this question. I think not. The court has held over and over again that it could entertain an action to adjust the boundaries between two States; but in such cases no judicial process is necessary to execute the judgment of the court. When a court has determined what the true boundary line between two States is, the political departments of the country, State and Feredal, respect that decision.

MR. JUSTICE WHITE: Now right there, Mr. Carlisle; It has often been said that, prior to the adoption of that provison of the constitution and the creation of this jurisdiction, sovereignty existed in these States; sovereignty existed in them prior to the formation of the constitution, and in the ultimate course of things if that jurisdiction could not be enforced by the courts there must be war, and the purpose of inserting that provision in the constitution, the States, being deprived of all power of waging war against each other, was to create some tribunal, not in the narrow sense of litigation between parties, by which the ultimate solution of all these great controversies could be determined without recourse to war. Now did not that proceed upon the theory that if the States entered into the constitution and if they consented to the constitution, they would respect the judgment of the tribunal which the constitution created, and therefore in testing the power, you were not to determine it by the narrow rules by which you determine wiether the court has the power over an individual?

MR. CARLISLE: I know, if your Honor please, that has been the argument always.

MR. JUSTICE WHITE: You say the States would respect a decision of this court with respect to a boundary?

MR. CARLISLE: Yes; they cannot do otherwise.

MR. JUSTICE WHITE: Why would they not respect a decision otherwise?

MR. CARLISLE: In the case of Kentucky *v.* Dennison, it was expressly held by the court that under the constitution of the United States and the act of Congress, it was the constitutional duty of the State of Ohio, through her governor, to surrender fugitives from the justice of other states of the union. The governor of Kentucky made a demand upon the governor of Ohio for the surrender of a fugitive from justice, the governor of Ohio refused to obey it, and an action was brought in this court, and the court held, in the strongest language, that although it was the duty of the State of Ohio to comply with that demand, there was no power in the court to compel it to do so.

MR. CONRAD: That was put upon a political ground.

MR. CARLISLE: No; upon the ground that although it was a solemn constitutional duty, the court had no power to enforce its performance, and it refused to give any judgment in the case, as it has also done in many other cases—because it could not enforce its judgment—Now I do not dissent entirely from the argument stated by Mr. Justice White, that one of the purposes of the constitution in conferring original jurisdiction upon this court was to prevent angry controversies and conflicts between the states. Still that does not militate at all against my position, that some construction must be put upon it that will accomplish this purpose, and at the same time keep the hands of the general government off the authorities of the States in the exercise of their constitutional powers, and in the discharge of their constitutional duties. The court can order the seizure of a piece of property, unless it is public property, without disturbing the relations between the States, or the relations between the States and the general government. It can seize money in a bank, if it is not held for public purposes, if found there, without disturbing the relations existing between the States or between the States and the general government; but if it undertakes to enforce a judgment for money against a State where there is no lien or trust, a plain, naked demand for money, which must be paid and sat-

isfied, either by the appropriation of the money or property of the State, or by exercising authority and control over its legislature and compelling it to act affirmatively, it is a very different thing from a proceeding where the remedy consists in restraining somebody from doing a wrong.

As I said, in the case of a controversy about boundaries, when a line has been established by this court and a survey has been made and marked, then all the courts of the country, all the political authorities of the State that has lost the county, as well as all the political authorities of the United States, regard the territory as consituting a part of the State to which it has been awarded. Congress will include it in the congressional districts of that State, and in the judicial districts of that State. The Executive Department of the United States, in exercising its duties with regard to the relations between the general government and the States, would treat it as a part of that State, and there is no power anywhere that can undo what this court has done.

In cases like *Kansas vs. Colorado*, and *Missouri vs. Illinois*, the Court has jurisdiction, not because it can compel the State authorities to act affirmatively, but because it can restrain the agencies of the State from continuing their wrong doing. In cases involving questions of boundary, it is the duty of the State, as a State, as a political organization clothed with the power and charged with the duties of government, to protect its area from encroachments on the part of another State, and that is done by appealing to the original jurisdiction of this court to establish the boundary. It is its duty as a State to protect its people against nuisances and the trespasses and other wrongs done to them by another State or by its authority. These are duties which belong to a State because it is a State, because it is the guardian and the protector of its people and their rights, their lives, their health and their property. But when a suit is brought merely for the recovery of money, the State stands exactly like an individual so far as her rights are concerned; and she cannot recover money in a case where an individual cannot recover money under the same circumstances. If the jurisdiction is extended to that class of cases it will be going beyond the intention of the framers of the Constitution.

In the case of *United States vs. North Carolina*, which was a suit to recover the interest on bonds, the State appeared in the court, and in writing which was made part of the record, voluntarily submitted to the court the only question there was in the case. There

was no question of fact, and only one question of law. This court has held more than once that the right of a State to be exempt from a suit is a personal right which may be waived, and North Carolina did waive it in the case referred to. In the case of *United States vs. State of Michigan*, the court found, after an examination of the statutes, that the State of Michigan held certain funds and certain tools and implements appertaining to the St. Mary's River Canal in trust for the United States, and so it decided that it could enforce the trust.

MR. CONRAD: That was not by law, it was by legal action.

MR. CARLISLE: The court decided there was a trust, and said that, under the act of Congress providing for the construction of the canal, the State became a trustee for the United States in the expenditure of the money for the purchase of the property. In the case of *South Dakota vs. North Carolina*, which is the next case relied on, there was a lien. This court held—it was decided by a divided court—that it had original jurisdiction to entertain that suit, to the extent of enforcing the lien at least, and it enforced the lien by decree, and ordered a sale of the stock; but it expressly reserved the question as to whether it could render a judgment for the deficiency. His Honor, Mr. Justice Brewer, delivered the opinion, and he cited various cases which showed the difficulty of proceeding in such a matter as that, and reserved the question. It was never decided by the court, because the parties settled the case between themselves; so that, to say the very least, this question is still open in this court. It is a question which the court, if it entertains jurisdiction, will have to decide in this case if it holds that it will not regard the compact between the parties; and if it regards the compact, it will have to compel the legislature of West Virginia to adjust her proportion of the public debt and establish a sinking fund to pay it. If it decides to adjudicate the case outside of the compact, the only decree that can be rendered would be a decree for money to be enforced by the ordinary process of execution. In view of the fact that the court has considered this question so often heretofore, and that it has been so often argued in previous cases, I have attempted to do no more than state our position.

Can the court entertain this action for an account? That is the only feature in the case that gives it the least appearance of an equitable proceeding. Virginia has all the accounts, and the claim arises upon a contract, plain and simple. No discovery is asked for, and none is necessary. There are no mutual accounts, and I think

it is well settled that a court of equity will not entertain an action for an account in such a case as this, unless a discovery is necessary. If a party cannot proceed at law because he is not in possession of the information necessary to enable him to do so, and that information is in the possession of his adversary, he may appeal to a court of equity to compel his adversary to disclose the facts; and then the court, having obtained jurisdiction of the case on account of that equitable ground, will proceed to decide the whole matter between the parties. It is stated in all the elementary works, and sustained by abundant authorities, that there is no jurisdiction to orden an accounting where there is no mutual accounts between the parties, unless a discovery is necessary, except in cases of trusts, partnerships and a few others. Story says that when, in such a case, a discovery is asked for and is not granted, the court will not order an accounting.

No discovery is required here, and an action at law can be brought for contribution, and a judgment at law for the recovery of the amount due would be just as effectual as a decree in equity. This court has held that the mere fact that the evidence is complicated or tedious constitutes no ground for proceeding in equity on a legal cause of action.

I have not said anything concerning the two Virginia statutes passed in 1863 under which claims were made in the bill, and I do not think it really necessary to do so, because that question has been fully discussed by my associates and by me in the briefs. I will say, however, that the act of February 4, 1863, simply appropriated to West Virginia certain money, which, as the court will see from the act itself, had been previously collected from the counties which constituted that State; and the act contains no provision requiring West Virginia to account for the money, or any part of it. It would have been absurd to ask that West Virginia should account for it, because it was her money. The other act transferred to West Virginia certain public properties located within the boundaries of the proposed new state, and declared that it should be accounted for by West Virginia "in the settlement hereafter to be made with West Virginia." What settlement was meant? Undoubtedly the act referred to the settlement to be made under the compact, for that was the only one that had been provided for. In that settlement West Virginia was to be charged with the money expended within her limits during the time the debt had existed, and with her just proportion of the ordinary expenses and credited with the money

paid into the treasury of the State of Virginia during the same period. Now the settlement which Virginia contemplated by the act of February 3, 1863, was the settlement which was to be thereafter made with West Virginia under this compact; and in that settlement West Virginia was to be charged with the money which was expended by Virginia in procuring this very property which the act turned over to her. Virginia now claims that West Virginia should be required to pay her just proportion of the public debt, which includes, of course, the money expended for this public property, and should pay for the property besides, thus imposing a double liability upon that state.

There is another claim for $25,000,000, including interest at six per cent., set up in the bill, which, as is shown by the bill, was a part of the debt contracted before January 1, 1861, and is therefore a part of the same $33,000,000 of indebtedness mentioned in the first part of the bill. It is a part of the debt which West Virginia was to assume her just proportion of, and it is nowhere alleged in the bill that Virginia has paid that $25,000,000, or a single dollar of it, in excess of her own just share. It is not even alleged that she has actually paid it, or any part of it. The allegation is simply that she "has paid or retired it."

It appears, as the court will see when it examines the act of March 6, 1900, under which this suit is brought, that the Attorney General of Virginia was authorized to use the name of the State only for one purpose. This court decided, in the case of *Texas vs. White*, that the Governor of a State might authorize a suit to be brought in its name, but that was an action in which the State, as a State, was interested, not as a trustee, but in her own right exclusively. While that may be the general rule, it does not apply here, because the legislature itself, which is the supreme power in a State, has taken charge of this subject, and has expressly declared for what purpose the suit shall be brought, and has limited the authority which it gave to its officers to that particular purpose; that is, to the institution of a suit to secure a settlement of the claims of the holders of the certificates. That is plain on the face of the act. Ordinarily this objection should be taken by a plea in abatement, but it appears on the face of the bill, and of course in that case it cannot be necessary to file a plea. For instance, in a case where diverse citizenship is necessary to confer jurisdiction, if it appears by the bill of complaint that the litigants are citizens of the same State, or, if it does not appear that they are citizens of

different States, the objection can be taken by demurrer. We submit to the court that the only authority given for the use of the name of the State of Virginia was authority to use it as trustee, and that as trustee she cannot maintain an original action in this court.

As there are only a very few minutes of my time remaining, I will not attempt to present or discuss any other question in the case.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Supplemental Brief of Counsel for West Virginia.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL NO. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

SUPPLEMENTAL BRIEF ON THE DEMURRER.

The evident purpose of the Virginia funding act of March 30, 1871, was to settle with the creditors for the full amount which the State had decided was her just share of the old public debt, and every creditor who surrendered his original bond for cancellation under the provisions of that act understood that he was being paid in the new bond all that the State recognized her obligation to pay. By presenting his bond for cancellation as required by the statute, and by accepting the certificate representing the remaining one-third, he necessarily released the State from any further pecuniary liability to him; for all the State agreed to do—if the language of the certificate constitutes an agreement—was, that the unfunded one-third "will be provided for in accordance with such "settlement as shall hereafter be had between the States of Virgin-"ia and West Virginia in regard to the public debt of the State of "Virginia at the time of its dismemberment." Both the act and the certificate issued under it provided that the State should hold the cancelled bonds in trust for the owners of the certificate (Record, pp. 15; 47-48).

The settlement referred to was to be made between the two States

alone, and the essence of the agreement was that if anything should be received from West Virginia the holders of the certificates should have the benefit of it to the extent of their ratable shares. If Virginia had been suable, no action could have been thereafter maintained against her on this agreement unless she had actually received money in a settlement with West Virginia. Money so received would have been held in trust by the State for the certificate holders; and she now sues in that capacity for their exclusive benefit.

Unless Virginia has a valid claim in her own right against West Virginia for contribution independently of her transactions with the creditors, she cannot maintain this action. It certainly cannot be said that the issue of certificates to which West Virginia was not a party could confer upon Virginia a greater or more perfect right with respect to the unfunded one-third than she would have otherwise possessed; and, in fact, it is conceded by counsel that the liability of West Virginia is in no way affected by the issuance of the certificates. Although counsel insist that Virginia was not released from pecuniary liability under the act of 1871, yet the Attorney General, in his reply brief, says:

> "While the creditor, as the result of this arrangement, took "the risk of such a settlement ever being made, it was none "the less the duty of Virginia to do all that she could, or all "that could be reasonable and fairly expected of her, to "bring about and effect such a setlement; and, her repeated "efforts to that end having proved abortive by reason of the "failure of West Virginia to meet her overtures, this suit has "become necessary."

The next funding act was passed March 28, 1879. It provided for the surrender and cancellation of the outstanding bonds and for the issue of certificates, and expressly declared that "The accept- "ance of said certificates for West Virginia's one-third issued under "this act shall be taken and held as a *full and absolute release* of "the State of Virginia for all liability on account of said cer- "tificates" (Record, p. 19). Notwithstanding this plain provision of the act, it is contended in one of the reply briefs that Virginia was not released from liability for the sums represented by the certificates issued under it. Of course, it was not necessary to provide that the State should be released from any part of the old bonds, because they had all been surrendered to her and cancelled, and no longer constituted, even apparently, an obligation upon her part.

The next act, which was passed February 14, 1882, also provided

for the surrender and cancellation of the outstanding bonds, and for the issue of certificates for the unfunded one-third, to be ac- "counted for by the State of West Virginia without recourse upon "this commonwealth" (Record, pp. 28-29).

The next and last funding act was passed February 20, 1892, and it also required the surrender and cancellation of the outstanding bonds and the issue of certificates for the unfunded portion "to be accounted for to the holder of this certificate by the State of "West Virginia without recourse upon this commonwealth" (Record, p. 30).

The foregoing references to the statutes show the relation which the State of Virginia bore to the unfunded part of the debt when the joint resolution of March 6, 1894, was passed constituting a commission to negotiate with West Virginia, upon the express condition, however, that it should "in no event enter into any ne- "gotiations thereunder except upon the basis that Virginia is bound "only for two-thirds of the debt of the original State, which she "has already provided for as her equitable proportion thereof." (Record, p. 40).

This was followed by the act of March 6, 1900, which authorized the commission to take the certificates on deposit "upon an agree- "ment and contract on the part of the holders of said certificates "that if the said commission would secure a settlement with West "Virginia with respect to said certificates, the holders of said cer- "tificates so deposited will accept the amount realized on such set- "tlement from West Virginia on said certificates as a full settle- "ment of all their claims thereunder" (Record, p. 42). And it was further provided that the commission, with the advice and approval of the Attorney General, might take such action and institute such proceedings "on behalf of the State" as might in their judgment be needful and proper to "bring about and carry into "effect a settlement as aforesaid;" but it was expressly provided that the owners of the certificates should defray all the expenses involved in connection with the proceedings "and the State shall "not be subject to any expense on that account" (Record, p. 42).

The contracts exhibited with the bill, which are set forth in full in our original brief, show that the holders of the certificates which were deposited with the commission agreed to all the terms and conditions of the acts last referred to; and the record shows that before the institution of this suit certificates to the amount of $13,173,- 435.41 had been deposited with the commission. Of this amount

$10,851,294.09 were issued under the act of 1871 (Record, p. 89). Certificates held by the State of Virginia or by the commissioners of the sinking fund and literary fund amounting to $2,745,462.01 have not been deposited, of which $2,578,518.68 were issued under the act of 1871 (Record, p. 90). If Virginia owes any part of the debt represented by these certificates, she owes it to herself on account of the obligations created for her own exclusive benefit, and West Virginia could in no event be responsible for any part of it.

The dissenting opinion of Judge Staples in the case of *Antoni* vs. *Wright*, 22 Grattan (62 Va.), p. 838, and the cases of *Higginbotham* vs. *Commonwealth*, 25 Grattan (66 Va.), p. 628, and *Greenhow* vs. *Vashon*, 81 Va., 341 are cited by counsel in support of their contention that Virginia was not released by the act of 1871 from the obligation to pay the unfunded one-third of the debt. But an examination of the cases shows that no such question was involved, or could have been involved, in either of them.

In *Antoni* vs. *Wright*, decided in 1872, the question was as to the constitutionality of the Virginia act of 1872, repealing the provision of the act of March 30, 1871, which made the coupons receivable for taxes. The court, in a very able opinion, held that the repealing act as unconstitutional. Anderson, *J.*, in delivering a concurring opinion, said:

> "It matters not whether the State is released from the one-
> "third of the debt or not; if a new bond had been given for the
> "whole of the debt, it would have been a valid obligation for
> "a valuable consideration. Whether the State is released or
> "not for one-third of the debt, it is very clear that in this
> "transaction she has only assumed to pay two-thirds of it.
> "And I could not say that she is bound for any more. That
> "question, though one of great interest to the State, is not
> "involved in this case" (p. 873).

We call the attention of the court also to what was said by the court on page 840 of the report.

In *Higginbotham* vs. *Commonwealth*, decided in 1874, the question was whether the State was bound under certain acts of the legislature to pay dividends on the stock of the James River & Kanawha Company. It was contended by the Attorney General for the State that the two States were bound ratably to the stockholders for the dividends agreed to be paid, and that Virginia was, therefore, released from one-third of it by the dismemberment. The court expressed the opinion that they were bound ratably, but that Virginia was not released, and, speaking of the State's attitude, said:

"By the payment of the whole debt, an equity at once "arises in her favor to demand contribution from the other "State which she may enforce in the United States Courts; "a right secured to States but denied to individuals. She can "not suffer, therefore, by doing right. Virginia has not lost "her identity by the loss of forty-eight counties and the in- "habitants thereof."

In the course of its opinion, the court further said:

"It is scarcely necessary to add that in what has been said "above it had not been my purpose to express or intimate any "opinion as to the respective rights and liabilities of the State "and those of her creditors who have accepted the provisions "of the act of March 30, 1871, commonly called the funding "act. That question is not before us, even incidentally, and "no opinion is expressed thereon" (p. 636.)

There has been no adjustment between the State and the stockholders who sued in that action, as there had been with the holders of the old public debt, and therefore there was no foundation for the claim that the State had been released from any part of the liability for dividends. The position assumed by the court that West Virginia was liable directly to the creditors for her just proportion of the debt is not insisted upon by counsel in this case. On the contrary, it is conceded that if West Virginia is liable for contribution, it is to Virginia alone.

In 1886, when the case of *Greenhow vs. Vashon* was decided, the entire personnel of the court had been changed as a result of the controversy over the readjustment of the public debt. It was a proceeding to compel the treasurer of the State to receive coupons in payment of taxes, and the court held that he could not be compelled to do so because the funding act of March 30, 1871, was unconstitutional and void!

We think it is clear that Virginia has been released by the provisions contained in the various funding acts, by the surrender and cancellation of the bonds, by the acceptance of certificates under the acts, and by the contracts entered into between the creditors and the commissions; but, even if there had been no formal or voluntary release, the State has repeatedly declared in the funding acts and in the joint resolution of March 6, 1894, and the act of March 6, 1900, under which this action is brought, that she is not liable for the unfunded one-third of the debt. These declarations amount to a positive refusal to pay, or to fund, that part of the debt, and are

therefore equivalent to a direct repudiation of the State's obligation to that extent.

Under these circumstances, what possible pecuniary interest can the State have in the claims alleged against West Virginia? But, no matter whether Virginia has been released or not, and no matter whether she has repudiated the one-third or not, she sues in this action for contribution, and no such suit can be maintained until she has actually paid, or in some way settled, more than her share of what her counsel call the "common indebtedness." She has decided for herself, with the consent of her creditors, what her just share was, and she has neither paid nor extended anything in addition. No authority has been cited, and we are not aware that any exists, showing that one co-obligor—and the States are not co-obligors—can maintain an action against another, either at law or in equity, for contribution, before he has paid more than his own just proportion of the joint indebtedness. The only authority relied upon by counsel on the other side in support of their contention on this point is *1 Spence, Equity Jurisprudence, p. 662;* but that citation has no bearing upon the question.

Speaking of the right to sue for contribution, the author says:

> "If one of several sureties paid the whole or more than his "proportion of the debt, he might compel his co-surety to "contribute proportionately to the amount so paid. So if "the original debtor, or one of the parties liable, becomes in-"solvent, each of the solvent parties was made to contribute "to the obligation thrown upon them."

He then states what the Roman law was upon the subject of contribution, and, still speaking of that law, he makes the following statement, which is the only quotation made by counsel on their brief:

> "It *was* not necessary to wait till some one was damnified "by having paid or having claim made against him for the "whole; a bill might be filed to settle the amount due from "each individual of a body liable to a common burden, and "to compel the payment by each, of his share." (*Original "brief,* p. 18.)

We have said that there are no co-obligors in this case, and that is conceded by counsel on the other side. The bill is not framed upon the theory that West Virginia was ever bound to the holders of the old bonds, or that she is now bound to the holders of the certificates issued by the State of Virginia, either as a co-obligor or otherwise. The claim is made against her by Virginia alone, and it

has been argued throughout the case that the indebtedness is to her. If the old bonds had been secured by a lien upon the public property situated in the new State, or by a pledge of the revenues to be derived from the people or territory embraced in the new State, it might have been contended that there was a direct liability to the creditors upon the part of West Virginia; but such was not the case. The bonds of a State, as this court has often said, are secured only by a pledge of its honor and good faith; and Virginia is still the same State that isued and sold the bonds. It cannot be necessary to make an argument to show that neither this court nor any other has power to exonorate her from any part of her liability. Even if such a power existed in any court, the creditors whose claims would be extinguished by the exoneration would be indispensible parties.

It is now contended by counsel for the plaintiff that there never was a compact between the two States with reference to the old public debt, and that no consent to the formation of the new State was ever given by the legislature of Virginia; and it is said that the question as to the existence of the compact cannot be relied upon by the defendant State in this argument because it is not specifically stated as one of the grounds of demurrer. The compact is set forth in the bill (pp. 4-6), and one of the separate grounds of demurrer is that the court has no jurisdiction to hear and determine the cause, which necessarily requires it to ascertain the foundation and character of the claim asserted and the nature and extent of the remedy sought by the plaintiff. The office of a demurrer is to present to the court the legal and equitable questions arising upon the face of the pleading—not to argue them—and one of the questions presented by the demurrer in this case is whether, if the compact is valid, the court has power to enforce it according to its terms.

We do not propose to reargue the question as to the existence of the compact or to discuss the validity of the Virginia act of May 13, 1862, consenting to the formation of the new State and asking its admission into the union under the constitution which had then been framed. The compact itself was entered into by the sovereignty conventions of the two States and consented to by Congress in accordance with the provisions of Clause 3 of Section 10 of Art. 1 of the constitution of the United States, and all that was required of the legislature of Virginia by Clause 1 of Section 3 of Art. 10 of the constitution was that it should give its consent, not to the compact, but to the formation of the new State out of a part of the territory of the old State.

Counsel claim in the reply briefs that the ordinance of the Wheeling Convention requiring West Virginia to assume a just proportion of the debt and prescribing the method of ascertaining it is binding upon that State, but deny that the conditions upon which the proposition was accepted are binding upon Virginia (Mr. Conrad's brief, pp. 22-23). We insist that the compact is binding as a whole or it is not binding at all, and that the act of the Virginia legislature, passed May 13, 1862, while it was not necessary to the validity of the compact, constituted a ratification of it by that body. Without this act the State of West Virginia could not have been constitutionally formed or admitted into the union, whether there was a compact or not.

Congress never passed but one act providing for the admission of the State into the union, and when it was afterwards actually admitted by the proclamation of the President, the constitution which Congress had already approved had not been altered in the slightest respect so far as it related to the compact between the two States. The only change that had been made, or that was required to be made, by Congress, was in relation to the institution of slavery.

But it is now argued that the compact between the two States has been abrogated by the omission of the State of West Virginia to include in the constitution of 1872 the same provision in regard to the old public debt that was contained in the constitution of 1862 under which the State was admitted into the union; but, notwithstanding this contention, it is still insisted by counsel that West Virginia became liable and is now liable for a just proportion of the debt as provided in the Wheeling ordinance, and which it is claimed constituted a part of the compact. The entire compact was that the new State should take upon itself a just proportion of the public debt, to be ascertained by charging to it all the State expenditures within its limits, and a just proportion of the ordinary expenses of the State Government since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of Virginia from the counties included within the new State during that period, and that the legislature of West Virginia should ascertain the same as soon as practicable and provide for its liquidation by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years.

This compact was entered into by the sovereignty conventions of the two States. In one the proposition was made in the form of an ordinance, and in the other it was accepted in the form of a con-

stitutional provision; and then it was consented to by Congress, and thus became an absolute and permanent obligation of the two States, which neither of them could thereafter abrogate or alter. It was not necessary for West Virginia to repeat in a subsequent constitution the terms upon which she had accepted Virginia's proposition, and upon which the compact had been concluded with the consent of Congress. The compact itself provides that the new State shall assume a just and equitable proportion of the debt, and that the Legislature of that State shall ascertain what that proportion is, and establish a sinking fund sufficient to pay the interest and redeem the principal in thirty-four years. The latter part of the compact is as binding upon the two States now as it ever was. The legisture of West Virginia has not been abolished; it still exists and possesses full power to provide for the ascertainment and payment of the State's just proportion of the debt in accordance with the stipulations of the compact between the parties. The State of Virginia has not heretofore supposed that West Virginia had extinguished her obligation to assume and pay a just proportion of the debt, or that she could do so; but if the argument now made is sound, she has done so by merely omitting a part of the compact from her constitution.

The act of Congress admitting the State into the union and thereby, as this court has held, giving the consent of that body to the compact, is a law of the United States enacted in pursuance of the constitution, and is therefore the supreme law of the land; and the compact itself constitutes a part of that law. *Penna.* vs. *Wheeling Bridge Co., 13 How. 185.* No State can abolish it or change it, even by an affirmative act, much less by a mere omission to repeat it in her constitution or statutes.

It is true, as stated in one of the reply briefs, that nearly forty-four years have passed since the compact was made, but it is also true that Virginia has repudiated it ever since 1871; and, although she has in her own exclusive possession all the accounts and vouchers necessary to effect a settlement, she has never presented to West Virginia any account, or even part of an account, which would enable the Legislature of that State to take any action in accordance with the Wheeling ordinance. It will be time enough for Virginia to make complaint against West Virginia when she has furnished that State with such an account or statement as will enable her Legislature, or a commission appointed by it, to ascertain the amount

claimed, in the manner prescribed by the Wheeling ordinance, which was Virginia's own chosen method of adjustment.

The reference to the fact that this court entertains jurisdiction of appeals from the Court of Claims involving demands for money, and renders judgment in such cases, is of no consequence in this discussion, because Congress has by statute not only consented that the United States might be sued on such claims, but has expressly authorized judgments to be rendered and directed their payment by the Secretary of the Treasury out of the general appropriations.

Act of March 3, 1863, Ch. 92, sec. 7; 12th, Stat. 766; Act of September 30, 1890, Ch. 1126, sec. 1.

The case of *Carter* vs. *State*, *42 La. Ann., 930*, quoted from in the original brief of counsel for plaintiff, is not at all in conflict with our contention in the case at bar. That was a proceeding to subject money belonging to the State to the satisfaction of a judgment previously obtained, and the court decided that it had no power to do so, although the legislature had authorized the institution of the action in which the judgment was rendered. In the course of its opinion, the court said:

> "The incidents and appurtenances of ordinary jurisdiction "have no application to a case like this. Undoubtedly juris- "diction granted to render judgments between parties sub- "ject to judicial power and control implies power to execute "such judgment. But the sovereign is not subject to judicial "power and control except just so far as is consented thereto; "the moment the limit of that consent is reached, the judi- "ciary must instantly halt."

But it is said by counsel that this court can afford adequate relief because it can ascertain and declare West Virginia's proportion of the debt, and that this will operate to exonerate Virginia from any further liability on account of the indebtedness. The adjudication would have no such effect; on the contrary, if Virginia is now liable, as her counsel contend, the effect of such adjudication would be simply to fix the amount of her liability, but with no judgment or decree for its payment. How that could afford any relief to Virginia in any respect, or to her creditors, we are unable to see.

While we do not consider it necessary to add anything to the argument heretofore made on that part of the demurrer which raises the question of multifariousness, it is proper to say that we do not controvert any of the propositions stated in Hogg's Eq. Proc., which is relied upon by counsel for plaintiff. They are in accord with the authorities cited by us.

Counsel quote from Mitford's Pl., p. 399, to show that there can be no misjoinder unless the parties have, or may have, conflicting interests in the suit, or unless some of them have no interest in the suit. What the author says, is:

> "If the plaintiffs actually have, or may have, conflicting "interests in regard to the object of the suit, or if any or "either of them have no interest in the subject-matter of the "suit, there is a misjoinder. But to be free from the objec- "tion of misjoinder it is not necessary that a co-plaintiff "should have an identity of interest."

They also refer to Daniels' Chancery, pp. 301-2, to show that an auctioneer may be joined with the vendor in a suit against a purchaser, but they omit to state, or quote, the reason given by the author, which is:—

> "because the auctioneer has an interest in the contract, and "may bring an action upon it; he is also interested in being "protected against the legal liability he has incurred in an "action by the purchaser to recover the deposit" (pp. 301-2).

He then says:

> "Upon a similar principle in cases where all the plaintiffs "have an interest in the subject of the suit but their inter- "ests are distinct and several, they will not be allowed to sue "together as co-plaintiffs" (p. 302).

It is not usual to embody the speech of an advocate in a bill in chancery, and thus require the defendant to admit on demurrer the truth of the statements contained in it; yet that course has been pursued in the present case, and the counsel on the other side quote from the speech of Mr. Harrison to show that the ultimatum contained in the joint resolution of March 6, 1894, had been abandoned by Virginia in 1900. All that we can say in response to this is that the gentleman who made the speech had no authority from the State of Virginia to propose or agree to any settlement except upon the basis that the share of the State was only two-thirds of the debt. An examination of the act of March 6, 1900, will show that its preamble reaffirms the position which the State of Virginia had previously taken with respect to the extent of West Virginia's obligation for one-third of the debt, and that it does not repeal or modify any part of the joint resolution of March 4, 1894, but mere-

ly authorizes the commission to receive the certificates on deposit and to "take such action and institute such proceedings on behalf of the State as may in the judgment of the Commission and the Attorney General be needful and proper to protect the interests of the State and bring about and carry into effect a settlement as aforesaid." Under this act the commission had no power to settle by negotiation except upon the basis that Virginia had paid her full share—two-thirds—but it was authorized to sue for a settlement for the benefit of the certificate holders, and, of course, if less than one-third should be recovered from West Virginia in the suit, they had the power to receive it for distribution among the beneficiaries under the contract made with them.

J. G. CARLISLE,
For West Virginia.

Counsel:
CLARKE W. MAY.
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CHAS. E. HOGG.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Reply Brief of Counsel for Virginia.

[MEMORANDUM.—Because the time allowed them was scant, the counsel for the Commonwealth agreed to apportion certain portions of this reply brief between themselves. Hence it appears as one brief, though in two parts.]

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

REPLY BRIEF OF COUNSEL FOR VIRGINIA UPON THE DEMURRERS TO THE BILL.

I.

The bill is not demurrable on the ground of multifariousness, either because of uniting any two or more distinct and separate matters or grounds for equitable jurisdiction, or upon the alleged ground that it blends in the same bill two causes of action, one of which is of equitable and the other of legal cognizance.

(1) None of the grounds for equitable relief shown by the bill are distinct and separate and independent of the other grounds assigned in the bill for the relief prayed. All of the demands for relief shown by the bill are intimately connected with each other and are properly to be considered in stating any account and making any settlement between the two States.

It cannot be fairly contended that any item of charge against West Virginia suggested by the bill is not a proper item to be brought into any statement which shall fairly ascertain the true state of accounts between the parties and the amount which the plaintiff is equitably entitled to recover from the defendant.

It is manifest that the equity for contribution and the equity for exoneration, to which the bill plainly shows that the plaintiff is entitled, are, for the purposes and with reference to all the legitimate objects of this suit, so associated together and so connected with each other that it would be impossible for the court to give complete relief, and to ascertain the amount for which the plaintiff has a just claim against West Virginia without bringing all of these matters into the account.

It would be impossible fairly and justly to state the account between these parties without bringing into it the sums with which West Virginia is justly chargable on account of the moneys and property constituting integral parts of the assets of the undivided State which West Virginia has received under the acts of the restored government of Virginia passed in 1863.

(2) But if, applying rigidly an extreme technical rule of pleading, it could be claimed that the demand which Virginia has a right, as shown by paragraph VIII of her bill, to make of the defendant imports of legal cause of action, and could not for any reason be properly cognizable by a court of chancery in making a final settlement between the parties to this cause, then, according to the rule of common sense and common justice, well settled by the authorities, the averment of such a cause of action in the bill will not be fatal to the maintenance of the suit, but will be treated as surplusage by a court of equity, and either ignored in its consideration of the case or will be by amendment stricken from the bill without prejudice.

We are saved any necessity for any further discussion of this phase of the argument of defendant's counsel by the admirable statement of the law governing this subject, accurately expressed in the work upon "Equity Procedure" of which the learned counsel,

Mr. Charles E. Hogg, who opened the oral argument for West Virginia and is upon her brief, is the author.

The principles governing this subject, as stated in Hogg's Equity Procedure, edition of 1903, vol. 1, sec. 136, furnish a conclusive answer to the elaborate argument of the counsel for the defendant upon this branch of the case and are as follows:

> "SEC. 136. Courts of equity have declined to announce a general rule applicable to all cases of multifariousness, *being guided by considerations of convenience in each particular case rather than by any absolute rule.* But there are certain cardinal principles which have been established by repeated and numberless decisions in the court of equity, and if borne in mind it will seldom if ever be found difficult to determine whether multifariousness exists in the particular case.
>
> "As to what these particulars are, all the adjudged cases agree.
>
> "From the numerous decisions relating to this matter, a few of which are cited in the foot-notes, the following principles may be safely declared to govern in questions of this character:
>
> "1. A bill will always be deemed multifarious where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite in his answer and defense different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delay might be occasioned respecting matters ripe for hearing by waiting for proofs as to some other matters not ready for hearing.
>
> "2. It will be treated as multifarious where there is a demand of several matters of a wholly distinct and independent nature, in the same bill, rendering the proceedings oppressive because it would tend to load each defendant with an unnecessary burden of costs by swelling the pleadings with the statement of the several claims of the other defendant or defendants with which he has no connection.
>
> "3. A bill against two or more defendants will be regarded as multifarious which also embodies a separate and distinct claim against one of the defendants only.
>
> "4. A bill will not usually be regarded as multifarious when the matters joined in the bill, though distinct, are not absolutely independent of each other, and it will be more convenient to dispose of them in one suit.
>
> "5. A blending of two causes of action in the same bill, one of which is of equitable cognizance and the other legal, will not render a bill multifarious, *as the latter will be treated*

as mere surplusage and stricken from the bill and the cause retained as to the equitable ground of the suit." (Italics, here and elsewhere, ours.)

These propositions are amply supported by the authorities cited by the learned author and by the following:

Story's Eq. Pl., secs. 271-278, 280, 284, 531, 532.
Mitf., Eq. Pl., by Jeremy, 181, 182, notes *a* and *b*.
Atty. Gen. *vs.* Merchant Tailors Company (1883), 1 Milne and Keene's Chy. R., 189, 191, 194.
Campbell vs. Mackey, 1 Mylne & Craig Chy. R., 622.

II.

The next ground of objection to the bill urged by defendant's counsel, which I will notice, is that the plaintiff has, as they allege, no interest in the subject matter of the controversy and asks no substantive relief for herself.

This position of opposing counsel is based upon an extraordinary misapprehension of the bill.

(*a*) The bill shows that the plaintiff has a very large direct claim against the defendant because of the fact that the plaintiff has paid off and satisfied in full obligations and evidences of indebtedness of the undivided State, including interest from the dates of payment of the several items constituting said demand, considerably in excess of $25,000,000, and that for this Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

See paragraph XVI, page 9 of the bill.

(*b*) *The bill shows that it is not true in fact,* as counsel argued, that Virginia has been released in respect to the unfunded portion of the bonds of the original State deposited with her under the act of 1871 and amounting, as appears from the exhibits printed at pages 73 and 90 of the bill, to $12,703,451.79, with interest on the principal sum thereof from July 1, 1871. As to this portion of the old debt of the State, Virginia has never been released, and her own highest court, in Greenhow *vs.* Vashon, 81 Va., 342-343, has so declared. In that case Judge Richardson, delivering the opinion of the court, quoting with approval the dictum of Judge Staples in Antoni *vs.* Wright, 22 Gratt., 864-5, says:

"It is said that the creditor has released one-third of his

debt. I do not so understand it, and I will hazard the assertion the creditor does not so construe the law. If this was the intention of the framers of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt, and coupons for the interest. For the remaining one-third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her the creditor will receive the other two-thirds also. On the other hand, if she repudiates these obligations there is no agreement or understanding absolving the State from the payment of the whole debt as before the passage of the funding bill."

And the Supreme Court of Appeals of Virginia, in Higginbotham *vs.* The Commonwealth, 25 Gratt., 627, expressed substantially the same opinion. This ought to be conclusive of this particular question for the purposes of this demurrer.

But, independently of said decisions, we assert with absolute confidence in the unquestionable correctness of the proposition, that it is impossible to read the act of March 30, 1871, and particularly section 3 of said act, found at pages 14 and 15 of the bill, without seeing not only that Virginia is not released, but that she has solemnly contracted that payment of said unfunded one-third, with the interest due thereon, "will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

* * * * * * * *

The manifest effect of the transaction was to continue in full force the liability upon the unfunded third of each of the bonds so deposited, both as against Virginia and against West Virginia, the only concession that the creditor made being that payment could not be expected or required of Virginia until a settlement should be had between the two States.

While the creditor, as the result of this arrangement, took the risk of such a settlement ever being made, it was none the less the duty of Virginia to do all that could be reasonably and fairly expected of her to bring about and effect such a settlement; and, her repeated efforts to that end having proved abortive by reason of the failure of West Virginia to meet her overtures, this suit has become necessary.

Her equity to maintain this suit in respect to the $12,700,000 of unfunded bonds deposited with her under the act of 1871 is based upon her right to exoneration to the extent of West Virginia's liability upon the indebtedness represented by those bonds.

By reason of the contract which her creditors have made with her, she has a further interest in maintaining this suit, viz., to obtain COMPLETE exoneration in respect to those unfunded bonds as to which she has been in no sense *released*, but can only be released by an adjudication of this court against West Virginia ascertaining West Virginia's aliquot liability on account of the said indebtedness.

(c) Nor is it true in any sense that Virginia has in any degree impaired her right to maintain this suit because she has agreed to turn over to her creditors entitled thereto the ratable proportion of any amount which she may obtain from West Virginia assignable to the holders of the unsatisfied obligations of the undivided State.

It cannot in any court of conscience impair a plaintiff's right to equity because her bill shows that it is her purpose to do equity.

Any recovery from West Virginia will, by the terms of Virginia's contract with the representatives of the creditors of the undivided State be ratably apportioned among all of the holders of the antebellum obligations of the original State, including Virginia as now constituted. The creditors other than Virginia will receive their *pro rata* share of such recovery in entire exoneration of Virginia, and Virginia will receive or retain the *pro rata* share of such recovery assignable to the obligations and evidences of indebtedness of the original State which she has paid in full, by way of equitable contribution to her.

It will be apparent from an examination of the contract between Virginia and the committee representing the certificates which she has issued, and which in turn represent the unsatisfied obligations of the undivided State, that, while the arrangements which Virginia has made with the common creditors or their representatives for her protection, and for their protection, with a view to their payment, and to her payment, and to her exoneration, enure alike to her benefit and to the benefit of the common creditors, West Virginia is not in the slightest degree prejudiced, nor are her interests or rights to any extent impaired by reason of any of these arrangements.

There were different stipulations in the certificates issued under the act of 1879, 1882, and 1892, in reference to the settlement of the

public debt of Virginia, but they do not impair Virginia's right to maintain this suit.

III.

With strange persistency counsel for West Virginia insist that jurisdiction has not been conferred upon this court by the judiciary clauses of the Federal Constitution over controversies between two or more States involving directly or indirectly a demand for the payment of money.

Their contention is that—

Jurisdiction imports power not only to decide, but to grant adequate relief, and—

That this court is powerless to give adequate relief to the plaintiff upon the case stated by her, and—

That therefore this court can have no jurisdiction of this cause.

We have shown in our brief, already filed, for the plaintiff that this question has been repeatedly adjudicated in this court, against defendant's contention, in cases so analogous to the case at bar that it is impossible to distinguish them upon any ground of principle as to this particular question.

But we have a further sufficient reply to make to this contention.

The proposition of opposing counsel rests upon the assumption that this court cannot give adequate relief.

That is not true. The court can give all the relief that is in the nature of things appropriate to the case and all that is prayed for by the bill.

It can cause the account between the two States to be stated and an ascertainment and an adjudication of the equitable proportion of the public ante-bellum debt of Virginia to be borne by West Virginia to be had, and upon confirming the report made by its master in chancery can, and will, adjudge and decree the amount which West Virginia is equitably bound to pay on account of the common indebtedness of the original State.

This, as is shown by the bill and pointed out in our former brief, not only will give Virginia adequate, but will accord her complete, relief, because it will operate to exonerate her from any further liability on acount of that indebtedness to the extent already plainly shown.

In further reply to this branch of argument of defendant's counsel, I beg leave to add to what has already been said upon that subject, that it has never been held by this court that no execution or

process could under any circumstances be issued upon any judgment against a State upon any pecuniary demand.

Whether strictly private property of West Virginia, property owned for profit and charged with no public trusts or uses, property owned for some commercial purpose, or owned just as an individual might own such property, would be liable to levy, attachment, or sale under an execution issued under a decree of this court, is a question which we hope will never arise and can never arise unless West Virginia shall fail or refuse to respect a decree of this court and to comply with its terms.

It will be time enough then for this court to decide what further action, if any, shall be taken in enforcement of its decree.

We frankly say that we at present know of no property of defendant which would be liable to levy or sale under any execution issued by this court, but it is not very difficult to conceive of a condition of things in which West Virginia might own property within the jurisdiction of this court which would be liable to be subjected for the satisfaction of a decree in this case. I fully concede that only such property as was not held by that State for governmental purposes and not charged with any public trust could be subjected for the satisfaction of a decree of this court; but there may be circumstances under which property charged with a special trust for the satisfaction of the very debt claimed here, or property not charged with any public trust, belonging to the State of West Virginia and held by her, just as a private individual might hold such property, might be liable to be attached for the satisfaction of a decree of this court in this cause.

Tried by the same principles which have controlled this court and the State courts in respect to judgments entered against municipal corporations, there can be no question that the fact that an effective execution cannot be issued upon the judgment does not invalidate the judgment.

2 Dill., Munic. Corp., 4 ed., sec. 576.
2 Dill., Munic. Corp., sec. 856.
Tiedman, Munic. Corp., sec. 212.

The execution is in no sense and under no circumstances an essential part of the judgment.

Freeman on Judgments, sec. 2, and cases cited.

Whether a defendant has or has not any property on which a

lawful execution could be validly levied does not at all affect the validity, though it may affect the value, of a judgment against him.

III.

I come now to consider the ground upon which Mr. Carlisle, the distinguished counsel for West Virginia who closed the oral argument of the case, seems in his brief and in his oral argument to mainly rely in his advocacy of the demurrers, though it is a ground not mentioned or suggested in either of the demurrers.

His contention is that by reason of the provisions of the alleged act of the General Assembly of Virginia, passed May 13, 1862, which were as follows:

> "That the consent of the legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, according to the boundaries and upon the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one,"

and of the provisions of section 8 of article VIII of the constitution of West Virginia, which is in the following words:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

a compact was created by which the legislature of West Virginia was constituted the sole tribunal to ascertain, adjudicate, and finally decide what was the equitable proportion of the public debt of the undivided State which West Virginia should assume and pay.

Upon this extraordinary contention counsel for the defendant seem now mainly to rest their case.

(*a*) We deny that the fact of such an alleged compact, not mentioned or suggested in the bill, can be relied on as ground of demurrer.

(*b*) We challenge the averment that any such act as the alleged

act of May 13, 1862, was ever passed by any legislature of the Commonwealth of Virginia, and we crave oyer of the act, if it is to be relied on.

(*c*) If the meaning and effect contended for by the counsel for the defendant could be fairly given to the terms of section 1 of the said alleged act of May 13, 1862, then Virginia has a right to insist, and does insist, that said act shall be at least reasonably, if not strictly, construed.

Under no fair construction of that act can it possibly have any such legal effect, even upon the violent hypothesis of counsel for the defendant, for the reason that the alleged consent and agreement of the Commonwealth of Virginia, as therein expressed, was predicated upon the admission of West Virginia into the Union under the provisions of the constitution for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, eighteen hundred and sixty-one, while the fact is that West Virginia never was admitted into the Union under that constitution, but was admitted under an amended constitution submitted to the people of West Virginia by an ordinance adopted by a convention thereof on the sixteenth of February, eighteen hundred and sixty-three, and pursuant to a further ordinance adopted by the said convention, entitled "An ordinance to provide for the organization of the State of West Virginia," passed February nineteenth, eighteen hundred and sixty-three, as will appear from the said constitution and ordinances of the State of West Virginia, published in the volume entitled "Constitution and Statutes of Virginia and West Virginia," printed pursuant to the act of the legislature of West Virginia passed February, twenty-sixth, eighteen hundred and sixty-six.

Non constat but that the consent of the legislature of Virginia would never have been given in manner and form as expressed in the alleged act of February thirteenth, eighteen hundred and sixty-two, if predicated upon the amended constitution, which was subsequently submitted to the people of West Virginia and received their sanction at the polls. This is by no means so strained a construction as that which counsel for the defendant would feign give to this act.

(*d*) But we deny utterly that by any fair or reasonable construction of the language of the first section of said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the provisions of the constitution proposed for the State of West Virginia by

the convention which met in the city of Wheeling on the 26th of November, eighteen hundred and sixty-one, the language of that section was ever by any possibility intended by the legislature of Virginia or understood by the convention or by the people of West Virginia, or by any rational human being, to be, or to operate as, a SUBMISSION to the legislature of West Virginia of the question of the amount and proportion of the common debt of the original State which it was equitable and just for West Virginia to assume and pay; or that that enactment was ever intended by Virginia, or understood by West Virginia, or by any one, to bind Virginia to accept and abide by such determination of that matter as might be made by the legislature of West Virginia, however capricious or unjust its judgment might be; or was ever intended or understood by either of the parties, or by anybody, to constitute the legislature of one of the parties to the present controversy a tribunal with plenary power and exclusive jurisdiction to determine and decide anything in respect to the common *ante-bellum* debt of Virginia which would be binding upon Virginia; and yet such is the contention of the learned counsel, unless we misapprehend the language of their briefs.

All that could be reasonably inferred from the language used in said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the proposed constitution of West Virginia, was that Virginia gave her consent to the creation of the State of West Virginia out of her territory under that constitution and that section 8 of article VIII of the proposed constitution was designed not to create any new contractual relation or obligation between Virginia and West Virginia, but to be, and operate as, a mandate from the people of West Virginia to the legislature of West Virginia, requiring that legislature to assume an equitable proportion of the public debt of the original State, and as soon as practicable to ascertain the same and to provide for its liquidation by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years, and that Virginia was willing that West Virgina should become a State of the Union under a constitution which contained those provisions and the other provisions expressed in the constitution as formulated and proposed prior to May thirteenth, eighteen hundred and sixty-two.

Reasonably construed, the purpose and effect of section 8 of article VIII was to place upon the new State an equitable proportion of the public debt of the old State and to require, and make it the

duty of, the legislature of the new State to provide for the payment of West Virginia's equitable proportion of that debt, so that the entire amount, interest and principal, should be extinguished and paid off within the period of thirty-four years.

Nearly forty-four years have elapsed, and yet West Virginia has done nothing; has paid not one cent of the interest or the principal of the debt; but, on the contrary, has repudiated every obligation imposed upon her by the stipulations of the Wheeling ordinance which constituted the essential condition of her political existence.

(*e*) But the entire conception and theory of opposing counsel upon this subject have been demolished by the fact that West Virginia has repealed and abrogated the constitution under which she was admitted into the Union, by the adoption of a new constitution in eighteen hundred and seventy-two, which new constitution contains no provision whatever requiring that State to assume an equitable proportion, or any other proportion, of the *ante-bellum* debt of Virginia, or requiring the legislature of that State to provide for the payment of any portion of that debt.

> See West Virginia Constitution, adopted in 1872; Code of West Virginia, 1887.

By her present constitution West Virginia ignores her obligation to pay any part of the debt, and if it had ever been true that anybody had ever attempted to constitute, or dreamed of constituting, the legislature of that State the supreme and ultimate arbiter between the two States as to the amount of the common debt which West Virginia should bear, West Virginia has not only failed and refused to discharge the duty as arbitrator, but she has actually abdicated any such function, duty, or power by repealing the constitution which counsel claim conferred such exclusive, supreme, and irreviewable jurisdiction upon her legislature.

IV.

The other points discussed in the briefs of defendant's counsel have been already anticipated and sufficiently met by the brief of counsel for Virginia already filed. A singular misapprehension of the language of the bill, and of the exhibits which constitute important parts thereof, has led counsel for the defendant into several errors of fact, two of which I deem it proper to notice. One is their contention that Virginia has ever made it a condition of any settle-

ment or negotiation with West Virginia that that State should assume one-third of the *ante-bellum* debt of Virginia.

It was a condition of the negotiation and settlement authorized to be made by the resolution adopted by the General Assembly of Virginia on the 6th of March, eighteen hundred and ninety-four (pp. 39-40 of the bill), that Virginia was not to be charged with or assume more than two-thirds of the debt of the original State already assumed and provided for by her as her equitable proportion thereof.

But even under that resolution there was no condition whatever as to what West Virginia was to pay. That was left wide open as a matter for negotiation and adjustment.

And by the act of March sixth, nineteen hundred, pages 41 and 42 of bill, beyond the shadow of a doubt, plenary power was conferred upon that commission, with the approval of the Attorney General, to make any settlement and adjustment with the State of West Virginia which it might be practicable to make, and which the commission and the Attorney General might approve, provided the creditors, as defined in the act, agreed to accept such amount as might be recovered from West Virginia as a full settlement of all their claims against the State of Virginia.

Another inaccuracy of statement by opposing counsel, founded upon a like misapprehension, is that Virginia has submitted *any ultimatum* to West Virgina, or has made as a condition of an amicable adjustment with West Virginia, or of a negotiation or accounting with West Virginia looking to such amicable adjustment, any condition that West Virginia should assume and undertake to pay any particular portion of the common debt or any sum whatever and particularly are the counsel for the defendant in error upon this point as to the last effort made by Virginia to bring about an amicable settlement, as will be seen from an examination of the address of Mr. Randolph Harrison, made on behalf of the Virginia Debt Commission before the joint committees on finance of the West Virgina legislature on the first of Feruary, nineteen hundred and five, and printed on pages 66-80 of the bill.

Among other things of interest to this cause and to the questions now submitted to the court which will be found in that admirable address, Mr. Harrison, on page 76 of the bill, said:

> "We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of

> the account will show; if it shows that West Virginia is not liable for any amount, that will end the matter. We only ask that your State will, through the proper authorities, unite with Virginia in stating the account between the two States in order that the question of her liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises."

I beg leave to commend the statement of Virginia's case, as made in that address, to the attention and consideration of the court. Its perusal will most conclusively demonstate to this court the rightfulness and righteousness of the cause of action stated in the bill.

Respectfully submitted.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

MARCH 14, 1907.

THE COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA.

REPLY BRIEF TO THE BRIEFS OF DEFENDANTS ON THE DEMURRER.

In the brief of Mr. Carlisle there appears, for the first time, the suggestion that this court cannot take jurisdiction of this case, because of a COMPACT alleged to have been entered into between the two States of Virginia and West Virginia, by which the question of the liability of West Virginia to Virginia on account of the public debt of the parent Commonwealth of Virginia was submitted to the arbitrament and award of the legislature of West Virginia.

The facts which it is claimed constitute such compact are as follows, viz.:

(1) That the constitution under which the State of West Virginia was admitted into the Union on June 20, 1863, contained the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and *the legislature shall ascertain the same as soon as may be practicable* and provide for

the liquidation thereof by a sinking fund to pay the accruing interest and redeem the principal within thirty-four years."

(2) That on May 13, 1862, the legislature of (restored) Virginia passed an act entitled "An act giving the consent of the legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State;" that by said act the consent of the legislature was given to the erection of the proposed new State "according to the boundaries *and under the provisions set forth in the constitution for the said State of West Virginia*, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

(3) That the State of West Virginia was admitted into the Union on the 20th day of June, 1863, under the constitution framed by its convention, approved by the State of Virginia and the Congress of the United States. "And thus the consent of that body was given to all the provisions of the agreement and it became a legal and constitutional compact between the two States."

(Mr. Carlisle's Brief, page 36.)

To this suggestion of a "compact" between the two States we have to say in reply:

1. That this is not among the grounds assigned in the formal demurrer heretofore filed in this cause, but is set up for the first time in the brief of Mr. Carlisle, and is again relied on in the brief of the Attorney General of West Virginia, subsequently filed.

2. That it is not a ground proper to be considered on demurrer, because it involves alleged facts which do not form any part of the case stated in the bill, viz., the fact that on May 13, 1862, the legislature of Virginia, by an act regularly passed, by a legislature duly assembled, consented to the erection of the new State of West Virginia "within the jurisdiction of this State." Not only is this alleged act not stated or admitted in the allegations of the bill, but it nowhere appears in the record of the case, nor is it set forth even in the briefs of counsel.

3. That the Commonwealth does not admit, but is prepared to deny, when opportunity is afforded it, that any such valid, constitutional act was ever passed by the legislature of Virginia, but that a demurrer affords no such opportunity to complainant to traverse the allegation of the existence of such act or of showing its non-existence.

4. That the existence and consequent effect of such an act should be asserted by a plea, to which replication might be made, or by answer, to which denial might be opposed, and thus an issue presented to which proper proof might be directed.

5. That from the official publications of the acts of assembly of the (restored) State of Virginia it distinctly appears that the regular session of that body adjourned *sine die* on February 13, 1863; that the constitution of the (restored) State of Virginia provides that extra sessions of the legislature may be convened only upon a proclamation of the governor of the Commonwealth calling the same; that while it does appear that the members of the General Assembly did assemble and were in session on the 13th of May, 1863, it does not appear from the proceedings of that body in the officially published journals of its proceedings that it had been called to meet by the proclamation of the governor.

6. That the constitution adopted by the convention of West Virginia, which assembled at Wheeling on the 26th of November, 1861, was not the constitution which was approved by Congress and under which the State of West Virginia was admitted into the Union, but, that that Congress did refuse to admit the State into the Union under that constitution until the same was amended in certain indicated particulars, and the said constitution was accordingly so amended.

7. That even assuming all the facts relied on as constituting such a compact to be established, yet the conclusion deduced therefrom is fallacious and unsound, in this, viz., that the provision of the constitution of West Virginia that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *shall be assumed* by this State, *and the legislature shall ascertain the same* as soon as practicable, and provide for the liquidation thereof," &c., does not import or mean that there was conferred upon the legislature power to adjudicate the fact or the amount of such "equitable proportion," or that there was lodged in the legislature any discretion whatever in the matter of such ascertainment.

In construing this provision of a constitution we must have regard to the subject-matter and the policy and purpose of the framers as disclosed by the instrument in all its parts. Here was a new State, about to be formed within the jurisdiction of an old State. That old State had, on August 20, 1861, just three months before,

by an ordinance, provided "for the formation of a new State out of the portion of the territory of this State," and it had by the same ordinance declared that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of this debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the new State during said period."

It is impossible to suppose that the new State should not have had this in mind when it framed its own constitution, and that when it provided that its legislature "shall ascertain the same as soon as practicable" it referred to the method of ascertainment prescribed by the Virginia convention in the very ordinance which provided for the creation of the new State. It seems to be at least reasonable to recognize that the ordinance of the Virginia convention and the provision of the West Virginia constitution should be taken as being *in pari materia* and construed together. It would then follow that what was meant by the expression the legislature "shall ascertain" was that the legislature should learn as soon as practicable the result of the method prescribed by the Wheeling ordinance, and then provide for the liquidation of the amount so ascertained.

It is simply preposterous to suppose that Virginia ever agreed to submit the matter of West Virginia's indebtedness to the arbitrament and award of West Virginia herself.

It should be enought to utterly repel this suggestion of a "compact" to inquire why, if such "compact" ever existed, in all the forty-three years that have elapsed since it was entered into, West Virginia has never, through her succession of governors, legislatures, and attorneys general, indicated and announced that it was upon such "compact" that she stood, and that to its terms and provisions she would hold Virginia, and why, through that long period, no step has ever been taken by West Virginia, through her legislature, to enter upon the performance of the duty which such "compact" imposed, or to notify Virginia that she stood ready and willing to enter upon such duty.

The suggestion that the case of Virginia *vs.* West Virginia, decided by this court thirty-six years ago, had restrained her from so

doing is scarcely creditable to the intelligence of the inventor of that excuse.

Again, it is suggested in the briefs of demurrants, and was urged in oral argument, that Virginia had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on January 1, 1861.

The grounds relied on to support this suggestion were indicated as follows, viz:

(1) That by the terms and provisions of the act of the General Assembly of Virginia of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt" (Record, p. 13), and the acceptance thereof by the holders of the bonds of the Commonwealth, such holders released Virginia from all liability to them on account of the original public debt existing on January 1, 1861, and for which West Virginia was bound with Virginia, and they created with Virginia a new debt, evidenced by the new bnds of Virginia, for two thirds of the amount of the old bonds, and accepted from Virginia a certificate showing that for the remaining one-third of such amount they would look for their payment only to such funds as might thereafter be obtained from West Virginia in satisfaction of her contributive share of the old public debt.

For reply to this ground we refer to the act itself. Its preamble fully recites its purpose. Its terms and provisions are contrived to strictly carry that purpose into effect. The third section of the act (Record, p. 14) shows that the bonds surrendered by the holders were not surrendered for cancellation and extinguishment of the obligations, save as to two-thirds of the amount of each bond so surrendered, and that as to the remaining one-third, which was estimated to be the amount of West Virginia's just and equitable proportion of the common debt, "the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees." The bonds, as to such one-third, could not be "canceled" and at the same time "held in trust for the holder of his assignees." Virginia, by giving her new bond to take the place of the old bond, cannot be held to have paid her debt, but only to have substituted one security or evidence for another. A creditor, by surrendering an old bond and accepting a new one for the same debt from the debtor, has not received payment or satisfaction of the debt, unless such was the plain intention of the parties. The act itself as well as the certificate issued under it (Record, p. 72) show that such was not the intention.

(2). That by the act of the General Assembly of Virginia of March 28, 1879 (Record, p. 16), it was expressly provided, in the seventh section (Record, p. 19), "The acceptance of the said certificates for West Virginia's one-third, *issued under this act*, shall be taken and held as a full and absolute release of the State of Virginia from all liability *on account of the said certificates.*"

Observe, the release of Virginia is not from her liability on account of the old bonds surrendered by the holder. These old bonds still are to remain, so far as the unfunded one-third of their amount, held in trust for the holder, but the release here provided for is expressly "on account of these certificates," by which was plainly meant that Virginia would not recognize these certificates as creating any distinct and substantive evidence of indebtedness on her part. They should not be construed to be causes of action against her. The holder, by surrendering his bond to be held in trust for him by Virginia did thereby agree to await the result of Virginia's efforts to obtain from West Virginia the amount of her "just and equitable proportion of the public debt," which amount Virginia solemnly dedicated to the satisfaction *pro rata* of the one-third for which the bonds were held in trust by her. This provision in the seventh section of the act was designed to preclude the idea that these certificates created a new and distinct liability of Virginia. The previous language of the seventh section is—

> "The owners of all classes of bonds mentioned in this act, and who shall not yet have received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, *shall receive certificates of a like character to those issued under the act of March 30, 1871, when they make such exchange,*" &c.

We have seen that the certificates issued under the act of March 30, 1871, declared on their face (Record, p. 72) that "the State of Virginia holds said bonds so far as unfunded in trust for the holder thereof or his assignees, and these certificates, issued under this act of 1879, were to be of "like character." It is manifest, then, that under the act of 1879 there was no release by the bondholders of the liability of Virginia on the bonds surrendered to Virginia and held by her in trust for the holder as to the one-third.

(3) That under the act of February 14, 1882, entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds

covering the same, and the regular and prompt payment of interest thereon" (Record, p. 21 *et seq.*), Virginia obtained a release of liability from the bondholders.

This was the act passed by the repudiating legislature, under the malign influence of the Mahone-Riddleburger reactionaries. This act was the fruitful source of all the litigation that so long disturbed the patience of this court, from Hartman *vs.* Greenhow, 102 U. S., 877, down through many years. By section 6 of this act (Record, p. 28) the form of a certificate was prescribed, which recites that "Virginia has this day discharged her equitable share of the — bond, * * * leaving a balance of — dollars * * * to be accounted for by the State of West Virginia, without recourse upon this Commonwealth."

Now this certificate does not even purport to be a contract on the part of the bondholder, nor does the act itself purport to alter, amend, or repeal the former acts. It was a mischievous attempt, conceived in wicked folly and wrought out in ignorance, to repudiate the public debt. It could operate only prospectively, and but few of the bonds remained at the date of its enactment on which it could operate. Whatever its purpose and intent were, it could have no sort of effect on the relations then existing between Virginia and West Virginia nor between Virginia and those of her creditors who had already surrendered their bonds and received the certificates.

That by the act of February 20, 1892, entitled "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of" [the preceding act], Record, p. 31,) Virginia was released. This was the first of a series of acts looking to the employment of a commission or committee as an instrumentality through which an arrangement might be made with all the holders of the bonds of every description issued by Virginia, whether funded or unfunded, under which all such bonds and the certificates issued in connection therewith might be assembled and united action taken by them with and through Virginia to obtain a final settlement of West Virginia's liability for her share of the public debt, the recovery of the amount of such liability, and the payment thereof to Virginia and the distribution by Virginia of such amount among the persons entitled thereto.

This was followed by the act of March 6, 1894 (Record, p. 39), and the act of March 6, 1900 (Record, p. 41).

On page 43 of the record appears the "Report of the commission appointed and acting under the joint resolution of the General As-

sembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia, and known as Virginia deferred certificates."

This report is contained between pages 42 and 82 of the record. It shows all that was done by the Virginia Debt Commission and the bondholders' committee in obtaining concurrent action on the part of the creditors; it shows the scrupulous and intelligent care taken by the General Assembly of Virginia in requiring that a large majority of such creditors should unite in their demands before the Commonwealth would take decided action; it required that an open, public, formal, and earnest request should be made upon West Virginia to come into a friendly settlement of these matters before any resort should be had to the courts for redress; it shows the extreme care taken by the Attorney General of Virginia to see that he was invested with full authority, and that all the conditions precedent to its exercise had been fully performed before he would institute the proceedings provided for in the acts; it shows, too, the address made by the Virginia Debt Commission to the legislature through their spokesman, Mr. Randolph Harrison (Record, p. 66), in which are the full history of the debt, the legislation had thereon, the repeated efforts made by Virginia to induce West Virginia to come into a friendly settlement, the sanction of law on which Virginia relied to support her demand, and the unpleasant consequences that must ensue in the event of West Virginia's persistent refusal to make a settlement.

The address was received with respectful silence, and it is of consequence to note that although it was heard by the assembled body of the legislative committees of West Virginia's intelligent legislature, that not then, or at any time since, as at no time in the long period that had passed, was any intimation given, or ground of refusal to the invitation urged, that West Virginia would not enter upon the proposed settlement because a COMPACT had been entered into between the two States, and which still subsisted, by which that very legislature had been chosen as the final arbitrator of the very matter as to which Virginia was asking a settlement.

HOLMES CONRAD,
Of Counsel for Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Decision Overruling the Demurrer.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

ORIGINAL NO. 7.

COMMONWEALTH OF VIRGINIA
vs.) *In Equity.*
STATE OF WEST VIRGINIA.

[May 27, 1907.]

This is a bill filed, on leave, February 26, 1906, by the Commonwealth of Virginia against the State of West Virginia.

The bill averred that—

"On the first day of January, 1861, complainant was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

"In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

"The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

"(2) That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped

stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio River, that the Commonwealth of Virginia, in the first quarter of the Nineteenth Century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio River, since the first day of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

"(3) The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvements, in a very large measure for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropri-

ations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been a fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

"4. The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

"5. On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the 'Restored State of Virginia,' and will be hereafter referred to in this bill as the 'Restored State.'

"6. On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to 'provide for the formation of a new State out of the portion of the territory of this State;' Section 9 of which ordinance was as follows, to-wit:

'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the

ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'

"7. On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

"8. Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

'That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the

said board of public works, or of any person or persons, for the use of this state.'

'That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.' "

Complainant charged "that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definately to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

"9. And by a further act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

'1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

'2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.'

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

"10. The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

"By Section 5 of Article VIII. of said Constitution it was provided:

'5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability to the State, to suppress insurrection, repel invasion, or defend the State in time of War.'

"And by section 7 of Article VIII. it was provided:

'7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.'

"And by section 8 of Article VIII. it was provided:

'8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'

"At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any 'public debt' or 'previous liability,' except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt 'except to meet casual deficits in the revenue, to redeem a previous liability of the State,' &c., and there was not and could not have been any such 'previous liability,' except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized the sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

"11. After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virgina and the State of West Virginia, respectively,

to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

"12. The efforts looking to a settlement by the concurrent action of the two States having proved abortive and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

"The first of these was made by the General Assembly which was chosen at the close of the period of 'destruction and reconstruction,' which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

"The purpose of the representatives of the Commonwealth, then just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

"By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

"It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

"13. As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-one Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

"It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution toward the

settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

"It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

"A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

"14. By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

"Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

"Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

"15. All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill,

except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

"16. Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

"For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

"17. In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

"18. Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

'First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Com-

monwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

'Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

'Third. The State of West Virginia has further, by the repeated enactments and joint resolutions of her legislature, recognized her liability for a just proportion of this debt.

'Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property amounting in value to many millions of dollars, and held and enjoyed the same, but upon express condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

'Fifth. While the transfer of this property, real and personal, and also certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of 'The Restored Government of Virginia,' there were in fact represented in said 'Restored Government' and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.'

"19. The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: 'A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,' approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

"Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

"The efforts made by this Commission, acting under the above

resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled 'An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,' the purpose of which Act is sufficiently set forth in its title, and a copy of the act will also be hereinafter shown as one of the exhibits herewith filed.

"20. The Commission acting under said last mentioned act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill."

21. Enumerates exhibits attached to the bill and prayed to be regarded as part thereof.

22. The bill prayed: "Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between

the two States; that this Court will adjudicate and determine the amount due your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet."

Attached to the bill were the numerous exhibits referred to.

The State of West Virginia demurred and assigned special causes as follows:

"First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

"Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

"Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

"Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

"Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia, in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

"Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

"Seventh. That the allegations in the said bill are not sufficient

to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

"Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

Hearing on the demurrer was had March 11, 12, 1907.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The ninth section of the ordinance adopted by the people of the Restored State of Virginia in convention assembled in the city of Wheeling, Virginia, on August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . . ."

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3 and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt and hereafter the State shall not become a stockholder in any bank." . . .

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the original debt of the original State of Virginia and liability for the money and property of the original State, which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore, invoked by Virginia to procure a decree for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court, and because the court has no power to enforce and therefore none to

render any final judgment or decree herein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia,* 6 Wheat. 264, 378, 406; *Kansas* v. *Colorado,* 185 U. S. 125; *Kansas* v. *Colorado,* May 13, 1907, 206 U. S. p. ; *Missouri* v. *Illinois,* 180 U. S. 208; *Same case,* 200 U. S. 496; *Georgia* v. *Copper Company,* May 13, 1907, 206 U. S. p. ; *United States* v. *Texas,* 143 U. S. 621;. *United States* v. *North Carolina,* 136 U. S. 211; *United States* v. *Michigan,* 190 U. S. 379.

In *Cohens* v. *Virginia,* the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and the citizens of another State,' 'and between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was no reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited, and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan*, *supra*, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provision: "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by the State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling

on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, Wast Virginia has never indicated that she stood upon such a compact, and, if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount of two-thirds of the total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds so far as unfunded in trust for the holders or their

assignees to be paid by the funds expected to be obtained from West Virginia as her "just and equitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds to Virginia, satisfied as to two-thirds, and held as security for the creditors as to one-third. We do not care to take up and discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado*, 185 U. S. 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackey*, 1 Mylne & Craig, 603, that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been often affirmed in this court. *Oliver* v. *Piatt*, 3 How. 333, 411; *Gaines* v. *Relf*, 2 How. 619, 642. But we do not mean to rule that the bill is multifarious. It is true that the prayer contains, among other things, the request, "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the interest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public debt of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia*, 17 How. 491, 492; *California* v. *Southern Pacific Company*, 157 U. S. 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term.

APPENDIX.

APPENDIX.

A convention of the people of Virginia met in the City of Wheeling on Thursday, June 13th, 1861, and on the 20th day of August, 1861, this convention adopted an ordinance entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State."

This ordinance provided for an election by the voters of certain counties therein named upon the question whether the new state should be formed or not and also for the selection of delegates to a constitutional convention which was to be held, if a majority of the votes cast therein was in favor of the new State. The ninth and tenth sections of this ordinance are as follows:

> "9. The new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the state of Virginia.
>
> "The lands within the proposed state, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants, issued by the proposed state, shall interefere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed state now liable thereto."
>
> "10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an

official copy of such constitution, with the request that the said new state may be admitted in the union of states."

CONSTITUTIONAL CONVENTION.

The election provided for in the ordinance of the 20th of August, 1861, was had and a majority of the people voted for the formation of the new State and elected delegates to a constitutional convention, which met in Wheeling in November, 1861. This convention adopted a constitution, and the following are sections five, seven and eight of article eight of that instrument:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full."

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

An ACT giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood,

Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union.

4. This act shall be in force from and after its passage.

An Act for the Admission of the State of West Virginia into the Union, and for other purposes.

Whereas the people inhabiting that portion of Virginia known as West Virginia did, by a convention assembled in the city of Wheeling on the twenty-sixth of November, eighteen hundred and sixty-one, frame for themselves a constitution with a view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid on the third day of May last, the said constitution was approved and adopted by the qualified voters of the proposed State; and whereas the Legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new state within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to-wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor,

Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and whereas both the convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State. Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia be, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the House of Representatives of the United States: *Provided, always*, That this act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said constitution by striking out the same and inserting the following in its place, namely: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore

SEC. 2. *Be it further enacted*, That whenever the people of West Virginia shall, through their said convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the convention may provide, make, and ratify the change aforesaid, and properly certify the same under the hand of the president of the convention, it shall be lawful for the President of the United States to issue his proclamation stating the

fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.

APPROVED, December 31, 1862.

AN ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the state of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this state, or the president and directors of the board of the literaty fund, or the board of public works thereof, or in any person or persons, for the use of the state to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this state or the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the state in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed state of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the state, or by the board of public

works, or the president and directors of the board of the literary fund, in any bank, bridge or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroads, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the state, railroad or express companies or other persons before or since the reorganization of the state government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, license tax, assessed in the counties aforesaid, and due the state for the year eighteen hundred and sixty-three, in the hands of officers of the state or individuals, together with all the rights of the state, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the state or corporations for the use of the state, shall be the property of the State of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the state, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the state of West Virgina, when the same shall become one of the United States.

4. Be it further enacted. For the purpose of carrying this act into effect, that suits may be brought in the name of the commonwealth for the use of the state of West Virginia, when it becomes

one of the United States on any bond or claim which shall pass to or become the property of the state of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer and the adjutant general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the state of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said state of West Virginia.

7. This act shall take effect when the proposed state of West Virgina shall become one of the United States.

An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars, be, and is hereby appropriated to the state of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

2. Be it further enacted, That there shall be, and hereby is ap-

propriated to the said state of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said state of West Virginia shall become one of the United States; provided, however, that when the said state of West Virginia shall become one of the United States, it shall be the duty of the auditor of this state, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said state of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state.

3. Be it further enacted, That the act passed May fourteenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the State of West Virginia, be, and the same is hereby repealed.

4. This act shall be in force from passage.

Legislature of 1867.

On the 25th day of January, 1867, Governor Arthur I. Boreman sent to the legislature a communication, dated on January 20, 1867, from Governor F. H. Pierpoint, of Virginia, together with a certain joint resolution adopted by the General Assembly of Virginia on the 28th day of February, 1866, in reference to the re-union of the States of Virginia and West Virginia and the adjustment of the public debt, and appointing Mr. A. H. H. Stuart, Mr. William Martin and Mr. John Janny as commissioners to proceed to the seat of government of West Virginia, and giving them authority to treat with the authorities of West Virginia on both subjects. On the 28th day of February, 1867, the legislature of West Virginia adopted the following joint resolution, to-wit:

Senate Joint Resolution No. 19. "To provide Commissioners to treat with the authorities of Virginia in regard to the public debt of that State:"

Whereas, the General Assembly of Virginia, on the twenty-eighth day of February, 1866, adopted a series of resolutions deeply lamenting the dismemberment of the "Old State," and declaring a

sincere desire to establish and perpetuate the reunion of the States of Virginia and West Virginia, and appealing to their brethren of West Virginia, to concur with them in the adoption of suitable measures of co-operation in restoration of the ancient Commonwealth of Virginia, with all her people and up to her former boundaries, and further providing for the appointment of three Commissioners with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries, and further empowering said Commissioners to treat with the authorities of the State of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State;

And whereas, Commissioners have been appointed on the part of the State of Virginia pursuant to, and for the purpose named in the resolutions aforesaid;

And whereas, the citizens of West Virginia deeply regret the civil strife, (for which they are in no way responsible) in the midst of which they secured their State organization, yet they regard their separate State existence of the most vital importance to them, and have no purpose or intention whatever, of reuniting with the State of Virginia;

And whereas, the citizens of this State are not only willing but deeply anxious that a prompt and equitable settlement should be made between the State of Virginia and West Virginia, and they greatly regret that the State of Virginia has interposed a difficulty by the institution of a suit against this State, to recover jurisdiction over the counties of Berkeley and Jefferson, which they fear will delay such settlement; Therefore,

Resolved by the Legislature of West Virginia:

1. That the people of this State are unalterably opposed to a reunion of this State with the State of Virginia, and will not entertain any proposition looking to that end.

2. That so soon as the suit of Virginia against this State, now pending in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson has been finally disposed of, the Governor of this State appoint three Commissioners on the part of this State to treat with the Commissioners appointed by the State of Virginia upon the adjustment of the public debt of said State as provided in Section IX of "An ordinance to provide for the formation of a new State," adopted by a

convention of the people of Virginia on the 20th day of August, 1861, and in Section VIII, of Article VIII of the Constitution of West Virginia, and report their action to the Governor, to be by him communicated to the Legislature of this State for their approval or disapproval.

Legislature of 1870.

Governor William E. Stevenson in his message on the 18th of January, 1870, called attention to the resolution of February 28th, 1867.

On the 24th day of February, 1870, Gov. William E. Stevenson transmitted to the Legislature of West Virginia, then in session at Wheeling, a communication from Gilbert C. Walker, then Governor of the Commonwealth of Virginia, enclosing an act entitled "An Act for the adjustment of the public debt with the State of West Virginia," which had been passed by the General Assembly of Virginia on the 18th day of February, 1870

On the 28th day of February, 1870, the Governor of West Virginia transmitted to the Legislature of West Virginia a communication from Messrs. William J. Robertson, W. T. Sutherlin and P. H. Aylett, commissioners appointed on the part of Virginia with reference to the settlement of the public debt of Virginia.

On the 1st day of March, 1870, the Legislature adopted the following joint resolution:

Joint Resolution raising a Joint Committee to confer with the Commissioners appointed by the State of Virginia, to adjust the Public Debt with the State of West Virginia.

WHEREAS, The State of Virginia, by act approved February the eighteenth, eighteen hundred and seventy, provided for the appointment of three commissioners to treat with the authorities of the state of West Virginia upon the subject of a proper adjustment of the public debt of the state of Virginia; and

WHEREAS, The governor by a communication dated February twenty-fourth, eighteen hundred and seventy, notified the legislature of the passage of the above recited act; and

WHEREAS, The governor on the twenty-eighth of February, eighteen hundred and seventy, notified the legislature that said commissioners, on the part of Virginia, had been appointed, and are now in the city of Wheeling for the purpose of carrying said act, above recited, into effect, therefore,

Resolved by the Legislature of West Virginia, That a joint committee of two upon the part of the Senate and three upon the part of the House of Delegates, be appointed by the presiding officers of their respective bodies, to confer with said commissioners, and report to this legislature the result of said conference.

2. All communications connected with said commission are hereby referred to said committee.

On the part of the Senate, Henry G. Davis and William I. Boreman were appointed.

On the part of the House, John J. Davis, Henry Brannon and Francis H. Pierpoint were appointed.

Joint Resolution adding two members to the joint special committee to confer with the Virginia commissioners.

Resolved by the Legislature of West Virginia, That Daniel Lamb, on the part of the house, and one member on the part of the senate, be added to the joint special committee, to confer with the commissioners of Virginia, in relation to the Virginia state debt.

ADOPTED March 1, 1870.

The additional member on the part of the senate was J. D. Ramsdell.

So far as the journals of the House and Senate of the session of 1870 show, no report was made by this committee.

On the 3rd of March, 1870, the following resolution was adopted:

Joint Resolution relating to the adjustment of the public debt with the commissioners appointed for the purpose by the State of Virginia.

Resolved by the Legislature of West Virginia, That the governor appoint three resident citizens of this state, one from each congressional district, to treat with the authorities of the state of Virginia on the subject of a proper adjustment of the public debt of that state, due or incurred prior to the first day of January, eighteen hundred and sixty-one, and a fair division of the property belonging to that state on that day; and make report thereof to this legislature for its approval or disapproval at its next regular session, with the facts and documents upon which their report is founded. Provided, that nothing herein contained shall be construed as waiving or impairing in any way the rights of this state to jurisdiction over the counties of Berkeley and Jefferson.

2. The commissioners so to be appointed shall proceed without

delay in the execution of their duties, and as compensation for their services, shall receive six dollars per day for the time actually employed therein, and the same mileage as that allowed to members of the legislature.

Legislature of 1871.

Gov. William E. Stevenson in his message to the Legislature of 1871 discussed at length the Virginia debt proposition and explained the reasons why no report was made under the above resolution and submitted the matter again to this Legislature.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution:

Joint Resolution authorizing the appointment of commissioners to treat with the state of Virginia on the subject of the state debt.

Resolved by the Legislature of West Virginia:

1. That the governor, on or after the fifteenth day of March, 1871, appoint three disinterested citizens of this state to treat with the authorities of the state of Virginia on the subject of a proposed adjustment of the public debt of that state prior to the first day of January, 1861, and make report thereof to the governor, to be printed and communicated by him to the legislature, at the commencement of its next session, for approval or disapproval.

2. The commissioners so to be appointed are further directed to ascertain and report the amount of said debt then held by persons other than the state of Virginia, and what said debt was incurred for, and what amount of this state debt was then held by the commissioners of the sinking fund and by the board of the library fund; that they ascertain and report the amount of all investments then held by the state, their respective amounts and character, and what portions thereof were then productive, and the dividends therefrom, and whether any of such investments then so held by said state have since been donated, changed, converted or disposed of by the authorities of said state, and if so, the amount and how disposed of; that they ascertain and report the revenue derived for the fiscal year ending on the thirtieth of September, 1860, from all sources, by the state of Virginia, within the present territory of Virginia, and the amount derived from all sources from the territory now composing the state of West Virginia; and that they report any other relevant matter deemed proper by them.

3. The commissioners so to be appointed shall proceed without

delay in the execution of their duties, and as a compensation for their services shall each receive six dollars per day for the time they or any one or more of them may be actually employed therein, and the same mileage as that allowed to the members of the legislature, and may employ such accountant or clerk, at a reasonable compensation, as they may deem necessary: and the governor shall have the power to remove any one or more of the commissioners, and fill any vacancy that may occur from removal, death or failure to act.

4. Nothing herein contained shall be construed as waiving or impairing in any way the rights of this state to jurisdiction over the counties of Berkeley and Jefferson.

5. That the foregoing resolutions be communicated by the governor to the governor of Virginia.

ADOPTED, February 15, 1871.

On the 15th day of February, 1871, the Legislature adopted the following joint resolution:

STATE OF WEST VIRGINIA,
EXECUTIVE DEPARTMENT
Charleston, February 17, 1871.

Gentlemen of the Senate:

I have the honor herewith to transmit a certified copy of a Joint Resolution, adopted by the General Assembly of Virginia, and approved February 11, 1871, tendering to West Virginia an arbitration for the apportionment of the public debt, which I this day received from His Excellency the Governor of Virginia. The resolution is accompanied by a letter from His Excellency, addressed to the Governor and Legislature of West Virginia, which I also respectfully communicate.

W. E. STEVENSON,
Governor.

COMMONWEALTH OF VIRGINIA,
EXECUTIVE CHAMBERS,
Richmond, February 10, 1871.

To His Excellency, the Governor, and General Assembly of West Virginia:

In pursuance of the authority vested in the Governor by a Joint Resolution passed by our General Assembly, and approved on the fourteenth day of February instant, entitled "Joint Resolution

tendering to West Virginia an arbitration for the apportionment of the public debt," an authenticated copy of which is hereto attached, I, Gilbert C. Walker, Governor of the Commonwealth of Virginia, on behalf of said Commonwealth, do hereby tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt, contracted by the State of Virginia prior to January 1, 1861," upon the conditions in said Joint Resolution specified, viz: Each State to select two arbitrators, not residents thereof, and the four thus selected to appoint an umpire, if they shall deem it advisable, and the arbitrators and umpire thus chosen, to proceed, as soon as practicable, to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt should be paid by West Virginia, and what part thereof should be paid by the State of Virginia: each State being represented by counsel if desired. The sole duty of the arbitrators and umpire will be to ascertain the amount of the public debt which each State ought justly to assume and pay.

It is earnestly hoped that the State of West Virginia will promptly accept this fair and equitable mode of adjustment of the public debt, to the end that the question involved may be speedily, satisfactorily and finally settled.

I have the honor to be, very respectfully, your obedient servant,

G. C. WALKER,
Governor of the Commonwealth of Virginia.

JOINT RESOLUTION.

Tendering to West Virginia an arbitration for the apportionment of the public debt.

(Approved February 11th, 1871.)

WHEREAS, The constitution of both Virginia and West Virginia impose upon the respective legislatures of said States the duty to provide by law, for the adjusting between them the proportion of the public debt, contracted prior to the first of January, 1861, proper to be borne by each of said States; and

WHEREAS, It is essential to the financial interests of Virginia

that said settlement should be obtained as soon as practicable, therefore

Be it Resolved by the General Assembly of Virginia:

That the Governor of this Commonwealth be, and he is hereby, authorized to tender to the State of West Virginia an arbitration of all matters touching a full and fair apportionment between said States of the public debt, and in the event of the acceptance of such offer of arbitration by West Virginia, then the Governor, Lieutenant Governor, President of the Court of Appeals, Auditor of Public Accounts and the Secretary of the Commonwealth shall appoint two arbitrators on the part of this State, who shall not be citizens of this State, to meet any two arbitrators selected by West Virginia, not citizens of said State.

The arbitrators so appointed shall, if they deem it advisable, appoint an umpire. Said arbitrators and umpire shall, as soon as practicable, proceed to adjust, award and decide upon fair, just and equitable principles what proportion of said public debt shall be paid by West Virginia, and what part thereof shall be paid by this State. Said apportionment, when ascertained and made, to be reported by said arbitrators to the Legislatures of said States, to enable them to carry out such award or apportionment by appropriate legislation.

Each State may be represented by counsel, and the board hereby directed to appoint the arbitrators for Virginia shall be, and are hereby, authorized to draw on the Treasury of the State of Virginia, out of any money not otherwise appropriated, a sum sufficient to defray the necessary expenses of this arbitration on the part of Virginia.

A copy.

(Signed) J. BELL BIGGER,

Clerk of House of Delegates and Keeper of the Rolls of Virginia, February 11, 1871.

On the same day the Legislature adopted the following joint resolution:

"Senate Joint Resolution No. 19, 'Raising a Joint Special Committee to consider the communication from the Governor of Virginia, concerning the proposed arbitration of the debt between Virginia and West Virginia.'"

"*Resolved by the Legislature of West Virginia:*

"That a Joint Special Committee of three on the part of the House of Delegates, and two on the part of the Senate, be appointed to consider and report on the communication from the Governor of Virginia, concerning the proposed arbitration of the public debt between Virginia and West Virginia."

On the part of the Senate, Mr. Henry G. Davis and Mr. George Koonce were appointed as members of such committee, and on the part of the House, Mr. James M. Jackson, Mr. James H. Ferguson and Mr. George C. Sturgiss were appointed as members of such committee.

On the 20th day of February, 1871, this special committee made the following report:

"*To the Legislature of West Virginia:*

"The Joint Special Committee, to whom was referred the special message of the Governor of the State, enclosing a Joint Resolution of the General Assembly of Virginia and the communication of the Governor of said State, tendering to West Virginia an arbitration for the apportionment of the public debt of Virginia contracted prior to the first of January, 1861, have had the same under consideration and submit the following

REPORT:

"The Legislature, by Joint Resolution No. 21, passed February fifteenth instant, having conferred upon the Governor authority, and instructed him to appoint three disinterested citizens of this State to treat with the authorities of the State of Virginia, on the subject of a proper adjustment of the public debt of that State, prior to the first day of January, 1861, and the authorities of the State of West Virginia having ever evinced a sincere desire to adjust and settle at the earliest practicable moment, the proportion of said debt proper to be borne by each of said States, and the Committee believing that the citizens of the respective States would of necessity be more familiar with the circumstances attending the creation of said debt and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable adjustment and apportionment of the same between said States, recommend that said tender of arbitration by arbitrators and umpire not citizens of either State, be respectfully

declined; and that the said State of Virginia be invited to appoint three disinterested citizens of that Commonwealth as Commissioners, with authority to treat with like Commissioners to be appointed under said Joint Resolution No. 21, on behalf of this State, with power to adjust, award and decide upon fair, just and equitable principles, what proportion of said debt should be paid by each of said States, subject to the ratification and approval of the General Assembly of Virginia and the Legislature of West Virginia; and to carry out the objects herein stated; the Committee recommend the adoption of the following:

"Senate Joint Resolution No. 21, 'Providing for the settlement of the debt between Virginia and West Virginia.'"

"WHEREAS, The Legislature of West Virginia in discharge of the duty imposed by the Constitution of the State, to 'ascertain as soon as may be practicable' the equitable proportion of the public debt of the Commonwealth of Virginia to be assumed and liquidated by this State, has authorized and directed by Joint Resolution passed on the fifteenth day of February, 1871, the appointment by the Governor of 'three disinterested citizens of this State to treat with the authorities of the State of Virginia on the subject of a proper adjustment of the public debt of that State, prior the first day of January, 1861;'" and

"WHEREAS, The Governor of the Commonwealth of Virginia, by authority conferred by a Joint Resolution of the General Assembly of said Commonwealth, passed February 11th, 1871, has tendered on behalf of said Commonwealth to the State of West Virginia, 'an arbitration of all matters touching a full and fair apportionment between said States, of the said public debt' by arbitrators, not citizens of either of said States, and not subject to the ratification of the legislative departments of said States; and

"WHEREAS, Any adjustment of the said debt should be subject to such ratification; and

"WHEREAS, Citizen commissioners would of necessity be more familiar with the circumstances attending the creation of said debt, and the many intricate questions connected therewith, and upon the proper comprehension of which must depend the equitable apportionment and adjustment of the same between said States; therefore,

"*Resolved by the Legislature of West Virginia:*

"1. That the tender of an arbitration made by the Governor of the Commonwealth of Virginia to this State for the adjustment of the public debt of said Commonwealth, having been anticipated

by the action of the Legislature of this State, authorizing the appointment of Commissioners to treat upon said subject, the said tender is respectfully declined, and the Commonwealth of Virginia is invited to appoint three disinterested citizens as Commissioners with authority to treat with like Commissioners heretofore authorized on the part of this State. And said Commissioners on behalf of this State in addition to the powers heretofore conferred, are hereby further empowered to proceed, as soon as practicable, to adjust, award, and determine, upon fair, just and equitable principles, what proportion of said public debt of Virginia should, in their opinion, be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia.

"2. The governor of this State is hereby directed to communicate to the Governor of the Commonwealth of Virginia, without delay, certified copies of this preamble and Joint Resolution.

Respectfully submitted.

JAMES M. JACKSON,
JAMES H. FERGUSON,
GEORGE C. STURGISS,
H. G. DAVIS,
GEORGE KOONCE,
Committee."

"February 20, 1871."

This report was signed by all the members of the Committee and the resolution therein set out was on the 24th day of February, 1871, adopted by the Legislature.

Under the resolutions of February 15th and 24th Governor J. J. Jacob appointed Mr. John J. Jackson, Mr. J. M. Bennett and Mr. A. W. Campbell.

REPORT

OF THE

Virginia Debt Commissioners of 1871.

REPORT

OF THE

VIRGINIA DEBT COMMISSIONERS OF 1871.

To His Excellency,
J. J. JACOB,
Governor of West Virginia:

SIR: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February, last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization, and also the following letter to Governor Walker, of Virginia:

PARKERSBURG, W. VA., }
AUGUST 9, 1871. }

To His Excellency, the Governor of Virginia:

SIR: The undersigned have the honor to inform you that under the joint resolutions passed by the legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861."

Also, that they met in this city to-day for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be taken by Virginia in the matter of appointing Commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be
Your Excellency's most ob't servants.

JOHN J. JACKSON,
J. M. BENNETT.
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

EXECUTIVE CHAMBERS,
RICHMOND, Sept. 7, 1871.

His Excellency,
J. J. JACOB,
Governor of West Virginia:

SIR: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying me of the appointment of Messrs. Bennett, Jackson and Campbell as Commissioners on behalf of the State of West Virginia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolutions empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Vir-

ginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with those appointed from Virginia. I have never been informed, however, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, by a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18th, 1870, was intended to *supercede* it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be done to the creditors of the old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,

Your Excellency's ob't servant,

G. C. WALKER
Governor of Virginia.

(P. S.—Accompanying the above.) "The foregoing is a copy of the original letter mailed to Governor Jacob."

From this letter we at once understood that so far as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Com-

missioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what portion thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us.

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empowered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction, thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Commissioners representing Virginia, viz: to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Accordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia:

RICHMOND, November 14th, 1871.

To the Second Auditor of Virginia:

SIR: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the

first of January, 1861, to procure from your office such information as can be furnished upon the following points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under this head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,

A. W. CAMPBELL,
Secretary.

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of the assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

SECOND AUDITOR'S OFFICE,
RICHMOND, Nov. 16, 1871.

A. W. Cambell, Esq., Secretary, &c.:

DEAR SIR:—Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to obtain for us the information requested, and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just received copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two States, and after a reference to our correspondence with him of August last and his answer there-

to, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now, if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States, disagreeing as the people do radically upon the merits of the question at issue? Of course not."

This quotation from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency. And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7th, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" an "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was so conspicuously spoken on our behalf, Governor Walker proceeds in his late message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last they did assume the modest right of adhering to the policy already inaugurated

by the State of Virginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia, from an enforced familiarity with the workings of "personal government," which he so much deplores, has acquired ideas as to the right of the initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia, upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia." And again, in his late message, he says that "the better course to be pursued is for the two States to submit the whole question to arbitration," and West Virginia is arraigned, as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of settlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to chose between two policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia,

and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as part of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778,867.32, after all reductions.

That all, or nearly all, of this debt was incurred for and actually expended in works of public improvements, such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,000 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles, or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of special agreement, ratably binding upon the different

parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it. First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a ratable part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and institutions, which, as we all know, vitally affect the equity of a division of territory.

Judge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debt, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We, therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

Judge Meredith winds up these references to various authorities, by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government; nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts

which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction it is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question, and Judge Meredith adds after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised, and certainly not in any of the quotations adduced by the Judge.

A moment's consideration will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion. It is, therefore, plain why the books do not give the rule as stated by Judge Meredith. Because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility of soil; all of which, and many other elements of wealth, property and power, might be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on numbers or square miles but on resources and values. How much stronger is the case when the very debt under consideration

was created in developing and enriching one portion of the State almost exclusively. Nay, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicability to the case under consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject, and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, railroads, turnpikes, plank roads and bridges. All these expenditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a market and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly ex-

tinguish these improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved and productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue. All these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we see set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navagable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no public works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, possessed of no capital wherewith either to develop their localities or ameliorate their own condition in life in fact, their only wealth being for the most part their poor soil, their untiring perseverance and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the condition and resources of the two States, Virginia assigns one-third of her funded and compounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth the population formerly belonging to the whole State. And this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of population in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in the past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report: Having given our reasons why we dissent entirely from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report, shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was $31,779,067.32.

The same statement also shows that all of said debt was expended within the present State of Virginia, with the exception of $2,784,329.29.

Statement E, shows that $325,706.22 was collected from counties in West Virginia after January 1st, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds, (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at

Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have found expended within her limits, viz: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at $3,875,000, as per statement G, and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having, in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to $1,509,583.16: As it was apportioned throughout the State on the basis of the white population, we follow that rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA.

Dr.	For the amounts expended and invested in her territory as set forth in statement F	$3,343,929.29
Cr.	By one-fourth of the estimated value	

of the public buildings and other assets, as given in statement G....	$968,750.00	
" By three-thirteenths of the United " States surplus fund as per same statement	446,032.92	
" By three-sevenths of the Literary fund as per same	647,079.92	
" By the amount collected in West Virginia after January 1, 1861, as per statement E	328,706.22	2,390,569.06
Balance due Virginia		$ 953,360.23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion We commend our investigations to Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point as set forth in these pages, that we beg leave, through Your Excellency, to call the attention of the Legislature.

Very respectfully,

Your Excellency's most obedient servants,

J. J. JACKSON,
J. M. BENNETT,
A. W. CAMPBELL.

STATEMENT A.

Showing the Amount of the Public Debt of Virginia on the First Day of January, 1861, and the Amounts Thereof Held by that State. Also the Amount Thereof Incurred for Public Improvements in West Virginia.

The debt of Virginia on the first day of January, 1861, as per the Auditor's report to the extra session of the Legislature on the 10th of December preceding, was as follows:		
Debt of January 1, 1852	$10,508,815 30	
Debt created since that time	23,379,946 33	
Total		$33,888,791 63
Less the amount redeemed on 31st December, 1860	$ 237,731 31	
Less amount in the Sinking Fund	1,462,993 00	
Less amount in the Literary Fund	248,000 00	
Less amount in the Library Fund	16,000 00	
Less Bonds lost on Steamship Arctic	145,000 00	$ 2,109,724 31
Net amount of the debt January 1, 1861		$31,779,067 32
This debt as will be seen by Statement B was mainly incurred for works of public improvement.		
*Statement F shows that only $2,784,329.29 of it was incurred for improvements in West Virginia. Said improvements are as follows:		
Joint Stock Turnpike	$ 906,196 32	
Roads on State Account	1,145,619 07	
Bridge Companies	76,612 50	
Navigation Companies	207,840 00	
Railroads	500,000 00	
Lunatic Asylum at Weston	125,000 00	
		$ 2,961,267 89
Deduct Virginia's pro rata for improvements lying in both States		176,938 60
		$ 2,784,329.29

*The statement shows as total expenditure in West Virginia of $3,343,929.29, but only the above amount for public improvement.

STATEMENT B.

Showing the amount and character of the investments held by the State of Virginia on the first of January, 1861, together with those that have since been donated or otherwise changed, as per Governor Walker's, message to the Virginia Legislature of March 8, 1870.

Alexandria, Loudon and Hampshire Railroad	$ 50,802 00	
Blue Ridge Railroad	1,744,723 00	
Chesapeake & Ohio Railroad	2,484,134 00	
Norfolk and Petersburg Railroad	1,341,341 00	
Orange and Alexandria Railroad	1,151,207 00	
Richmond and Danville Railroad	1,847,585 00	
Richmond and Petersburg Railroad	385,600 00	
Richmond and York River Railroad	490,999 00	
South Side Railroad	1,883,500 00	
Virginia and Kentucky Railroad	103,348 00	
Virginia and Tennessee Railroad	3,755,000 00	
Marietta and Cincinnati Railroad	202,611 00	
James River and Kanawha Canal	10,400,000 00	
Other Navigation Companies	1,102,616 00	
Plank Roads, Turnpikes and Bridges	4,761,564 00	
Chesapeake and Ohio Canal	900,000 00	
Selden, Withers & Co	436,000 00	
Total		$33,131,090 00
To this amount add, as per Governor Walker's message of March 8, 1870, for amounts "lost, abandoned, or surrendered and released," the following sums, viz:		
Subscription paid to Covington & Ohio Railroad Co	$ 3,206,461 83	
Subscription paid to Fredericksburg & Gordonsville Railroad Company	163,299 00	
Subscription paid to City Point Railroad Company	110,000 00	
Subscription paid to Blue Ridge Railroad Company	1,100,000 00	
Subscription paid to Manassas Gap Railroad Company	2,280,000 90	
Subscription paid to Portsmouth & Roanoke Railroad Company	406,650 00	
Subscription paid to Roanoke Valley Railroad Company	307,402 00	
Subscription paid to Winchester & Potomic Railroad Company	270,000 00	
Subscription paid to Alexandria, Hampshire and Louden Railroad Company	1,017,248 00	
Subscription paid to Navigation and other companies	298,032 05	
Loss by Selden, Withers & Co., and Chesapeake & Ohio Canal Company	580,000 00	
*Total		9,739,092 88
Grand Total		$42,870,182 88

*We add these amounts simply because we find them given by the Governor as addenda to the $33,131,090 00, and not because we find them in any official record to which we have had access.

STATEMENT C.

Showing the amount of revenue contributed by the counties composing the State of West Virginia to the Treasury of Virginia for the fiscal year ending September 30, 1860, together with the amount in the aggregate contributed by the present State of Virginia.

COUNTIES.		COUNTIES.	
Barbour	$ 11,402 86	Monongalia	$ 22,116 00
Berkeley	31,819 72	Morgan	6,111 98
Boone	4,481 95	Nicholas	6,156 59
Braxton	6,968 90	Ohio	48,710 29
Brooke	9,112 34	Pleasants	3,981 46
Cabell	14,353 52	Preston	15,081 36
Calhoun	2,165 30	Pocahontas	8,380 89
Clay	1,820 82	Putnam	8,465 10
Doddridge	5,765 72	Pendleton	8,588 99
Fayette	6,642 01	Randolph	8,557 30
Gilmer	4,873 78	Ritchie	8,778 51
Greenbrier	30,863 02	Raleigh	3,979 31
Hancock	6,068 57	Roane	4,930 46
Harrison	27,117 22	Taylor	10,530 33
Hampshire	26,856 45	Tyler	7,213 93
Hardy	19,986 40	Tucker	2,257 74
Jackson	11,357 91	Upshur	5,661 71
Jefferson	47,293 59	Wayne	8,156 39
Kanawha	26,927 46	Webster	534 35
Lewis	12,004 97	Wetzel	6,450 94
Logan	4,444 96	Wirt	3,913 52
Marion	19,985 80	Wood	22,114 67
Marshall	15,657 33	Wyoming	2,304 99
Mason	20,257 22		
Mercer	5,936 80	Total	$ 626,351 97
Monroe	25,343 32		

Add for taxes on bank dividends	$ 10,214 99
Bank dividends themselves	19,513 00
	$ 647,079 96
Total revenue of Virginia for the fiscal year ending September 30, 1860	$ 4,182,510 27
Less the amount borrowed that year	245,636 71
Revenue proper	$ 3,936,873 56
Deducting amount paid by West Virginia	647,079 96
Leaves the amount paid by Virginia as	$ 3,289,793 60
By this Virginia would pay of the public debt	$26,547,582 22
West Virginia would pay of the same	5,231,485 10

*The taxation on dividends of branches of Virginia banks in West Virginia is not included, because not ascertained.

STATEMENT D.

Showing the population of West Virginia, by counties in 1860, also the area in square miles as given by Boye's map of the counties existing at date of its publication. Also, the years in which said counties were formed.

NOTE—There is a discrepancy of several thousand square miles between Boye's map and Mitchell's. The former gives the area of Virginia at 65,624 and the latter at 61,352*.

COUNTIES.	Population.	Square Miles.	Formation of County.	COUNTIES.	Population	Square Miles.	Formation of County.
Barbour	8,959	308	1772	Monroe	10,759	614	1790
Berkeley	12,525	202	1796	Morgan	2,731	271	1820
Boone	4,840	1,033	1809	Nicholas	4,636	1,431	1813
Braxton	4,992	.....	.....	Ohio	22,432	375	1776
Brooke	5,494	.....	.....	Pendleton	6,165	999	1718
Cabell	8,020	.....	.....	Pleasants	2,945	.....	.....
Calhoun	2,502	.....	.....	Pocahontas	3,958	794	1821
Doddridge	5,203	.....	.....	Preston	13,312	601	1818
Fayette	5,997	.....	.....	Putnam	6,301	.....	.....
Gilmer	3,759	.....	.....	Raleigh	3,367	.....	.....
Greenbrier	12,210	1,409	1778	Randolph	4,990	2,061	1787
Hampshire	13,913	989	1754	Ritchie	6,847	.....	.....
Hancock	4,445	.....	.....	Roane	5,382	.....	.....
Hardy	9,864	1,156	1786	Taylor	7,463	.....	.....
Harrison	13,790	1,095	1784	Tucker	1,428	.....	.....
Jackson	8,306	.....	.....	Tyler	6,517	855	1814
Jefferson	14,575	225	1801	Upshur	7,292	.....	.....
Kanawha	16,150	2,090	1789	Wayne	6,747	.....	.....
Lewis	8,029	1,754	1816	Webster	1,553	.....	.....
Logan	4,938	2,930	1824	Wetzel	6,703	.....	.....
Marion	12,721	.....	.....	Wirt	3,751	.....	.....
Marshall	13,001	.....	.....	Wood	11,046	1,223	1799
Mason	9,185	904	1804	Wyoming	2,861	.....	.....
McDowell	1,535	.....	.....				
Mercer	6,818	.....	.....	Totals	374,987	24,040	
Monongalia	13,048	721	1776				

NOTE—On a debt of $31,779,967.32 divided equally between a population of 1,594,291, (which was the whole population of Virginia in 1860 would be nearly $19.03 3.7-100 mills each, and would impose a debt on the above population of 374,087, amounting to $7,474,642.46.

*No complete survey of the State has ever been made, and in consequence of the irregular exterior lines no reliable estmate of the State's area appears to have been attained. By Herman Boye's map, made in 1825, the area is as above. By L. Von Buchoitz's map by authority of Virginia in 1860, the mean length of the State is given at 360 miles, and the mean breadth at 200 miles, giving a horizontal area of 61,352 miles, which is the same as given in Mitchell's map.

STATEMENT D.—Continued.

A Table Showing the Appropriate Number of Square Miles in Virginia and West Virginia.

By Boye's map, the number of square miles in Virginia prior to the division was 65,624, or 41,999,360 acres.

By the Auditor's report for 1861, the number of Square miles in the State was reported at 81,549, or 52,191,360 acres.

There appears to be not only a wide discrepancy in these respective authorities, but likewise an error in reducing the square miles to acres. These errors are no doubt to be accounted for by the notorious fact, that under the Virginia system of patenting lands the same lands are on the Commissioner's books several times.

By Mitchell's General Atlas for 1868, the area of Virginia is given at 41,352 square miles, and that of West Virginia at 20,000, which would give to West Virginia something less than one-third of the joint territory.

There being no map that gives the area of the counties of West Virginia separately, we have assumed that the statement given by Mitchell is approximately correct.

STATEMENT E.

Showing the Revenue paid into the Treasury of Virginia since the first day of January, 1861, from counties now included within West Virginia.

Amounts marked with a † were collected by judgments or executions in the year named, but for what particular year is uncertain.

Where it was plain that any collections were arrears for 1860, they have not been brought into this statement. †

COUNTIES.	1861	1862	1863	1864	1865	Total.
Barbour	$ 726 14	$	$	$	$	$ 726 14
Braxton	797 50			† 1,000 00		1,797 50
Boone	381 02	† 2 00				383 02
Cabell	739 08					739 08
Calhoun				† 2,307 82		2,307 82
Fayette	391 35					391 35
Gilmer				† 84 57		84 57
Greenbrier	26,945 81	44,084 83	79,227 26			150,257 90
Hardy	16,508 10					16,508 10
Jackson	800 00					800 00
Jefferson	32,269 06					32,269 06
Kanawha	1,590 76	† 1,694 33	† 2,738 00	† 3,467 00		9,490 09
Lewis	946 10					946 10
Logan	472 52		† 25 63	† 1,410 08		1,908 23
Marshall	107 95					107 95
Mason	675 66					675 66
Mercer			† 1,111 91			1,111 91
McDowell			1,200 00			1,200 00
Monroe	22,415 34	33,470 48				55,885 82
Morgan	615 00					615 00
Nicholas			5,000 00			5,000 00
Pleasants	365 00					365 00
Pendleton	8,006 61	6,000 00	16,900 00			30,906 61
Pocahontas	7,714 00					7,714 00
Putnam	746 10					746 10
Raleigh			† 600 00			600 00
Ritchie	21 12					21 12
Roane			† 3,487 81			3,487 81
Upshur	690 75					690 75
Wayne	354 74					354 74
Webster	20 00					20 00
Wyoming					† 624 97	624 97
						$ 328,706 22

†On the exclusion from this statement of taxes levied in 1860 and collected in 1861, the Commissioners were not unanimous. For it was maintained that the taxes of 1860 were levied and collected chiefly to pay interest falling due January 1 and July 1, 1861. One-fourth of the taxes especially designed to pay the July interest was not payable into the treasury until about the 15th of February, 1861: The taxes were collected off of the people who had assumed the burden of the debt and ought to be applied to their relief.

STATEMENT F.—West Virginia's Indebtedness to the State of Virginia.

Showing (approximately) the amount of the public debt of Virginia that was incurred for works of improvement in the territory now included within the State of West Virginia, and such other sums as West Virginia is chargeable with.

These improvements consist of works in which Virginia was a joint stockholder with private companies, and of works constructed wholly on her own account, and certain miscellaneous expenditures.

Date of the several acts authorizing these expenditures is given as far as ascertained.

These expenditures are classified as follows: (1.) Joint Stock Companies. (2.) Roads Constructed on State account. (3.) Bridge Companies. (4.) Navigation Turnpike. (5.) Railroads. (6.) Miscellaneous.

Date of Act.	Class I—Joint Stock Turnpikes.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length
.....	Back Creek Valley Turnpike	$ 1,500 00	$ 1,140 00	$ 360 00	.....
.....	Berkeley and Hampshire Turnpikes	21,600 00	16,750 00	4,850 00	.....
1849, March 15	Buckhannon and Little Kanawha	7,773 00	7,773 00	.....	24
.....	Brandonville, Kingwood and Evansville	6,000 00	3,193 46	2,806 54	.....
1848, Febr'y 9	Clarksburg and Buckhannon	32,000 00	28,514 49	3,485 51	27¾
1849, March 13	" " Philippi	6,000 00	5,446 25	553 75	22
1850, Febr'y 10	Cranberry Summit and Brandonville	4,815 00	4,120 11	694 89	18¼
1850, " 2	Clarksburg and Wheeling	10,200 00	4,195 35	6,004 65	18
1858, April 3	Cacapon and North Branch	12,000 00	12,000 00	.....	45
1835, Jan'y 22	Charleston and Point Pleasant	31,260 00	31,260 00	.....	56
1800, March 9	Charleston, Ripley and Ravenswood	30,000 00	27,519 41	2,480 59	.....
.....	Dunkard Creek	6,000 00	6,000 00	.....	.....
.....	Elk River	37,000 00	116 00	36,884 00	.....
.....	Franklin and Circleville	2,400 00	2,175 00	225 00	.....
1833, March 30	Fish Creek Road	6,000 00	6,000 00	.....	25
.....	Gnatty Creek and West Union	10,800 00	5,700 55	5,099 45	.....

STATEMENT F.—Continued.

Date of Act.	CLASS 1—Joint Stock Turnpike.	Amount of the Appropriation	Amount Expended.	Amount Unexpended	Miles Length
1850, March 21	Grave Creek and Pennsylvania State Line	$ 4,800 00	$ 1,800 00	$ 3,000 00	4¾
1853, " 29	Gilmer and Braxton	7,200 00	6,699 80	500 20	26¼
1850, " 19	Gilmer, Ripley and Ohio	30,000 00	29,974 80	25 20	61
1837, " 1	Giles, Fayette and Kanawha	45,000 00	44,990 60	8 40	.....
1849, " 15	Hardy and Winchester	23,400 00	23,400 00	.....	70
1849, " 15	Hampshire and Morgan	6,600 00	6,510 00	90 00	18
.....	Hardy and Randolph	18,000 00	7,134 78	10,865 22	.....
1848, March 28	Harrisville	8,100 00	6,000 00	2,100 00	20¾
1850, Feb'y 9	Hudgesville and Potomac	6,000 00	6,000 00	.....	20¾
1849, March 9	Hillsborough and Harper's Ferry	6,000 00	6,000 00	.....	8
1838, " 2	Holiday's Cove	15,000 00	10 650 00	4,350 00	6
1832, " 20	Huntersville and Warm Springs	10,359 24	6,159 24	4,200 00	26¼
1851, " 29	Holiday's Cove and New Cumberland	2,400 00	2,400 00	.....	8
1837, " 30	Ice's Ferry Road	1,358 00	1,358 00	.....	5¼
1846, Febr'y 2	Kanawha and Logan	5,000 00	5,000 00	.....	52
1848, " 25	Kingwood and West Union	40,000 00	34,083 18	5,916 87	31
.....	Letart's Falls and New Columbia	21,000 00	2,950 00	18,050 00	.....
1834, March 12	Lewisburg and Blue Sulphur	4,950 00	4,950 00	.....	15¼
.....	Leading Creek and Buffalo	9,600 00	5,847 84	3,752 16	.....
.....	Logan, Raleigh and Monroe	27,600 00	7,320 24	20,278 76	.....
1848, Febr'y 11	Marshall and Ohio	12,000 00	11,948 75	56 25	9¾
1849, March 17	Martinsburg and Potomac	18,000 00	15,290 00	2,710 00	12½
1849, Jan'ry 20	Martinsburg and Winchester	27,000 00	27,000 00	.....	22¼

STATEMENT F.—Continued.

Date of Act.	CLASS 1—Joint Stock Turnpike.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length
1854, Feb'y 18	Middleway and Gerardstown	$ 12,000 00	$ 11,943 75	$ 56 25	12
1848, March 24	Milwood and Berryville	9,000 00	9,000 00	.....	6½
	Moorefield and North Branch	39,300 00	28,137 75	11,162 25	.....
1849, March 15	Moorefield and Alleghany	10,200 00	8,779 78	1,420 22	27½
1849, " 15	Morgantown and Bridgeport	27,600 00	10,687 40	16,912 60	36
	Morgantown and Beverly	7,999 96	2,999 96	5,000 00	.....
1851, Feb'y 25	Morgan and Frederick	9,000 00	8,005 00	995 00	20
1851, March 28	Newark	3,600 00	3,000 00	600 00	10
1850, Feb'y 25	New Creek and Hardy	6,000 00	5,431 24	568 76	20½
1848, April 4	New Manchester	2,000 00	2,000 00	.....	6
1850, March 11	Patterson's Creek Valley	9,900 00	9,000 00	.....	37¾
1851, Feb'y 17	North River	5,400 00	5,400 00	.....	24¾
1850, March 11	Parkersburg and Elizabethtown	4,800 00	4,800 00	.....	21½
1853, " 30	Pleasant Valley and Tunnelton	6,000 00	4,078 45	1,921 55	28
1851, " 4	Potomac	2,700 00	2,489 70	210 30	9½
1850, Feb'y 18	Ravenswood and Reedy Creek	9,000 00	9,000 00	.....	23
1851, March 21	Reedy and Harrisville	7,200 00	1,751 87	5,448 13	44¾
1836, Jan'y 13	Red and Blue Sulphur Springs	8,856 66	8,856 66	.....	32¾
1851, March 12	Ritchie and Gilmer	9,000 00	8,891 18	108 82	51
1854, Feb'y 28	Raleigh and Boone	1,800 00	1,800 00	.....	39
	Raleigh and Wythe Line	4,800 00	2,800 00	2,000 00	.....
1851, March 10	Salem and Harrisville	7,200 00	3,817 92	3,382 08	39
1851, " 31	Sandy	3,000 00	3,000 00	.....	24

STATEMENT F.—Continued.

Date of Act.	Class 1—Joint Stock Turnpikes.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length
1851, March 24	St. Marys	$ 6,000 00	$ 6,000 00	$	24
1816, Jan'y 31	Shepherdstown and Smithfield	18,575 00	18,575 00	.....	13¾
1849, March 15	Sweet and Salt Sulphur Springs	10,200 00	10,104 00	96 00	29
1847, Feb'y 1	Sistersville and Salem	20,000 00	20,000 00	.....	26½
1850, " 7	Shinston	13,302 26	13,302 26	.....	33⅝
1830, " 18	Smithfield, Charlestown and Harper's Ferry	14,000 00	14,000 00	.....	14
.....	Walnut Gap Road	1,800 00	1,305 37	494 63	.....
1848, March 9	Weston and Fairmont	98,000 00	97,902 50	37 50	40⅝
1848, " 25	Weston and Gauley Bridge	66,000 00	64,098 31	1,901 69	106
1850, " 7	West Milford and New Salem	13,800 00	10,526 32	3,273 68	29¼
1847, " 20	Wheeling, West Liberty and Bethany	21,000 00	21,000 00	.....	15¼
1822, " 2	Wellsburg and Washington	7,071 01	7,071 01	.....	6
1849, " 15	Wellsburg and Bethany	16,200 00	12,590 22	3,609 78	6
....	Weston and West Union	8,400 00	5,538 21	2,861 79	.....
....	West Union	3,200 00	3,054 00	146 00	.....
1849, March 15	Williamsport	6,000 00	5,130 65	869 35	15⅜
1831, Jan'y 8	White and Salt Sulphur	4,000 00	4,000 00	.....	20½
	Total	$ 1,108,630 14	$ 906,196 32	$ 202,428 82	

STATEMENT F.—Continued.

Date of Act.	Roads Constructed Wholly on State Account.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length
.....	Allegheny and Huntersville	$ 11,600 00	$ 11,462 67	$ 137 33	.....
.....	Abbs' Valley and Tug Road	5,000 00	4,450 00	550 00	.....
.....	Beverly and Fairmont	77,060 00	75,384 65	1,615 35	.....
.....	Cove Spring and White House Road	2,500 00	2,500 00	.....	.....
.....	Clear Fork Road	3,000 00	600 00	2,400 00	.....
.....	Franklin and Monterey	14,000 00	14,000 00	.....	.....
.....	Fairmont and Wheeling	31,848 85	31,848 85	.....	.....
.....	Huttonsville and Huntersville	23,168 72	23,168 72	.....	.....
.....	Huntersville and Lewisburg	20,000 00	19,976 47	23 53	.....
.....	Marlin's Bottom and Lewisburg	12,615 09	12,615 09	.....	.....
.....	Middlefork	15,000 00	14,467 34	532 66	.....
1831, March 19	North Western Turnpike	452,579 87	452,579 87	.....	.....
.....	Ohio River and Maryland Road	95,934 37	95,934 37	.....	.....
.....	Princeton and Red Sulpher Springs	4,200 00	4,200 00	.....	.....
.....	Staunton and Parkersburg	368,277 51	355,864 30	12,413 21	234
.....	Slavin Cabin and Summersville	37,000 00	16,372 08	20,627 92	.....
.....	Wyoming Court House and Bluffs	3,000 00	1,894 66	1,105 34	.....
.....	Road from South Branch to Petersburg	900 00	900 00	.....	.....
.....	Road from South Branch to Brock's Gap	1,400 00	1,400 00	.....	.....
.....	Berryville and Charlestown	6,000 00	6,000 00	.....	.....
		$ 1,185,024 41	$ 1,145,619 67	$ 39,405 34	

STATEMENT F.—Continued.

Date of Act.	CLASS 3—Bridge Companies.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
.....	Cheat River	$ 6,000 00	$ 4,612 50	$ 1,387 50
.....	Coal River	3,000 00	3,000 00	.....
.....	Fairmont and Palatine	12,000 00	12,000 00	.....
.....	Guyandotte	12,000 00	12,000 00	.....
.....	Morgantown	24,800 00	24,800 00	.....
.....	South Branch	4,200 00	4,200 00	.....
.....	Virginia and Maryland	10,000 00	10,000 00	.....
.....	Elk River	6,000 00	6,000 00	.....
	Total	$ 78,000 00	$ 76,612 50	$ 1,387 50

Date of Act.	CLASS 4—Navigation Companies.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
.....	Coal River Company	$ 96,000 00	$ 96,000 00	$ .....
.....	Guyandotte River Company	120,000 00	106,800 00	13,200 00
.....	Tug Fork River Company	5,040 00	5,040 00	.....
	Total Navigation Companies	$ 221,040 00	$ 207,840 00	$ 13,200 00

STATEMENT F.—Continued.

	CLASS 5—Railroads.		
	There is but one item of expenditure under this head, viz: the appropriation for the Covington & Ohio Railroad, say		$ 500,000 00

	CLASS 6—Miscellaneous.		
	Stock of Virginia in West Virginia Banks	$ 539,600 00	
	The Lunatic Asylum at Weston	125,000 00	
	The Lewisburg Law Library	20,000 00	
			$ 684,600 00

TABLE 1.

Showing the pro-rata expenditures in Virginia on account of certain of the foregoing improvements that lie in both States.

	Hardy and Winchester	$ 11,700 00	
	Hillsborough and Harper's Ferry	4,800 00	
	Martinsburg and Winchester	13,500 00	
	Millwood and Berryville	4,500 00	
	Franklin and Monterey	7,000 00	
	Northwestern Turnpike	38,192 40	
	Staunton and Parkersburg	91,246 20	
	*Berryville and Charlestown	6,000 00	
	* It is understood that this road has been sold by the State of Virginia.		$ 176,938 60

RECAPITULATION.

	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
Total expenditures on account of Joint Stock Turnpikes	$ 1,178,620 14	$ 906,196 32	$ 202,423 82
" " " Roads constructed on State account	1,185,024 41	1,145,619 07	39,405 34
" " " Bridge companies	78,000 00	76,612 50	1,387 50
" " " Navigation companies	221,040 00	207,840 00	13,200 00
" " " Railroads	500,000 00	500,000 00	
" " " Miscellaneous	684,600 00	684,600 00	
Total	$ 3,777,284 55	$ 3,520,867 89	$ 256,416 66
From these deduct on account of Virginia's pro-rata for certain expenditures as given in Table I—Statement F		176,938 60	
Leaving a total expenditure in West Virginia of		3,343,929 29	
Deducting from this total the stock of Virginia in West Virginia Banks, and the value of the Lewisburg Law Library, as given in Class 6, viz		559,600 00	
And we have left as the total expenditure in West Virginia on account of Public Improvements		$ 2,784,329 29	

NOTE—It does not appear from any documents examined what exact proportion of this $3,343,929.29 enters into the bonded debt of Virginia, and what proportion was paid out of the current revenue. That matter is left open for settlement hereafter.

STATEMENT G.

Showing the property and other assets of the State of Virginia on the first day of January, 1861, not included in any of the foregoing tables:

Lunatic Asylum at Williamsburg	
" " Staunton	
Deaf, Dumb and Blind Asylum at Staunton	
Virginia Military Institute at Lexington	
University of Virginia at Charlottesville	
Penitentiary of Virginia at Richmond	
Armory " "	
Capitol and public grounds "	
Governor's House "	
Public miscellaneous library "	
" law " "	
Total	$ 3,875,000 00

OTHER ASSETS.

By a provision of an act of Congress of June 23, 1836, there was directed to be deposited with the State of Virginia, of the surplus revenue of United States, $2,937,237.34.

And it appears by the document number 52 of the session of 1839-40, that of the amount there was actually received by Virginia and subscribed to the stock of certain banks of the State, the following amount, say, $1,932,809.33.

Whether the residue of this sum was ever paid to Virginia, the Commissioners have not ascertained.

The Literary Fund, as given in document No. 4, Second Auditor's Report of September, 1844, is $1,509,853.16.

This fund is given as it stood many years ago. By the first of January, 1861, it had probably increased, from fines, forfeitures, and amercements, one or two hundred thousand dollars.

STATEMENT H.—BANKS.

Settlement showing the amount of stock owned by the State of Virginia in the several banks in the year 1840, and how that stock was paid for.

In What Banks.	In What Name Held.			Total Number of Shares.	Par Value of Shares.
	Commonwealth of Va.	Board of Public Works.	Literary Fund.		
(A) Bank of Virginia	$ 3,250	$ 3,365	$ 2,121	13,736	$1,373,600
(B) Farmers' Bank of Virginia	5,050	3,442	1,054	9,546	954,000
(C) Bank of the Valley of Virginia	3,700	1,000	52	4,792	479,200
(D) Northwestern Bank of Virginia	4,000	271	500	4,771	477,100
(E) Exchange Bank of Virginia	9,000	50	.....	9,059	905,900
(F) Merchants and Mechanics' Bank of Wheeling	.....	125	.....	125	12,500
	$ 25,000	$ 13,262	$ 3,727	42,029	$4,202,900

NOTES—(A) Bank of Virginia—Subscribed by the Commonwealth per act of 30th January, 1804, payable in ten annual installments, to meet which the tax on merchant's license and dividends on the stock itself was pledged. The dividends during the time amounted to ..... $ 300,000 00
Bonds and profit on sale of new stock of the bank, under act 20th January 1814 ..... 494,700 00
Purchased out of the disposable funds of the board of Public Works.. 41,800 00
Purchased out of the permanent capital of the Literary Fund..... 205,600 00
Out of undrawn school quotas in treasury 6,500 00
Subscribed and paid for out of the United States surplus revenue on deposit in the treasury 325,000 00

$1,373,600 00

(B)—Farmers' Bank of Virginia.

Bonus under act 13th February, 1812 ..... $ 333,400 00
Purchased out of permanent fund of the Board of Public Works..... 4,700 00
Out of the disposable funds of the same 6,100 00
Out of the permanent capital of the Literary Fund 105,400 00
Subscribed and paid for out of the United States surplus revenue on deposit 505,000 00

$ 954,600 00

(C)—Bank of the Valley.

Bonus under act February, 1817 ..... $ 90,000 00
Purchased out of the disposable funds of Board of Public Works..... 100,000 00
Purchased out of permanent capital of Literary Fund 9,200 00
Paid out of United States surplus revenue 370,000 00

$ 569,200 00

(D)—Northwestern Bank.

Bonus under act 5th February, 1817 ..... $ 23,100 00
Bonus under act 25th March, 1837 ..... 4,000 00
Paid out of United States surplus revenue 282,809 33
Paid for dividends of stock itself 24,908 67
Paid for State's 6 per cent scrip 92,282 00
Paid for out of permanent capital of the Literary Fund 50,000 00

$ 477,100 00

STATEMENT H—Continued.

(E)—Exchange Bank of Virginia.

Bonus under act 25th March, 1837	$ 5,900 00
Paid for out of United States revenue	450,000 00
Paid for in State's 6 per cent scrip	295,000 00
Due on subscription of $900,000 by Commonwealth, $155,000, which was subsequently paid	155,000 00
	$905,900 00

(F.)—Merchants' and Mechanics' Bank of Wheeling

Bonus under act of 7th March, 1834	12,500 00

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January, 1861,* to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation

thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this commitee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon pub-

lic and official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored government which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. MCCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

House Joint Resolution No. 10, Concerning the Virginia Debt.

(Adopted February 7th, 1895)

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this legislature declines and refuses to take any action in re-

gard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

AN ACT to provide for the defense of the equity suit of the Commonwealth of Virginia against the State of West Virginia, now

pending in the supreme court of the United States, and appropriate money for such purposes.

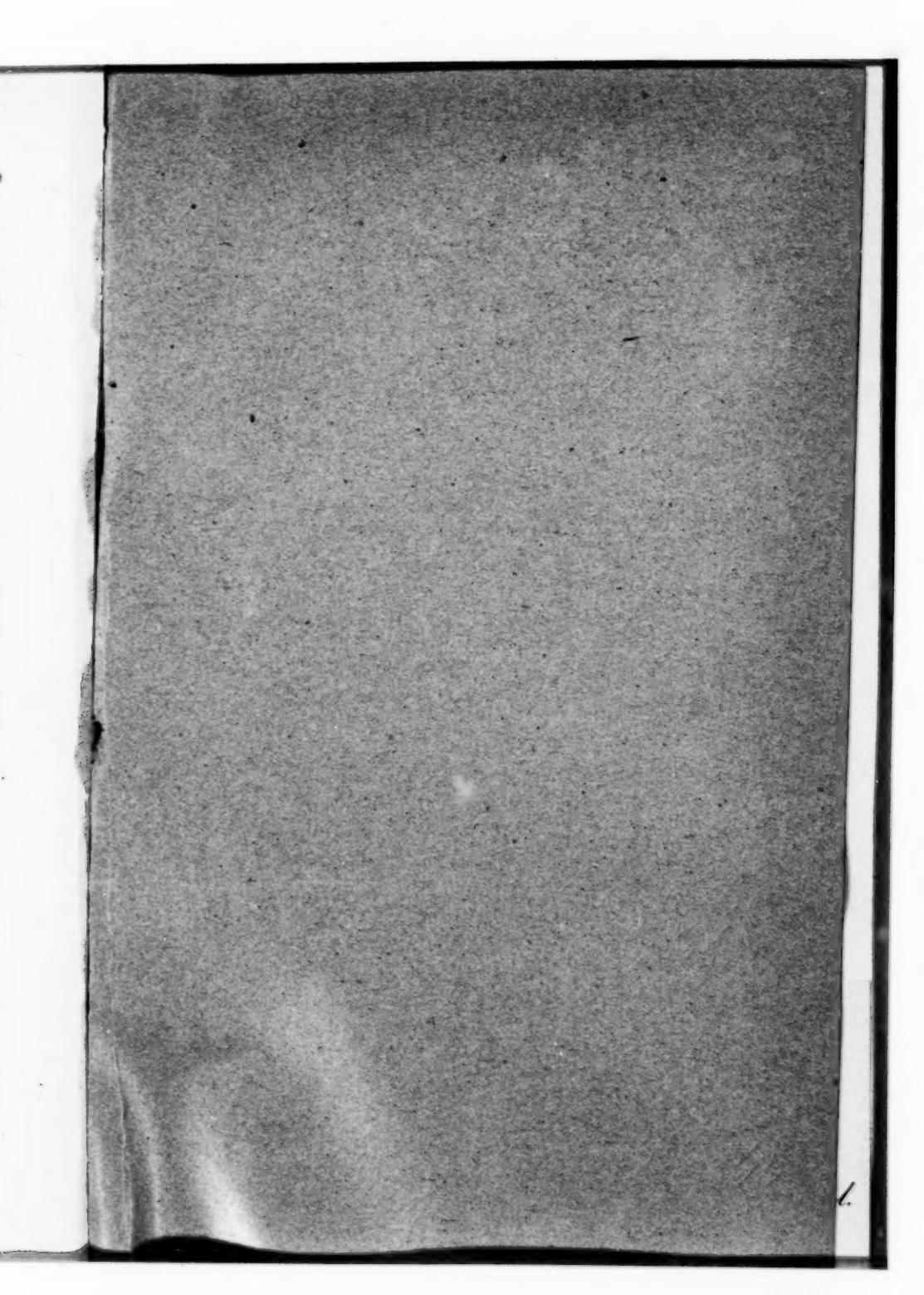
Passed February 4, 1907.

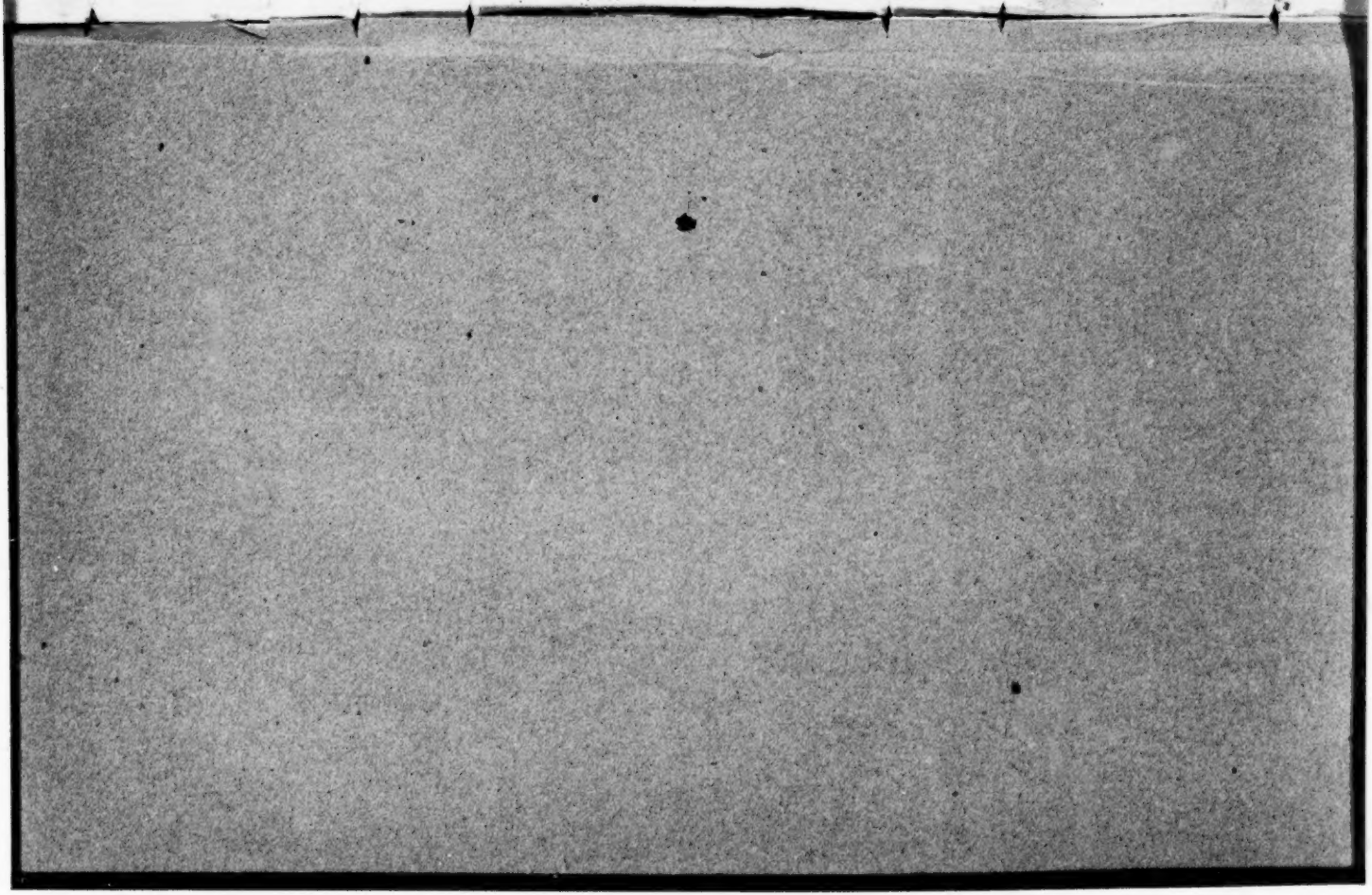
Be it enacted by the Legislature of West Virginia:

Sec. 1. That the attorney general of West Virginia be and he is hereby authorized and directed to defend the equity cause of the Commonwealth of Virginia against the State of West Virginia now pending in the supreme court of the United States; and the board of public works is hereby authorized to employ such attorneys and agents to assist the attorney generel in the defense of such suit as in its judgment shall be necessary for the purpose.

Sec. 2. The attorney general is further authorized and directed to have made as soon as possible such searches and investigations as may be necessary to ascertain all the facts, which in his opinion, are needed for the proper defense of said suit; and the attorney general is further authorized, if in his opinion it is necessary, to request of the officers of the said Commonwealth of Virginia reasonable access to the records of said Commonwealth so far as it may be necessary for such purpose; and to cause such copies and extracts of such records made as he or his associates may deem necessary for such purpose; and the attorney general is directed to make full and complete reports of his acts hereunder to the board of public works, from time to time, as he may deem proper or as requested by said board, and to the legislature at each session thereof during the pendency of this suit.

Sec. 3. To carry out the provisions of this act, the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, to be paid out of the treasury from time to time on the requisition of the board of public works.





PROCEEDINGS

IN THE

EQUITY SUIT

OF THE

Commonwealth of Virginia

VS.

The State of West Virginia,

WITH AN APPENDIX.

VOLUME II.

COMPILED BY
WILLIAM G. CONLEY, Attorney General.

Compliments of

Wm. G. Conley,

Attorney General.

UNION
LABEL

TABLE OF CONTENTS, VOL. II.

	Page
Answer of West Virginia	1-26
Exhibit 1—An Act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the Jurisdiction of this State	26
Exhibit 2—Letter of Second Auditor of Virginia	27
Exhibit 3—Report of the Senate Finance Committee of 1873	28-32
Decree proposed by Virginia referring the Cause to a Master	35-38
Decree proposed by West Virginia referring the Cause to a Master	41-44
Decree referring Cause to a Master	47-50
Order by the Court giving leave to submit names of fit persons for appointment as Master	53
Persons recommended by Defendant	57
Persons recommended by Complainant	61
Brief for Virginia, upon motion to enter decree referring the cause to a Master	65-74
Appendix to brief for Virginia	74-82
Brief for Defendant on Complainant's motion to refer Cause to a Master	85-130
Reply Brief for Virginia upon motion to refer cause to Master	133-163
Appendix Nos. 1, 2 and 3 to Reply Brief for Complainant,	163-172
Brief in reply to Defendant by Holmes Conrad, of Counsel for Complainant,	175-198
Argument of Mr. Holmes Conrad, for Complainant,	201-217
Argument of Mr. Randolph Harrison, for Complainant,.	221-235
Argument of Hon. John C. Spooner, for the Defendant,.	238-264
Argument of Hon. John G. Carlisle, for the Defendant,.	267-294
Argument of Hon. Wm. A. Anderson, for the Complainant,	297-315
Decree referring the Cause to a Master	319-322
Motion by Defendant to modify Decree of Reference	325-326
Brief of Defendant in support of motion to modify Decree of Reference	329-334
Reply of Plaintiff against motion of Defendant to modify the Order of Reference	337-341
Report of Commission—John Marshall, Chairman,—filed as an Exhibit for Complainant,	345-368

Order amending Decree of Reference 371
Order appointing Special Master 375

APPENDIX.

Substitute for H. J. R. No. 25 379
Judge Mason's letter to Governor Dawson 379-383
Part of speech of Hon. Waitman T. Willey in the United States Senate, July 14, 1863, ... 384-390
Part of speech of Hon. Jacob B. Blair in the House of Representatives, July 16, 1862, ... 390-407

TABLE OF CONTENTS, VOL. I.

Page
Bill of Complaint 1-93
Petition to File Demurrer 97
Demurrer 98-99
Amended Demurrer 103-105
Brief of C. W. May, Attorney General, and Associate Counsel, C. E. Hogg, and Mollohan, McClintic and Mathews, for the defendant 109-153
Brief of J. G. Carlisle for the Defendant 157-219
Brief of William A. Anderson, Attorney General, and Associate Counsel, Holmes Conrad, for the Plaintiff.... 223-268
Argument of C. E. Hogg, for the Defendant, ... 271-287
Argument of Holmes Conrad, for the Plaintiff, ... 291-317
Argument of William A. Anderson, for the Plaintiff, ... 321-344
Argument of J. G. Carlisle, for the Defendant, ..., 347-376
Supplemental Brief for West Virginia 380-390
Reply Brief for Virginia 393-413
Decision Overruling the Demurrer 417

APPENDIX.

Wheeling Ordinance, sections 9 and 10, ... 437
Provisions of first West Virginia Constitution on the Virginia debt 438

CONTENTS.

Act of Virginia giving consent to formation of West Virginia 438-439
Act of Congress for admission of West Virginia into the Union 439-441
Act of Virginia transferring to West Virginia certain interests in property 441-443
Act of Virginia making appropriation to the proposed new State 443-444
Joint Resolution Concerning Reunion of Virginia and West Virginia 444-446
Arbitration proposed by Virginia 449-451
West Virginia's Reply to the Proposed Arbitration..... 451-454
Report of Virginia Debt Commissioners, 1871, ... 457-489
Report of Senate Finance Committee, 1873, ... 490-493
Joint Resolutions passed by the West Virginia Legislature relating to the Virginia Debt 494-496

INTRODUCTION

There will be found in this volume all of the proceedings had in the chancery cause of the Commonwealth of Virginia *versus* the State of West Virginia, now pending in the Supreme Court of the United States, since the publication of Volume I, which ended with the decree overruling the defendant's demurrer to the plaintiff's bill.

This volume begins with the defendant's answer and includes arguments of counsel, the decree of the Court referring the cause to a Master, the amendments made to said decree on the petition of the defendant, and the appointment of Congressman CHARLES E. LITTLEFIELD, of the State of Maine, as Master in said cause.

There is appended to this volume parts of the speeches of Hon. WAITMAN T. WILLEY, United States Senator, and Congressmen WM. G. BROWN and JACOB B. BLAIR, made in the Congress of the United States, on the admission of West Virginia into the Union. These speeches show some of the reasons why the counties west of the Allegheny Mountains were demanding to be separated from those counties east of said mountains. The appendix also contains Judge JOHN W. MASON'S letter to Governor DAWSON, and what is commonly known as Senate Joint Resolution No. 14, but is reported in the Acts of the Extraordinary Session of the Legislature of 1908, as "Substitute for House Joint Resolution No. 25," creating a non-partisan committee of citizens and property holders to advise with the Board of Public Works as to the matters involved in said suit.

The Board of Public Works, under chapter 45, Acts of the Legislature, 1907, and since Volume I. was printed, has employed Hon. JOHN C. SPOONER, late a United States Senator from Wisconsin, as an additional associate counsel to assist in the defense of said suit. Expert accountants are also employed and are at work to ascertain the true state of accounts.

The hearing before the Master will begin in said suit at Richmond, Virginia, November 9, 1908. This date was fixed upon by

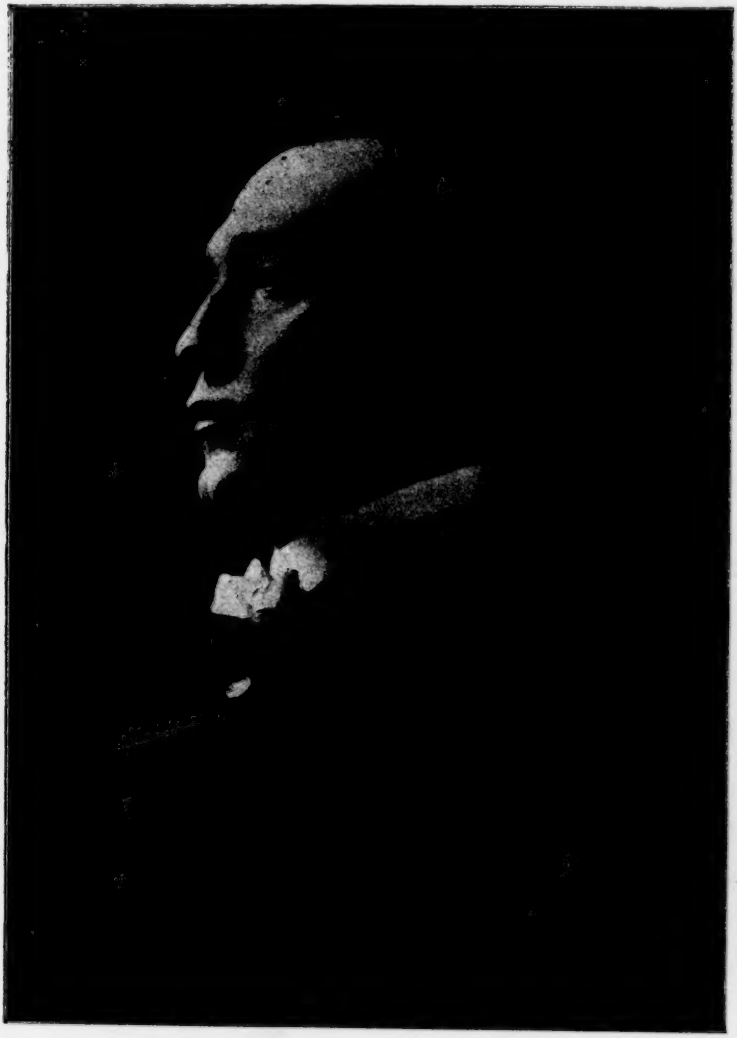
the Master that both sides might have time to properly prepare for the contest.

The best legal ability and expert accountants in the country have been employed to assist in the defense of this suit, and the people of this State may rest assured their interests therein are being efficiently and honestly protected.

Respectfully submitted,

WM. G. CONLEY,
Attorney General.

Charleston, W. Va.,
August 17, 1908.



HON. CLARKE W. MAY,
LATE ATTORNEY GENERAL OF WEST VIRGINIA.

DEATH OF GENERAL MAY.

Attorney General CLARKE W. MAY, one of the best known men in public life in West Virginia, died at 6:30 o'clock Saturday morning, April 25, 1908, at his home at Hamlin, Lincoln County, as the result of blood poisoning arising from injuries received in a runaway ten days before. Friday night, April 24th, about 9 o'clock his right leg, which sustained a compound fracture in the accident, was amputated just below the knee. General May rallied after the operation, but toward morning he took a change for the worse, and, at 6:30 o'clock, peacefully passed away.

Attorney General May was born at Griffithsville, Lincoln county, July 14, 1869. He was educated in the common schools of that county. Left on his own resources at the age of sixteen by the death of his father, he began the battle of life, having nothing to aid him but ambition and energy. In 1894 he completed the law course at the State University and began the practice of his profession in his home county. In 1896, at the age of 26, he was elected the first Republican Prosecuting Attorney of Lincoln county. In 1900 he was elected to the State Senate by over 2,500 majority. In 1903 he was the unanimous choice of his party for President of the Senate. At the Republican convention of 1904, held at Wheeling, he was nominated for Attorney General and was elected by a large majority. After his election as Attorney General, he moved to Charleston and gave to the duties of the office his entire time.

In the death of General May the State lost a man it can ill afford to lose. While an active partisan, he

was one of those royal good fellows who did not think it a crime to pass a flower over the dividing wall between political parties. He loved his fellow-man and enjoyed the social side of life. He had a strong mind and was a successful lawyer, and only a few weeks before his death fortune began to smile upon him in a financial way. By the discovery of oil near Griffithsville, on a tract which he had held for years, he realized an income which, with the drilling of other oil wells would have made him financially independent.

He was a candidate for re-election as Attorney General and it is the opinion of many of his party associates that he would have been re-nominated by his party had he lived. It seems indeed sad that with his political prospects satisfactory, his professional career most promising and financial success assured he should be cut off while yet a young man. The State needs such men and his loss is greatly felt.

During the last two years Mr. May had spent much time in untangling the old Virginia Debt skein, and it is owing altogether to his indefatigable effort and his high ability that this question has been brought to the semblance of intelligence it now assumes. Senator John C. Spooner, who was associated with General May in this suit, has this to say of him: "The death of Attorney General May is a great shock to me. I had come to regard him as a very able lawyer, zealous and watchful in safeguarding the interests of the State, and any other client with whose business he might be intrusted, and an absolutely honest man. West Virginia sustains a serious loss."

IN THE SUPREME COURT OF THE UNITED STATES.

ORIGINAL NO. 7.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of West Virginia by William A. Anderson, Attorney General, for and on behalf of the State of Virginia.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for her to make answer to, answering, says:

I

That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in "about" the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvement within her then territory; and it may be true that the greater part of said indebt-

edness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for said purpose; and it may also be true that all her liabilities, though arising under contracts made before that date, had not then been covered by bonds issued for their payment; but as to this allegation respondent has no knowledge or information except what is derived from said bill. This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and Literary Fund of the said State of Virginia as created under her laws, amounting the former to $1,462,993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere State agencies, and public officials of the State, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that State on the first day of January, 1861, and denies that the certificates representing one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity.

II.

It is true as alleged that said portion of the territory which now constitutes the present State of Virginia was, prior to January 1, 1861, devoted mainly to agriculture, and, to some extent, to grazing and manufacture, which afforded its chief source of revenue at that time; but this defendant avers that the territory which now composes the State of Virginia was largely underlaid with rich and valuable minerals only awaiting the opportunity and means of development to make the said State exceedingly wealthy in varied mineral resources such as coal, iron, manganese and other valuable and marketable products, and the said State abounded at that time in large forests of valuable timber which have since developed into

a great source of revenue to the said State and its citizens. It is true that the portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in undeveloped stores of mineral and timber, and respondent avers that the same was inaccessible and of very little value on the first day of January, 1861, and during all the years prior thereto, and that it has been only within recent years that the development of said resources has been begun in the said State of West Virginia, and this required the outlay of many millions of dollars, since January 1, 1861, in the construction of railroads and other public works and the appropriation by the Congress of the United States of many more millions of dollars for the improvement of her waterways in order to afford an outlet for her mineral and other products. This respondent denies that the prime object of the State of Virginia in entering upon a system of internal improvement was to hasten and facilitate the development of the resources of wealth and revenue in West Virginia by the construction of graded roads, bridges, canals and railways extending through the then State of Virginia from tidewater toward the Ohio river, and avers that the main object of said system of internal improvements was to afford the eastern part of the State an outlet for its own products to the Ohio river on the west and to the seaboard on the east, and to afford convenient communication with those points so as to create a market for such products at points on the eastern coast of Virginia at tidewater, and thus open up and develop the resources of the territory now constituting the State of Vinginia, and not, as alleged in said bill, for the purposes of developing the resources of the western part of her territory, now constituting the State of West Virginia. This respondent further says that it is true as alleged in said bill that the larger portion of these public works was constructed east of the Appalachian range of mountains and within the present territorial limits of Virginia, and respondent avers that nearly all of the money derived from the sale of the bonds was in fact expended in the development and improvement of what now constitutes Virginia, and only a comparatively small sum was expended in developing, and improving the portion now composing West Virginia; that these expenditures in Virginia were of very little practical benefit to the people living in the western part of the State up to and including the first day of January, 1861. This respondent further says that it is true that property values within the limits of West Virginia have been largely increased since 1861, but denies

that such increase was caused by the improvements made within her present territory prior to 1861, but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years and are due to railroads and other public works constructed by her own people and by private capital brought within her territory and by appropriations made by Congress, and are almost entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by the proceeds of bonds issued and sold by her or from any other means derived from the creation of any debt by her. Respondent admits that the money appropriated and the payment of the annually accruing interest on said debt prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof was derived from taxes imposed upon property subject to taxation throughout the entire state, but respondent avers that the large amount thus derived from taxation to which the present State of West Virginia, then a part of Virginia, contributed her full share, was not kept intact by the State of Virginia after her ordinance of secession from the union in the year 1861, but was used by her in the administration of the so-called State Government at Richmond and for many other purposes while she claimed to be a part of the Confederate States of America, and that the part of the Sinking Fund so expended should be accounted for to this State and constitute a credit to her in the settlement of her equitable proportion of said debt; this respondent calls upon the State of Virginia to show what the aggregate amount of said Sinking Fund was on the first day of January, 1861, and of what it consisted, together with the interest thereon since accruing, and that she shall be required to give credit to this respondent for the amount contributed thereto by her prior to January, 1861, in case this court shall determine that an accounting shall be had between the said States in this action.

III.

This respondent denies that the Commonwealth of Virginia was induced to enter upon the construction of her general system of improvement, in a very large measure, for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, and thereby as alleged in said bill, ameliorating the condition of her citizens residing therein, and denies that it was with this view that she took upon herself

the alleged burden of her public debt, for which her bonds were issued, without which debt, it is alleged, said improvements could not have been undertaken. The respondent avers that Virginia appropriated to her own use, within the territory now constituting the present state of Virginia, about nine-tenths of all the money derived from the proceeds of said bonds, and that this large part of said proceeds enured to the sole benefit of the people living in what now constitutes the State of Virginia, while the territory now constituting the State of West Virginia received but a small proportional part thereof, and that all the money appropriated was expended under and by direction of the officers of the State of Virginia who were elected and controlled by the voters then living within the present limits of that State.

It may be true that a majority of the representatives residing in that part of Virginia now composing the State of West Virginia voted for the appropriations for the said public improvements, but if so, it was with the expectation and belief that an equitable proportion thereof would be expended in their section of the State which, as hereinbefore averred, was not done; and at the times when said debt was created the Legislature was in the absolute control of the very large majority of members chosen by the people living within what now constitutes the State of Virginia and they could, and actually did, control the legislation of the State.

IV.

It may be true that the development of this system of public improvements was, from its character and extent, progressive, as is alleged, and that the same extended with the general growth and increasing needs of the State, and was incomplete in 1861; but this respondent denies that prior to that time a very considerable portion of such improvements had been constructed in the territory now constituting West Virginia in order to meet the needs of the people of that portion of the State for their local purposes. On the contrary, the principal object of the State in entering upon this system was for the construction of a canal from the James River to the Ohio River for the purpose of connecting the Virginia seaboard with the western waters, the building of certain railroads projected in the same direction and in certain other directions, all within the present territorial limits of the State of Virginia, and for the construction of highways and bridges and certain public buildings, nearly all of which weere located and constructed within

the present limits of the State of Virginia. It is true, as alleged, that the expenditures of this money were under the direction and control of the Board of Public Works, the members of which were elected by the voters of the State at large, but respondent avers that this Board of Public Works was at all times composed of a majority of members residing within the present limits of Virginia and that only such members were chosen as were acceptable to the people residing within the present limits of Virginia and to promote their views and interests as to the method and policy of the expenditures of said moneys.

V.

It is true that on the 17th day of April, 1861, the people of Virginia in general convention assembled adopted an ordinance by which it was intended to withdraw Virginia from the union of the States, and it is also true that a considerable portion of the people of Virginia dissented from this action and that a great majority of the people residing in the territory now composing the State of West Virginia opposed the action thus taken by the people of Virginia then residing within the present territorial limits of that State, and representatives of the people organized a separate government within the territorial limits of Virginia, known and recognized by the people now living within the State of Virginia as the "Restored State of Virginia;" and this government was thereafter recognized by the executive and all the other departments of the United States Government and treated as the State of Virginia until long after the close of the Civil War.

VI.

It is also true that on the 20th day of August, 1861, the State of Virginia, in a convention assembled at the city of Wheeling, adopted an ordinance "to provide for the formation of a new state out of a portion of the territory of this State," and that section nine of said ordinance is in the following words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within

> the said new State during the same period. All private right and interests in lands within the proposed State derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of West Virginia."

Section ten of said ordinance provided as follows:

> "When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States."

The same ordinance also provided for a convention of the people to be held within the territorial limits of the then State of Virginia by representatives to be selected by a popular vote of the people within the limits of the proposed new State to adopt a constitution for such proposed new State, and the said convention assembled at Wheeling in November, 1861, and framed a constitution which was thereafter duly ratified by a vote of the people, which constitution contained the following provision relating to the public debt of the State of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Subsequently, on the 13th day of May, 1862, an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia. Section one of this act provided as follows:

> "That the consent of the Legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, (and many other counties) according to the boundaries and under the provisions set forth in the Constitution of the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section three of said act provided:

> "Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union."

The respondent avers that said act was transmitted to the senators and representatives of Virginia in Congress. A correct copy of the same is attached to this answer and made part hereof as "Exhibit No. 1."

VII.

This respondent further says that the allegations contained in Paragraph VII of said bill with reference to the act of Congress and the admission of the State of West Virginia into the Union are true.

VIII.

This respondent for further answer to said bill says it is true that pending the admission of the State of West Virginia into the Union the general assembly of the Commonwealth of Virginia passed the act of February 3, 1863, which is set forth in Paragraph VIII of said bill; but this respondent denies that the property which was by this act appropriated and transferred from the Commonwealth of Virginia to the State of West Virginia amounted in the aggregate to several millions of dollars on the 3d day of February, 1863, as in said bill is alleged, and denies that the State of West Virginia realized and received into her treasury from the sale of bank stock alone about $600,000 as is in said bill alleged.

Respondent denies that she is chargeable for or on account of the transfer of said property, except the stocks of companies or corporations and the credits, or for any part thereof, otherwise than in a settlement with the State of Virginia for this respondent's just proportion of the public debt of that State as provided in the said ordinance of August 20, 1861, and in the said act of February 3, 1863; and respondent avers that she is not chargeable in any settlement for or on account of such stocks or credits with any sum in excess of the actual market value of the same at the times when they were transferred to her; and she avers that at the times when

such stocks and credits were transferred they were greatly depreciated and were of but little value.

IX.

Respondent admits the passage of the act of February 4, 1863, as alleged in Paragraph IX of said bill, but denies that she received, or that it was intended by said act that she should recive, any money except such as had then been collected, or might be thereafter collected, within the territory constituting the present State of West Virginia prior to the admission of the State into the Union, and she denies that she is legally or equitably liable to the plaintiffs for any part thereof, or that said act of the Legislature imposed, or purported to impose, any liability upon her or was so intended or understood. Respondent avers that after the Wheeling Convention and the passage of the ordinance providing for the formation of a new State, the Restored State of Virginia continued to impose and collect taxes in the territory now composing the State of West Virginia until the admission of that State into the Union, and a small part of the money realized by such taxation was returned to the new State under the said act of February 4, 1863, and no other money was appropriated or received under that act.

Respondent avers that nearly the entire amount of revenue collected by the "Restored State of Virginia," prior to the admission of West Virginia into the Union was collected from the counties now constituting the latter State, and that much the largest part of it was expended by the said state government outside of those counties, and that it was only just and equitable that such surplus as might remain at the time of admission into the Union should be restored to her in order that she might be able to install her government, establish courts and preserve order within her limits; and this just and equitable claim was recognized by Virginia when the said act was passed.

X.

This respondent, for further answer to said bill, says that it is true that the Constitution of the State of West Virginia contained the provision, among others, set forth and alleged in Paragraph X of said bill, but this respondent denies that the terms "public debt" or "previous liability" referred to either the property or money formerly belonging to the State of Virginia which had been

transferred to and received by West Virginia under the acts of the general assembly of the Commonwealth of Virginia set forth in Paragraph VIII and Paragraph IX of said bill, for the reason that said constitution was adopted long before the said acts of the general assembly of Virginia were passed, and before the act passed in May, 1862, by the said general assembly of Virginia giving her consent to the formation of the proposed new State out of the territory within her limits. This respondent therefore denies that anything contained in sections 5, 7, or 8 of Article VIII of the Constitution of West Virginia, adopted in 1861, bears any such construction, or is susceptible of any such meaning, as is given thereto by the allegations contained in Paragraph X of plaintiff's said bill.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communication between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that West Virginia's boundaries could not be known and therefore it could not be

determined what amount of money had been expended within her limits for public works or other purposes prior to the 1st day of January, 1861.

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed of, to appoint three commissioners on the part of West Virginia to treat with the commissioners of Virginia upon the matter of adjusting the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for

the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the state to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their appointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemd necessary. This proposal made by the Commonwealth

of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virginia; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners proceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To

this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investgations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention, did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in

recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

XII.

This respondent further answering the said bill, says that the efforts looking to a settlement, and the only efforts looking to a settlement, are those hereinbefore stated in paragraph XI in this answer; the said commonwealth of Virginia having declined in 1871 to appoint any commissioners empowered and authorized to adjust or confer with the commissioners appointed by the State of West Virginia to adjust and determine what was the proportion of the public debt of said commonwealth to be assumed by this respondent. But, on the contrary, the said State of Virginia in 1871, assumed the right herself to settle the said public debt, created prior to January 1, 1861, with her creditors and for that purpose, without advising or consulting with West Virginia, passed an act, approved March 30, 1871, whereby she repudiated the ordinance of the Wheeling convention and adopted a method of her own as a basis of settlement and set apart as her own just proportion of said public debt two-thirds thereof, providing for its adjustment and funding as in the said act is set forth; a copy of which is filed with said bill as exhibit No. 1.

XIII

This respondent further answering said bill, says that any burden that the commonwealth of Virginia assumed with reference to the payment of said debts, was made upon the assumption that she owed only two-thirds thereof and which she thereby admitted was not more than her just proportion; and therefore whatever she has paid on account thereof is a matter that cannot affect any controversy involved in this suit and is a matter of which the commonwealth of Virginia cannot complain. It is true, as alleged in said bill, that the great mass of creditors of the commonwealth of Virginia have agreed to accept the certificates issued under the acts of 1871, 1879, 1882 and 1892, for the one-third of her public debt, created prior to January 1, 1861, and have likewise agreed to accept the adjudication of this court what ever it may be, in full discharge of all their claims against Virginia on account of the old bonds and their claims represented by said certificates, thus relieving said commonwealth from any further liability as to said one-third of the public debt, or any part thereof, and this was the effect which the commonwealth of Virginia and the creditors intended and understood that the act of March 30, 1871, should have as to all the certificates issued under that act.

XIV

This respondent for further answer to said bill, and especially that part contained in paragraph XIV, says that the old bonds were all required by the acts of the Legislature to be surrendered by the holders thereof to the State of Virginia and canceled, and they were all surrendered and canceled and new bonds were issued in lieu thereof for two-thirds of the said debt, not including interest, and certificates were issued for the other one-third; and it was declared by Virginia in the acts authorizing the issues and in the certificates that they were to be paid by West Virginia; and respondent avers that the said commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

This respondent denies that Virginia used any means for an amicable settlement of said debt with West Virginia, or made any overtures to that end which were repeatedly refused, as alleged in said bill, except as hereinbefore stated in paragraph XI of this answer.

XV.

This respondent, for further answer to said bill, avers that even if all the bonds and obligations and other evidences of indebtedness of the original State of Virginia outstanding or contracted before January 1, 1861, as stated in paragraph I of said bill, except a comparatively insignificant sum, not amounting to one percentum of this liability, have been taken up and are now actually held by the commonwealth of Virginia, this fact does not give to the plaintiff the right to call upon West Virginia for settlement with respect thereto, because this respondent avers that the said bonds and obligations and other evidences of public indebtedness of the commonwealth of Virginia, contracted prior to January, 1861, have been taken up by the issuance of other bonds in lieu of two-thirds thereof as before stated, and by the issuance of the certificates hereinbefore mentioned for the other one-third thereof, the said one-third to be paid by West Virginia, according to the plan of funding the said debt by said commonwealth of Virginia, and that all the said original bonds and obligations and other evidences of said indebtedness are without any force, effect or value and have been canceled and annulled as aforesaid. Respondent avers that whatever has been paid upon said old indebtedness, by Virginia, if anything, was paid only on account of her own separate and equitable proportion thereof as recognized and declared by herself; and this respondent denies that

the commonwealth of Virginia has any claim either in law or equity for any accounting with reference to said bonds or certificates or other evidences of indebtedness mentioned in paragraph XV of said bill or any part thereof. Respondent avers that the plaintiff does not allege or admit in said bill, nor does it appear thereby, that she is liable on account of the other one-third or for any part thereof, which is represented, as before alleged, by said certificates.

XVI.

For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted, but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said commonwealth of Virginia has, in her own right, a "just claim" against West Virginia for contribution on account thereof.

Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000 or any part thereof, and demands strict proof.

XVII.

This respondent, for answer to paragraph XVII of said bill, avers that the matters therein contained do not relate to the public debt of Virginia within the meaning and contemplation of section 9 of the Virginia ordinance of August 20, 1861, and cannot be brought

into this suit for adjudication and determination. This respondent denies any and all liability for or on account of the matters referred to in said paragraph and avers that the said allegations are so uncertain, general and indefinite that respondent cannot answer them specifically and that no claim against this respondent can be founded upon them in this action.

XVIII.

This respondent, for further answer to said bill says that she denies that the alleged liability of the State of West Virginia for a just and equitable proportion of the public debt of the commonwealth of Virginia rests upon any of the grounds specified in paragraph XVIII of said bill except the second, upon which, as hereinbefore averred in this answer, the State of West Virginia has always been ready and willing, and is now ready and willing, to adjust her liability, and upon which she proposed adjustment from 1866 to 1873, at which time Virginia had clearly evinced by her legislative action with reference to her public debt, her intention not to observe or abide by section 9 of the ordinance adopted by the Wheeling convention, and actually repudiated the agreed method upon which a settlement between the States should be made.

XIX.

This respondent, for further answer to said bill, avers that the only acts of Virginia indicating a desire to treat with West Virginia with reference to said public debt was that in which she tendered a proposition to arbitrate the same, thereby proposing to ignore the mode of settlement provided in said ordinance, and the two subsequent ones whereby she declared the only conditions upon which she would negotiate with the said State of West Virginia was that West Virginia should admit that the said Commanwealth of Virginia was only liable for two-thirds of the said public debt; and this respondent avers that if it is intended by paragraph XIX of said bill to aver that plaintiff ever attempted an amicable negotiation with West Virginia, except the ones hereinbefore stated, then this respondent denies the allegations contained in said paragraph of the bill and calls for proof thereof.

XX.

This respondent, for further answer to said bill, avers that what has already been stated in paragraph XIX of this answer is also applicable to paragraph XX of said bill and is hereby

adopted as part hereof; and respondent avers in addition thereto that the alleged attempts of said commission to negotiate with West Virginia with reference to the said public debt related solely to the certificates owned by third parties and held in trust by said commission and the state of Virginia, which certificates represented about all, or practically all, of the one-third of the public debt not including interest of that State created prior to January, 1, 1861; and these efforts on the part of said commission to negotiate were upon the expressed condition that this respondent should concede that the Commonwealth of Virginia was, and is, liable for two thirds of the said public debt, and no more, which proffered negotations were declined by the State of West Virginia because the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia on account of the said public debt under the ordinance of the Wheeling Convention, and this respondent now denies that she owes or will owe any sum whatever to the State of Virginia upon a settlement made in the mode provided in said ordinance.

For further answer respondent says that the ordinance adopted by the Wheeling Convention in August, 1861, provided for the formation of the new State out of a part of the territory of the Commonwealth of Virginia, defined in the manner in which the respondent's equitable proportion of the public debt of Virginia should be ascertained, as appears from section nine of the said ordinance, which is set out in paragraph VI of the plaintiff's bill, and is heretofore referred to and made part of this answer..

And the said Commonwealth of Virginia also provided by section 10 of said ordinance as follows:

> "When the General Assembly shall give its consent to the formation of such new state, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that the said new state may be admitted into the Union of States."

And respondent avers that the General Assembly referred to in section ten was the General Assembly of the Commonwealth of Virginia and the constitution referred to in said section was the constitution to be thereafter adopted by the proposed new state.

The said ordinance as heretofore stated also provided for the holding of a convention by the citizens within the territory of the proposed new state for the purpose of framing a constitution. Af-

ter the promulgation of the ordinance of the convention, the people of Virginia, as well as those residing in that part of the territory to be converted into a new state as those residing in the other part of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance defining the manner in which the equitable proportion of the said debt was to be ascertained, and when the Constitution of West Virginia was framed and adopted in the year 1861 the said section nine was in full force, and both the Commonwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new state was to be formed were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said public debt was assumed on the basis of the said ordinance, and not otherwise. It was provided in section eight, Article VIII, of the Constitution of the State of West Virginia:

> "An equitable portion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

After the adoption of this Constitution the Commonwealth of Virginia, on May 13, 1862, as hereinbefore stated, by an act of her Legislature, gave her consent to the formation of the new state. "According to the boundaries and under the provisions set forth in the Constitution for the said state of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day of November, 1861."

Subsequently, by an act of Congress approved December 31, 1862, provision was made for the admission of West Virginia into the Union, the said act providing a change in the seventh section of the eleventh article of the constitution of the said new state, relating to slavery, and providing for a vote to be taken relative thereto, and the proclamation thereof by the President of the United States, under which West Virginia, on the 20th day of June, 1863, became one of the states of the Union.

And so this respondent is advised, and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia and the Commonwealth of Virginia, through her Legislature, by the act aforesaid, approved the constitution of West Virginia as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act Congress admitting the said state into the Union, a compact between the two states prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.

The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia through her Legislature, as provided by her constitution, nor can its liquidation be otherwise provided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. Respondent therefore pleads and relies upon said compact in bar of the plaintiff's right to prosecute and maintain this suit in this Honorable Court and prays that the said bill may be dismissed.

XXII.

This respondent further answering and as a defense to said bill avers that the Commonwealth of Virginia, by her said bill and exhibits therewith filed and made part thereof, shows that she has adjusted before the institution of this suit to the entire satisfaction of her people and her creditors her alleged equitable proportion of her whole public debt existing on the first day of January, 1861, which she claims is only two-thirds thereof, and that therefore this respondent should be made liable for the other one-third thereof. In effecting this adjustment she refunded all the evidences of indebtedness created prior to January 1, 1861, except about one per centum thereof, and required the same to be surrendered to her and cancelled and annulled. Respondent avers that the said Commonwealth of Virginia did not refund two-thirds of her public debt, as alleged, in said bill although she proposed to do this by an act of her Assembly approved March 30, 1871; but finding that she could probably secure more favorable terms of set-

tlement of what she decided to be her just portion, another act was passed by her General Assembly which was approved March 28, 1879, whereby the debt was divided into two classes as shown by said act and thereby made a further reduction in the principal of her indebtedness, as well as securing a lower rate of interest to be paid thereon.

After various efforts to adjust the indebtedness on terms most favorable to herself, she secured a settlement whereby she funded and settled what she claimed to be her equitable proportion of her debt at a fraction less than forty-seven per cent upon the entire amount, including interest, a part of which she may have paid, but for the great volume of which she has issued her bonds, and which are now outstanding and unpaid. For one-third of her original indebtedness, created prior to January 1, 1861, she has issued certificates amounting in the aggregate to $18,227,153.60, of which it is alleged her Commissioners of The Sinking Fund and the Literary Fund hold $2,745,462.60, leaving $15,281,970 in the hands of the public.

Said certificates were issued by the State of Virginia and accepted by her creditors under the following acts of the General Assembly of that State, to-wit:

Under the act of March 30, 1871, certificates were issued for the sum of $15,281,970, of which it is alleged the Commissioners of the Sinking Fund and the Literary Fund held $2,578,515, leaving $12,703,451 in the hands of the public. Of these certificates issued to the public $10,85 ,294 had been deposited with the Virginia Commission on the fourth day of January 1906, and only $1,852,-157 had not been deposited at that time.

Under the act of March 28, 1879, certificates were issued to the amount of $564,258, of which $463,892 had been deposited with said commission at the date aforesaid, leaving $100,366 which had not been deposited. Neither the Commissioners of the Sinking Fund nor the Literary Fund held any of these certificates. The act of the Legislature under which all these certificates were issued and accepted by the creditors expressly provided that they should be taken "as a full and absolute release of the State of Virginia from all liability on account of said certificates."

Under the act of February 14, 1882 certificates were issued to the amount of $1,775,603 of which $166,943 were issued to the Virginia Literary Fund and $1,608,660 were issued to the public. Of the amount issued to the public $1,313,792 had been deposited

with the Virginia Commission on the date aforesaid, leaving outstanding at that time $294,868.

Under the act of February 20, 1892 certificates were issued to the amount of $605,320, of which $544,456 had been deposited on the date aforesaid, leaving $60,844 still in the hands of the old bond-holders or their successors in interest. Neither the Commissioners of the Sinking Fund nor the Literary Fund received any of the certificates issued under said act.

The certificates for $1,774,603 issued under the act of 1882 and the $605,320 issued under the act of 1892 were in the following form, and the respondent avers that the State of Virginia has been wholly released from liability thereon.

No..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for ..... dollars, dated ..... day of ....., from....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

..... *Second Auditor.*

..... *Treasurer.*

And respondent says that the amount of certificates of all classes deposited with the Virginia Commission on the date aforesaid was $13,173,435.41, but respondent does not know what amount, if any, has been deposited since that time, and respondent asks that the State of Virginia be required to show on the hearing of this cause, what amount of certificates have been so deposited since January 4, 1906, and under what acts of the Legislature the same were issued. Respondent avers that all said deposits were made under and in accordance with the agreement made between the Virginia Commission and the Depositing Committee for the certificate holders on the 24th day of November, 1895, which, among other things provides as folliws:

> "And the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be

realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and aquittance of all claims in the premises against the State of Virginia."

And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of said certificates and not in her own right; and that she has agreed through her said commission with the said creditors that she is to incur no expense on account of this action and that the whole expense thereof is to be borne by the holders of said certificates in whose behalf and for whose exclusive benefit the same was instituted and is now being prosecuted.

XXIII.

This respondent for further answer to said bill says that all the matters and allegations therein contained and not admitted in this answer to be true or heretofore specifically denied, are now and hereby denied and strict proof thereof is required.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of plaintiff, material to be answered, according to her best knowledge and belief and humbly prays this Honorable Court that the said plaintiff's bill be dismissed and that this defendant have and recover her reasonable costs.

And as in duty bound she will ever pray, etc.

CLARKE W. MAY,
Attorney General,
J. G. CARLISLE,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
For West Virginia.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, SS:

This day there personally appeared before me, the undersigned authority in and for said County and State, William M. O. Dawson, Governor of the State of West Virginia, the defendant named in the foregoing cause, and being by me duly sworn, says that he is the Governor of the defendant, the said State of West Virginia, and that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

WM. M. O. DAWSON,
Governor of West Virginia.

Sworn to and subscribed before me this 5th day of October, A. D., 1907.

W. B. MATHEWS,
Clerk Supreme Court of Appeals.

EXHIBITS WITH ANSWER.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1.

An Act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Mason, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell Wayne, Boone, Logan, Wyoming, Mercer, McDow-

ell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union.

4. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

SECOND AUDITOR'S OFFICE,
RICHMOND, NOV. 16, 1871.

A. W. Campbell, Esq., Secretary, &c.:

DEAR SIR:—Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

EXHIBIT NUMBER 3.

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subjects their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be apprroved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January, 1861,* to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Common-

wealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and to provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obli-

gations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public official records, appropriate to determine how much of the bonded debt of Virginia existing prior to Januaary, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,-079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the

intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts, by conditions precedent prescribed by Virginia under the restored government which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which a State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount if its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dol-

lar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. MCCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Decree Proposed by Virginia Referring the Cause to a Master.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs. In Equity.

STATE OF WEST VIRGINIA, *Defendant.*

Original No. 4..

DECREE PROPOSED BY VIRGINIA REFERRING THE CAUSE TO A MASTER.

This cause coming on this day to be heard upon the complainant's Bill and the Exhibits filed therewith, the Answer of the defendant, with the Exhibits filed therewith, and the General Replication filed by the complainant thereto, was argued by counsel. On consideration whereof, it is adjudged, ordered and decreed that this cause be referred to————————————, who is hereby appointed a Special Master herein, who, after giving ten days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will, without delay ascertain and report to the Court:

I.

The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stated specifically, how and in what form the same was evidenced, by what authority of

law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

What proportion and amount of said indebtedness and of the interest since accrued thereon, should, in equity, be apportioned to, and be now paid by, the State of West Virginia.

III.

He will make and return with his report any special or alternative statements of the accounts between the complainant and the defendent in the premises, which either may desire him to state, or which he may deem to be desirable to present to the Court.

It is further adjudged, ordered and decreed as follows:

(1) To the end that full and complete information may be afforded the Master as to all matters involved in the inquiries with which he is charged by this decree, the Commonwealth of Virginia, and the State of West Virginia shall each of them respectively produce before the Master, all such records, books, papers, and public documents as may be in their possession, or under their control, and which may, in his judgement, be pertinent to the said inquiries, and accounts, or any of them.

And the Master is authorized to visit the capitals of Virginia and West Virginia and to make or cause to be made such examination, as he may deem desirable, of the books of account, documents and public records of either state relating to the inquiries he is directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All published records published by authority of the Commonwealth of Virginia prior to the formation of the State of West Virginia, and all papers and documents, and other matter constituting parts of the public files and records of Virginia prior to the partition of new territory, which in the judgment of the Master, may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence, and considered by the Master. The public acts and records of the two states since the formation of West Virginia shall be evidenced if pertinent and duly authenticated; but all such testimony tendered by either party shall be subject to proper legal exception as to its competency.

The Master is empowered to summon any persons whose testi-

mony he, or either party, may deem to be material, and to cause their depositions to be taken before him or by a Notary Public, or other officer authorized to take the same, after reasonable notice to the adverse party.

(2) The Master is authorized and empowered to employ such accountants, stenographers, or other clerical assistance as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such accountants and stenographers and typewriters for such compensation to be made to them as the Master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

(3) The complainant will cause the sum of three thousand dollars to be deposited with the Marshal of this Court to the credit of this cause, on account of the costs and expenses of executing this decree, and of this suit; and in the event that the defendant shall desire any special statements or accounts to be made, she shall in like manner before the taking of any such account, or the making of such special statement, cause the sum of $———— dollars to be deposited with the Marshal.

And the Master is authorized from time to time to draw upon the fund so deposited by Virginia, for the compensation of the accountants and other clerical assistants whom he may employ, and for any other costs or expenses, including stationery, and printing, which it may in his judgment be necessary to be incurred in executing this order of reference, or making up any special statement or accounts asked for by the plaintiff; and he will draw upon the fund deposited by the defendant for any costs which may be incurred in making up any special statement or accounts which may be desired by the defendant to be specially stated, which drafts, accompanied by proper vouchers, the Marshal of this Court will pay.

And the said Marshal is allowed to have and retain a commission of five per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts and disbursments in the premises to the Court.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys General of the respective States.

Washington, D. C., Dec. 2, 1907.

To HON. CLARKE W. MAY,
Attorney General of West Virginia.

Please take notice that on the meeting of the Court on Monday next the 9th instant, we will move the Supreme Court of the United States to enter the decree of which the above is a copy in the above entitled cause.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Decree Proposed by West Virginia Referring the Cause to a Master.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY.

Original, No. 4.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

DECREE PROPOSED BY WEST VIRGINIA REFERRING THE CAUSE TO A MASTER.

This cause came on this day to be heard upon the complainant's bill and the exhibits filed therewith; the answer of the defendant, with the exhibits filed therewith; the general replication thereto by the complainant, and was argued by counsel, and on consideration of which it is adjudged, ordered, and decreed that this cause be, and the same is hereby, referred to ———— ————, who is appointed a special master herein, who, after giving —— days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will ascertain and report to the court:

I.

The amount of the public debt of the Commonwealth of Vir-

ginia on the 1st day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

The amount of state expenditures made by the Commonwealth of Virginia prior to the 1st day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20, 1861, charging the same to the State of West Virginia; also a just proportion of the ordinary expenses of the state government of the Commonwealth of Virginia during the same period from the counties included in the State of West Virginia, charging the same to the State of West Virginia, but deducting therefrom the moneys paid into the treasury of the Commonwealth of Virginia during the same period from the counties included within the limits of West Virginia.

III.

Whether any agreements, contracts, or arrangements, other than those appearing from the exhibits filed with the bill herein, have been made by the Commonwealth of Virginia with her creditors since January 1, 1861, with reference to said public debt created prior to said date, or to the satisfaction or discharge of said indebtedness or any part thereof.

IV.

The amount of certificates relating to said indebtedness issued by the Commonwealth of Virginia under the acts of her General Assembly, approved March 30, 1871, March 28, 1879, February 14, 1882, and February 20, 1892; and what amount, if any, of said certificates have been deposited since January 4, 1906, with the commission appinted under the joint resolution of the General Assembly of the Commonwealth of Virginia approved March 6, 1894; and he will also ascertain and report what amount of said certificates so deposited since said date were issued under the act of March 30, 1871; what amount were issued under the act of March 28, 1879; what amount were issued under the act of February 14, 1882, and what amount were issued under the act of February 20, 1892.

V.

The master will ascertain and report to what extent said certificates issued by the Commonwealth of Virginia represented the principal of one-third of said public debt and to what extent they represented the interest thereon, and the rate at which the interest was reckoned; and he will also ascertain and report whether there is included in said certificates, or in any of them, the interest or any part of the interest, which had accrued on the portion of said public debt refunded by the Commonwealth of Virginia, and if so, what was the total amount of such interest and at what rate it was reckoned.

VI.

It is further ordered and decreed that the master shall ascertain and report what amount, if any, of the bonds or other evidences of debt issued by the Commonwealth of Virginia under the act of March 30, 1871, was subsequently surrendered by the holders thereof and exchanged for other bonds or evidences of debt issued under the acts of 1879, 1882, and 1892, and if such exchanges were made, the master will ascertain and report what rate of interest was agreed to be paid upon such new bonds or evidences of debt.

VII.

It is further ordered and decreed that the Commonwealth of Virginia and the State of West Virginia shall each produce before the master all such records, books, papers, and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to make or cause to be made such examination as he may deem desirable of the books of account, vouchers, documents, and public records of either state relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid which in the judgment of the master may be relevant and pertinent to

any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two states since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of three thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters, and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal is allowed to have and retain a commission of 5 per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys General of the respective states.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Referring Cause to Master.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 4, Original,—October Term, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA, *Defendant*.

DECREE ENTERED MAY 4TH, 1908, REFERRING CAUSE TO MASTER.

This cause having been heard upon the pleadings and accompanying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and valuation of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia with the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of

Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly

authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, aftter reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorney General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until

after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Order by the Court.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 4, Original.—October Term, 1907.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

It is ordered by the Court that counsel for the respective parties in this cause have leave to submit on or before the 18th instant the name of fit persons for appointment as Master to take the testimony herein.

Per MR. CHIEF JUSTICE FULLER.

May 4th, 1908.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Recommendation by Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 4, Original,—October Term, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant.*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

Now cometh the defendant, the State of West Virginia, by her counsel of record, and in pursuance of the order of this Court entered on the 4th day of May, 1908, doth respectfully submit the names of the persons hereinbelow set out, either of whom as the defendant believes and avers, would be a fit person for the appointment as Master to take the testimony under the decree in this cause entered on May 4th, 1908, to-wit:

Mr. JOHN W. YERKES, of Kentucky;

Mr. CHARLES E. LITTLEFIELD, of Maine.

We respectfully say to the Court that in the selection of these names we have deemed it proper and right not to consider any citizen of the Commonwealth of Virginia or of the State of West Virginia or of the Cities of New York, Philadelphia, Baltimore, or any of the other money centers where the so-called "West Virginia Certificates" are owned, or are sold or traded in, on stock exchanges or exchanges of a similar nature.

Respectfully submitted,

W. G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Recommendation by Plaintiff.

IN THE SUPREME COURT OF THE UNITED STATES.

No. 4, Original.

VIRGINIA, *Complainant*,

vs.

WEST VIRGINIA, *Defendant*.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On behalf of the Commonwealth of Virginia, the undersigned beg to nominate as suitable persons from whom a selection may be made by the court of one to be appointed "special master" to ascertain and report on the several subjects indicated in the order of the court on the ——— day of May, 1908, the following named gentlemen, *viz:*

Mr. J. J. DARLINGTON, of the District of Columbia;

Mr. GEORGE WHARTON PEPPER, of the city of Philadelphia.

Apart from the qualification of personal fitness, the residence of the master is regarded as a feature entitled to great consideration. He should be in a locality easily accessible to the counsel in the cause, and especially should he be where he could have easy and frequent access to the public records of Virginia, in the city of Richmond, from which nearly all the facts on which the inquiries he will be charged with conducting are to be found.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

I cordially concur in the above nominations.

HOLMES CONRAD,
Of Counsel.

May 14, 1908.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Brief for Virginia.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original No. 4.

IN EQUITY.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA, *Defendant*.

Brief for Virginia, upon motion to enter decree referring the cause to a master.

Drafts of a decree referring the cause to a Master have been submitted on behalf of the complainant, and the defendant, respectively.

[I]

There are some differences going rather to matters of procedure than to any question of principle, between the provisions of paragraphs III and IV of complainant's draft, as compared with paragraph VII of defendant's draft, which will be apparent upon reading the two papers.

We respectfully ask that the provisions expressed in paragraphs III, IV and V of complainant's draft be embodied in the decree which the court shall enter, for reasons which will be apparent on reading those paragraphs.

[II]

Our serious objections to the defendant's draft of decree are particularly to paragraph II, but also to paragraphs III, IV and V thereof.

The draft submitted on behalf of the complainant directs the master to take an account ascertaining:

I.

> "The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness."

The defendant's draft adopts this paragraph.

Paragraph II of plaintiff's draft directs the master to take the following accounts:

II.

> "What amount and proportion of said indebtedness and of the interest accrued thereon, should in equity be apportioned to and be now paid by the State of West Virginia."

Paragraph II of plaintiff's draft directs the master to take the following accounts:

II.

> (*a*) "The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th 1861.
>
> (*b*) "The aggregate ordinary expenses of the State government of the Commonwealth of Virginia, prior to January 1st, 1861, and since any part of said indebtedness was contracted.
>
> (*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period."

Paragraph III of plaintiff's draft directs that the master,

III.

"Will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court."

We respectfully object to paragraph .II of defendant's draft, on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of the account, which is not shown by anything as yet in the cause to be either equitable or just.

Before any such question can be fairly adjudicated, it is necessary to the ends of justice, that there shall be a mass of evidence in the case, not yet introduced, which evidence the court should have the aid of its master in collating and thoroughly digesting.

There is by no means enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be equitable to adopt in stating the account.

To do so at this stage of the litigation, would be to decide an important question in the case before the evidence necessary for a full understanding and just decision of that question is before the court. It would be largely to take a step in the dark, which might, and in all probability would, do injustice to one party or the other.

Our main objection to paragraph II of defendant's draft is that its effect manifestly is to have the court prejudge the case as to the basis on which the account shall be stated.

On the other hand, in the draft of decree tendered by counsel for Virginia, we have not asked the court to prejudge the case upon any controverted question of law or fact.

The case is not now being submitted for a decision upon its merits.

It is submitted for a decree referring it to a master, to state and report to the court the data necessary to enable the court to justly decide it upon its merits—and all the complainant desires is an opportunity to show the court and its master what is the fair and equitable basis upon which the account between the two States should be stated, under all of the circumstances of the case, as they shall appear when the evidence is all in.

If it should then appear that the basis prescribed by the Wheeling ordinance is binding upon the parties, and must be followed

as the basis upon which the account shall be made up, that basis would be adopted. But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to impair the obligation of the contracts by which the common debt was created, contracts which were and are alike obligatory upon Virginia and upon West Virginia, or for any other valid reason, then the scheme of settlement indicated in the Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted.

It is due to frankness to say, that, while the Wheeling ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are satisfied that upon a fair, reasonable and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay.

The debt, a portion of which she was to pay, was an interest-bearing debt. It would be manifestly "just" and "equitable" that West Virginia should be required to pay interest as well as principal. Indeed, any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust, and inequitable, but iniquitous.

The ninth section of said ordinance required the new State "to take upon itself a *just* proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861."

And section 8 of Article VIII, of the first Constitution of West Virginia, under the provisions of which she became a State, required that:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State;" and that "the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund *sufficient to pay the accruing interest* and redeem the principal within thirty-four years."

So, West Virginia came into the Union upon the distinct condition expressed in her Constitution, that she would assume an equitable proportion of the common debt of the undivided State, as it existed prior to January 1, 1861, and would provide for the payment of the accruing interest and the redemption of the principal thereof.

While it is believed that, upon the facts stated in the Bill and accompanying exhibits, and upon the proofs hereafter to be adduced in support thereof, West Virginia will owe a very large sum, even under the arbitrary scheme of the Wheeling ordinance, we submit that we should not, in the present status of the litigation, be tied down to the terms of that ordinance.

Indeed, its provisions were modified by the terms of the eighth section of Article VIII of the Constitution under which West Virginia was made a State, which provided that West Virginia should assume an equitable proportion of the common debt of the Commonwealth, principal and interest: And yet the defendant's draft excludes any item of interest from the account.

[III]

Another palpable objection to the defendant's draft is, that it excludes from the account the value of the property, assets, and money which West Virginia has received from the Commonwealth.

Upon any basis of just accounting, these items should be brought into the account.

If the account should be stated on the basis of the Wheeling ordinance, these items would manifestly be proper charges against West Virginia.

By the terms of that ordinance, Virginia's title to, and ownership of, all of the property and assets theretofore belonging to the Commonwealth remain intact.

By it, West Virginia would acquire no title to any of those assets or of that property. Framed as that ordinance was, by western Virginian's and arbitrary, and on its face unjust, as were the criteria by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a

share of the property and assets of the Commonwealth, free of charge.

All that was, by the terms of that ordinance, to be ceded by the Commonwealth to the new State, was political dominion, and jurisdiction over the people and territory embraced in the new State.

The meaning and effect of the ordinance was to leave the title to, and ownership of, the assets and property of the Commonwealth in the Commonwealth.

If nothing more had been done or said by Virginia as to that property and those assets, than was said in the Wheeling ordinance, none of it ever would have become the property of West Virginia.

The Virginians who were the creators of West Virginia, who sat in the Wheeling Convention on the 20th of August, 1861, who constituted the convention which framed the first Constitution of West Virginia, and who constituted the Legislature of the restored government of Virginia which sat in Wheeling in 1862, and in 1863, fully recognized this to be true, for, pending the formation of the new State, and before the Legislature of Virginia had in any form given its consent to its creation out of the territory of Virginia, the Legislature of the restored State of Virginia, whose authority was supreme over the territory and people afterwards constituting West Virginia, and binding upon them, on the 3rd and 4th of February, 1863, passed the acts copied in the appendix to this brief.

These statutes constituted a part of the enactments out of which the State of West Virginia had its birth. It is particularly true of the act of February 3, 1863, that it was fundamental, so far as West Virginia was concerned: for it constitutes her title deed to a vast quantity of property, the title to which by law and under the Wheeling ordinance, was vested in Virginia.

These statutes, together with the Wheeling ordinance, the first Constitution of West Virginia, the act of the United States Congress approved December 31, 1862, under which the new State was afterwards admitted into the Union, and the act of the Wheeling Legislature of May 13, 1862, constitute the constating instruments and acts by which her political existence was created, and her governmental powers and duties determined.

As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling ordinance, and Section 8 of

Article VIII of the first Constitution of West Virginia, must be taken and read together: So also these constating acts of February 3rd and 4th, 1863, and particularly of February 3, 1863, must be taken and read together with Section 9 of the Wheeling ordinance, and with Section 8 of Article VIII of the first West Virginia Constitution, as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that new State when formed of any portion of the assets and property of the parent State.

Property and money large in quantity and value were thereupon transferred by Virginia to West Virginia, for all of which West Virginia must account, not only as an equitable obligation resting upon her, under the circumstances, but as a legal obligation put upon her by positive and binding enactment.

All of these just items of charge against West Virginia, are excluded from the account to be directed by the court by the terms of defendant's draft.

For convenience of reference, the "Wheeling Ordinance," and the acts of the Legislature of Virginia at Wheeling, passed February 3rd and 4th, 1863, are printed as an appendix to this brief.

[IV]

Another objection to the account called for by defendant's draft, is that it does not direct *any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January, 1, 1861, which West Virginia should assume and pay,* but contents itself with merely directing the arbitrary and inconsequential accounts defined in paragraph II of defendant's draft.

But our principal insistance is that defendant's draft of a decree prejudges the case in advance of a hearing upon the merits, while that tendered for the plaintiff cannot operate to the prejudice of either party, upon any material question in the cause; by this draft the adjudication of these questions being left to await a hearing after the Master's report shall be filed, upon the evidence then fully in the cause.

[V]

The precise accounts called for by paragraph II of defendant's

draft will be taken by the Master if he shall find it necessary and proper to take them in order to ascertain the amount and proportion of the Virginia debt which West Virginia should pay; and if the Master shall for any reason deem it unnecessary to take those accounts, the defendant can, under paragraph III of complainant's draft, have them stated as special accounts, if she shall be so advised.

Paragraph II of complainant's draft is designed to enable each party, or the Master, to have alternative, or special statements of the accounts made up on any basis on which either party or the Master may deem it proper or desirable that the same shall be stated.

By having the respective views and contentions of the complainant and the defendant thus presented in contrast in such concrete form, the court, with the assistance of the findings of the Master, will be enabled more readily and intelligently to reach a just conclusion.

[VI]

If the inquiries defined in paragraphs III, IV, V and VI of defendant's draft have any pertinency to any question in the case, it must be because of something not yet in the record.

We object to them as being unnecessary and irrelevant.

(*a*) There is nothing in the cause, or so far as we know out of it, to show that there is any foundation in fact for the inquiry mentioned in paragraph III of defendant's draft, as to whether Virginia has made any other contracts or arrangements with the public creditors, since January 1, 1861, in reference to the public debt. So that inquiry, though harmless, is useless.

(*b*) The accounts provided for in paragraphs IV and V of defendant's draft, are not pertinent to any issue in the cause.

Both relate to the certificates or receipts given by Virginia to the holders of the bonds issued by the Commonwealth before her dismemberment, who have deposited these bonds with her.

Those certificates are in the nature of a declaration of trust by Virginia, that she holds said bonds (so far as they have not been funded in the new securities which the Commonwealth has given for about two-thirds of the aggregate amount thereof, principal and interest), for the benefit of the owners of the bonds deposited with her.

It is impossible to see how those transactions could in any way affect any question which will arise in this cause.

The only function of those certificates is to show who are now entitled to the bonds which were so deposited with Virginia, and which she holds in her treasury for the benefit of these certificate holders, awaiting a settlement with West Virginia.

As is true of the inquiries mentioned in paragraph III, of defendant's draft, the objection to those provided for by paragraphs IV and V are that they are unnecessary and useless.

(*c*) The same objection applies to paragraph VI of defendant's draft. That relates to the obligations which were issued by Virginia, as now constituted, in settlement of the two-thirds of the old bonds funded, and payment of which was assumed by her.

That is a matter with which West Virginia has nothing to do, and which does not affect the rights or obligations of either party in respect to the claims asserted in complainant's bill.

Those new bonds given by Virginia for the two-thirds of the old bonds assumed by her, and accepted by the owners of the old bonds so deposited with Virginia, operated as a payment and discharge of the old bonds to the extent of the two-thirds thereof so funded.

West Virginia is not sued here to pay any part of that two-thirds so settled by Virginia. She is sued to have her assume and pay so much of the remaining unfunded third of the common debt of the undivided State, as may be West Virginia's equitable portion of the whole of the debt represented by the bonds of the original State. It has never been claimed or suggested that there was any liability on West Virginia beyond said unfunded third of the bonds of the original State which have been funded; or that West Virginia should pay more than one-third of the bonds issued by Virginia prior to the formation of West Virginia, which have not been funded.

The liability of West Virginia on account of the common public debt, has sometimes been estimated by Virginia or her representatives at one-third thereof, but never at more than one-third, and Virginia has undertaken to take care of the other two-thirds with which West Virginia has nothing to do.

It is true, that there are some millions of the debt of the undivided State, which Virginia has paid in full, and holds the obligations so taken up by her as a claim against the new State, to the extent of West Virginia's equitable liability for contribution therefor; and the extent of that liability can be ascertained

and stated in the account directed by paragraph II of complainant's draft.

There is no occasion for any of the accounts directed by paragraphs III, IV, V and VI of defendant's draft. If West Virginia wants any of them to be stated, she can have that done as a special statement under paragraph III of complainant's draft.

[VII]

We object generally to the defendant's draft, that it does not direct the accounts which are necessary to be taken in order to intelligently, definitely, and fairly determine the amount and proportion of the debt of the undivided State, which West Virginia is equitably and justly bound to pay.

Respectfully submitted,

WILLIAM A. ANDERSON,
Counsel for Virginia.

APPENDIX.

Copy of the ordinance adopted by "the Wheeling Convention," providing for the formation of the new State afterwards called West Virginia.

AN ORDINANCE.

To provide for the formation of a new State out of a portion of the territory of this State.
(Passed August 20, 1861.)

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this Commonwealth, and to be erected into a separate State, and admitted into the Union of States, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: beginning on the Tug Fork of Sandy river, on the Kentucky line where the

counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the southwest corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the States of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the States of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke, and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a Constitution for the government of the proposed State.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and

shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State." And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the Secretary of the Commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We, ..., commissioners, and ..... conducting officer, do certify, that we caused an election to be held at ....., in the county of ....., at which we permitted all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we

have carefully added up each column of our poll books, and find the following results:

For a new State, ... votes; Against a new State, ... votes.

Given under my hand, this ..... day of ....., 1861.

Under which certificate there shall be added the following affidavit:

..... County, To-wit:

I, ..., a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under our hand, this ..... day of ....., 1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of election and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the Constitution that may be agreed upon by it, to the qualified voters within the proposed State, to be voted upon by the said voters on the fourth Thursday in December next.

7. The counties of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston, and Wood shall each elect two; and the other counties named

in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every thousand of the population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegate shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants issued by the proposed State, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed State now liable thereto.

10. When the general assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the union of States.

11. The government of the State of Virginia as re-organized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said re-organized State government in any county which shall not be included within the proposed State.

(SIGNED) A. I. BOREMAN, *President.*
(SIGNED) G. L. CRANMER, *Secretary.*

Copies of acts passed by the Legislature of Virginia, at Wheeling, February 3rd, and February 4th, 1863.

CHAPTER 68.—*An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.*

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads, and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this State, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in any person or persons, for the use of this State to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch

doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this State or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the State in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed State of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the State, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroad, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the State, railroad or express companies, or other persons before or since the reorganization of the State government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, assessed in the counties aforesaid, and due the State for the year eighteen hundred and sixty-three, in the hands of officers of the State or individuals, together with all the rights of the State, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the State or corporations for the use of the State, shall be the property of the State of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the State, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the State of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of the commonwealth for the use of the State of West Virginia, when it becomes one of the United States, on any bond or claim which shall pass to or become the property of the State of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State: provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer and the adjutant-general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said State of West Virginia.

7. This act shall take effect when the proposed State of West Virginia shall become one of the United States.

CHAPTER 72.—*An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.*

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars be, and is, hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.

3. Be it further enacted, That the act passed May fourteenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the State of West Virginia be, and the same is hereby repealed.

4. This act shall be in force from passage.

Supreme Court of the United States

OCTOBER TERM, 1907.

Brief for Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

In Equity.—Original No. 4.

COMMONWEALTH OF VIRGINIA, *Complainant,*

against

WEST VIRGINIA, *Defendant.*

BRIEF FOR DEFENDANT ON COMPLAINANT'S MOTION TO REFER CAUSE TO MASTER.

The complainant proposes an interlocutory decree referring the cause to a master with a direction to the master to take an account ascertaining

I.

"The amount of the public debt of the Commonwealth of Virginia as of the First day of January, 1861, stating specifically how and in what form the same was evidenced and by what authority of law and *for what purposes the same was created* and the dates and nature of bonds or other evidences of said indebtedness."

This paragraph was adopted in the decree proposed by the defendant, although in our view entirely unnecessary; but, upon reflection, it seems to require amendment in order to conform it to the allegations of the bill and the admission of the ANSWER. The words "for what purposes the same was created" imply that the debt was

created for diverse purposes. The bill alleges that "on the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory."

The bill is burdened with allegations as to the internal improvements, the motive which led the Commonwealth of Virginia to enter upon the policy, etc. The first sentence of paragraph I. of the Answer is as follows:

> "That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in 'about' the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvements within her then territory."

Then, upon the allegation of the bill that the indebtedness of about $33,000,000, as it existed prior to January 1st, 1861, was incurred in connection with the construction of works of internal improvement, both parties are by bill and Answer in accord. In so far, therefore, as paragraph I of the proposed decree calls for an investigation into the purposes for which the same was created, if by "purposes" it means for the accomplishment of objects other than the construction of works of internal improvement, it is a departure from the fact established by the pleadings. Unless that is admissible, which we deny, the paragraph is objectionable for its uncertainty of expression. It would be better in accord with the Bill and Answer, and more useful to the court and to the parties, if the words were stricken out and there were inserted in their place: "for what particular works of internal improvement the same was created and its proceeds expended and where the same were located."

II.

"What amount and *proportion* of said indebtedness and *what interest* accruing thereon *should in equity* be *apportioned to and be now paid by the State of West Virginia.*"

The defendant's objection to Paragraph two is radical and will fully appear in the argument submitted herein in support of *its* proposed Paragraph two.

The remaining paragraphs of the decree proposed by the complainant need not here be set forth.

On the other hand, the defendant proposes a decree which directs the master to ascertain:

II.

(*a*) "The amount of State expenditures made by the Commonwealth of Virginia prior to the First day of January, 1861, within the territory now included within the State of West Virginia, since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861."

(*b*) "The aggregate ordinary expenses of the State government of the Commonwealth prior to January 1st, 1861, and since any part of said indebtedness was contracted."

(*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the Counties included in the State of West Virginia during said period."

Paragraph III. of the complainant's proposed decree directs that the master:

> "III. Will make and return with his report any special or alternative statement of the account between the complainant and defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the Court."

The difference between the two proposed decrees above quoted is radical, and presents to the Court a question which in our view is fundamental and which West Virginia contends, respectfully and very earnestly, should be decided before any reference to a master to state the account between the parties.

The jurisdiction of the Court over this case is settled by the decision overruling the demurrer. We are quite aware that the Court has recognized a distinction between suits by private parties in respect of the application of the rules of pleading and of practice, and suits between States. Thus it was held, in *Rhode Island vs. Massachusetts* (13 Peters, 23), that:

> "From the character of the parties, and the nature of the controversy, we cannot, without committing great injustice, apply to this case the rules as to time, which govern Courts of Equity in suits between individuals. In the last-mentioned cases, the material allegations in the bill are comparatively few in number, and rest in the personal knowledge of the individual who is to put in his answer. But a case like this, and one, too, of so many years' standing, the parties, in the nature of things, must be incapable of acting with the promptness of an individual."

In Rhode Island vs. Massachusetts (14 Peters, 256), the Court, through Mr. Chief Justice TANEY, says:

> "The case to be determined is one of peculiar character, and altogether unknown in the ordinary course of judicial proceedings. It is a question of boundary between two sovereign states, litigated in a Court of justice; and we have no precedents to guide us in the forms and modes of proceeding, by which a controversy of this description can most conveniently, and with justice to the parties, be brought to a final hearing. The subject was, however, fully considered at January term, 1838, when a motion was made by the defendant to dismiss this bill. Upon that occasion the Court determined to frame their proceedings according to those which had been adopted in the English Courts, in cases most analogous to this, where the boundaries of great political bodies had been brought into question. And acting upon this principle, it was then decided, that the rules and practice of the Court of Chancery should govern in conducting this suit to a final issue. The reasoning upon which that decision was founded is fully stated in the opinion then delivered; and upon re-examining the subject, we are quite satisfied as to the correctness of this decision (12 Peters, 735, 739).
>
> "The proceedings in this case will therefore be regulated by the rules and usages of the Court of Chancery. Yet, in a controversy where two sovereign states are contesting the boundary between them, it will be the duty of the Court to mould the rules of Chancery practice and pleading in such manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of Chancery pleading. And if it appears that the plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of her claim, on which she relies, the case ought not to be disposed of on such an issue. Undoubtedly the defendant must have the full benefit of the defense which the plea discloses; but at the same time, the proceedings ought to be so ordered as to give the complainant a full hearing upon the whole of her case. In ordinary cases between individuals the Court of Chancery has always exercised an equitable discretion in relation to its rules of pleading whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength."

West Virginia does not and could not successfully here contest the principles thus laid down, but the principles of equity and the rules of

chancery procedure so far as *essential* to protect the rights of parties litigating in this tribunal will, of course, be substantially enforced. The application of some of the rules of procedure are certainly essential to substantial justice. Mr. Bates, in his work on Federal Equity Procedure (Vol. II., p. 802), says (section 753):

> "Before a cause is referred to a master to take and state an account between the parties, the following preliminary steps should be taken, as conditions precedent to the reference, viz: (1) The pleadings should be perfected and the cause put at issue; (2) the parties should take the proofs upon the issues made by the pleadings, as fully as the nature of the case will allow; (3) the cause should be regularly set down for hearing; (4) the cause should be regularly heard upon the pleadings and the evidence by the court; (5) *upon such hearing the court should pass upon all the issues made by the pleadings, and should enter an interlocutory decree declaring the rights of the parties,* and *also settling and declaring the principles upon which the account is to be taken;* (6) the decree should refer the cause to a master to take and state the account in accordance therewith and report to the court, and all other matters should be reserved until the coming in of the report. * * *"

While the foregoing quotation refers to the equity practice which obtains in the *Circuit* and *District Courts* of the United States, so far as the practice is based upon substantial justice and is necessary for the protection of the rights of parties litigant, we suppose it will be pursued by this Court in the exercise of its *original* jurisdiction. If there were two bases of accounting in this case, both equally open to adoption by the Court, the objection of West Virginia to paragraph II. of the decree proposed by the complainant, would be perhaps without force, but from our standpoint, it is conclusively apparent that there is but one basis upon which an accounting in this case for West Virginia's Equitable proportion of the Virginia debt can be decreed. The bill alleges, in paragraph VI., that on the 20th day of August, 1861,

> "The Restored State of Virginia in convention assembled in the City of Wheeling, Virginia adopted an ordinance to 'provide for the formation of a new State out of portion of the territory of this State,' section 9 of which ordinance was as follows, to wit: '9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, *to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted,*

and deducting therefrom the moneys paid into the treasury of the Commonwealth from the Counties included within said new State during such period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.' "

The bill also alleges, paragraph VII., that:

"On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinance of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in the proposed Constitution with regard to the liberation of slaves therein."

Also that it was provided by the Act of Congress that whenever the President should issue a proclamation stating that such change had been made and ratified, the Act admitting such new State should be effective sixty days after the date of such proclamation.

The bill also alleges that a proclamation was issued by President Lincoln on April 20th, 1863, and that West Virginia in conformity therewith, and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863.

The bill also alleges, in paragraph X. *inter alia, that*

" 'By section 8 of Article VIII. of the Constitution of West Virginia it is provided:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the First day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.' "

The bill in paragraph XVIII. alleges the second of four grounds upon which the liability of West Virginia in this suit is asserted, as follows:

"II. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia as it existed prior to the creation and erection of the State of West Virginia, *forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in*

which the method of ascertaining her liability on account of said debt is prescribed, and this liability is embedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union."

This is rhetorical, but it is none the less accurate and true.

The answer admits (paragraph VI.) the allegations of the bill as to the adoption and terms of the ordinance, including Section 9. It also admits the allegations of the bill averring the assumption of a liability and making provision for its ascertainment and payment by the constitutional provision quoted in the bill.

Paragraph XVIII. of the answer is as follows:

"This respondent for further answer to said bill says: that she denies that the alleged liability of the State of Virginia for a just and equitable proportion of the public debt of the Commonwealth of Virginia rests upon any ground specified in Paragraph XVIII. of said bill *except* the *second, upon which, as hereinbefore averred in this answer,* the *State of West Virginia has always been ready and willing and is now ready and willing to adjust her liability."*

Thus it stands *alleged in the bill* and *admitted by the answer,* and if it were not admitted by the answer, it is *conclusively established by the bill and its exhibits,* that there was a solemn agreement entered into in 1861 between the State of Virginia and the new State of West Virginia, with the consent of the Congress, by which the latter State assumed (as one of the conditions of the assent of Virginia to her becoming a State) a just proportion of the indebtedness of that Commonwealth as it existed prior to January 1st, 1861, *the manner of ascertaining which proportion was defined by the ordinance itself.*

The ordinance was, as treated by this Court in the case of Virginia vs. West Virginia (11 Wallace, 39), a *proposition* by the Commonwealth of Virginia to the people of the proposed new State. It was accepted by the constitutional convention of the proposed new State, carried into its Constitution and adopted by the people; and when the State was admitted into the Union by the Congress, with the assent of Virginia, *it became a completed compact between competent parties, upon adequate consideration, protected by the Constitution of the United States from impairment by either party.*

We say the ordinance defines what would be a just proportion. This is an accurate statement; for the ordinance provided not only for the assumption of a just proportion, but provided *specifically in what manner that proportion shall be ascertained.* We do not understand

the suggestion which appears to have been made at the argument, that the continued obligation of the compact depends upon the *continued assent to it by both States*. A compact between States, entered into with the consent of Congress, has always been treated by this Court as irrevocable by *either* of the parties, and where the legislation of either has attempted to impair the obligation of a compact, it has been held void under the Constitution of the United States (See *Greene vs. Biddle*, 8th Wheaton, 1).

The obligation of a lawful compact between two States, justiciable in its nature, certainly is as binding in law upon *both* until abrogated by *both* in a constitutional way, as a contract between a State and an individual, or between two individuals, and a disregard or violation of it by one, certainly cannot thereby release it from its obligation.

It is difficult to understand how, from the averments of the bill and the admsisions in the answer, and the argument at the Bar, it can be an *open question in this case* that the only liability of West Virginia for an Equitable proportion of the *ante-bellum* debt of Virginia is upon the basis of the ordinance.

The bill, in paragraph XVIII, summing up the grounds upon which it rests the liability of Virginia to account, says:

> "FIRST. The area of the territory now known as the State of West Virginia, formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original state at the time of its dismemberment, and the State of West Virginia *by the acquisition and appropriation of said territory*, with the population thereof, *assumed therewith liability for a just and equitable portion of the public debt* created prior to the partition of said territory."

This is followed by the second ground, hereinbefore quoted, which is based upon the ordinance and Section 8 of the Constitution.

The third ground is as follows:

> "The State of West Virginia has further by repeated enactments and joint resolutions of her legislature recognized her liability for a just proportion of this debt."

The first ground invokes the application of what is assumed to be the rule of *international* law that "debt follows territory," and that the debt as between West Virginia and Virginia is to be "ratably apportioned" on the basis of *population* and *territory* at the time of the separation.

In support of this theory of liability, which is absolutely incompatible with the theory of liability based upon the compact, one of the

learned counsel for the complainant read, on the argument from the opinion of Mr. Justice FIELD, who wrote for the court in *Hartman vs. Greenhow* (102 U. S., 672) this sentence:

> "Where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them."

counsel added, "That is in Hartman vs. Greenhow."

JUSTICE HARLAN: "Please read that again."

MR. CONRAD: "Where a state is divided into two or more states in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them."

Counsel added: "That is an opinion of this court that has received no dissent."

With the greatest veneration for the learning and just fame of Mr. Justice FIELD as a jurist, we venture the observation that the subject was not at all involved in the case. The question there was solely as to the *receivability of coupons*, of bonds representing the funded debt of Virginia, *for taxes*. West Virginia was not a party; nor was Virginia. But aside from this the quotation read from Mr. Justice FIELD did not in the slightest degree correctly put before the Court the view which he must be deemed to have entertained. We supply the deficiency, quoting all that he said:

> "Writers on public law speak of the principle as well established that, where a State is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: 'If a State should be divided in respect of territory, its rights and obligations are not impaired; *and, if they have not been apportioned by special agreement*, their rights are to be enjoyed and their obligations fulfilled by all the parties in common' (1 Com., 26); and Halleck, speaking of a State divided into two or more distinct and independent sovereignties, says: 'In that case, the obligations which have accrued to the whole before the division are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of courts, and the practice of nations.' (International Law, c. 3, Sect. 27.)"

Mr. Justice FIELD continues:

> "In *conformity* with the doctrine thus stated by *Halleck*, both States—Virginia and West Virginia—have recognized in their constitution their respective liability for an equitable

> proportion of the old debt of the state, and have provided that measures should be taken for its settlement."

It is apparent that Mr. Justice FIELD, in the clause last above quoted, referred to the *special* agreement evidenced by Section 9 of the Ordinance and to the first clause of Section 8 of Article VIII. of the West Virginia Constitution.

It is worth noting that, in *Antoni vs. Greenhow* (107 U. S., 769), which also involved the same Funding Act, Mr. Justice FIELD, in his dissenting opinion, in which Mr. Justice HARLAN concurred, said, referring to the same subject:

> "It is a well-settled doctrine of public law that, upon the division of a state into two or more states, the debt shall be ratably apportioned among them (*See authorities upon this subject in Hartman vs. Greenhow* (102 U. S., 672, 677)."

Phillimore, after quoting both Grotius and Kent, says:

> "If a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are, *unless they have been the subject of special agreement*, ratably binding upon the different parts";

and Sir Sherston Baker in "First Steps of International Law," page 36, says:

> "The case is slightly different where one state is divided into two or three distinct and independent sovereignties. In that case the obligations which had accrued to the whole before the division are (*unless they have been the subject of a special agreement*) ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of courts and the practice of nations. It is incorporated into the treaty by which the modern Kingdom of Belgium was established."

Thus it will be seen that the general rule as quoted from Mr. Justice FIELD, is *essentially qualified* by the authorities which he quotes, in this, that a *special agreement* between the two states in respect of the assumption of a proportion of the debt as it existed before the separation, *takes the case out of the general rule:* so that the second ground alleged in the bill, which specifically avers a *special agreement, destroys the applicability of the rule to this case.* Upon what theory is this special agreement, consisting of a proposition by Virginia, its acceptance by the constitutional convention, its embodiment in the Constitution, the ratification of the latter by the people, and the admission of the State into the

Union by Congress, to be so cavalierly dismissed from this case as the decree proposed on behalf of Virginia would do? This Court had occasion to consider the validity of this ordinance in the case of *Virginia vs. West Virginia*, 11 Wallace, 39, in respect of the provision contained in it for the incorporation of the counties of Berkeley and Jefferson in the latter State conditioned upon a popular vote therefor; and the Court said:

> "There was then a valid agreement between the two states consented to by Congress, which agreement made the accession of these counties dependent on the result of a popular vote in favor of that proposition."

If the ordinance was valid *then* in respect of the incorporation of the two counties, upon what theory can it be held to be invalid as to the specific provision contained in Section 9 for the assumption by the new State of a just proportion of the indebtedness *to be ascertained in the manner defined*, clearly carried into the Constitution of the new State and assented to by Congress by the admission of West Virginia into the Union? It does not impeach or even belittle the "Restored State of Virginia" or the validity of its acts to refer to it as a "revolutionary government" or to the ordinance as a "revolutionary proceeding." Whether it was or was not the lawful government of Virginia was a political question. When the House of Representatives admitted the members of Congress from that State and the Senate admitted the senators elected by the legislature of the "Restored State," and the President recognized that government as the true government of Virginia, that forever settled its legality and regularity beyond the power of judicial review and made valid its acts *ab initio*. But for that "Restored State of Virginia," and its recognition by the political departments of the Federal Government, there would have been no government of Virginia *under the Constitution* of the United States from April, 1861, to the close of the war. The ordinance of the Wheeling convention of '61, which was the genesis of the State of West Virginia, and the adoption of its Constitution, are, from the standpoint of law, as clearly acts of the Commonwealth of Virginia as if they had taken place in 1851 instead of in 1861.

The suggestion so often made in oral and printed argument that West Virginia is the "daughter of Virginia," is sentimental, but inaccurate. When admitted into the Union she came in on an equality with the original states and became a member of the

sisterhood of states, equal in sovereignty and personality to the older commonwealth of which her territory had once been a part, and of which her people had once been citizens.

May it not be that this misconception of the real relation of West Virginia as a State of the Union to old Virginia has played an unconscious part in the disregard by the latter of the special agreement which has operated to delay an adjustment under its provisions? If this special agreement in respect of the proportion of the debt of Virginia which was to be assumed by the State of West Virginia constituted a valid compact between the two states, when did it cease to be valid, and for what reason, at the suit of Virginia, is it to be ignored? It was said, by Mr. Justice BALDWIN, in *Rhode Island vs. Massachusetts* (12 Peters, 748), speaking for the Court:

> "In Poole *vs.* Fleeger, this Court declared that an agreement between States, consented to by Congress, bound the citizens of each State."

Greene vs. Biddle, *supra*, involved the validity of the compact between Virginia and Kentucky, entered into at the time she separated from the former and was admitted into the Union as a State, and the compact in that case in respect of the assent of Congress to it, is not unlike the compact in the present case. The Court said:

> "The compact was entered into between Virginia and the people of Kentucky, upon the express condition that the general government should, prior to a certain day, assent to the erection of the District of Kentucky into an independent State, and agree, that the proposed State should immediately, after a certain day, or at some convenient time future thereto, be admitted into the federal Union. On the 28th of July, 1790, the convention of that District assembled under the provisions of the law of Virginia, and declared its assent to the terms and conditions prescribed by the proposed compact; and that the same was accepted as a solemn compact, and that the said District should become a separate State on the 1st of June, 1792. These resolutions, accompanied by a memorial from the convention, being communicated by the President of the United States to Congress, a report was made by a committee, to whom the subject was referred, setting forth the agreement of Virginia, that Kentucky should be erected into a State, *upon certain terms and conditions*, and the acceptance by Kentucky *upon the terms and conditions so prescribed*; and, on the 4th of February, 1791, Congress passed an

act, which, after referring to the compact, and the acceptance of it by Kentucky declares the consent of that body to the erecting of the said District into a separate and independent State, upon a certain day, and receiving her into the Union.

"Now, it is perfectly clear, that, although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State, without the assent of Virginia, or upon terms variant from those which Virginia had prescribed, But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed, by a solemn act, the consent of that body to the separation. The terms and conditions, then, on which alone the separation could take place, or the act of Congress become a valid one, were necessarily assented to; not by mere tacit acquiescence, but by an express declaration of the legislative mind, resulting from the manifest construction of the act itself. To deny this, is to deny the validity of the act of Congress, without which, Kentucky could not have become an independent State, and then it would follow, that she is at this moment a part of the State of Virginia, and all her laws are acts of usurpation."

It was held that the act passed by the Legislature of Kentucky in violation of the compact was void.

The suggestion that Virginia never assented to the compact with West Virginia because of the amendment which Congress proposed to the Constitution, is without weight.

The conditions imposed by Virginia upon West Virginia were embodied in the Ordinance. It may be admitted that any amendment proposed by Congress which would vary the terms of the *Ordinance* might have been operative to destroy the consent of Virginia to the erection of a new State out of her territory, but her General Assembly was content with the Constitution as not being in violation of the ordinance, and the amendment proposed by Congress to the Constitution, relative to slavery, was a matter with which Virginia could have no concern, it being purely local to the State of West Virginia, as affecting the status of property and persons within her borders and under her sovereignty. It sustained no relation whatever to the Ordinance or to the conditions upon which Virginia had given her assent. It is almost an evidence of desperation that, at this day, it should be solemnly argued in this Forum in behalf of Virginia that West Virginia did not become a State with the assent of Virginia, because Con-

gress decided, in response to representations from West Virginia, to require, as a condition of admission, an amendment to the Constitution providing for the gradual extinction, within her borders, of slave ownership.

We have asserted that the Ordinance was carried into the Constitution. The provision is as follows:

> "ARTICLE VIII, Section 8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years."

It will be noted that this language of assumption is the language of the ordinance except that the word "equitable" is used in the Constitution, while the word "just" is used in the ordinance. As a qualifying word, used in such a connection, "equitable" and "just" are synonymous. An equitable proportion could not be other than a "just" proportion, and a just proportion would be an "equitable" proportion. The ordinance and the Constitution are the constating instruments upon which the State was erected and they are to be read *in pari materia*, and it is not susceptible of doubt that the word "ascertain" as used in Section 8 of the Constitution is an adaptation of the word "ascertained" in section 9 of the Ordinance. It will be remembered that this convention assembled within ninety days after the adoption of the Ordinance. Its sole warrant for assembling was the ordinance. Its authority to frame the Constitution was derived from the ordinance. The ordinance as a whole was a proposition to that Convention and, as a whole, was accepted by the Convention. The Convention complied with all the provisions of the Ordinance. The Constitution was framed to meet all the requirements of the Ordinance. It was the basis of the Constitution.

It is difficult to consider with equanimity, the studied and inconsistent attempt to eliminate the Ordinance from the case. This is apparently the present posture of counsel for Virginia. If section 8 of the Constitution is not read in connection with the Ordinance, and, therefore, as an assumption of an equitable proportion of the debt to *be ascertained as provided in the Ordinance*, the Ordinance is eliminated, and section 8 of the first Constitution

is to be construed as the assumption by the new State of an equitable proportion of the public indebtedness of Virginia prior to January 1st, 1861, upon the basis of *population* and *territory*. It is inconceivable that such can be the law of this case. The assembling of the Convention was an acceptance of Section 9 of the Ordinance. The Ordinance embodied the conditions, and section 9 by no means the least important of them, of Virginia's consent to the erection of the new State out of her territory.

If the Convention had failed to comply, *in the Constitution*, with the *requirements of the Ordinance*, or had departed in any way from the conditions of Virginia's assent, as stated in the Ordinance, its work would have been nugatory. It was bound by the ordinance to carry into the Constitution the assumption by the new State of an equitable proportion of the indebtedness of Virginia prior to January 1st, 1861, to be ascertained as provided in the Ordinance.

It could no more disregard the terms of Section 9 than it could the other conditions of the ordinance. It was for Virginia to fix the terms of her consent. It was not for the convention to depart therefrom. It could only accept or reject. If it rejected it, it must have adjourned. Its work would have been done. Although we take it that nothing is finally decided in this case except the question of jurisdiction, we note that the court was impressed, as shown by the opinion of the Chief Justice with the relation of the ordinance to the Constitution. In the opinion it is said:

> "Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression 'that the legislature shall ascertain' was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed and provide for the liquidation of the amount so ascertained."

The attempt to dislocate the first clause of section 8 of Article VIII of the Constitution of West Virginia "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State" from section 9 of the Ordinance, is subversive of fundamental principles of Constitutional construction and is indefensible from every standpoint of law or equity. It is beyond all reason to suppose that the plain language of the first clause of Article VIII, general in its terms, was anything more or less than an acceptance

of the proposition theretofore specifically made in section 9 of the Ordinance in order that the first clause of section 8 and section 9, would together make plain the compact.

The suggestion that section 8 of Article VIII of the Constitution had no reference to section 9 of the Ordinance, assumes that the new State was taking upon herself an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, without definition or understanding as to the basis upon which it was to be ascertained, therefore leaving open the vital question as to what would constitute an equitable proportion, for future adjustment between the two states. This is not to be believed.

The debt of the Commonwealth of Virginia on January 1st, 1861, was doubtless well known throughout the State of Virginia. It was a matter of public record and reduced to a certainty. It is alleged in the bill that about $33,000,000 of it were incurred in connection with the construction of works of internal improvement—an enormous sum "in those days." If it had been the purpose of Virginia, in requiring as a condition of her assent, the assumption by the proposed new state of an equitable proportion of the public debt without specification as to the manner in which, and the basis upon which that proportion should be ascertained, it is inconceivable that the language of section 9 of the Ordinance would have been what it was, and that the language of section 8 of Article VIII of the Constitution would have been what it was. It was entirely for Virginia to dictate the terms, and if it had been her purpose to require an assumption of the debt upon the basis of territory and population, West Virginia would have been required to assume "one-third of the debt as it existed prior to the first day of January, 1861," or "an equitable proportion to be ascertained upon the basis of territory and population." If she had so provided in Section 9 of the Ordinance, the first clause of Section 8 of Article VIII of the Constition would have *adequately assumed liability upon that basis.* But no such proposition was made to her. No such condition of assent to her statehood was imposed upon her and there is no reason to believe that in her then condition in respect of financial ability, her people would have been willing to enter upon the status of statehood burdened with $11,000,000, or thereabouts, of the indebtedness of the old state. At all events, she was neither called

upon nor given an opportunity to decide whether she would accept statehood upon such a condition.

If section 9 of the Ordinance had provided "The new state shall take upon herself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained upon the basis of territory and population" or "The new state shall take upon herself one-third of the public debt of the Commonweaith of Virginia prior to January 1st, 1861, would West Virginia be heard here for a moment to contend that the Ordinance was no part or basis of the Constitutional provision and that the court is at liberty to adopt some other basis than that agreed upon by the parties? It would not tax the ability of the distinguished counsel on the other side, to demolish such a proposition. And section 9, as it was written, defining the basis upon which the new state should take upon herself an assumption of a just proportion of the public debt as completely forecloses the question of basis as would have been the case had the language of the Ordinance been as we have suggested.

To rub out section 9 of the ordinance and put upon West Virginia, liability for one-third of the debt of the Commonwealth of Virginia, as it existed prior to January 1st, 1861, upon the theory that this was what she assumed by section 8 of Article VIII of the Constitution, is a proposition as unjust as it is untenable. Indeed, if the opposite theory were adopted no testimony need be taken except to ascertain the amount of the public debt of Virginia on the first day of January, 1861, and the proportion of population and territory of the new state to that of the Commonwealth of Virginia at the time of the separation. If the Ordinance were eliminated it follows that the assumption of an equitable proportion of the debt by section 8 of Article VIII of the Constitution of West Virginia was purely voluntary *and not in any sense a condition of the assent of Virginia to the admission of West Virginia as a state into the Union.* This is contrary to repeated allegations of the bill and against the truth as disclosed everywhere in the record. If section 9 of the Ordinance were eliminated, it is a grave question whether, but for an assumption of liability by section 8 of Article VIII of the Constitution, West Virginia would have been legally liable at all, upon principles of international law, for a dollar of that debt (See Hall on International Law, sec. 27, p. 78, and especially note on p. 80).

An effort is argumentatively made in the bill and was repeated

at the bar, and it seems to have somewhat impressed the court, to make it appear that Sections 5 and 7 of Article 8 are a recognition, not only of the liability to assume a portion of the indebtedness of Virginia, but as a recognition of liability to Virginia for grants of land and money made by the Acts of February 3 and 4, 1863.

Although not especially material, with great deference, we are unable to agree to this construction. Section 5 of Article 8 provides:

> "5. No *debt* shall be contracted by this state except to meet casual deficits in the revenue, to redeem a *previous liability* of the state, to suppress insurrection, repel invasion or defend the state in time of war."

And Section 7 of the same article provides:

> "7. The legislature may *at any time* direct a sale of the stocks owned by the state, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the *public debt* and hereafter the state shall not become a stockholder in any bank."

We do not see that the words "a previous liability," in Section 5, and the words "public debt," in Section 7, can be construed, all things considered, as referring to *any liability* of the new state to Virginia. Both Sections 5 and 7 were manifestly intended to be permanent provisions of the Constitution. They would have been properly included in the Constitution if Virginia, at the time of separation, had owed not a dollar of debt. Section 5, in our view, was intended to express the policy of the state as to indebtedness. The word "debt" is used here in contradistinction from the word "liability." A debt is a liability, but a liability is not necessarily a debt, and where they are *both used in the same clause*, as above, they are not to be construed as synonymous. The phrase "a previous liability" is altogether indefinite, and has no regard to the time at which it is incurred, except that it must have been incurred *prior* to the *contracting of a debt* with which to redeem it. The provision will apply to any liability incurred during the history of the state, which *thereafter* must be provided for by the contracting of a debt. It was the evident policy of the Constitution that West Virginia should "pay her way" except as therein otherwise indicated. If it is uncertain whether anything will be demandable by virtue of the contract, it cannot be called a debt. "Debt," as used here, we think, means a certain sum of money due upon an express agreement.

Hagar *vs.* Reclamation District, 111 U. S., 701.

The theory of the constitutional provision was, we submit, that the state should rely upon taxation and current revenues to carry on its operations, and was to prohibit the contracting of debts (borrowing of money), evidenced by bonds or otherwise, except to meet casual deficits in revenue, etc., *which would involve a previous liability.* In other words, that money should not be borrowed, *save as excepted,* in *anticipation of liabilities.* The words, "public debt" in Section 7 are not to be construed as having any reference to unliquidated demands. It will not be pretended that until an accounting West Virginia owes a "debt" to Virginia. She has assumed a liability which may or may not ripen into a debt, only to be determined by a judicial accounting or by voluntary adjustment.

Section 7 was likewise a permanent provision of the Constitution. To say otherwise is to assume that there was not to be any "public debt" *except* the debt to be contracted under the ordinance when its amount shall be ascertained. This assumption is untenable, for Section 5 authorizes the state to borrow money to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion or defend the state in time of war. Very conclusive evidence that this is the true construction of these provisions is to be found in the fact that in the new constitution of West Virginia adopted in the year 1872 from which was *omitted* Article 8 of Section 8 which was in the Constitution of 1861, is found this provision.

(Sec. 4, Article 10):

> "No debt shall be contracted by the state except to meet casual deficits in the revenue, to *redeem a previous liability* of the state, to suppress insurrection, repel invasion or defend the state in time of war, but the payment of any liability other than that for the ordinary expenses of the state shall be equally distributed over a period of at least twenty years."

Strongly supporting the view which we urge is the fact that in the Constitution of *Virginia* of *1867-8,* Article X, section 7, is found this provision:

> "No debt shall be contracted by this State except to meet casual deficits in the revenue, to *redeem a previous liability* of the State, to suppress insurrection, repel invasion or defend the State in time of war."

This seems to have been rather a customary permanent Constitutional provision in that region.

But a better reason, why sections 5 and 7 of Article VIII of the West Virginia Constitution should not be construed as having any reference whatever to any liability of West Virginia to the Commonwealth of Virginia is that by section 8 of the same Article, it was provided:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year 1861, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

This is a provision not susceptible to misconstruction in respect to the subject to which it refers. Its language is not general. It is in its nature a temporary provision. It deals with but one thing and that is the assumption by West Virginia of a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, with a provision for its ascertainment and liquidation.

It is hardly to be supposed that three distinct sections of Article VIII, two of them general and permanent and one specific and self-executing so far as the assumption of the indebtedness was concerned, were deemed necessary in order to carry into the constitution the provision of section 9 of the Ordinance. The omission of the clause in the next Constitution was very natural and nowise sinister. It would have been absurd to readopt it in the Constitution. The liability had been solemnly assumed, and once assumed in the Constitution, it was an acceptance of the proposition of the Ordinance and, with the assent of Congress, by her admission into the Union became an irrevocable compact between West Virginia and Virginia. It is as valid today as it was when it was made. It could not be subtracted from by omission to repeat it in every new or revised Constitution, nor could it be added to by frequent repetition. Any act passed by the Legislature of West Virginia or any subsequent Constitutional provision attempting to repeal this assumption of liability would be void under the Constitution of the United States; and it is as binding upon *Virginia,* who was a party to it, as it is on *West Virginia.*

But *under Section 5 of Article VIII* it is perfectly clear that

when the proportion of the public debt of Virginia prior to the 1st day of January, 1861, to be borne by West Virginia under the ordinance and the constitutional provision shall have been ascertained, as provided by the former, a "debt" may lawfully be contracted by the State to redeem it, upon such terms as the legislature may prescribe. The question is: Was the ordinance binding and is it still binding?

If it be valid and binding, it is impossible for us to discover any ground upon which it can be disregarded by the Court, for if it is binding upon the states, it is binding upon the Court. True, West Virginia could not by any suit prevent Virginia from disregarding it in the adjustment with her creditors of her debt or any portion of it. But when Virginia invokes the original jurisdiction of this Court in a suit against West Virginia to compel her to account for an equitable proportion of her debt prior to January 1, 1861, upon the basis of the ordinance *and upon other and different bases*, she may plead the ordinance as the only basis upon which the Court can decree an accounting by her. The Court will not make a new contract for the parties. They were competent to make one for themselves, and they did make one for themselves. It is unfortunate that the two states were unable many years ago to adjust the matter in accordance with the agreement which they had entered into and which subsist between them. Without asserting that the fault for delay rests solely with either, we have a right to say on the record that it does not lie in the mouth of Virginia to impute much, if any, of the fault for delay to West Virginia. The records of this Court show that in December, 1866, Virginia instituted a suit in equity in this Court against the State of West Virginia to test the question whether the Counties of Berkeley and Jefferson were or were not a part of the territory of West Virginia. The cause was not determined until the 6th day of March, 1871, upon which day it was decided in favor of West Virginia, and until it was settled, obviously there could be no accounting under the ordinance, for the boundaries of West Virginia depended upon the decision, and until it was determined what Counties were a part of West Virginia, the basis for accounting under the provisions of the ordinance was wanting.

This Court takes judicial notice of the general laws and constitutions of the states. The Constitutional Convention which assembled at Alexandria on the 11th day of April, 1864, framed

and adopted a constitution, it not being submitted to the people for ratification. Section 27 was as follows:

> "The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt proper to be borne by the States of Virginia and West Virginia, respectively, and may authorize, in conjunction with the State of West Virginia, the sale of all lands and property of every description, including all stocks and other interests owned and held by the State of Virginia in banks, works of internal improvement, and other companies, at the time of the formation of the State of West Virginia, *and no ordinance passed by the Convention which assembled at Wheeling on the 11th day of June, 1861, adjusting the public debt between Virginia and West Virginia shall be binding upon this State.* It shall provide for the payment of any debt or obligation created in the name of the State of Virginia by the usurping and pretended authorities at Richmond, and shall not allow any County, City or corporation to levy or collect any taxes for the payment of any debt created for the purpose of effecting any rebellion against the State or the United States. The legislature shall not provide for the payment of any bonds now held by rebels in arms against the State or United States Government."

This convention was provided for by the General Assembly of Virginia of 1863. Relatively few delegates were elected for the districts were mostly within the Confederate lines. The Constitution was adopted by the convention but was not required, nor was it submitted to a vote of the people. Under this Constitution the government of Virginia was conducted until it was superseded by another Constitution adopted some years later. We apprehend that no lawyer would contend that this attempted repudiation of section 9 of the ordinance of the Wheeling Convention, embodied in the Constitution of Virginia, adopted in convention *after the State of West Virginia had been for over a year in the Union*, was of the slightest validity. Nevertheless, it showed bad faith and doubtless had a tendency to prevent an energetic effort by West Virginia for the ascertainment of the liability under the ordinance with that government.

The Court will find appended to the bill as an exhibit the argument of Mr. Randolph Harrison, representing the Virginia Debt Commission, before the Joint Committee on Finance of the West Virginia Legislature, February 1, 1905, in relation to West Virginia's contributive share of the debt of Virginia, an unusual doc-

ument to be found in such a relation, but certainly the complainant is not in position to impeach its accuracy, for it is made a part of its bill. In that argument Mr. Harrison says:

> "In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of the State, for the purpose of inviting the Governor and the legislature of West Virginia to unite with her in making a statement in settlement of this account, but the Governor of West Virginia did not think the time opportune to deal with the subject, because the suit between the two states involving the counties of Jefferson and Berkeley had not then been decided. *Soon thereafter the Governor of West Virginia sent Commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia, did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.*"

It cannot therefore upon the basis of the Bill be truthfully said here that West Virginia was in the beginning laggard in respect of attempting to adjust on the basis of the ordinance the burden which she had assumed by her acceptance of it. She could not do it without the co-operation of Virginia.

Then came the enactment, on March 30, 1871, by the General Assembly of Virginia of the first funding bill, approved March 30, 1871, (Exhibit No. 1 of the bill). By this act Virginia *herself* undertook to "apportion," without consulting West Virginia, the debt between *herself and West Virginia* upon the assumed international law basis, and adjusted it upon the basis that Virginia's share of the debt was two-thirds, and *West Virginia's share was one-third;* which act provided for the issue of several million dollars of what were known in the market as "West Virginia certificates" for one-third of the debt. This was in utter disregard of the compact. If she had settled with her creditors on the basis of two-thirds, and left open the ascertainment, on the basis of the ordinance, of West Virginia's share, without issuing the "West Virginia certificates," it would have been simply her affair. But the preamble to this act challenges attention. It is as follows:

> "WHEREAS, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and
>
> "WHEREAS, *in the ordinance authorizing the organization of such state it was provided that the said State shall take*

upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and

"WHEREAS, the people of this Commonwealth are anxious for the prompt liquidation *of her portion of said debt*, which is estimated to be two-thirds of the same; and

"WHEREAS, it has been suggested that the authorities of West Virginia may prefer to pay that *State's portion of said debt* to the holders thereof, and not to this State, as the Constitution of this State provides;

"NOW, THEREFORE, to enable the State of West Virginia to settle *her proportion* of said debt with the holders thereof and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her portion of said debt as the same shall become due therefor;

"1. Be it enacted by the General Assembly of Virginia," etc.

Here, the Court will observe, is a distinct reference in the second clause of the preamble of the first funding act, to the *Wheeling ordinance*, under *which West Virginia was to take upon herself the just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861*, with the declaration that it had not yet been fulfilled, although repeated and earnest efforts in that behalf had been made by this State, "and will continue to be made as long as may be necessary." This ordinance is made the basis of her funding legislation.

How strange it seems that in this legislation asserting the liability of West Virginia to be based upon section 9 of the ordinane, and declaring that it would be continuously insisted upon, its terms, brief as they were, should have been garbled, and that the legislature should have proceeded to ignore it. But the reference to section 9 of the ordinance in the preamble was operative in law to incorporate it *all*, and to put upon notice of its terms as measuring the liability assumed by West Virginia thereunder, every person who accepted a bond or a certificate issued under that act and under the subsequent acts.

In the act of 1879, approved March 28, 1879, Exhibit No. 2 of the bill, it was provided by section 7:

"The owners of all classes of bonds mentioned in this act who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the *remaining one-third of their principal and interest due and payable by the State of West Virginia*, shall receive certificates of a like character to those issued under the act of March 30, 1871, when they made such exchange, etc."

In the act of February, 1882, Exhibit 3 of the bill, it is provided:

"6. For all *balances* of such indebtedness constituting *West Virginia's share of the old debt*, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said Board for Sinking Fund Commissioners shall issue a certificate as follows:

"No. . The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for , held by , dated the day of , numbered , leaving a balance of , with interest from , *to be accounted for by the State of West Virginia without recourse upon this Commonwealth.*"

Exhibit No. 4, Chapter 325, provides for the issue of similar certificates, "to be accounted for to the holder of this certificate by the State of West Virginia."

In the act, Exhibit No. 5, Chapter 747, after reciting in the preamble the various funding acts of 1871, 1879, 1882 and 1892, occurs the following:

"WHEREAS, in each of said acts provision is made for issuing to creditors of the original State of Virginia which should accept the new bonds provided for by said several acts, certificates for such proportion of the obligations surrendered by them as was *deemed proper to be borne by the State of West Virginia*, to wit, *one-third of the amount of said obligations*, of which certificates this State holds a large amount, through the agency of the Commissioners of its Sinking Fund and Literary Fund; and

WHEREAS, the present State of Virginia has settled and adjusted to the entire satisfaction of her people and her creditors the liability assumed by her on account of two-thirds of the debt of the original State;

"NOW, THEREFORE, be it resolved," etc., "that a commission of seven members is hereby created," etc., "which is known as the Debt Commission, and said Commission is hereby authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public

debt of the original State of Virginia properly to be borne by West Virginia;" concluding with this language:

"But said Commission shall in no event enter into any negotiation hereunder, *except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof.*"

Thus beginning with 1871, Virginia has proceeded without regard to her compact to adjust two-thirds of the indebtedness as her own, and to issue $18,000,000 or thereabouts, of West Virginia certificates, frequently characterized in the act as West Virginia's proportion, and several millions of them bearing on their face the statement that they are to "be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth," and hawked about in the markets, to the injury of the credit of West Virginia. Is the State of West Virginia much to be chided for the delay which has occurred in adjusting with Virginia this matter on the basis of the ordinance?

But there would seem to be, from the bill and the argument on behalf of Virginia in this Court, no question open here as to the validity and binding force of the compact created by the proposition in the ninth section of the Wheeling ordinance, its acceptance by the Convention of November, 1861, its incorporation in the constitution of West Virginia, its ratification by the people of the State, and the assent of Congress to it, evidenced by the admission of the State into the Union.

It was said on the argument by the learned Attorney-General of Virginia, who officially and very ably represents the Commonwealth in this cause, after outlining, at page 323, what he thinks *would have been* a fair adjustment and coming to the ordinance, as follows:

"MR. ANDERSON: In the 11th Wallace case it was established that the Wheeling government was the government of Virginia, and the effect of that decisoin was to uphold the validity of what is known as the Wheeling ordinance.

"Now instead of letting these questions be settled upon the principles of equity and public law, that convention prescribed this artificial and arbitrary basis of adjustment. *We have to concede that we cannot go behind this, that we must accept it.*

"Section 9 of the ordinance, giving the consent of Virginia to the formation of the new State, reads as follows:

"MR. JUSTICE HARLAN: What are you reading ?

"MR. ANDERSON: From the Wheeling Ordinance quoted at page 3 of the brief of the counsel for the plaintiff. Section 9 of the ordinance reads as follows:

"'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period.'

"That is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of this new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards, in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitutes a primary obligation and lies at the very foundation of the right of West Virginia to be a State."

Nothing could be stronger than this statement nor could anything be more accurate.

It is very difficult to reconcile this explicit and conclusive statement by the chief law officer of the Commonwealth of Virginia, in respect of the binding force and effect of the ordinance, with the decree which he proposes on behalf of Virginia and the brief which he submits in its support; for this proposed decree asks the Court to ignore the ordinance, to treat the matter as being as completely open as if the ordinance had never been adopted or accepted; and to commit the case at large to a master to ascertain as an original proposition on the alleged basis of international law or any other basis he may choose to adopt, what proportion of said indebtedness and of the interest accrued thereon *should in equity be apportioned* to and be *now* paid by the State of West Virginia. (See Kimberly *vs.* Armes, 129 U. S., 512). West Virginia says to this:

That she thinks herself entitled to have the the question whether or not the special agreement as to what shall constitute a just proportion of the debt solemnly entered into between the two states is binding, determined at this juncture *by the Court* and that, if it be held to be a binding agreement, Virginia is entitled to no accounting with West Virginia in this suit for her equitable proportion of the debt of the Commonwealth prior to January 1, 1861, *except under the terms of that ordinance, carried into the constitution.*

True, the decree proposed by the complainant directs that the master

> "III. Make and return with his report any special or alternative statements of the account between the plaintiff and the defendant in the premises *which either* may desire him to state or which *he* may deem to be desirable to present to the Court."

This asks the Court to leave the determination of the pivotal point in the case, which we think should be decided by it in advance of an accounting, to a master, albeit only in an advisory way, and it gives West Virginia permission to have an accounting made, *if she desires*, it, on the basis of the ordinance *at her own expense*. *She is defendant* here. In that event we would have two lines of investigation proceeding before the master at the same time, each entirely distinct in basic principle from the other, each burdensome in labor, expense and the consumption of time. Neither would throw any light upon the other. An exhaustive accounting under the ordinance would not aid the Court in determining whether it is *binding* and the only legal basis of settlement or not. An exhaustive investigation upon the international law basis would no more aid the Court in determining whether the ordinance is binding and therefore the sole ground upon which the liability of West Virginia to an accounting at all can be based. If the compact is in force, any accounting save under that will be not only burdensome, but superfluous. If both were made, upon what principle would the Court choose between them?

Upon general principles there must be a distinction, one would think, dealing with the general doctrine of apportionment, *in the absence of a special agreement* between a debt incurred by a state, before separation, in repelling invasion, *a debt which would be for the equal benefit of all its inhabitants*, and a debt incurred, as was the *entire* debt of Virginia prior to the first day of January, 1861, for *works of internal improvement*. If the proceeds of such a debt were all expended in the territory of the original state, there would seem to be no equity in requiring the new state erected out of a portion of its territory to be saddled with any portion of the debt, for the reason that the improvements for which the debt was incurred would be owned by and remain entirely within the limits of the original state. Upon the other hand, if a portion of the debt were expended in improvements within the boundaries of the newly erected state, it would seem that upon separation, as such *improvements would be local* and the old state would be deprived of her property in them and the new

state would become the proprietor and beneficiary by virtue of the separation *in the absence of a special agreement,* she should, in equity, contribute their cost or value to the payment of the debt of the original state. And this was the theory of the Ordinance.

In this case it is alleged in the bill that the larger portion of the indebtedness for internal improvements, for which the debt was incurred, were constructed within the state of Virginia, but it is alleged, generally, that several millions were expended in constructing improvements within the territory of the new state of West Virginia. All this, manifestly, must have been taken into account in the framing of the ordinance. All the local improvements which were constructed in what is now Virginia remain in Virginia, of course; and those which were construed in what is now West Virginia were fixed within her borders. It is alleged in the bill:

But it must be remembered, *first,* that these internal improvements which have been completed within the territory, now West Virginia since January 1st, 1861, have been completed without expense to Virginia, and for that she is entitled to no credit. *Second,* Obviously, the completion of such works to a connection with the railroads and other means of transit in Virginia, has enhanced the value of the improvements local to Virginia constructed with the proceeds of said debt, by increasing the business over them. The allegations of the bill, that these improvements in Virginia, which began in 1820, were mainly with a view to ameliorating the condition of the people of West Virginia, and for their benefit are not issuable allegations, but they are denied by the answer. They are easily pleaded, but they afford no basis upon which the Court can enforce a liability upon West Virginia. Whatever element of fact there is in the allegation was well known to the government of Virginia when the Wheeling ordinance was adopted, and undoubtedly entered into the proposition embodied in Section IX.

It is said in the brief for complainant by way of objection to Paragraph 2 of the decree proposed by defendant:

> "That the completion of some of the main lines of improvement beyond the said range toward the Ohio River since the first of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvements which could not have been had not the lines east of said range ben first constructed."

"We respectfully object to paragraph 2 of defendant's draft,

on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of account, which is not shown by anything *as yet* in the cause to be either equitable or just.

"Before any such question can be fairly adjudicated, it is necessary to the ends of justice, that there shall be a mass of evidence in the case, not yet introduced, which evidence the court should have the aid of its Master in collating and thoroughly digesting."

In reply to this we have to say that *all that can be shown*, bearing upon the question whether the ordinance, and its acceptance and incorporation into the constitution with the consent of Congress, is the measure of liability assumed by West Virginia in agreement with Virginia *is already in the case*. No evidence can throw any light upon it. It raises a question of law pure and simple; evidence or aid by a Master are not necessary to its determination. The facts are not only undisputed and indisputable, but they are documentary, and are alleged in the bill and admitted by the answer. If the court is of the opinion that it is the basis agreed upon between the two states, it certainly is not for the court to determine whether the agreement *ought*, or *ought* not, *to have been made between the states*. Whether it would, from the standpoint of to-day, be a just or equitable basis, is beside the question, which is: Is it the basis agreed upon? It is also said:

"There is by no means enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be *equitable* to adopt in stating the account.

"To do so at this stage of the litigation would be to decide an important question in the case before the evidence for a full understanding and just decision of that question is before the court. It would be largely to take a step in the dark, which might, and in all probability would, do injustice to one party or the other.

"Our *main* objection to *paragraph* 2 of defendant's draft is that its effect manifestly is to have the court *prejudge* the case as to the *basis* upon which the *account shall be stated*."

All this means but one thing, and that is, that the court shall take a mass of testimony in order to enable it to determine whether or not *it will set aside the compact between the two states*. We take this to be an impossible proposition. Of course it is not possible to determine now what the result of an *accounting*, on the basis of the ordinance, will be, if such an accounting is had. The records, archives and papers bearing upon it, for the most part have been

in the continued custody of the complainant, and were not open, upon reasonable request many years ago officially preferred, by the Commissioners appointed by West Virginia authorized to state the account. It seems to be the notion of the learned counsel that the court will feel itself at liberty to enforce the ordinance as the basis of accounting, or set it aside and resort to the alleged international law basis, according as *testimony* shall be furnished as to whether it *was equitable or otherwise*. We do not understand that to be within the province of the court upon the allegations of this bill and the conceded facts in this case. It involves no pre-judgment. It is simply what occurs in such cases generally that the court will have decided where upon the pleadings and other exhibits it is able to do so, upon the *principle which shall govern the accounting*. There is no allegation in the bill that the proposition made by the restored government of Virginia, defining the just proportion of the debt to be assumed by the new state, was not advisedly made. There is no allegation of fraud or overreaching, and if there were it comes over forty years too late. It must not be forgotten that this proposition, which was accepted by West Virginia, was a proposition *made by Virginia*, and that the *acceptance* of it was a *condition* upon which *she gave her assent* to the *erection of the new state out of her territory*. It is not for her to ask the court to aid her in repudiating it. It must be borne in mind, too, that the fairness of the agreement is to be considered, if it were an open question, without reference to the condition of either party at this day but with reference solely to the condition of both in 1861 when the ordinance was adopted. Probably it is true that with the development of West Virginia, which has come about through the lapse of years, the increase of her population, the expenditure of vast sums in transportation facilities, in mining and other operations, and the general exploitation of her resources, Virginia would not be willing to make the proposition which she did make a half century ago. But when one thinks of West Virginia as she was then, with her undeveloped resources, with scant transportation facilities and population, it will be quite apparent that the agreement in her then condition was at least a fair one. If it is open to criticism at all, it is that it is unfair to West Virginia. True, Virginia has suffered; she was through four years of war a battleground; her people were largely withdrawn from their vocations of peace; her agriculture languished; her commerce was paralyzed and much of her property destroyed by contending armies. But the people of West Virginia, who adhered to the Union and helped

to rescue the government of their state and to bring it into harmony with and support of the government of the United States are neither to blame for it nor should they be compelled to pay for it. West Virginia likewise suffered from her proximity to the theatre of war. Counsel add:

> "It is submitted for a decree referring it to a Master, to state and report to the court the data necessary to enable the court to justly decide it upon its *merits*—and all the complainant desires *is an opportunity to show to the court and its Master what is the fair and equitable basis upon which the account between the two states should be stated, under all of the circumstances of the case, as they shall appear when the evidence is all in.* If it should *then appear* that the *basis prescribed by the Wheeling ordinance is binding upon the parties* and *must be followed as the basis upon which the account shall be made up, that basis would be adopted.* But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to *impair the obligation of the contracts by which the common debt was created*, contracts which were and are alike obligatory upon Virginia and West Virginia, or for any other valid reason, then the scheme of settlement indicated in the Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted."

This, too, is but a restatement by counsel, in different language, of the proposition that it is for the court to take testimony through a Master, to determine what *would be a just and equitable basis* of settlement between Virginia and West Virginia, the agreed basis, or the assumed international law basis. This is plainly calling upon the court to ignore the ordinance as a binding agreement, notwithstanding the solemn statement of the Attorney-General on the argument as to its binding force and contractual character. This, it seems to us, is impossible.

What is meant by the suggestion that the ordinance may be held to be *unconstitutional* because it *impairs* the obligation of contracts by which the common debt was created, "contracts which were and are alike obligatory upon Virginia and West Virginia," is difficult for us to understand. It is easy to see that it begs the question, for it assumes the indebtedness of Virginia prior to January 1st to be contracts which are binding alike upon Virginia and West Virginia. The personal identity or individuality of Virginia as a state which issued the bonds and owed the debt was not at all affected by the sepera-

tion of West Virginia from her and her erection into a new state. It would have been entirely competent for Virginia to have agreed with West Virginia that she would not be liable to assume any portion of the debt of Virginia as it existed prior to the first day of January, 1861. It would not have impaired the obligation of any contract, just as it was competent for the United States to enter into an agreement with Texas that she should pay her own debt, consisting of several millions of dollars, incurred before she was received into the Union.

The writers on international law are unanimous as to the validity of agreements between nations, under similar circumstances, as to the apportionment of indebtedness accrued before a separation. It is needless to again quote or cite them.

Counsel say further by way of objection to paragraph second of the decree proposed by the defendants:

> "While it is believed upon the facts stated in the bill and the accompanying exhibits and upon the proofs hereafter to be adduced in support thereof that West Virginia will owe a very large sum under the arbitrary scheme of the Wheeling ordinance, we submit that we should not in the present status of that litigation be *tied down to the terms of that ordinance.*"

If it is binding upon the two states, why should not both parties be "tied down to the terms of that ordinance?" It will be observed by the Court that no argument is made that it is not binding and that no reason is given why it should not be binding and enforced. Indeed it is insisted upon in the Bill as an irrevocable Compact.

Counsel add:

> "Indeed, its provisions were modified by the terms of the eighth section of Article VIII. to the State Constitution, under which West Virginia was made a state, which provided that West Virginia should assume an equitable proportion of the common debt of the Commonwealth, *principal and interest,* and yet the defendant's draft excludes any item of interest from the account."

Section 8 of Article VIII. of the first West Virginia constitution *did not* assume the payment of *any interest upon the debt of Virginia as it existed prior to the 1st day of January, 1861.* It is brief, we repeat it:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State."

The above words constitute all there is in the Constitution by way of *assumption of liability for indebtedness*. If there was unpaid interest due January 1, 1861, that would be a part of the debt of the Commonwealth of Virginia then existing, an equitable proportion of which was assumed by this constitutional provision. After assuming an equitable proportion of the debt, Article VIII. laid a command upon the *legislature:*

> "* * * to ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This injunction for reasons which appear in the case was not observed. There was no agreement to assume an equitable proportion of the *interest* on the *debt* which *might accrue after January 1, 1861.* The Constitution shows that it was in the contemplation of its framers that the new State, confessedly sparsely settled and undeveloped, would require time for the discharge of the equitable proportion of the *debt* so *assumed* when it should have been *ascertained,* and it was provided that the legislature should make provision for the liquidation of the *debt so assumed,* when ascertained, by a sinking fund to pay the *interest* accruing on the *debt so ascertained* and *assumed* by West Virginia, and to pay the principal of the *debt so ascertained* and *assumed* within thirty-four years.

The thirty-four years have expired. The constitutional provision has been omitted. The provision as to ascertaining the indebtedness and providing for its liquidation, etc., within thirty-four years was outside of the constitutional *assumption* of an *equitable proportion of the debt* of the Commonwealth of Virginia, as it existed prior to January 1, 1861. It was no part of the ordinance which was carried into the Constitution, and fulfilled by the specific assumption of an equitable proportion of the debt. The ordinance had made no provision as to the tribunal by which the debt should be ascertained, nor did it contain any provisions as to its payment, after its ascertainment. The assumption of the debt was a literal acceptance and fulfillment of the requirement of Section 9 of the ordinance, to be ascertained as therein provided. If Article VIII. had stopped there, it would, so far as the obligation of West Virginia to Virginia was concerned, have been complete: it would have constituted, as it does constitute, a compact for the assumption and payment of an equitable proportion of the debt of the Commonwealth of Virginia as it existed prior to January 1st, 1861. If the requirement that the Legislature

should "ascertain" the amount and provide for its payment, principal and interest, within thirty-four years, had been carried out and bonds issued therefor, the bonds might have been delivered to Virginia for distribution among her creditors and would have borne interest; or they might have been sold by West Virginia, and the cash proceeds paid to Virginia for distribution among her creditors. Either method was open under section 8 to the legislature and so, when there shall have been an accounting under the ordinance and an ascertainment thereby of what is the equitable proportion of the debt as it existed prior to the date of January 1, 1861, assumed by West Virginia, the legislature of West Virginia is perfectly free as to the manner in which the obligation shall be discharged. It would not be obliged to issue bonds for thirty-four years, that provision of the Constitution having been omitted in the revised Constitution. *It might do so if it chose.* It might provide for the issue of bonds due in 100 years, or 20 years. It is at liberty to fix the rate of interest which the bond shall bear at 2 per cent. or 3 per cent. or 4 per cent. It could provide for the delivery of the bonds to West Virginia in discharge of her obligation to that Commonwealth, if acceptable to her, or she could borrow the money on her bonds at a low rate of interest and discharge the debt to Virginia *in money.* That would be a "debt contracted" under section 5 of the Constitution for the *redemption of a previous liability,* and in nowise a modification of or departure from the ordinance or the contract of assumption made irrevocably by the adoption of section 8 of the first Constitution. She made no covenant to pay interest upon the proportion which she assumed upon its ascertainment, until the amount should be paid to the State. But whether she should pay interest or not, is a question which is not necessary to determine at this time through a Master or otherwise. In any event, it is very difficult to see what testimony could be taken before a Master which would aid the Court in determining the *liability* of the defendant *to pay interest.*

Under Point III., the learned Attorney General objects to the second paragraph of the decree proposed by the defendant also upon the ground that it excludes from the account the *value of the property, assets and money which West Virginia is alleged to have received from the Commonwealth* of Virginia by grants contained in the *acts of February 3 and 4, 1863.* The learned Attorney General says that these acts were passed, as we understand him, "before the legislature of Virginia had in any form given its consent to its (West Virginia) creation out of the territory of Virginia." In this he is certainly in

error. It has been our understanding that the claim of Virginia, for which an accounting is sought in this case, is restricted by the court to an accounting which shall ascertain the equitable proportion of the debt of the Commonwealth of Virginia, prior to January 1, 1861; but be this as it may, the argument of the learned Attorney General is extraordinary.

It is said that upon the basis of the ordinance alone none of the property embraced by the grants contained in the acts of February 3 and 4, 1863, would have passed to the State of West Virginia; and on page 6:

> "By the terms of that ordinance Virginia's title to ownership of all the property and assets theretofore belonging to the Commonwealth remained intact. By it West Virginia would acquire no title to any of these assets or of that property. Framed as that ordinance was, by West Virginians, and arbitrary on its face, unjust as were the *criteria* by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt, which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a share of the property and assets of the Commonwealth free of charge.
>
> "All that was by the terms of that ordinance to be ceded by the Commonwealth to the new State was political dominion and jurisdiction over the people and territory embraced in the new State."

To this we do not agree. There is nothing in the terms of the ordinance which affirms Virginia's title to and ownership of all the property and assets theretofore belonging to the Commonwealth of Virginia, or of any thereof located in the territory of the proposed new state. Virginia consented to the erection of West Virginia into a new State, out of her territory. She did not *grant sovereignty* to the new State. There could not be a new State without sovereignty, and when she gave her consent to the erection of the new State, it was accompanied by all the rights and powers which upon principles of international law would follow the territory and inhere in the sovereignty of the new State over the territory within her borders. The ordinance contained nothing upon the subject. The ordinance did provide—as such ordinances have always provided:

> "SECTION 9. All *private* rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws

of the proposed State derived from the laws of Virginia prior existing in the State of Virginia. The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of land, or land warrant issued by the proposed State, shall interfere with any warrant issued from the Land Office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed State now liable thereto."

By Section 1 of the ordinance it is declared:

"The people of Virginia, by their delegates assembled in convention, *do ordain that a new State,* to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary, to wit: * * *"

And there is not a word in the ordinance in regard to what should be possessed by the new State of West Virginia, nor a *single reservation* in *the ordinance of assets or property of any kind to the commonwealth of Virginia.* What passed to the State of West Virginia by the separation was what would have passed had Virginia been a nation and a portion of her people had, by revolution, separated themselves from her sovereignty and formed of the people and the territory an entirely distinct and new nation called West Virginia; and what would be possessed by the new nation out of what had been possessed by the old one, would be measured entirely, *in the absence of special agreement,* by the settled principles of international law. It is needless to cite authorities. As Mr. Hall says (p. 79):

"And as the old State continues its life uninterruptedly, it possesses everything belonging to it as a person which it has not expressly lost; so that property enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continues to belong to it. *On the other hand, rights possessed in respect of the lost territory,* including rights under treaties relating to cessions of territory, and demarcations of boundary, *obligations contracted with reference to it alone* and *property which is within it and which has therefore a local character,* or which, *though not within it, belongs to State institutions localized there, transfer themselves to the new State person.*"

Again he says:

"Property which becomes transferred by the fact of separation consists in domains, public buildings, museums and art collections, communal lands, charitable and other endowments connected with the State, and the like."

State banks, which are State institutions and local in their nature, certainly belong to the new State created after a forcible secession. The same result would follow from an agreed dismemberment, unless the property in them were reserved. The same would be true of railroads and all proprietary interests of the old State *local to the new State*. Section 9 of the ordinance industriously safeguards all *private* rights and interests in lands within the proposed new State and their titles; but we repeat, it is silent as to *public interests* and *ownership* of the old State *located within the borders of the new*.

All that Virginia required in a financial way of the new State was that she should—

> "take upon herself a just proportion of the public debt of the commonwealth of Virginia prior to the 1st day of January, 1861, by charging to the defendant all stated expense within the limits thereof and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted and deducted therefrom, the moneys paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Expressio unius est exclusio alterius.

Possibly, these grants were made in February, 1863, mainly to afford a ground for the claim that the property which had passed by the separation should be "accounted for in the settlement hereafter to be made." The learned counsel contends—as he is obliged to contend, we think, to give any plausibility even to his proposition—that the *statutes of February 3d and 4th, 1863,*

> *"together with the Wheeling ordinance*, the *first Constitution of West Virginia*, the Act *of the United States Congress, approved December 31, 1862*, under which the new State was afterwards admitted into the Union, and the act of the Wheeling legislature of May 13, 1862, constitute the constating instruments and acts by which her political existence was created and her governmental powers and duties determined."

And he adds:

> "As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling ordinance and Section 8 of Article VIII of the first Constitution of West Virginia must be taken and read together; *so, also*, these constating acts of February 3 and 4, 1863, and particularly of February 3, 1863, *must be taken and read together with*

Section 9 of the Wheeling ordinance, and with Section 6 of Article VIII of the first West Virginia Constitution, as together prescribing the terms and conditions on which the consent of the commonwealth was given to the formation of the new State out of her territory, and the transfer to that new State, when formed, of any portion of the assets and property of the parent State."

The court does say in the opinion overruling the defendant's demurrer, "Reading the Virginia ordinance and the West Virginia Constitution, in *pari materia*, it follows that what was meant by the expression that the legislature "shall ascertain" was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed and provide for the liquidation of the amount so ascertained." True this was said in deciding adversely to the contention that the admission of the State under the ordinance and Section 8 of the Constitution, with the consent of Virginia, created a *compact which gave to the legislature of West Virginia power of final ascertainment of the equitable proportion of the public debt of Virginia prior to January 1st, 1861, assumed, as provided in the 9th Section of the ordinance.* But there can be no question of the correctness of the proposition above quoted from the opinion. We dissent altogether from the suggestion of counsel that the acts of February 3d and 4th, 1863, are to be taken and read with Section 9 of the Wheeling ordinance and with Section 8 of Article VIII, of the first West Virginia Constitution, *as together prescribing the terms and conditions on which the consent of the commonwealth was given to the formation of the new State out of her territory.* This proposition is entirely untenable. The Wheeling ordinance was adopted August 20th, 1861. The Constitutional Convention assembled in November, 1861, and framed the Constitution which was thereafter duly ratified by a vote of the people, which Constitution contains Section 8, assuming an equitable proportion of the debt. *On the 13th of May, 1862*, an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia, Section 1 of which is as follows:

> "That the consent of the legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke and Ohio (and many other counties), according to the boundaries and

> under the provisions set forth in the constitution of the said State of West Virginia and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section 3 of said act provided:

> "Be it further enacted That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with the certified original of the said Constitution and schedules, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."

It ought here to be stated that the Constitutional Convention of West Virginia appointed three Commissioners to that end also that the Commissioners presented on May 31, 1862, to the United States Senate a memorial praying for the admission of that State into the Union, addressed to the Hon. B. F. Wade, Chairman of the Committee on Territories, in which they gave a history of the proceedings which led to the organization of the restored government of Virginia, and which *included at length the ordinance adopted on the 20th of August, 1861, by the Convention at Wheeling entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," which, on the 31st day of May, 1862, was referred by the Senate to the Committee on Territories and ordered to be printed* (Congressional Globe, p. 2451; 37 Cong., 2d Session, Misc. Senate Doc. No. 99), thus *clearly demonstrating that Congress had before it not only the Constitution of West Virginia but the Wheeling ordinance in full.*

On the 31st day of *December, 1862*, an act was passed by the 37th Congress providing that the new state, thus formed in pursuance of the ordinance of the Wheeling convention above referred to, should, upon a certain condition, be admitted into the Union by the name of West Virginia, with the Constitution which had theretofore been adopted by the new State and by the people thereof; said condition being that a change should be made in the constitution of the proposed State in regard to the liberation of slaves therein. And it was provided by the act of Congress that whenever the President should issue his proclamation stating the fact that such change had been made and ratified, *thereupon the act admitting the new State into the Union should become effective 60 days after the date of such proclamation.*

The proclamation was duly issued by President Lincoln on the *20th day of April, 1863, and on the 20th day of June, 1863*, West Virginia became a state and fully organized as one of the States of the Union.

Prior to the passage, it will be observed, of the acts of February 3 and 4, 1863, the general assembly of Virginia *had consented* to the admission of West Virginia under the Constitution adopted by her people and had requested her admission, and *Congress had admitted her under that Constitution with the single condition* that *a change should be made in it relative to the liberation of slaves, which was made*. And we deny that it was in the power of Virginia *after the action of Congress* to withdraw her consent to the admission of West Virginia or to change the terms of her consent, Congress not having required as a condition of her admission any *change in the ordinance* adopted by the Wheeling convention or in the Constitution *in anywise affecting the provisions of the ordinance*.

Virginia could not thus play fast and loose with Congress in respect of her consent to the admission of West Virginia. This proposition has been sustained by this Court in *Virginia vs. West Virginia*, 11 Wallace, 39.

It cannot be supposed that after Congress had passed the law admitting the state of West Virginia into the Union upon the conditions indicated and authorizing President Lincoln to issue the proclamation announcing a compliance with the condition, that a *specific withdrawal by Virginia of her consent to the admission of the new state into the Union would have been of any force*. If this be a correct proposition, it necessarily follows that no modification of the consent theretofore given upon which Congress had acted and *after Congress had acted on the faith of her prior consent*, would be of any efficacy. The proposition of the learned counsel must have for its predicate the assumption that after Congress had passed the act for the admission of West Virginia and up to the time President Lincoln issued his proclamation declaring the condition imposed by Congress to have been complied with, the General Assembly of Virginia possessed the power to withdraw her consent or to modify it as she might see fit. If she could withdraw it, she could modify it. She could change its terms and impose other conditions. *Prior to February, 1863*, West Virginia *had been admitted into the Union upon a condition subsequent*. The act was complete. Congress simply suspended the taking effect

of the act until sixty days after the proclamation of the President that the condition had been complied with. The argument places the acts of February 3 and 4, 1863, upon precisely the same basis, which it is conceded that the Wheeling ordinance of August 20, 1861, and the constitution of 1861 stand. It is probable that Virginia might have withdrawn her consent to the formation of the new state at any time before the acceptance of the proposition proffered by the ordinance, by the convention which framed, adopted and submitted for ratification the constitution of 1861. That she could do it afterwards and before the action of Congress is subject to grave doubt, although it is academic, since she *did not attempt to do so.*

The counties of Berkeley and Jefferson involved in the case of Virginia *vs.* West Virginia, *supra*, were by the ordinance authorized to be incorporated in West Virginia upon the condition that a majority of the votes of the counties were cast in favor of becoming a part of West Virginia. The convention by the constitution made provision for their being incorporated. By act afterwards Virginia renewed her consent by legislation. The *vote* was not *taken by the counties until after the state had been admitted into the Union* and by that time *and before the vote was taken Virginia had repented and had passed an act withdrawing her consent;* and, to test the question whether these counties had become a part of the State of West Virginia, the suit of Virginia *vs.* West Virginia was brought in this Court. The Court said:

> "Now, we have here on two different occasions the legislative proposition of Virginia that these counties might become part of West Virginia, and we have the *constitution of West Virginia agreeing to accept them* and providing for their place in the new-born state. There was one condition, however, imposed by Virginia to her parting with them and one condition made by West Virginia to her receiving them, and those conditions were the same, namely, the assent of the majority of the votes of the counties to the transfer. It seems to us that here was an agreement between the old state and the new that these counties should become part of the latter, subject to that condition alone."

Again, as to Congress having assented, the Court says:

> "It is therefore an inference clear and satisfactory that Congress by that statute (referring to the act of admission) intended to consent to the admission of the state with the contingent boundaries provided for in its constitution and in the statute of Virginia, which prayed for its admission on

those terms and that in doing so it necessarily consented to the agreement of those states on that subject. There was then a valid agreement between the two states, consented to by Congress, which agreement made the accession of these counties dependent upon the result of a popular vote in favor of that proposition."

Mr. Justice DAVIS, with whom concurred Justices CLIFFORD and FIELD, dissented upon the ground, that Congress had not given its consent to the compact between the states for the transfer of Berkeley and Jefferson Counties to West Virginia until March 2, 1866, saying:

> "If so, the consent came too late because the legislature of Virginia had on the 5th day of December, 1865, withdrawn its assent to the proposed cession of these two counties. This withdrawal was in ample time, as it was before the proposal of the state had become operative as a concluded compact, and the bill in my judgment shows that Virginia had sufficient reasons for recalling its proposition to part with the territory embraced within these counties. *But it is maintained in the opinion of the Court that Congress did give its consent to the transfer of these counties by Virginia to West Virginia when it admitted Virginia into the Union.*"

From this the learned justices dissented.

It is clear to our apprehension that whatever may be the opinion of the court as to the effect of the acts of February 3 and 4, 1863, it cannot be said that they had any effect whatever, qualifying or otherwise, upon the assent which Virginia gave in the ordinance and by the act of her legislature to the admission of the State of West Virginia into the Union, and if the Court shall be of the opinion that under the general public law which governs between nations, the property referred to in the acts of February 3 and 4 or either of them, passed by the acceptance of the ordinance and the conditional admission of the State by Congress upon the request of Virginia, the enactment of the acts of February 3 and 4, 1863, were not necessary as evidences of title, and *in no event could be anything more than that.* The learned Attorney General further says:

"It is objected to the draft of the proposed decree for the defendant that it does not direct any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January 1, 1861, which West Virginia should assume and pay, but contents itself with merely directing the arbitrary and

inconsequential accounts defined in paragraph second of defendant's proposed decree." This is an objection simply that the proposed decree of the defendant is upon a different theory from that proposed by the complainant. That this is true, is freely admitted. It was not intended by the draft that the Court should direct the Master to ascertain and report what *proportion* of the public debt of Virginia prior to the first day of January, 1861, West Virginia *ought to assume and pay*. That was settled by Virginia and West Virginia nearly fifty years ago. The latter was required to take upon herself a just proportion of the debt, and the two states agreed how that should be ascertained. The draft proposed by the defendant is in literal execution of the contract of the parties, as evidenced by the ordinance and section eight of the first constitution.

It directs the Master to ascertain and report:

(*a*) The amount of State expenditures made by the Commonwealth of Virginia prior to the 1st day of January, 1861, within the territory now included within the State of West Virginia, since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of August 20, 1861.

We agree that the last clause need not be inserted.

(*b*) To ascertain the aggregate ordinary expenses of the State Government of the Commonwealth prior to January 1, 1861, and since any part of said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the said period.

The items (*a*) and (*b*) are, under the ordinance, to be *charged* to West Virginia.

The item (*c*) is under the ordinance to be *credited* to the State of West Virginia, and when these three steps shall have been taken, and the two items *charged*, and the one item *credited*, the *sum which it was agreed between the two States should constitute a just proportion of the debt of the Commonwealth of Virginia prior to January 1, 1861, which West Virginia assumed, will have been ascertained*. It is vain to refer to these as "arbitrary and inconsequential items."

They are the items which Virginia herself framed and required to be accepted by the proposed new State as a condition of assent to her separation and admission into the Union.

The entire debt of the Commonwealth of Virginia as it existed

prior to January 1, 1861, *as averred in the bill*, and *admitted by the answer*, was contracted for, and its proceeds are alleged to have been expended in, the construction of a system of internal improvements, the greater part of which were expended in what is now Virginia, and several millions of which were, it is alleged by the Bill, and denied in the answer, expended in what is now West Virginia. It was just that Virginia should provide that there should be charged to West Virginia so much of the proceeds as were expended in the construction of internal improvements within her territory. It ought not to be very difficult to ascertain how much of the debt was expended for internal improvements within the limits of what is now West Virginia.

There is but one item in section 9—defining the manner in which the account should be taken in order to ascertain the proportion of the debt to be taken upon herself by the proposed new State—left at all indefinite, and that is item (*b*), "'*a just proportion*' of the ordinary expenses of the State Government, since any part of said debt was contracted." This involves a determination of the basis upon which a "just proportion" of the aggregate ordinary expenses of the State Government during the said period is to be ascertained. Shall it be population or territory, or both, or taxable values? We are strongly of the opinion that it should be based upon population, since "government"—including the administration of justice, the making and administering of the laws, the education of the children through a system of common schools, academies and a State university, the maintenance of State institutions, the support of prisoners, the care of the insane and paupers, and the like—is for *people*, not *acres*. It is difficult to conceive of *government* except in its relation to *people*, and so, it has seemed to us that the basis must be population. We therefore suggest that there should be added to the draft proposed by the defendant, in respect of an ascertainment of the aggregate ordinary expenses of the State, a direction to the Master to find alternatively certain facts substantially as follows:

> "For the purpose of enabling the Court to determine the just proportion of the aggregate of the ordinary expenses of the State Government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of said indebtedness was contracted, said Master shall ascertain and report the population during the said period of the counties now constituting the Commonwealth of Virginia, and separately the population of the counties now constituting the

State of West Virginia, as shown by the decennial censuses taken during the said period by the United States, and also the average population of Virginia during each of said periods of ten years."

The aggregate ordinary expenses being found, and the items suggested as to population, it will be easy to determine the "just proportion" if that is the proper basis.

We submit that this case should not be cast at large, with no definition of the principles to govern his action, into the hands of a Master; that at least it should be settled before a reference for the *purpose of taking an account*, whether the liability of Virginia to West Virginia is upon the *special agreement* which preceded and accompanied her admission into the Union, *or, because of the absence of a special agreement*, upon the basis of *population* and *territory*.

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Of Counsel for Defendant.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Reply Brief for Virginia.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

REPLY BRIEF FOR VIRGINIA UPON MOTION TO REFER THE CAUSE TO A MASTER.

The propositions contended for by the counsel for West Virginia in their elaborate brief upon the above motion will be here reviewed, though not in the order in which they are presented.

AS TO ORDER OF PROCEDURE.

While this court in *Rhode Island* v. *Massachusetts,* 14 Peters, 210, 257, considered it proper that the proceedings in that case should "be regulated by the rules and uses" of the English Court of Chancery, it declared that:

> "in a controversy where two sovereign States are contesting the boundary between them, it will be the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring this case to a final hearing *on its real merits. It is too important in its character, and the interests concerned are too great, to be decided upon the mere technical principles of chancery pleading."* 14 Peters, 257.

It will not be gainsaid that this language applies with added force to this case.

The only rule of chancery practice adopted by this court, is in accordance with this just conception of its powers and duties, and is as follows:

> "Rule 3. This court considers the former practice of the courts of King's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary."

Neither the technical rules of practice obtaining in the circuit courts of the United States; nor those approved by Mr. Bates and other learned text-writers; nor those sanctioned by any other tribunal whatever will *control* this court in the matter of the procedure and processes which it may deem necessary and proper to adopt, in order to attain the ends of justice.

This results from the very nature of its powers and duties in a case like this, as to which its jurisdiction is not only exclusive, but final, plenary and absolute.

In this its only rule upon the subject, the court has indicated the former practice of the courts of chancery in England as "affording outlines" for the practice of this court in chancery causes.

If we look to the practice of the English courts in chancery, and to the chancery practice sanctioned by the courts and jurists of this country, precedents and authorities will be examined in vain to find any sanction for the proposition that each of the six rules laid down by Mr. Bates in the section quoted in the brief for West Virginia, must be complied with before there can be a decree for an account in a case like this; nor are we willing to believe that the learned counsel for the defendant would carry their contention to any such extremity.

2 Daniel's Chy. Pl. & Pr. (5th Ed.) p. 1004 and note 7;

Adam's Equity (8th Ed.) Book III, Chapter 1, M. pp. 220 to 222-226;

Story's Eq. Pl., Sec. 218 & note (b);

1 Story's Eq. Jurisprudence (13th Ed.) Chapter VIII. Titles, Account, Apportionment, and Partnership, Sections 450, 469 to 477-483-488-671.

The general rule is that a decree for accounts, or order of reference is from its nature interlocutory, because it directs an inquiry and contemplates the bringing of new and additional facts into the record.

It would be practically impossible to state in advance all the principles of law which might apply to the facts as they might thereafter be developed. As if an account of debts were ordered against a partnership, corporation, or estate, it would be impracticable to state in advance what rules of law should obtain in regard to the establishment of such debts; as for instance, what might be valid defences, such as failure, or want of consideration, the statute of limitations, payment, set-off, &c., any of which might be interposed against the different debts as presented, and no one could say in advance to what extent they might be applicable or valid.

"A decree is understood to be interlocutory whenever an inquiry as to a matter of law or fact is directed preparatory to a final decision." *Bebee* v. *Russel,* 19th How., 285, and in the same case we find the following citation from the 2nd volume of Perkin's Daniel's Chancery Practice 1193, "that the most usual ground for not making a perfect decree in the first instance, is the necessity which frequently exists for a reference to a master of the court, to make inquiries, or take accounts, or sell estates and adjust other matters which are necessary to be disposed of, before a complete decision can be come to upon the subject matter of the suit," p. 285.

The primary purpose of this suit is to invoke the equitable jurisdiction of "Account"; to have the account between the parties involving more or less complicated transactions, made up of a vast number of items running through a period of more than seventy years, stated, in order to obtain from the defendant the amount for which she shall be thus ascertained to be equitably liable.

The principal facts upon which the complainant's claim depends, namely: the formation of the new State out of the territory of the Commonwealth of Virginia; the existence of a public debt of the undivided State of some $33,000,000.00 at and before that event, a large part of which remains an unsatisfied and binding obligation upon both States; the ordinances, public acts, and fundamental stipulations and enactments by which West Virginia assumed, and became liable for an equitable proportion of that common indebtedness,—all of these and other material facts are alleged in the bill, and are, either not controverted by the defendant's answer, or are established by the documents and public records filed with the bill, or are a part of the history of the two States, and of the times, and of the country.

The facts which justify the complainant in instituting her suit for an accounting, and for a decree thereupon, are thus sufficiently

established to entitle her to a decree to that end. Indeed, we had supposed that the decree of this court overruling the defendant's demurrer, had pretty well settled this.

If precise proof of Virginia's claim should be required to be made, before a decree for an accounting would be entered, it would be necessary for the court to devote months of its time to the examination of the books, accounts, documents, and transactions of the Commonwealth, in connection with the creation of the debt, the expenditures made in the counties now constituting West Virginia, and the payments made from those counties into the treasury of Virginia, during a period of forty years or more, and also to the examination of the records of both States in reference to the lands and other property which West Virginia received from Virginia.

It is difficult to conceive how a stronger case could be presented for the exercise of the equitable jurisdiction of "Account," "in order to bring the case to a final hearing upon the merits."

But while the case is not in a condition for the court to intelligently and fairly "pass upon all the issues made in the pleadings," it is in condition for a decree of reference, in which decree the principles upon which the account shall be stated should be settled, so far as it is practicable to do that from the data now in the record, and without doing injustice to either party.

In the draft of decree tendered on the 7th of last December by counsel for the complainant, some important questions were left open which we are prepared now on further consideration to say, it would be as well, or better, to have settled in advance.

To this extent we concur, upon this point, in the views presented by the learned counsel for West Virginia.

While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that Ordinance, *reasonably and fairly construed,* and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII of the Constitution under which West Virginia became a State, was not binding on both States.

While thus construed and applied, the amount and proportion of the public debt assignable to West Virginia will doubtless be much less than it would have been equitable for her to have assumed and paid, we are constrained to the opinion that the plan of settlement prescribed and sanctioned by the foregoing enactments is binding upon Virginia.

It is due to candor also, to say that, although it is true that the Convention which enacted the Wheeling Ordinance, was not called, constituted, or organized in accordance with the requirements of the Constitution and laws of Virginia, and was a revolutionary body; although it could then have been shown that that Convention and its acts were invalid, and may now be contended that the Convention and the Wheeling Ordinance which it adopted, were fictions, nevertheless, they and their offspring, the Restored Government of Virginia, and the State of West Virginia, have since received such recognition and sanction from every department of the United States Government, and from the Government of Virginia also, that, what, in its inception, was a fiction, has become a *legal* fiction, and now has all of the force, if not all of the virtue, of a legal verity.

We are constrained to recognize the following propositions as true:

(a) That the State of West Virginia could have no legal birth or existence without the consent of the Legislature of Virginia.

(b) That the only Legislature of Virginia which ever gave its consent to the formation of West Virginia, was the Legislature of the Restored Government which, sitting at Wheeling on the 13th of May, 1862, gave its consent to the formation of the new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th of November, 1861."*

(c) That the Act giving such consent and the Legislature which passed it, depended for their validity upon the validity of the Wheeling Ordinance under which the Restored Government of Virginia was organized.

(d) That said Convention, and its acts, and the Government which it established, have been legitimated, by recognition by every department of the Government.—by the President of the United States in his official intercourse and dealings with the Governor and officials of said Restored Government; by approving the bill for the admission of West Virginia, and by his proclamation announcing

*At the time of the argument upon the demurrer, counsel for complainant were under the impression that this Legislature had not been convened pursuant to the proclamation of the Governor, without which proclamation the meeting of the Legislature would have been, under the then Constitution of Virginia, invalid; but subsequently the Executive Journal of the Governor of Virginia at Wheeling, for 1862, was found, and it appears from it that Governor Pierpont issued a proclamation under which the special session of the Legislature in May, 1862, was held.

the admission of the new State into the Union; by the Congress of the United States in the admission of Senators Willey and Carlisle elected by the Legislature of the Restored Government, by the passage of the Act approved December 31, 1862, admitting West Virginia into the Union, and by other acts; and by the United States Supreme Court, by its decision in *Virginia* v. *West Virginia,* 11 Wallace, p. 39, in which the Wheeling Convention and this very Wheeling Ordinance and the Wheeling Legislature of Virginia, are recognized as being a Convention, an Ordinance, and a Legislature of the Commonwealth of Virginia.

We are forced by these considerations to conclude that it is too late now to question the binding effect of the Wheeling Ordinance.

Still, it cannot be forgotten that there was not a man in the Virginia, and West Virginia, Wheeling Conventions of 1861-2, and 3, from any of the counties or cities which now constitute Virginia, except the four men admitted to seats in the Virginia Convention at Wheeling, of August, 1861, two of them from Alexandria and two from Fairfax county, both parts of the present State of Virginia; that there was no pretence that there was any representation whatever in said Conventions, or in the Legislature of the Restored Government of Virginia, from more than two-thirds of the territory and people of Virginia; and that, in a number of instances, the very same men acted as the representatives both of the people of Virginia, and of the people of West Virginia, in said Conventions and Legislatures.

The indisputable facts are, that it was the people of the counties and cities now constituting West Virginia, or their representatives, who were dealing with the people of the same counties and cities, or their representatives, and undertaking to make covenants and stipulations with themselves which would bind all the people, and the entire Commonwealth of Virginia, in matters of the utmost importance to them.

Among other instances of manifest injustice in the plan prescribed in the Ordinance, is, that it operates to exclude from the account all items of expenditure in the early years of the last century.

If the principle adopted by that Ordinance was just, why should its application be stopped in 1820?

For a number of years before that date there had been large expenditures made by Virginia in what is now West Virginia, towards which the people of that section had contributed little or nothing. For a long period after the settlement of Western Virginia, the rest

of the State had practically to carry that section of the Commonwealth.

Many times as much was expended there on public account, as it contributed to the Treasury of the Commonwealth.

All that was well enough, for it was reasonably hoped that in time, with the development of the bountiful resources of that trans-montana region and the consequent increase of its wealth, the accounts would be squared.

From the very dawn of the internal improvement policy of Virginia the dream of her leading men was the construction of some efficient line of communication between her Eastern and her Western waters.

This was earnestly advocated by Washington, and others of her representative citizens, and among these Chief Justice Marshall applied the great powers of his mind and unerring judgment in aid of a wise solution of the problem.

In 1812, at the request of the General Assembly, he devoted much of his time to arduous service as Chairman of a Commission which was created for the purpose of examining the intervening region, and ascertaining and reporting as to the best route and mode of communication between the Eastern and Western waters.

Together with other members of the Commission, the Chief Justice spent some time among the mountains and wild woods of Western Virginia, much of it then almost a trackless wilderness, in the patriotic discharge of this voluntarily accepted duty.

The report of this Commission which was evidently written by the Great Chief Justice, will be filed as an exhibit in the cause, not only as indicating the purpose and desire of Virginia at that early day to open up a highway through West Virginia, but as an interesting fact in connection with the history of the internal improvement policy of Virginia.

From 1812 down to the breaking out of the war which resulted in her dismemberment, the means and energies of the Commonwealth were largely devoted to the construction of roads, turnpikes, waterways, and railroads, and especially to lines which were designed to develop Western Virginia.

This policy generally received the earnest support of the people of what now constitutes West Virginia, and their representatives, and very little indeed of the debt would have been contracted if they had opposed it; for there was a powerful opposition to that policy

and to contracting the debt in large portions of the Eastern part of the State.

As giving some notion of the views of leading and representative citizens of Western Virginia, extracts from the message to the General Assembly, of Governor Joseph Johnson, of Harrison county, West Virginia, in January, 1852, will be printed in the appendix to this brief.

These are incontrovertible facts, to which we cannot shut our eyes, unless we would ignore the truth.

We therefore respectfully submit that these ordinances and public acts, adopted under such circumstances, should not be construed strictly against Virginia, who, without the actual consent of her people, or their representatives, was to be bound by them.

On the contrary, they should be strictly construed against West Virginia, in whose interest they were manifestly conceived and made.

That the rule embodied in the Wheeling Ordinance was not only arbitrary, and inequitable, but contrary to the usages of nations, and the principles of natural equity and public law, as enunciated by the great publicists and jurists of the world, and also as expressed by learned American authors, will be manifest from an examination of the extracts from the works and opinions of a number of these authorities which will be found in an appendix to this brief.

It will be seen that the authorities there quoted, with a single exception, all substantially agree that the rule of equity applicable to such a case is, that the common debt and common assets shall be apportioned between the two States ratably.

The only exception to this practically unbroken line of authority, is to be found in Mr. Hall's treatise on International Law. With entire deference for his ability, we respectfully submit, that the views of this learned author upon this subject are unsupported by reason or authority, and are repugnant to those principles of justice and right, from which the rules of International and Public Law derive their highest sanction.

If Mr. Hall is correct, then three-fourths, or four-fifths, of a State, could, by splitting off from the original State, escape liability for the common public debt of the unsevered Commonwealth, and leave that burden to rest exclusively upon the remaining parcel thereof.

The flagrant injustice of such a rule would be the same if it should be applied to this case, the only difference here being one, not in principle, but in degree; for, here the new State embraced perhaps one-third of the actual, and one-half of the prospective and potential

resources and wealth of the original State, instead of three-fourths, or four-fifths thereof, as in the case just assumed.

The debt was created by the whole State, bound the whole State, and should be paid by the whole State.

Its obligations rested equally upon the whole State, and upon every part of it, and should have been, and should now be, borne by every part of the undivided Commonwealth, whether each part has received its ratable shares of the expenditures made out of the money for which the debt was contracted, or not. It would be exceedingly difficult, indeed impossible, to apportion the debt upon any basis which would require each county, or each section, or each grand division, to contribute to its payment in proportion to the benefits actually received by such county, section, or grand division—and no sanction for any such principle will be found in the writings of the publicists and jurists who have considered and discussed these questions.

But, if it be true, as is indicated in the Bill, and as it can and will be demonstrated to be true, that the public debt of the Commonwealth was created largely for the construction of works of internal improvement which would develop the vast resources of Western Virginia then known to be lying there in boundless but almost useless affluence; that some of the most important and most expensive of these works would not have been undertaken, if it had not been believed that their construction would have that effect; that the policy under which and the acts by which that debt was contracted received the warm and active support of the people of the counties which now constitute the new State; *that a large part of that debt was contracted by the votes of a majority of the representatives from those counties, and against the wishes and the votes of a majority of the representatives in the General Assembly from the counties constituting the present State of Virginia; and that a very small part of the debt was or could have been created had the people from the counties now forming West Virginia, and their representatives in the General Assembly opposed its creation,*—if these facts which are a part of the history of the Commonwealth, be true, how could the amount of money which was expended in West Virginia be, by possibility, any just or equitable measure of the share of that debt which, in good conscience, she should assume and pay?

Yet, by the Wheeling Ordinance, that is made the chief measure for determining the production of the common debt which the younger Virginia should assume and pay.

Tried by every test of authority, and every standard of principle and right, the basis of settlement prescribed by the Wheeling Ordinance, was, upon its face, arbitrary, illogical, and inequitable, and yet the learned counsel for West Virginia, would, by construction, give it a meaning which would make it work even greater hardship and injustice upon Virginia, than its language fairly interpreted would justify.

Here, then, we have an Ordinance which prescribes a plan of settlement, palpably unjust and inequitable, and in contravention of both common right, and of the common public law of the civilized world.

Such an enactment clearly comes within the time-honored rule, that a statute in derogation of common right or of common law must be strictly construed—and so construed as to conform it in its operation and effect, to the principles of right and justice and of the common law, so far as this can be done without violating the manifestly *expressed* purpose of the statute.

See this Rule as applied to Acts in derogation of the common law.

> Enlich on Interpretation of Statutes, §127, citing *Brown* v. *Barry* 3 Dall., 365, 367; *Shaw* v. *R. R. Co.*, 101 U. S., 557; *Newell* v. *Wheeler*, 48 N. Y., 476; and a number of other cases.

This salutary rule, especially as to statutes in contravention of common right, but also as to those in derogation of the common law, is embodied in the jurisprudence of both Virginia and West Virginia.

> *Commonwealth* v. *Gaines*, 2 Va. Cases, 172-175.
> *Richmond City* v. *Daniel*, 14 Gratt., 485, 487.
> *Delaplain* v. *Crenshaw*, 15 Gratt., 457, 470.
> *Virginia & S. W. R. R. Co.* v. *Clower*, 102 Va., 867, 871.
> *Wheelright* v. *Commonwealth*, 103 Va., 512, 519.
> *Davis* v. *Commonwealth*, 17 Gratt., 617.
> *Alexandria & Fredericksburg R. R. Co.* v. *Alexandria & Washington R. R. Co.*, 75 Va., 780, 788.
> *Harrison* v. *Leach*, 4 W. Va., 383.
> *Harrison* v. *Smith*, 4 W. Va., 97.
> *Pendleton* v. *Barton*, 4 W. Va., 496.
> *McGugin v. O. R. R. R. Co.*, 33 W. Va., 63, 68.
> *Richardson v. N. & W. R. R. Co.*, 37 W. Va., 641.

To the same effect are a large number of decisions of other States, a few of which are:

> *Webb* v. *Baird*, 6 Ind., 13.
> *Sewall* v. *Jones*, 9 Pick., 412.

Mayor of Savanah v. *Hartridge*, 8 Ga., 23.
Chapin v. *Persse & Brooks Paper Works*, 30 Conn., 461.
Phillips v. *Dunkirk R. Co.*, 78 Pa. St., 177.

By the express terms of the 9th Section of the Wheeling Ordinance, it was provided that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained," &c.

That is the paramount and controlling mandate and stipulation of the clause which prescribes the portion of the debt which the new State shall assume and pay.

Our insistence is, that the residue of the clause should be so construed as to give effect to the righteous principle thus expressly made the rule by which West Virginia's liability under it shall be determined.

The enactment should be interpreted and applied so as not to defeat that purpose: *ut res magis valeat quam pereat.*

And so, whenever in stating the account between the two States under the provisions of the Ordinance, a question shall arise as to whether a particular item of charge against West Virginia shall be included in the account, such construction should be given to the Ordinance as will tend to place upon the new State a just proportion of the common indebtedness, rather than a construction which will tend to exonerate West Virginia from her just and equitable share thereof.

In other words, in the application of the arbitrary basis prescribed by the Ordinance, Virginia should, according to the equitable rules of construction which are especially applicable to this case, be given the benefit of every reasonable doubt.

If the construction and effect, which, as we understand their position, opposing counsel advocate, be given to that Ordinance, the Act of February 3, 1863, and to Section 8 of Article VIII. of the first Constitution of West Virginia, the result will be one of palpable wrong and injustice to Virginia.

The whole Wheeling Ordinance will be found printed in full in the appendix to the opening brief of counsel for Virginia upon this motion.

Its provisions and the language in which they were formulated, were manifestly the work of intelligent and able lawyers.

It fully specifies the terms upon which Virginia authorized the formation of the new State,—terms which having been recognized as

being in the nature of things fundamental, upon the acceptance of them, and the formation of a new State under them with the sanction of Congress, they became contractual, and operated as a covenant binding both States.

As a necessary corrollary to this, there results this now self-evident truth, namely, that no additional or new term could be added to that Ordinance, without the consent of Virginia.

While it is true that the opening brief of counsel for Virginia, upon this motion, did not accept the basis prescribed by the Wheeling Ordinance as having been *irrevocably* fixed, as the one by which the settlement must be made, and intimated that in the event that it should turn out upon the application of that scheme of accounting to the facts of the case, that it would "lead to absolutely unconscionable results, and operate to impair the obligation of the contracts by which the common debt was created, contracts which were obligatory alike upon Virginia and West Virginia, or for any other valid reason, then the scheme of settlement indicated by the Wheeling Ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted."

In other words, if the basis prescribed by the Ordinance should, when applied, produce results which would shock the moral sense of mankind, and operate a fraud upon Virginia and the common creditors of both States, then it would be right for the court to adopt some other basis.

But the statement above quoted is immediately followed by this qualifying paragraph:

> "It is due to frankness to say, that, while the Wheeling Ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are satisfied, that upon a fair, reasonable, and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay."

Farther investigation and consideration convince the representatives of Virginia and her counsel that fairly construed and applied, as we believe they must be construed and applied by a court of equity, the Ordinance and the constating Acts which constitute as much

a part of the plan of settlement adopted by the two States, as does the Ordinance itself, will not lead to any such unconscionable results, as would appear to be inevitable, particularly if the Ordinance be taken by itself.

It may be that the framers of those instruments built fairer than they intended. It is pretty certain that they built fairer than they knew.

Clause III., pp. 6 to 8 of the opening brief upon this motion, succinctly and frankly states the position of the complainant in reference to the scheme of settlement which we seem to be shut up to. The following quotation from that clause (p. 7 of opening brief):

> "As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling Ordinance, and Section 8 of Article VIII of the first Constitution of West Virginia, must be taken and read together: So also these constating acts of February 3, and 4, 1863, and particularly of February 3, 1863, must be taken and read together with Section 9 of the Wheeling Ordinance, and with Section 8 of Article VIII of the first West Virginia Constitution, *as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that new State when formed of any portion of the assets and property of the parent State,*"

correctly expresses the views of complainant and her counsel upon this question, as the same are stated in the Bill, in the oral arguments and printed briefs of counsel for complainant upon the questions arising upon the demurrer, and as now stated in this brief, and as, in principle at least, sanctioned by the opinion of the court upon the questions raised by the demurrer.

Various questions are suggested by the brief of the distinguished counsel for West Virginia, in respect to the meaning and effect of that Ordinance, and the basis, and principles upon which the accounts between the two States should be stated, and the settlement between them made, which questions we agree should be now determined by the court, and directions given to its Master accordingly, so far as it is practicable to do so without working injustice.

These questions will be now considered:

I.

The first of them which we ask the court now to decide is: Whether West Virginia is not justly and legally chargeable with interest?

In this connection, we must remember that the contract which we are considering was a Virginia contract.

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation,—and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

In *Jones* vs. *Williams*, 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great Judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."

Cited with approval in *Baker* vs. *Morris*, 10 Leigh, 284, *McVeigh* vs. *Howard*, 87 Va., 599, and *Stuart* vs. *Hurt*, 88 Va., 343.

In *Hatcher* vs. *Lewis*, 4 Randolph, 152, 157, the court laid down the rule in the following expressive language:

> *"The interest follows the principal as the shadow does the substance."*

In *Chapman* vs. *Shepherd*, the court said:

> "In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman vs. *Shepherd*, 24 Gratt., 377, 384.

Roberts vs. *Cocke*, 28 Gratt., 207.

Tidball vs. *Shenandoah National Bank*, 100 Va., 741.

> "Interest is favored both by the legislative and judicial bodies of the State."

Tazewell vs. *Saunders*, 13 Gratt., 354, 370.

In *McVeigh* vs. *Howard*, the Supreme Court of Appeals of Virginia said: (87 Va., 599.)

> "It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *

Citing *Jones* vs. *Williams* and *Hatcher* vs. *Lewis*, quoted above.

Such is the law of Virginia as to interest.

The law of West Virginia in regard thereto is the same.

In *Shipman* vs. *Bailey*, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

> "Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule, which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

Shipman vs. *Bailey*, 20 W. Va., 140, 146.

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickins* vs. *McCoy*, the court affirms *Shipman* vs. *Bailey*, and adopts the language just quoted from that decision. 24 West Va., 344-352.

Independently of these West Virginia decisions, such parts of the common law, and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of Article XI of the first West Virginia Constitution.

The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

As a part of this body of laws, the law of Virginia as to in-

terest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public Acts of Virginia and West Virginia set forth in complainant's Bill.

The framers of the Wheeling Ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia lawyers of that day, as since that time, Judge Coalter's apt formula of the doctrine that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an essential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," etc.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided State, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the Commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipulated interest was made as much a part of the debt as was the payment of the principal.

The interest was as much a part of the debt as was the principal, and as many of the bonds were payable thirty-four years after date, and some of them at the pleasure of Virginia with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that Ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice upon Virginia, that the new State should take upon itself, and relieve what remained of the old State of a part of the burden of debt which rested upon both States. They knew that that burden consisted as well of interest, as principal, and as much, or more, of interest than of principal.

It was not proposed that the new State should, as soon as she became a State pay in cash a sum to be ascertained in the manner indicated in the Ordinance. The framers of the Ordinance understood too well that under the conditions then existing, it would be impossible for the new State to raise and pay any considerable sum in cash.

Why the new State was dependent upon the old State for the money necessary to enable her to begin business and she did not have and in the nature of things could not command a sufficient amount in cash to pay off one-fifth or even one-tenth of the then Virginia debt.

The stipulation was not that the new State should pay a sum in cash on account of its share of a common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the Ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new State shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which represent it, as the branches are a part of the tree from whose trunk they spring?

In their very elaborate reply brief upon this motion, opposing counsel devote very little attention to this important question, although it was plainly in their minds when they prepared their draft of decree, and although their attention was challenged to it by the opening brief for Virginia. There is some discussion of the question at pp. 35 to 37 of their brief, but that discussion ignores the facts and the principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not depend alone upon the Wheeling Ordinance, or upon the law of Virginia and of West Virginia which makes the interest an essential part of the debt; but it rests also upon the express terms of the Constitution under which West Virginia became a State.

Now, by the Act of the Virginia Legislature at Wheeling, of May 13, 1862, the validity of which we no longer question, for reasons hereinbefore stated, Virginia gave her consent to the formation of the new State out of her territory, "under the provisions set forth in the Constitution for said State of West Virginia and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day of November, 1861."

It is true that this consent was predicated upon West Virginia's being erected into a State under the provisions of that identical Constitution, without the performance of which condition that consent was abortive and ineffectual.

The fact is, that at the behest of Congress, that Constitution was subsequently amended in a material particular, which change, unless objection thereto had been waived, or the change assented to by the Legislature of Virginia, would have rendered the previous conditional consent null and void.

But since the opening brief upon this motion was filed the counsel for Virginia who writes this brief has discovered the following joint resolution, which it seems was adopted by the Legislature of Virginia at Wheeling, on the 9th of December, 1862:

> "No. 2. Joint Resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.
>
> Passed December 9, 1862.
>
> *Resolved*, That feeling the greatest anxiety and interest in the successful issue of the movement for a new State in West Virginia, we earnestly request the House of Representatives of the United States to take up and pass, without alteration or amendments, the bill which passed the Senate of the United States on the 10th of July last."

See "Constitution and Statutes Va. and West Va., 1861-66."

This resolution was telegraphed to Washington on the evening of the day on which it was passed. History of West Virginia by Lewis, p. 389.

The Senate Bill referred to in the resolution was taken up in the House of Representatives, and passed on the 10th of December, and was approved by President Lincoln and became a law on the 31st of December, 1862, in the very form in which the Legislature of Virginia had by its Joint Resolution of the 9th of December, 1862, requested and urged that it should be passed.

This Act of Congress to which the Legislature of Virginia had thus given its assent, made it a condition of the admission of the new State into the Union, that its proposed Constitution should be amended in the particular in which it was afterwards amended by the Convention and people of West Virginia, in regard to the emancipation of slaves.

The effect of said Joint Resolution, was, under these circumstances, to waive any objection by the Legislature of Virginia to the amendment made to the Constitution of West Virginia at the instance of Congress, and to make the consent given by the Act of May 13, 1862, effective, notwithstanding that amendment.

What, then, was the effect of the admission of West Virginia to the Union under the consent thus given, and the Constitution upon which that consent was predicated?

It will not be denied that the condition upon which the consent of the Legislature of Virginia was given to the formation of West Virginia and her admission into the Union as a State, was, that she should become a State under the provisions of the Constitution under which her statehood was sanctioned by Congress.

Among the most important of those provisions, so far as Virginia was concerned, were those expressed in Article VIII of that Constitution in reference to the public debt.

Section 8 of that Article reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

We have a right to assert that, unless West Virginia had been

required to assume and pay an equitable proportion of the Virginia debt in manner and form as was expressly prescribed in this Section, the consent of the Legislature of Virginia would never have been given to the creation of the new State.

These were, therefore, fundamental conditions of West Virginia's existence.

By accepting these conditions, the new State became bound in equity and in law to performe them in good faith.

Upon grounds which have been already indicated, as sufficient and controlling we are constrained to concede that Section 8 of Article VIII of the first West Virginia Constitution, and Section 9 of the Wheeling Ordinance being *in pari materia*, must be read together, and that the proportion of the debt which the new State was required by this provision of her Constitution to assume, was to be ascertained in the manner prescribed by the Ordinance.

But the Constitution goes farther, and expressly provides as to the equitable proportion of the debt which West Virginia should assume, that her Legislature should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of her debt.

This plan was embodied not only in the statutes, but also in the Constitution of Virginia in force when West Virginia, became a State.

It was embodied in that Constitution in the following terms:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon

at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852. Code of Virginia for 1860, p. 47.

It was expressed in a concrete form and given further effect by the second Section of the following Act passed by the General Assembly of Virginia:

"Chap. 17.—An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.
Passed March 26, 1853.

* * * * * * * * * * * * *

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

* * * * * * * * * * * * *

Acts of General Assembly of Virginia, Session of 1852-3, p. 29.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was, the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Hall, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the Commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the Commonwealth to pay the accruing interest, and to liquidate or re-redeem the principal of each bond representing the debt, within thirty-four years.

(This statement is subject to this qualification, that as to a considerable portion of the debt, particularly that contracted prior to 1852, like English consols, the principal was redeemable at the pleasure of Virginia).

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that lan-

guage, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt which plan was adopted by the new State as to its share of that debt.

And so, we find that both by the express terms of the Wheeling Ordinance fairly construed, and by the express terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a State, this new State has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable. U. S. *vs.* N. Carolina, 136 U. S., 211.

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling Ordinance and by the Section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly, equitably, and legally, (because it accords with the express terms of both the Ordinance and the Constitution) the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A farther kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably, and legally bound to pay this interest,

(1) By the terms of the Wheeling Ordinance, certainly, for the period during which the debt of the Commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest, in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the Section of her Constitution above

quoted, West Virginia undertook that her Legislature should assume and pay the accruing interest and the principal of her share of that debt in thirty-four years.

Her Legislature has failed either to assume, or to pay that share, or any part of it.

The interest accruing thereon from December 31, 1860, has continued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia's Legislature was to make provision, so that the same should be paid within thirty-four years.

We are unwilling to anticipate that the learned and fair-minded counsel for the defendant will argue that West Virginia, by the language of that provision of her Constitution, is only bound to pay interest for thirty-four years from December 31, 1860, or from June 20, 1863, because we are unwilling to assume that our distinguished opponents would contend that a State, any more than an individual, should be allowed to take advantage of her own wrong, or profit by her own procrastination, and neglect of duty.

Here, West Virginia has not only not taken upon herself a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things, and has by the votes of her Legislature, repeatedly repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia in Appendix).

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a State, which should be an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged it, that equity will not suffer any party to take advantage of his own wrong.

Here, fortunately for West Virginia, it will, by reason of her increased wealth and prosperity, be far easier for her to pay the principal and the accumulated interest now, than it would have been to have paid the interest annually as it accrued, and the principal thirty-four years from 1861, or 1863. West Virginia

could pay thirty million of dollars now, with as little inconvenience as she could have paid three or four millions thirty-five or forty years ago.

If there ever was a case to which the benign doctrine of Virginia law, that "interest follows the principal as the shadow does the substance," should be applied, we seem to have such a case here.

Nor is there any extravagance in the language of our opening brief upon this motion, when we say that,

> "any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust and inequitable, but iniquitous."

II.

The Wheeling Ordinance provides: that in ascertaining the just proportion of the debt which the new State shall take upon itself, it shall be charged with:

> "all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included in said new State during said period."

There cannot well be any question as to what will be included in the first item of the debit charge against the new State under this language.

It includes all expenditures of whatever kind made by Virginia in any part of the territory embraced in the new State, since any part of the debt was contracted. There will be no controversy as to the earliest date when any part of the debt existing on the 31st of December, 1860, was contracted.

Part of the debt, then unpaid, was created as far back as 1820. So, the period covered by the account will be from, say, January 1, 1820.

There is likely to be some question as to what shall be regarded as under the circumstances, a just proportion of the ordinary expenses to be charged to West Virginia.

As to the criterion on which the apportionment of the expenses of government should be made, if this is to be the population, we respectfully submit that in this case it should be the free population—the citizenship—and not the total of the free and the

slave population. The care and policing of the slaves cost the State little or nothing. Those matters were regulated by their masters on the plantations. Of course, none of them could vote; but upon the "mixed basis" of representation which was partially adopted in Virginia, they counted to some extent in fixing the basis of representation in the General Assembly; that is, five negroes counted as much as three white men, where the mixed basis prevailed.

The debt was contracted solely by the votes of the white population or their representatives. It was expended by them or under laws of their enactment. The taxes were levied exclusively upon the property of the free population; and the revenues were appropriated and expended as they directed, and exclusively for their benefit.

The negroes owed no part of the debt, did not constitute a part of the citizenship of the State during any part of the period when the debt was contracted, or the money realized from it was expended; nor were they any part of the body politic.

Under these circumstances we would submit as a just criterion for such apportionment the white population of the territory embraced in West Virginia, and of the territory still remaining to the Commonwealth, at the times when the expenditures to be apportioned were made.

However, there is not probably, as yet, enough in the record to enable the court to decide this question intelligently; or satisfactorily.

III.

Another and quite an important question which can probably be fairly considered and decided, upon what is now in the record, and which should be decided now, if a just conclusion about it can be reached at this time; is, whether West Virginia shall be charged, in the settlement to be made, with the property or assets which she has received from the Commonwealth?

The Act of the Virginia Legislature at Wheeling, of February 3, 1863, which is printed in the appendix to the opening brief for Virginia on this motion, expressly provides that "the new State shall duly account for the same in the settlement hereafter to be made with this State." See Section 5 of the Act of February 3, 1863.

Counsel for West Virginia deny that these important items shall

be brought into the account; and in order to have any ground on which to base their objection, they contend that the Acts of February 3 and 4, 1863, were not binding upon West Virginia; that her rights were determined by the Wheeling Ordinance, and by the provisions of her first Constitution, and by the Act of May 13, 1862, of the Virginia Legislature at Wheeling, and the Act of Congress approved December 31, 1862, giving the consent of the Congress to the formation of the new State and her admission to the Union; that these Acts were all effective, and the rights of the new State definitely determined by them before the Acts of February, 1863, were passed; and that those Acts of the Virginia Legislature of February 3 and 4, 1863, were not binding upon West Virginia, and imposed no obligation upon her, because she had already, by reason of the consent given by Virginia to her statehood, been absolutely vested with the very rights which the Act of February 3rd, undertook to confer upon her upon conditions.

The answer to this argument, vigorously and ably as it is presented, is complete.

The position of the counsel for the defendant upon this point would find support in the doctrine laid down by Mr. Hall, *if there had been no agreement between Virginia and West Virginia as to the terms upon which the partition of the old State should be made, and the debt thereafter apportioned between the two States:* but neither Mr. Hall, nor any other authority will be found to sanction the proposition, that, where a new State has been erected out of the territory of the old State by treaty or by a convention between the mother State and the new State any such doctrine applies.

The rule in that case logically, and necessarily is, and must be, that where the two States have undertaken to define and prescribe the terms upon which the new State shall be created, the rights and obligations of the two States will thereafter be determined absolutely by the stipulations and provisions of such treaty or convention.

The elementary rule of universal application, that a party will not be allowed to add to, or take from, the terms of a valid written instrument applies with intensified force to a compact between two sovereign States.

The Wheeling Ordinance, which taken together with the first Constitution of the State of West Virginia; the Act of the Vir-

ginia Legislature at Wheeling, of May 13, 1862, giving the consent of the Legislature of Virginia to the formation of the new State under the provisions of that Constitution, and the Act of Congress approved December 31, 1862, giving the consent of Congress to the creation of the new State and to her admission into the Union, constitute a compact; and to this compact no new term can be added, and no term prescribed therein can be taken away.

Now, the Wheeling Ordinance, and the article of the Constitution of West Virginia referred to, are absolutely silent upon the subject of the property and assets of the Commonwealth of Virginia. While the Wheeling Ordinance, with the greatest particularity, undertakes to prescribe and define minutely the terms upon which the new State shall be created, its boundaries, and the rights of property of individuals residing therein, it makes no provision whatever in respect to property held by Virginia in her corporate capacity, whether it be personal or real. As a necessary effect of the terms of that Ordinance, the title and ownership to that property remained, after its enactment, and after the formation of the new State of West Virginia, just where they were vested before the Ordinance was enacted; and that is, in the Commonwealth of Virginia.

As already indicated no new term can be incorporated in, or added to, that Ordinance, without the consent of Virginia; and yet, the learned counsel for the defendant would have the court, by a forced construction to interpolate a new term into this Ordinance which was, as we have a right to assume, intentionally excluded from it by the parties who framed it.

If there is any contract or covenant to which the doctrine of *expressio unius est exclusio alterius* ought to apply, it is to a compact like this between States, affecting the rights of the people of those States for all coming time.

The men who framed the Wheeling Ordinance and the Constitution of West Virginia among whom were evidently lawyers of a high order of ability, intelligence, and learning, must have fully realized the meaning and effect of the Wheeling Ordinance, and must have known that it did not transfer to the new State any title or ownership in respect to any of the property and assets which Virginia owned in her corporate capacity; for we find that they, or some of them, were instrumental in the enactment of the Act of February 3, 1863, which undertook to cure this omission,

which was doubtless an intentional omission, and to vest in the new State the property and assets of Virginia, the situs of which was within the limits of the new State, upon the just and equitable terms that the new State should account for the value of all such property, in the settlement to be made between the two States.

The only settlement to be made between the two States, was the settlement in regard to the public debt; and the purpose of the Act of February 3, 1863, was to provide that the new State should account in that settlement for the value of the assets and property which she should acquire from Virginia under that Act.

The Legislature of Virginia at Wheeling had the right to exercise supreme dominion over the territory and people of West Virginia at the time that the Act of February 3, 1863, was passed; subject only to the limitations of the Constitutions of Virginia, and of the United States; so that the Act of February 3, 1863, was clearly within the competency of the Legislature of Virginia to enact; nor can we be blind to the fact that the portion of the territory of Virginia which was represented by Senators and Delegates in the Legislature at Wheeling, was practically coincident with the territory of the proposed new State of West Virginia; so that it was in fact the representatives of the people who were about to form themselves into the State of West Virginia, who enacted the Act of February 3, 1863.

Upon these grounds, we can fairly claim that the Act of February 3, 1863, was a valid law, and binding upon the people who afterwards constituted the State of West Virginia.

But that Act has still farther sanctions which make it absolutely binding upon the people of West Virginia.

The 8th Section of Article XI of the first Constitution of West Virginia is as follows:

> "8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation; and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature." * * *
>
> Article XI, Section 8, 1st West Virginia Constitution; effective June 20, 1863.

We respectfully insist that the effect of this provision of the Constitution was to sanction and continue in force the Acts of February 3 and 4, 1863, both of which were in force within the

boundaries of the State of West Virginia at the time that that Constitution went into operation.

But this Act of February 3, 1863, has received still farther and express sanction and acceptance by a positive enactment of the Legislature of West Virginia. Section 8 of the Act of the Legislature of West Virginia, approved December 20, 1875, Acts of the Legislature of West Virginia, Session of 1875, p. 126, is as follows:

> "8. The Auditor shall institute all the necessary and appropriate measures for the collection of all claims for taxes and other demands transferred by the Commonwealth of Virginia to this State by an act of the General Assembly of said Commonwealth entitled 'an act transferring to the proposed State of West Virginia, when the same shall become one of the United States, all the State's interest in property; unpaid and uncollected taxes, fines, forfeitures, penalties and judgments in counties embraced within the boundaries of the proposed State aforesaid;' passed on the third day of February, 1863."

And therefore, we respectfully, but earnestly, claim that West Virginia is equitably, legally, and justly, bound to account for all property and assets, whether real or personal, which she has received from the Commonwealth of Virginia; in the settlement which it is the object of this suit to bring about.

There is, we think, enough in the record to show that no equitable settlement can be made between the two States upon the basis of the Wheeling Ordinance and the constating Acts referred to, unless there shall be brought into the account with West Virginia a fair charge against her for such assets, money, or property as she has received under the Acts of February 3 and 4, 1863, and upon the fullest examination and consideration which we have been able to give to the subject, we are satisfied that even then the amount with which West Virginia will be chargeable on account of the public debt of the undivided State, will be far less than she ought to have assumed and paid if we have reference to all of these facts, and all of the equities of the case.

It is proper to state here that in so far as any property or money which West Virginia acquired from Virginia, either under the Acts of February 3 and 4, 1863, or otherwise, was property which was acquired by Virginia by the expenditure of money within the limits of the State of West Virginia, or money paid by Virgini, after 1819, the new State will, of course, be charge-

able with the amount so expended or paid by the Commonwealth, under the Wheeling Ordinance, and not under the Act of February 3, 1863, in the settlement to be made between the two States, for the Wheeling Ordinance provides that the new State shall be charged with all expenditures made within its limits by the Commonwealth of Virginia, since any part of the debt was contracted.

Counsel for Virginia will file a modified draft of decree in conformity with the views presented in this brief; which we will respectfully ask the court to consider, and to enter, if they shall approve of the same.

Respectfully submitted,

WILLIAM A. ANDERSON.

Attorney General and as such Counsel for Virginia.

APPENDIX No. 1.

To Reply Brief for Complainant on motion for order of reference in *Virginia* v. *West Virginia.*

The doctrine of the apportionment of the public debt of a State, which is divided into two or more States.

Grotius states the principle as follows:

> "On the other hand it may happen that what has been one State, is divided, either by mutual consent or by hostile force, as the body of the Persian Empire was divided among the successors of Alexander. When this transpires, several sovereignties exist instead of one, each with its own rights; *but if anything had been in common; that ought either to be administered in common, or divided in portions pro rata.*"
>
> Grotius' Book II; Chapter 9; Section 8.

And Puffendorf says:

> "Where a kingdom divides by common consent into two or more distinct Commonwealths, the public patrimony with all the debts and incumberances upon them, ought to be equally shared among them. Tho' indeed when such separations are made by mutual agreement, there is commonly express provision made for such cases."
>
> Puffendorf's Law of Nature & Nations, Book VIII., Chapter 12; Section 5.

Chancellor Kent thus concisely states the doctrine:

> "If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement, those rights are to

be enjoyed; and those obligations fulfilled, by all the parts in common."

1 Kent's Comm. pp. 25-26.

Phillimore thus clearly states the rule:

"If a nation be divided into various distinct societies, the obligations which had accrued to the whole before division, are, unless they have been the subject of a special agreement, ratably binding upon the different parts."

1 Phillimore International Law, Part II, Chapter 137, M. p. 158.

Pomeroy expresses the rule in the identical language of Mr. Phillimore.

Pomeroy's International Law, Section 74.

Mr. Dana expresses himself as to one phase of the doctrine as follows:

"In the separations and re-arrangements of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted; that, in case of a division of a State, each new State is bound for the whole debt contracted by the former; and; in the case of a union of states; it seems equally clear that, as the whole must defend the part in war which is the international process of attachment it must practically pay the debt, although the foreign power may look only to the people and land of the State which made the contract. The formation of the new State so alters the nature of all the securities the creditor looked to; that the new State has a general obligation to see that he does not suffer by the change.

See Article 13 of treaty of 1839 for the separation of Belgium; and the treaty of Zurich, ceding Lombardy to Sardinia."

Wheaton's Int. L.—Edited, with notes, by Richard Henry Dana, Section 30, Note 18.

Mr. Halleck, after stating the effect of the dismemberment of a State by the loss of a portion of its territory by foreign conquest, or by the revolt and separation of a province, says:

"§27. The case is slightly different where one state is divided into two or more distinct and independent sovereignties. In that case, the obligations which had accrued to the whole, before the division are, (unless they have been the subject of a special agreement), ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers; the dicisions of courts, and the practice of nations. It was incorporated into the treaty by which the modern kingdom of Belgium was established."

Halleck's International Law & Laws of War; Section 27.

Mr. John Bassett Moore thus states the doctrine:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for as Story says, 'the division of an Empire creates no forfeiture of previous vested rights of property.'"
> 1 Moore's Digest Int. L. p. 334, citing
> Abdy's Kent, p. 96, and
> Lawrence's Wheaton, 52 (m) 20.

A number of precedents are cited by Mr. Moore in Vol. I, Section 97, pp. 339-365, of his Digest of International Law, giving the terms upon which public debts of States have been divided and apportioned, by conventions, or treaties, between the States affected, in cases where there has been a division of territory by war, conquest; or treaty.

No sanction for the rule prescribed in the Wheeling Ordinance will be found in any of the adjustments of public debts, there recorded by the learned author.

Judge Story declared the following fundamental truth:

> "It has been asserted as a principle of the common law, that the division of an empire creates no forfeiture of previously vested rights of property.
> And this principle is equally consonant with the common sense of mankind and the maxims of eternal justice."
> Mr. Justice Story in *Terrett and others* v. *Taylor and others*, 9 Cranch, 43, 50, citing *Kelly* v. *Harrison*, 2 Johnson, c. 29, *Jackson* v. *Lunn*, 3 Johnson, c. 109.

In *Hartman* v. *Greenhow*, 102 U. S. 672-677, Mr. Justice Field states the rule of international law in the following language:

> "Writers on public law speak of the principle as well established, that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them. On this subject Kent says: 'If a State should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligation fulfilled by all the parts in common.' 1 Com., 26. And Halleck, speaking of a State divided into two or more distinct and independent sovereignties says: 'In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers; the decisions of courts, and the practice of nations.'" Interna. L., ch. 3, section 27.

And this language was again approved by Mr. Justice Field in his dissenting opinion in *Antoni* v. *Greenhow,* (in which opinion Mr. Justice Harlan concurred), 107 U. S. 769-7, where the following language is used:

> "It is a well settled doctrine of public law, that, upon a division of a State into two or more States, her debts shall be ratably apportioned among them. See authorities upon this subject in *Hartman* v. *Greenhow,* 102 U. S., 677."

The only dissent from the principles thus enunciated by this long line of authorities by any author whose opinions would carry any weight upon such a subject which we have been able to discover is to be found in the dogma of Mr. Hall; in his work on International Law, where that learned author says:

> "§27. When a new State splits off from one already existing, it necessarily steps into the enjoyment of all rights which are conferred upon it by international law in virtue of its existence as an international person, and it becomes subject to all obligations which are imposed upon it in the same way. No question therefore presents itself with respect to the general rights and duties of a new State. What, however, is its relation to the contract obligations of the State from which it has been separated; to property belonging to and privileges enjoyed by the later, and to property belonging in common, before the occurrence of the separation, to subjects of the original state in virtue of their status as such, when some of them after the separation become subjects of the new State?
>
> The fact of the personality of a state is the key to the answer. With rights which have been acquired, and obligations which have been contracted, by the old State as personal rights and obligations the new State has nothing to do. The old State is not extinct, it is still there to fulfill its contract duties, and to enjoy its contract rights. The new State, on the other hand, is an entirely fresh being. It neither is, nor does it represent, the person with whom other States have contracted, they may have no reason for giving it the advantages which have been accorded to the person with whom the contract was made; and it would be unjust to saddle it with liabilities which it would not have accepted on its own account. What is true as between the new State and foreign powers, is true also as between it and the old State. From the moment of independence all trace of the joint life is gone. Apart from special agreement no survival of it is possible, and the two States are merely two beings possessing no other claims on one another than those which are conferred by the bare provisions of international law. And as the old State continues its life uninterruptedly, it possesses everything belonging to it as a person,

which it has not expressly lost, so that property, and advantages secured to it by treaty, which are enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continue to belong to it. On the other hand, rights possessed in respect of the lost territory, including rights under treaties relating to cessions of territory and demarcation of boundary, obligations contracted with reference to it alone, and property which is within it, and which has therefore a local character, or which, though not within it, belongs to State institutions localized there, transfer themselves to the new State person. Conversely, of course, the old State person remains in sole enjoyment of its separate territory, and of all local rights connected with it.

* * * * * * *

Property which becomes transferred by the fact of separation consists in domains, public buildings, museums and art collections, communal lands, charitable and other endowments connected with the State, and the like. When a portion of the lands belonging to a commune or to an endowment lies without the boundary of the new State it is only considered that a right to the value of the property is transferred. Convenience may dictate expropriation from the property itself; and it is only then necessary to pay its full value by way of compensation."

Hall's International Law, Sec. 27.

The fallacy of the positions taken by this learned author will be manifest when we reflect, that, if the Wheeling Conventions and Legislatures had chosen to annex, and had annexed fifty or sixty other counties to the new State, so that it would have embraced more than two thirds of the population and territory and actual and potential wealth, public properties, assets and resources of the undivided Commonwealth, the new State would have taken a good title to all of those assets, properties, and resources, free and discharged from any liability whatever for any part of the antecedent public debt of the Commonwealth, if the ordinances and other public acts of the Wheeling Conventions and Legislatures had omitted to impose any obligation upon the new State to assume and pay any part of that public debt.

Such a result would shock the moral sense of mankind; and yet, it would be no more unjust and inequitable than that which would confront us here, if the views of this eminent author are correct, had the Wheeling Conventions and Legislatures failed to prescribe any stipulations, provisions, or conditions as to the apportionment of the antecedent common public debt between the two States.

APPENDIX No. 2.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

Extracts from message of Joseph Johnson, of Harrison, Governor of Virginia, to the General Assembly of Virginia, January 12, 1852. See Journal, House of Delegates, 1852, pp. 18-19.

> "The subject of internal improvement, which for many years has engaged the anxious attention of our people, is rapidly increasing in interest and importance, and will require your most serious and careful consideration. Whether we look to the vast amount of capital already invested by the State in the enterprise, or the appropriations yet required to carry out successfully the schemes already begun, and thereby make them available for revenue and State purposes—or consider the magnitude of the objects sought to be obtained, and the importance of the results anticipated from their completion in the aid they will give in developing the mineral and agricultural resources and the manufacturing and commercial advantages of our State—all will see and be forced to acknowledge the importance of the subject, and the great and growing necessity for energetic and yet judicious action on your part in relation to it. Indeed the works of internal improvement already commenced and in course of construction, and upon which large sums of both public and private means have been expended, are so intimately connected with all the leading interests of the Commonwealth, that every year's delay in their completion will necessarily postpone, at a common loss to the whole people, great and incalculable blessings, and for an equal period of time defer to the State treasury that repletion which the heavy appropriations heretofore made for internal improvement purposes so earnestly demand, and which their final completion cannot fail to effect. Many of our sister States, with less capacity for such enterprises, and possessing natural resources and advantage far inferior to our own, have, under circumstances of great embarrassment, executed works of internal improvement which would do honor to the enterprise of independent nations. Nor have they been disappointed in the individual or State benefit which their works were expected to impart. The citizens of those States feel the superiority of this improved condition of their country, and duly appreciate the increased comforts derived from it.
>
> "If our generous and noble old Commonwealth has been tardy in the execution of those improvements most clearly indicated by the geological structure of the country, and in a proper development of her great physical resources, it is gratifying to consider, that profiting by the example of others,

she may gain much of the loss in time, by wise, prompt and energetic measures hereafter."

Then, after recommending the completion of the James River & Kanawha Canal to Clifton Forge, Governor Johnson says:

"From this point I most earnestly recommend the construction of a railroad, on State account, to some point on the Ohio river deemed most eligible upon a full reconnoissance of the several routes heretofore contemplated, having in view the valuable trade of that river and ultimately a railroad connection with the cities of Cincinnati and Louisville. In connection with this line, I recommend that every proper aid should be given for the speedy completion of the central railroad from Richmond to the point proposed at the present terminus of the canal, and that from Alexandria to Gordonsville. The railroad from the canal to Loup creek shoals would not exceed 150 miles, (to which point steamboats are now accessible), and from which to Guyandotte, should that point be selected as the terminus, it would be about 82 miles, making 232 miles of railroad. The water line by the Kanawha would be about 80, and strike the Ohio 40 miles above Guyandotte—thus giving the section of road between Loup creek shoals and Clifton Forge the double importance of being connected at both ends with water and railroad lines. The best energy of the State should therefore be turned to the speedy completion of this division of the work. There is little doubt that the Alexandria and Orange railroad and the Blue Ridge tunnel may be completed, and the Central railroad and the canal be carried to Clifton Forge by the time the railroad from the latter place to the Ohio river can be finished."

Journal House of Delegates, 1852, p. 21.

APPENDIX NO. 3.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

House Joint Resolution No. 10, Concerning the Virginia Debt.
(Adopted February 7th, 1895.)

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject. And, *further,* that this Legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this Legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other State or Territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the socalled Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject.

APPENDIX NO. 4.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

"Chap. 78.—An Act giving consent to the admission of certain counties into the new State of West Virginia, upon certain conditions. Passed February 4, 1863.

"1. Be it enacted by the General Assembly of Virginia, That at the general election on the fourth Thursday of May,

one thousand, eight hundred and sixty-three, it shall be lawful for the voters of the district composed of the counties of Tazewell, Bland, Giles and Craig, to declare by their votes whether said counties shall be annexed to and become a part of the new State of West Virginia; also, at the same time, the district composed of the counties of Buckhanan, Wise, Russell, Scott and Lee, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Alleghany, Bath and Highland, to declare by their votes, whether the counties of such last named districts shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Clarke, Loudoun, Fairfax, Alexandria and Prince William, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Shenandoah, Warren, Page and Rockingham, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; and for that purpose there shall be a poll opened at each place of voting in each of said districts, headed 'For Annexation,' and 'Against Annexation.' And the consent of this general assembly is hereby given for the annexation to the said State of West Virginia of such of said districts or either of them, as a majority of the votes so polled in each district may determine: provided, that the Legislature of the State of West Virginia shall also consent and agree to the said annexation, after which all jurisdiction of the State of Virginia over the districts so annexed shall cease.

2. It shall be the duty of the goveernor of the Commonwealth to ascertain and certify the result as other elections are certified.

3. In the event the state of the country will not permit, or from any cause, said election for annexation cannot be fairly held on the day aforesaid, it shall be the duty of the governor of this Commonwealth, as soon as such election can be safely and fairly held and a full and free expression of the opinion of the people had thereon, to issue his proclamation ordering such election for the purpose aforesaid, and certify the result as aforesaid.

4. This act shall be in force from its passage."

Act of the General Assembly of Virginia, approved February 4, 1863, Acts of 1863, pp. 65-66.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Brief in Reply to Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 4.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA, *Defendant*.

BRIEF IN REPLY TO DEFENDANT.

On behalf of the complainant, an order is asked for referring this cause to a master to ascertain and report—

> "what amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to, and be now paid by, the State of West Virginia."

The order further provides that the master shall—

> "make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state, or which he may deem desirable to present to the court."

The object of this latter provision is to have stated and presented to the court the several methods or plans which, in the view of the respective parties, properly expresses and illustrates the correct method of ascertaining the "just proportion" of the

public debt of the Commonwealth of Virginia which each party should bear.

The court, having before it the accounts, stated in accordance with the views of each side, may be better enabled to judge of their respective merits and elect between them, and so avoid the delay which would be occasioned by a recommitment of the report.

On behalf of the State of West Virginia it is proposed, in section 2 of the draft of the decree presented by counsel, that the master shall state in his report—

(*a*) The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia, at Wheeling, August 20, 1861.

(*b*) The aggregate ordinary expenses of the State government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of the said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

Among the "ordinances and acts of the restored government of Virginia, prior to the formation of the State of West Virginia," passed in the convention which assembled at Wheeling on the 11th of June, 1861, there was one ordinance, passed August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," the ninth section of which ordinance was as follows, *viz:*

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period," etc.

It will be seen at once that the provision of the proposed decree is a wide departure from the Wheeling ordinance, in that it does not even propose to ascertain by the method indicated West

Virginia's "just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861." It was doubtless too apparent to the framers of the decree that the method proposed by the Wheeling ordinance had in fact, as we will show, no sort of connection with such public debt, and the account, stated as there suggested, might well have been taken, had no public debt of Virginia ever existed.

From the plan proposed by the Wheeling ordinance, as from that proposed in the decree offered by the defendant, there is altogether excluded any account of or reference to the public debt of the Commonwealth of Virginia, evidenced by bonds and other evidences of indebtedness outstanding on the first of January, 1861. The only settlement which this method could effect would be a mere accounting between two sections of Virginia, *inter sese*, of the amounts which had been paid into the treasury of Virginia from each section and the amounts which had by the appropriations of their common legislature been expended in each section during the period between 1822 and 1861.

If it should appear from such an accounting that the counties lying west of the mountains, and now constituting West Virginia, had during such period paid into the treasury of Virginia more money than had been expended by the State legislature within said counties, what possible connection could the result reached by that account have upon the outstanding public debt of Virginia? Is there any provision or principle of law under which one county, or any number of counties, in a State can claim that the amounts paid to the State in the way of legal taxes shall not exceed the amounts which such counties receive from the State in the way of legislative appropriations? Can such counties claim that they should not be required to contribute their share of the public taxes toward the payment of the State indebtedness because, forsooth, they have through a period of sixty years paid into the State treasury more money than they have received from it? Coming to the case in hand, we have the request made to this court, in the decree offered by defendant, that the master, who may be directed to ascertain and report to the court what proportion and amount of the public debt of Virginia should justly and equitably be now borne by West Virginia, shall ascertain such amount and proportion by taking the aggregate amount of the taxes and ordinary State expenses collected from the counties constituting West Virginia and the

amounts paid into said counties by legislative appropriation since 1822 and, deducting the smaller amount from the greater, report the balance so found to the court as West Virginia's just proportion of the public debt as of January, 1861.

The court has overruled the demurrer to the bill, and in doing so has stated in effect that the case stated in the bill entitles the complainant to the relief prayed, if such case is established by the proof. Is the case stated in the bill satisfied by the Wheeling ordinance?

The defendant was fully warranted in reiterating again and again in her answer that Virginia has always repudiated the Wheeling ordinance as binding on her, or as affording to any extent a satisfaction of Virginia's reasonable demand that West Virginia should contribute her just and reasonable share of that common indebtedness.

The Wheelingg ordinance is impracticable, illusory, and altogether inadequate.

In suggesting here considerations which warrant us in insisting that the Commonwealth of Virginia cannot lawfully be bound by the ordinances of the Wheeling convention, which provided for the repudiation by the people of West Virginia of their liability to contribute toward the payment of the public debt of Virginia, we must not be understood as criticising in any manner the constitutional status of the State of West Virginia. It is as firmly entrenched and established as any State in the Union. What we do deny and repudiate is the claim asserted, that in matters relating to the pecuniary obligations—legal or equitable—of that State, the acts or ordinances of that convention which assembled in Wheeling in June, 1861, calling itself a convention of Virginia, and which professed to preserve, protect, and defend the interests of Virginia while actually engaged from its outset in providing for the dismemberment of Virginia—that such acts and ordinances, so far as they were designed to relieve West Virginia from her proper share of the public debt of Virginia, are of any legal, equitable, or moral binding effect on Virginia.

We object to West Virginia's proposed plan of settling the accounts, because—

(1) THE PLAN OF THE WHEELING ORDINANCE AND OF DEFENDANT'S DECREE IS IMPRACTICABLE.

It is charged in the bill and admitted in the answer of defend-

ant that the public debt of Virginia, as of January, 1861, was about $33,000,000, and was evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia issued prior to that date. At the periods when said public debt was created the counties now constituting the State of West Virginia were each represented in the legislature of Virginia and in the executive councils of that State; that such representatives in the legislature advocated and voted for the creation of this debt and the application of its proceeds to the construction of works of internal improvement, which were designed for the benefit and welfare of the entire Commonwealth; that the region now forming West Virginia was the portion of Virginia toward which the greater part of such public works tended, and it was for the development of that region they were primarily designed. Hence it is that we insist that not only on the principles of international law, but on the homelier and more intelligible rules of common honesty and morality, as well as upon legal and equitable doctrines, West Virginia is as much bound as Virginia for this public debt.

The Wheeling ordinance ignores these solemn evidences of the public indebtedness, and proposes to go back to the year 1824, through a perod of nearly sixty years, and inquire into the consideration of all these evidences of a common indebtedness, and into the various objects to which were applied the moneys obtained for them as they were made and issued. It requires the production of the vouchers and evidences of every dollar paid into the public treasury of the money derived from the taxation of the counties now forming West Virginia, and of every dollar appropriated and expended by Virginia within that territory. How far such requirement can be complied with at this time, with fullness and accuracy, it is impossible to tell.

It should be enough to suggest the danger and uncertainty attending such attempt, to remind the court that the State courthouse, in the city of Richmond—the repository of many of the most valuable of Virginia's archives—was destroyed by fire at the evacuation of that city, at the close of the Civil War; and further, that many of the most valuable of the State records and files were ravaged during the period of the military government of the State and during the baleful period of "Reconstruction," when hostile aliens had control and possession of the State government and property. To require now that, in order to correctly ascertain the amount which West Virginia should contribute to-

ward the payment of a public debt, evidenced by bonds to which that State was in effect a party, Virginia should make research through her files and records of nearly sixty years and produce the evidences of the items of receipt and expenditure, so far as the territory of West Virginia is concerned, is a peril and a hardship to which she should not be exposed.

It cannot be claimed that Virginia is in default in the performance of any duty resting upon her to West Virginia. The State officers at the capitol were the common agents of both the litigants here, and both are equally bound by their acts.

It is a fact which should not be forgotten, but to which due weight should be given in any equitable adjustment of the common burden, that it was the voluntary act of the people of West Virginia in withdrawing themselves from the body politic and corporate of Virginia and surrendering all right of participation in her councils and administration of her affairs that has contributed to the present conditions.

But another and more serious objection lies to the Wheeling ordinance as a plan of adjustment. Its evident purpose was to avoid and defeat the very liability to which this bill seeks to hold her. It proceeds on the theory that West Virginia cannot be held for any other amount than the difference between the amounts she—or her constituent counties—paid into the treasury of Virginia and the amount they received from that treasury during the sixty years preceding January, 1861; and also on the theory that those counties should not be held liable for any more of the public debt than was actually enjoyed by them by the extension of the works of internal improvement into or through their territory. It ignores the fact that the liability accrued when the bonds were issued and the money for them was obtained by the State, and not when the works for which that money was borrowed were actually constructed. The construction of the works was arrested by the war. They were not all completed within West Virginia. The war arrested, it did not prevent, the completed construction; *that* was prevented by the secession of West Virginia.

At the close of the war the spirit of energetic activity which the war had quickened found employment in every field of material development. Never in its history had this country known such an era of successful enterprise and development. The vast resources of wealth in timber, coal, gas, and oil would speedily have

secured the capital for the realization of the plans which had been discerned and provided for by the generations of Virginia people sixty years and more before. The works of internal improvement for which this public debt had been created would have been completed, and Virginia's taxable wealth would very soon have been applied to the entire extinction of her public debt; but all this was defeated by the withdrawal of the territory now forming the State of West Virginia; and now that State appears in the unenviable attitude of possessing all the sources of wealth which induced the creation of the public debt—that debt which her people had largely contributed to making—while denying all liability for the bonds by which the debt was evidenced. She is willing to enter upon a settlement as prescribed by the Wheeling ordinance. That ordinance, as we have shown, provides a plan of settlement which omits altogether the public debt.

(2) THE COMMONWEALTH OF VIRGINIA IS NOT BOUND BY THE WHEELING ORDINANCE.

It is true that this court has in one case recognized the restored State of Virginia—the "Pierpont government," as it is called in that case—as the State of Virginia. *Virginia* vs. *West Virginia*, 11 Wallace, 39, was on a bill brought by Virginia "to settle the boundary line between the States of Virginia and West Virginia." The real question presented was the validity and effect of the proceedings by which the counties of Jefferson and Berkeley were transferred in 1866 from the Commonwealth of Virginia to the State of West Virginia. We have endeavored, without success, to obtain a copy of the record of the case, to learn what exactly were the issues presented by the pleadings and the course of the proceedings had in the case in this court. It appears (page 51) to have been argued at December term, 1866, and again, after this court had been differently constituted, at December term, 1870. Justices Davis, Clifford, and Field dissented from the judgment. The case has been rarely referred to in the subsequent decisions of this court. Chief Justice Chase, who sat in the case, did, in *Caesar Griffin's case* (Chase Decisions, p. 412), referring to the State government of Virginia, say:

> "Indeed, it is well proven historically that the State and the government thus organized were recognized by the National Government. Senators and Representatives from the State occupied seats in Congress, and when the insurgent force which held possession of the principal part of the

> territory was overcome, and the government recognized by the United States was transferred to Richmond, it became in fact, as it was before in law, the government of the whole State. As such, it was entitled under the constitution to the same recognition and respect, in national relations, as the government of any other State."

And yet, notwithstanding this solemn judicial declaration as to the validity of Virginia's right to "recognition and respect in her national relations," it appears that on March 2, 1867, Congress, in an "Act to provide for the more efficient government of the rebel States" (14 St. L., p. 428), declared that—

> "Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of VIRGINIA, *etc.*; * * * and
>
> "Whereas it is necessary that peace and good order should be enforced in said states, until loyal republican State governments can be legally established, &c."

By virtue of this act the entire State government of the restored State of Virginia was swept away—executive, legislative, and judicial—and Major General Godfrey Wetzel succeeded to all their functions.

So it seems that this restored State, on which had been poured the annointing balm of national recognition and acceptance, and which was "entitled under the Constitution to the same recognition and respect in national relations as the government of any other State," was now declared by the political branch of the National Government to have "no legal State government existing in it," and the government that did exist in it was totally abolished.

A natural inquiry is suggested: If the State government, which had been created in Wheeling in August, 1861, and removed to Alexandria in 1863, and transferred to Richmond in 1865, and continued in operation continuously until 1867, was then ascertained and declared to be "illegal," and so extinguished, when had it ceased to be a legal government, or when had it ever become a legal government? Surely, in its "national relations," it could not be both legal and illegal, or legal for some purposes and illegal for others.

Whether a State government exists, and whether it is a lawful and valid government, are political questions, and are to be determined by the political departments of the National Government and not by the judicial. The government of Virginia formed

at Wheeling, and continued until after the close of the war, was recognized by the National Government as the true and lawful government of Virginia. In all of its political conduct and relations it must be assumed by the courts to be the true and lawful government of the State. But when it appears, as it does here, that the people of that part of the territory of Virginia which now forms the State of West Virginia were in fact the only people represented in the convention assembled at Wheeling on the 11th of June, 1861, and in the legislatures of Virginia held under the authority of that convention; that the leading object and purpose of those people in assuming the insignia—the title, powers, and authority of the Commonwealth of Virginia—was only to enable them to erect within the territory of Virginia a new State, and to appropriate to its uses all the property of Virginia under their control, and at the same time to absolve themselves from all liability on those bonds which they had united in making, as the evidences of that public debt which they had insisted on creating, then other considerations must apply.

The fiction that the people west of the Allegheny mountains were "the people of Virginia;" that the government which they organized in that region was the government of Virginia; that it became invested with all the powers and authority of the ancient Commonwealth of Virginia, ceases to apply. That fiction has served its purpose; the National Government has recognized this government, for all political purposes, as the Commonwealth of Virginia, and has accepted as valid and efficient the consent given by it to the erection of a new State within the borders of Virginia. Such recognition was the exercise of a power which belonged to the political departments alone. As to the propriety of its exercise the judicial branch is without jurisdiction to inquire. But into the conduct of this government in relation to its civil rights and liabilities—its liability on bonds and contracts, or under the application of equitable doctrines—the judicial courts may inquire, may take jurisdiction, and afford relief. Such courts may inquire into the validity and the *bona fides* of State action. It may ascertain and declare such action to be an impairment of the obligation of contracts. Inquisition may not be made into the motives or the good faith of the law-makers, whether in convention or in legislature, but the actions of these bodies may be annulled or disregarded when they appear to have been procured by fraud, as the judgments of the courts may be without impeachment of the motives of the judge who presided.

In Graham *vs.* Folsom, 200 U. S., 253, this court, speaking of an attempt by a county to rid itself of debt, said:

> "But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of a State, but they will not ignore the effect of its action."

The Wheeling ordinance was ordained by a body of citizens who proclaimed themselves to be citizens of Virginia, assembled in convention to reform and establish her organic law. Their religious duty was to preserve, protect, and ameliorate her material interests; and yet it is manifest that their paramount object was to despoil Virginia of one-third of her territory; to erect upon that portion so cut off a new State, and to endow it with all the money and other property of Virginia found within the limits of the proposed new State. This purpose was actually carried into effect. These things were not conceived and performed to promote the welfare of Virginia. The citizens of Virginia by whom they were done looked not to the welfare of the State whose citizens they were, but to the welfare of that new State, for whose erection they were then providing and the dawn of whose creation was already appearing. The ordinance is entitled "*An ordinance to provide for the formation of a new State out of the territory of this State*," and was passed August 20, 1861. It should be construed, then, in the light of its professed object. Its provisions, so far as they related to the public debt of the Commonwealth of Virginia, and to the ascertainment of the contributive share which the new State of West Virginia should bear, must be construed as designed to secure the interests of West Virginia as opposed to those of Virginia. But one body corporate and politic then existed, but this very ordinance, as its title and body shows, was to partition this existing body and create another body, with opposing and antagonistic interests. The framers of the ordinance were in a little while to become citizens of the new and opposing body. They legislated for their own future interests and not for the interests of Virginia. Hence it was that in framing this section of the ordinance which prescribed a method of ascertaining the portion of the common burden to fall upon West Virginia they ignored the bonds which evidenced the common debt and provided for an adjustment which involves the items of receipts and expenditures between the two sections of Virginia through a period of nearly sixty years.

The fiction of the restored State of Virginia is again invoked

to shield the actual truth. It cannot serve it. It has long ago fulfilled its only mission. It is now too thin and transparent to conceal the truth.

We have already shown, and the attention of the court cannot be too earnestly called to it, that the ordinance, in providing a plan for ascertaining the "just proportion" of the public debt which West Virginia should bear, makes no further reference to that public debt than the words contained in its opening sentence. The plan of ascertainment does not in any way involve the debt. It relates only to the amounts which the two sections of the Commonwealth had paid into the treasury of the Commonwealth and had received from that treasury since 1822. As a plan of ascertaining West Virginia's share of the public debt, it was illusory, disingenuous, and inadequate, and wholly in the interest of the people who framed and passed it.

It cannot be tolerated that one of the parties in interest should be the sole arbiter of the proportion or amount of the common burden which it will bear, or, as contended here, that a plan prescribed by one-third of the people of Virginia should be made the exclusive rule of measurement by which their share of the public debt of the whole people must be ascertained; and this although such one-third had separated themselves, and had met in convention, calling itself the convention of Virginia, which by an ordinance had provided for the erection of a new State within the territory occupied by them, and had by the same ordinance prescribed this rule for the ascertainment of its "just proportion" of said public debt. It is true, as stated in the answer, that Virginia has always denied that the Wheeling ordinance was binding upon her.

We submit that the debt for which West Virginia is liable is evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia prior to January 1, 1861. We have assumed—and no reason had been shown against it—that, taking into the account the population, area, and values of West Virginia, a reasonable and just proportion of the common burden was two-thirds of the public debt as the proper share to be laid upon Virginia and one-third of it as the proper share of West Virginia.

Apportioning the common burden on this basis, it would yet be competent for West Virginia to show on the taking of the account any just grounds that she may have of abatement of the

amount thus ascertained, whether by payments, set-offs, or otherwise. The amount of the public debt is admitted to be about $33,000,000. The exact amount can be readily ascertained. This should form the basis of any accounting between the two States. It is a fixed and certain factor. The liability of West Virginia for a just and reasonable proportion of this debt is not denied. The proportion in which it should be borne by the two States must be determined by some rule which the court may prescribe or which the master may adopt. The result is then readily ascertained.

If the court desire it, the master may be instructed as to the principles, rules, and methods which he must employ in stating and settling the account, or he may be authorized to return with his report such alternative statements of the account as to him may appear proper or as either party to the cause may require

In the argument of counsel for West Virginia in support of the demurrer to the bill it was pointed out that by section 8 of article 8 of the Constitution of West Virginia it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years;"

and that by the act of May 13, 1862, of the legislature of Virginia it was provided—

> "That the consent of the legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, * * * according to the boundaries, and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

From these two provisions the conclusion was deduced that a compact had been entered into by the two States, by which the legislature of West Virginia was made the sole arbiter of the fact and the amount of West Virginia's liability.

The court in its opinion (206 U. S., 320) disposed of that contention by saying:

> "When Virginia, on August 20, 1861, by ordinance provided for the 'formation of a new State out of the territory of this State,' and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should ascertain the same as soon as practicable, it referred to the method of ascertainment prescribed by the Virginia convention,"

the soundness of which reasoning cannot be questioned. The court was dealing with the question before it, which was the demurrer of West Virginia to the bill of Virginia. On the demurrer, all the allegations of the bill were taken for true. It was a fact that such ordinance had been adopted by the convention assembled at Wheeling. It was also a fact that the matters recited were in the acts and proceedings of the legislatures and conventions; but it was even more significantly the fact that the members of the Wheeling convention of August, 1861, and the members of the convention that framed the constitution for West Virginia knew what was in each other's minds, and what had been the acts of each body, for they were the same people, and it was all done in the same convention and at the same time, as appears by the official records (11 Wall., p. 41).

The court, in its opinion on the demurrer, did not decide or intimate any opinion as to the validity, or legal effect, or binding force of the Wheeling ordinance on the people of Virginia. It was manifest from the bill that the Wheeling ordinance was referred to there only as an additional expression by West Virginia people of their liability for the public debt. Virginia had never recognized for a moment that she was bound by an act which had so plainly for its object the casting upon her of the entire burden of the debt. The answer of defendant here complains that Virginia had persistently repudiated all responsibility for and liability under that ordinance.

The True Basis of Virginia's Right to an Accounting.

In paragraph VIII of the bill (Record, p. 10) five grounds are indicated on which the liability of West Virginia rests. The first of these grounds is that the mere partition of the territory created the liability. Writers on international law agree that—

"In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for, as Story says, 'the division of the empire creates no forfeiture of previously vested rights of property.' And so *ex contracio*, where several separate States are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new State; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union framed and the characters of the act of incorporation in each particular case."

1 Wharton, International Law Digest, sec. 5, p. 19, citing authorities.
1 Oppenheim on International Law, p. 122.
Wheaton, International Law, 4th English ed., p. 46.
Hartman v. *Greenhow*, 102 U. S., 672.

In 5 Moore on International Arbitrations, pages 4618-19, the case of the "Tarquin" is reported. On page 4619 it is said:

"This claim was in the nature of a public debt, founded upon the King's decree, and by the rule of international law public debts are not extinguished upon the division of a State into distinct States, whether that division be by war or by mutual consent; but they must be discharged either jointly or severally, according to the principles of justice and equity," &c.

The partition of territory alone, without agreement and without consent, imports an equalization of the burdens which were incident to the territory between the partitioners. The only question is, by what rule shall such equalization be made?

It is charged in the bill, and indeed is matter of public history in Virginia, that the sole purpose had in view in the construction of the works of internal improvement for which this debt was created was the development of the natural resources of the region to the west of the Alleghany mountains. The action of the delegates from that region in the General Assembly of Virginia confirms this.

The answer of the defendant denies this, and affirms that they were constructed for the development of the eastern part of the State. There were no natural resources in the eastern part that could be developed. The seacoast was there, and it was to bring to the coast the timber, coal, and other minerals of the west that the turnpikes, railroads, canals, and bridges were constructed. The reports of the Commissioners of Public Works through many years will attest this.

The enlightened sense of equity and justice throughout the civilized

world has now become crystallized in the rule of international law which is stated above. That is the rule which Virginia asks may be applied here, and not the rule of the Wheeling ordinance, framed by the very people who then and now were guided and controlled by the single purpose of protecting West Virginia from this very liability.

It was not necessary that Virginia should have paid off the entire public debt before it could call on West Virginia for contribution. It was as much the debt of West Virginia as it was of Virginia. Virginia comes into court and invokes the application of those well-settled doctrines of equity of exoneration and of *quia timet*, and prays that the burden may be adjusted by the court in accordance with those doctrines and methods of procedure.

1 Spence, Equity Juris. (marginal), page 662.
3 Pomeroy, Equity Juris., section 1197 and notes.

The act "to provide for the funding and payment of the public debt," approved March 30, 1871 (Record, p. 13), recites that—

> "Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas in the ordinance authorizing the organization of said State, it was provided that the said State should take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and whereas the people of this Commonwealth are anxious for the prompt liquidation of her proportion of said debt, *which is estimated to be two-thirds of the same.*"

The estimate here referred to, of the proportions in which the "public debt of the Commonwealth of Virginia" should be borne by the two States into which the territory of that ancient Commonwealth was now divided, was not recklessly arbitrarily assumed, but was the result of a careful and intelligent reckoning. The territory and population of each State was considered, and the value of such territory taken into account, embracing therein all those constituent elements, natural and artificial, which enter into and make up the wealth of a State. The seacoast, the navigable rivers, the agricultural lands, with the works of internal improvements, in varying stages of completion, which formed the value of Virginia, and the vast mineral wealth of coal, gas, oil, and the forests of hardwoods of inestimable value that formed the wealth of West Virginia. The elements of wealth

duly considered, it was thought that West Virginia should bear, at the very least, one-third of the common public debt. It is charged in the bill that "West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of mineral and timber which had been known for many years prior to the first of January, 1861, and their prospective values, if made accessable to the markets of the country were understood to be well nigh beyond computation." The answer of West Virginia admits the charge, but avers "that the same was inaccessible, and of very little value on the first of January, 1861." And yet on July 1, 1862, when the restored State of Virginia, through her Senators and Representatives in Congress, was endeavoring to have the new State erected within the territory of Virginia, one of those Senators, Willey, employed as an argument in support of the creation of a new State, the existence of the vast resources of mineral wealth in that territory. He said:

> "Here is an opportunity presented to the Senate to erect northwestern Virginia into a free State, a condition for which she was designed by the God of nature—the richest portion of this broad land in mineral resources—with inexhaustible marble quarries equal to those of Egypt and very similar; rich in inexhaustible fountains of salt and oil, and forests exceeding any of those that ever waived upon Mount Lebanon itself, that have remained from the foundation of the government of the State of Virginia, undeveloped, useless, valueless, simply because we have not been able to organize improvements within and under the control of the western section."
>
> Congressional Globe, second session of Thirty-seventh Congress, 1861-'2, p. 3037.

And on the 14th day of the same month, in the same debate, he said:

> "This new proposed State contains within its towering hills and mountains treasures richer perhaps than can be found within the limits of any other State within this Confederacy, and there they have lain ever since the establishment of this Government, undeveloped, unworked, valueless, and they must continue to remain so unless a different policy is pursued."
>
> *Ibid.*, p. 3317.

It was this potentiality of wealth that those railroads, turnpikes, canals, and bridges were being constructed by Virginia to develop and realize for which this public debt of the Commonwealth was created. It was this vast wealth which was in the view of Senator Willey, in 1862, when in the Senate of the United States he urged it as a strong

ground why the new State should be laid off in the limits and from the territory of Virginia; that such new State would be a free State, and all this wealth of which Virginia would be thus despoiled would become the exclusive property of the new State, and that the provision made by the Wheeling ordinance for ascertaining the just proportion of the public debt of Virginia to be borne by the new State would not embrace or take into account any portion of this public wealth. It was this vast wealth which, in the estimation of Virginia in 1871, imparted so great value to the hilly and mountainous territory of West Virginia that, in computing the just proportion of the public debt which West Virginia in equity and good conscience should bear, she reckoned with extreme moderation that the territory of West Virginia was equal at least to one-third of that of Virginia, and so did she apportion their respective contributive shares of this common liability.

But it is suggested that an account is necessary to ascertain the amount which West Virginia should contribute, and, further, that such account should be taken on the principles of a partnership account.

We cannot perceive in the relations existing between Virginia and West Virginia any of the features which distinguish a partnership. A partnership has been defined by this court to be—

> "a voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some one or all of them, in lawful commerce or business with the understanding that there shall be a communion of profits thereof between them."

What was the contract and who were the parties and what were the terms of any partnership when the common debt, here sought to be apportioned, was created? The Commonwealth of Virginia was a political body, a sovereign corporation, a member of the Federal Union when she created this debt, and issued her bonds therefor. The counties of Virginia, which now form the State of West Virginia, were in no sense partners with the other counties of Virginia. They were all members of one body. The welfare of one member was the welfare of the entire body. These counties, by their own voluntary act, seeking their own exclusive selfish interests, procured their separation from the body corporate and politic of Virginia, and, after they had done so, they sought and obtained the political recognition and support of the National Government to gain for themselves separate political existence and autonomy. On the principles of international law, they remained liable for a just proportion of the pub-

lic debt of Virginia. What doctrine or maxim of equity can be invoked to entitle these counties to demand a marshaling of the assets of Virginia? What indeed would be counted as constituting those assets? If a partnership existed, then all the partnership fund constituted the assets and not any particular part of such fund. The debt which is here sought to be apportioned was not created on the security of any particular asset of Virginia. It was created on the faith and credit which the lenders of money extended to the Commonwealth of Virginia. The bonds which the Commonwealth issued were the obligations of the whole State and for which the entire State was liable. They were not the bonds of the counties of Virginia *jointly*. They were the several obligations of one body politic. The debt evidenced by them was the debt of the State sanctioned and imposed by the people of Virginia, through their General Assembly, acting within constitutional limits. *How* the money derived from these bonds was expended by legislative appropriations, or *where* it was expended, are considerations which should not even be inquired into in this proceeding, for it matters not in the present inquiry whether the entire debt of $33,000,000 was expended within the limits of Virginia or of West Virginia, so that it was expended by a legislature in which all parts of the State were fully represented. The expenditure must be conclusively presumed to have been made in good faith and for the welfare of the whole body politic. Two thousand five hundred years ago Aesop illustrated this in the fable of the "Belly and the Members." The liability, or the measure of the liability, of the two States into which the territory has since been divided can in nowise depend upon the amount of the proceeds of the loan which may have been expended in each. If any valid, actual, legal agreement was entered into between the two States, by which the proportion in which they should contribute to the common burden, was fixed, or if any means were agreed on by which such proportion should be ascertained, then such agreement must control. But if no such agreement can be shown, then on principles of international law each State remains liable for the whole debt, and the apportionment of the burden between them is a judicial matter to be settled by the courts.

How shall the proportions of this debt to be borne by the two States, respectively, be ascertained? Virginia, in 1871, estimated that it should be borne in the proportion of two-thirds by Virginia and one-third by West Virginia. She formed this estimate by computing the vast undeveloped mineral wealth of West Virginia—her "unsunned

gold"—as making her equal to one-third of the entire value of old Virginia, including therein all the works of internal improvement, completed and uncompleted, that remained within the limits of the present Virginia. But suppose this estimate of Virginia should not be adopted, how should the court ascertain the just proportion? It is suggested that West Virginia should be charged with only so much of the public debt as was actually expended within her borders, and Virginia should be charged with so much of said debt as was actually expended within her borders. But we have shown that whenever or however the amount of money represented by the debt was expended within the limits of old Virginia, it was all expended for the benefit of the whole body of the State. That the counties constituting West Virginia seceded from the old State before the improvements were completed, and thus prevented this completion, and that she sought by such secession and has now succeeded in monopolizing for her own exclusive use all those stores of natural wealth which would have afforded to the old State the basis of taxation by which the public debt could be easily and speedily discharged, surely affords her no equitable ground for an apportionment of liability on such a basis. If an accounting is to be had on the basis of the wealth of the respective States, then in estimating such wealth it will be impossible to ignore or disregard the mineral wealth of West Virginia. Her coal and oil and gas and marble and timber must be taken into the account, not according to their taxable values in 1861, but according to the values which would have been given to them by such an appraisement as would have been made of them in a suit for partition. The present material condition of West Virginia is but the fulfillment of the expectations that were entertained by the people of Virginia a hundred years ago. It was forseen when the scheme of internal improvements was entered upon in 1820. It was foreseen and appreciated by Senator Willey in 1862. It was distinctly appreciated and estimated by the legislature of Virginia in 1871, when it reckoned the just proportion of the public debt of Virginia as of 1861 which should be borne by West Virginia at one-third of the aggregate amount of that public debt.

THE "SPECIAL AGREEMENT" THEORY.

It is claimed on the part of West Virginia (Brief for Defendant, p. 11) that a "special agreement" was entered into between the States of Virginia and West Virginia, by which the method prescribed by the Wheeling ordinance was adopted as the exclusive method of as-

certaining the amount of that "just proportion" which it was declared West Virginia should bear.

The "special agreement" relied on by defendant appears to be that feature of the Wheeling ordinance which prescribes the method for ascertaining what is the "just proportion" of the public debt to be borne by West Virginia. Section 9 of the Wheeling ordinance presents two distinct features, which must not be confounded with each other, viz: (1) A recognition of the liability of West Virginia for a just proportion of the public debt, expressed in these words

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861."

It was this feature that is referred to in paragraph XVIII of the bill, and which defendant, on page 7 of his brief, insists is a recognition by plaintiff of the terms of the ordinance. (2) The method by which such "just proportion" shall be ascertained, expressed in these words—

> "to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

In pointing to the Wheeling ordinance as a recognition of West Virginia's liability for a just proportion of the common debt, section XVIII of the bill cannot be construed as an admission of the validity of the method of ascertainment proposed in the second feature. That section refers only to the "liability" recognized, and it indicates the ordinance as the one "in which the method of ascertaining her liability on account of said debt is prescribed," without in any way assenting to or conceding the validity of such method.

Suppose the second feature of the ordinance had prescribed as the method of ascertaining the just proportion that West Virginia should pay one mill on every thousand dollars of the public debt, or that it should pay one mill on every thousand tons of coal shipped from the State, could it be truly contended that the Commonwealth of Virginia had deliberately consented thereto? Yet, as I have endeavored to show, these supposed methods are not one whit more whimsical and fantastic than the method actually proposed, because the difference between the amount that a county has paid into the State treasury,

in a given period in taxes, and the amount that has been expended within that county by legislative appropriations during that period has no more connection with the public debt of the State than the number of tons of coal shipped from such county during such period can have.

There can be no question as to the power of two States, or of two sections of the same State, to enter into compacts within the conditions existing in the cases of Green *v.* Biddle, 8 Wheat., 1, and Wharton *v.* Wise, 153 U. S., 155, or as to the soundness of the rule stated in Wharton *v.* Wise, p. 173:

> "The consent of Congress to any agreement or compact between two or more States is sufficiently indicated—when not necessary to be made in advance—by the adoption or approval of proceedings taken under it."

But can it be said that Congress ever saw or considered the Wheeling ordinance or ever knowingly adopted any proceedings taken under it? Congress had before it the constitution which had been framed for the proposed new State, and the act of May 13, 1862, purporting to give the assent of Virginia to the erection of this new State. Nothing appears in the constitution as to this method of ascertaining West Virginia's share of the debt. The provision of the constitution appears in article 8, section 8, and is as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

There it appeared to Congress that adequate provision had been made for the payment of West Virginia's "equitable proportion" by requiring the legislature to ascertain the same, and then provide a sinking fund for its payment.

Can it be supposed, in view of the debates that occurred in Congress on the bill for the admission of West Virginia into the Union, that such bill would have become a law if it had appeared in the constitution under which it sought admission that it proposed to ascertain its equitable proportion of the debt by deducting from the amount of taxes it had paid since the first debt was incurred the amount it had received in the way of legislative appropriations? It gained admission into the Union by the method indicated in its constitution. It

now proposes to fall back on a method which would have defeated its effort to be admitted into the Union.

SECTIONS 5 AND 7 OF ARTICLE 8 OF THE CONSTITUTION.

On pages 18 and 19 of their brief counsel for defendant insist that the words "previous liability" in the 5th section and the words "public debt" in the 7th section do not refer to West Virginia's liability to her equitable proportion of the public debt of the Commonwealth of Virginia.

What other *previous liability* of the new-born State existed besides the public debt of the old State? Many of the States of the Union now provide in their constitutions that no public debt of the State shall be created. But counsel for defendant insist that while the State may be thus prohibited from creating *a public debt*, it is not prohiibted from creating *a public liability*, and that when a public liability is created then the legislatures may create a public debt to extinguish the previous liability. It is to be supposed that the court can be favorably impressed by such linguistic jugglery. The liability of West Virginia for a just or equitable proportion of the public debt of Virginia existing previously to the formation of this constitution was recognized by the constitution, and provision was made to meet it. This provision contemplated the issuance of bonds of the new State, but it was intended to leave no room for the creation of any other public debt, and hence it was that in this section 5 of article 8 it was provided that "no debt shall be created by this State except to meet * * * a previous liability of the State," &c. So in section 7 of article 8 it was provided that the legislature may sell all the stocks owned by the State in banks and other corporations, "but the proceeds of such sale shall be applied to the liquidation of *the public debt*," &c. What was *the* public debt?

Note, it is not *a*, or *any* public debt, but *the* public debt. There was and could be but one public debt, and that was the public debt which West Virginia had in common with Virginia, and as part of Virginia previously created.

Counsel argue on page 20 of their brief that because this same provision appears in the later constitution of West Virginia, adopted in 1872, that for that reason it could not have been intended to apply to the public debt of Virginia prior to 1861. It is true that this provision was repeated in several constitutions adopted by West Virginia, as was also section 8 of article 8; but it may be also true that when control of the State passed from the hands of the native-born citizens and into the hands of citizens from other States who had drifted into

West Virginia and had filled all the high offices of the State, then these provisions disappeared from the later-formed constitutions. The reason for such disappearance is not far to seek. Doubtless the hope was indulged that a repudiation by omission of this declaration of liability might soon warrant a repudiation by express disavowal of liability, a stage which, it appears, has now been reached.

Both Virginia and West Virginia in their respective constitutions prohibit the creation of any more public debts. Virginia has learned from experience. West Virginia has taken warning from the exampie before her. But both States have recognized that it might become needful to issue new bonds in order to extinguish the existing debt which rested upon both of them, and hence it was that each State provided that the prohibition should not extend to "previous liability," referring in each case to their espective liabilities for the existing public debt of the old State.

It is evident that West Virginia now rests her entire defense to the case stated in the bill on the recognition by this court of the Wheeling ordinance as a contract between the States of Virginia and West Virginia and now binding on the Commonwealth of Virginia. On the part of Virginia it is submitted that she had no part or lot in that matter. It surely lacked one essential element of a *contract;* the people who proposed the ordinance, and the people who accepted it were the same people. They did not coexist at the same time as parties to the contract. They contracted with themselves at successive stages of their continuing existence. When West Virginia was created Virginia ceased to be in that territory. True, the governor, who was a citizen of one of the counties of the new State, did not relinquish his titular office of governor of Virginia, but moved his seat of government to Alexandria and remained there within the Federal military lines. He assembled a handful of men, who masqueraded as the General Assembly of Virginia, and then on the 11th of April, 1864, organized a Constitutional Convention of Virginia, and adopted a new constitution for Virginia, the 27th section of which is quoted on page 22 of defendant's brief, by which the Wheeling ordinance was held to have no binding force upon Virginia. It was all a grim farce. But it cannot be denied that they had as much legal right to repudiate its binding force on Virginia as they had in August, 1861, to impart such binding force to it. The existing public debt of Virginia in January, 1861, was $33,000,000, as admitted in the answer to the bill. This was the debt of West Virginia, or of the counties constituting it, as much as it was of the other counties of Virginia. If the wealth

of West Virginia was equal to one-third of the wealth of the whole Commonwealth of Virginia, then the equitable proportion of that debt to be borne by West Virginia should be $11,000,000 as of January, 1861, and that amount should now be adjudged to be due by her.

SECTIONS 3, 4, 5, AND 6 OF THE DECREE PROPOSED BY DEFENDANT.

These sections of the decree are also objected on behalf of the complainant on the ground that they seek inquiries into matters that have no apparent connection with the ascertainment of West Virginia's "just proportion" of the public debt of the Commonwealth of Virginia prior to January 1, 1861. The amount of that public debt as of the date named is admitted to be about $33,000,000. The exact amount is susceptible of ascertainment. The only other question is as to the just proportion to be borne by West Virginia. If the proportion heretofore fixed by Virginia, of one-third, is objected to, then it remains for the court to determine, through its master, or in such other way as it may adopt, what the just proportion is. It has been assumed on the part of Virginia that the evidence relevant to such inquiry, which is altogether documentary, consisting of the public records and files of the Commonwealth of Virginia, could not appropriately be laid before the court at this stage of the cause, but would be produced before the master at such times and in such manner as he might require.

Should it be found that one-third of the public debt is the just proportion to be borne by West Virginia, then any inquiry into the manner in which Virginia has settled with her creditors for the two-thirds of said public debt, assumed by her as her just proportion, can have no relevancy to the inquiry here.

The certificates issued by Virginia represent only the bonds which were surrendered by the creditors and are now held by Virginia in trust for the owners of them; as to the one-third set apart as West Virginia's just proportion of the debt evidenced by such bonds, the bill sets forth with minuteness of detail the amount of such certificates, which has been assembled by the committee representing such bondholders, under the plan adopted for the settlement between Virginia and her creditors and under the acts of the General Assembly of Virginia, all of which appear in pages 39-66 of the bill and exhibits, no part of which appears to be denied by the answer of the defendant.

HOLMES CONRAD,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Argument of Mr. Holmes Conrad.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant*,
vs.
WEST VIRGINIA, *Defendant*.

In Equity—Original No. 4.

ARGUMENT OF MR. HOLMES CONRAD,
For the Complainant.

Mr. Carlisle: If your Honors please, we desire to have some understanding as to the order of this argument. Major Conrod, I understand, appears as *Amicus Curiae*, and we think we have a right, before we are required to address the Court, to hear a statement from the representative of the State itself also. We do not object to Major Conrad opening the case, but there are three arguments on that side and we think two of them ought to precede us, one of the *Amicus Curiae* and the other representing the State.

Mr. Anderson: That is satisfactory to us.

Mr. Conrad: I did not desire to make the first argument; I am not prepared to do it, but it is the wish of counsel that I should do so, and I am not going to shrink from it.

This bill was filed, as your Honors may remember, to have ascertained the just and reasonable contributive share that the State of West Virginia should pay towards the public debt of the Common wealth of Virginia as of January 1, 1861. That is the object of the bill.

The bill charges that the public debt as of that date was about $33,000,000; the answer admits that allegation. That fixes a very

important factor in this equation; it leaves open, however, a still more important one. The whole debt is thirty-three millions of dollars; here are two States now who, at one time, formed the one State, that contracted this debt. It is admitted there must be an apportionment, and the question is, How shall this debt be apportioned? How, by what plan or method, shall we ascertain the just contributive share of the State of West Virginia? We are halted at the threshold of this inquiry by a statement from counsel for West Virginia. They say that the plan and method has already been fixed and determined by a contract entered into between the two States. We ask them to show us the evidence of that contract and let us see the terms in which it is stated, and how and where it is expressed, and on the eighth page of their brief, signed by C. W. May, Attorney General, I find an answer to that inquiry, which, in the interest of conciseness and brevity, I venture to read. They speak of the admission, and they say:

> "there was a solemn agreement entered into in 1861 between the State of Virginia and the new State of West Virginia, with the consent of the Congress, by which the latter State assumed (as one of the conditions of the assent of Virginia to her becoming a State) a just proportion of the indebtedness of that Commonwealth as it existed prior to January 1st, 1861, the manner of ascertaining which proportion was defined by the ordinance itself.
>
> "The ordinance was, as treated by this Court in the case of Virginia *vs.* West Virginia (11 Wallace, 39), a proposition by the Commonwealth of Virginia to the people of the proposed new State. It was accepted by the constitutional convention of the proposed new State, carried into its Constitution and adopted by the people; and when the State was admitted into the Union by the Congress, with the assent of Virginia, it became a completed compact between competent parties, upon adequate consideration, protected by the Constitution of the United States from impairment by either party."

With a full sense of the responsibility of such a denial, I deny that either one of those four propositions is true. I deny, and will show, I think, that it never was accepted by the constitutional convention of the proposed new State; it never was carried into its constitution and adopted by the people, and it never was protected by Congress, or considered by Congress when it admitted this State. I say I am fully sensible of the responsibility of a denial so direct to four elements of a contract charged so specifically and concisely as is done in that brief.

I may be asked, what is the Wheeling Ordinance of which so much has, and will be said? Let me very briefly recall to the attention of the Court some dates and facts. After the convention in Richmond had passed its ordinance of secession, about one month later, in May, 1861, a number of persons met in the City of Clarksburg, some of them had been members of the Richmond Convention, I believe, all of them were violently opposed to the course adopted by that convention, and those gentlemen issued notices to all the people of the forty-eight counties lying west of the Alleghenies, inviting them to meet in a convention in the City of Wheeling in June, and they met in convention. This convention, assembled in this way, continued until August, 1861. It adjourned from time to time, took recesses, and on the 20th day of August, 1861, it adopted an ordinance, which I will ask your Honors just briefly to follow me in. You will find it in the appendix to the brief of the Attorney General of Virginia. That ordinance is entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State." That was its object; it was an ordinance that contained eleven sections.

Mr. Justice White: Will you be good enough to give me the page you are reading from?

Mr. Conrad: Page 12 in this appendix.

Mr. Justice McKenna: Which brief is it? I find no appendix in my record.

Mr. Conrad: I find it in the brief of the Attorney General, but it is printed elsewhere in the record. I beg the Court's attention now to the fact that of the eleven sections, ten of them relate purely to the formation, recognition and admission into the Union of a new State. Those are political questions with which the judicial department has nothing to do. Those ten sections, I say, are political questions with which the courts have nothing to do, which could not come before this Court, which could not have been restrained by application to any other court. The ninth section, however, does not present a political question; that presents a question of contractual obligation, that presents the question in which private rights of creditors are concerned and contractual obligations of a State are concerned; that presents a question with which political departments are not competent to deal; that presents justiciable questions, questions that are cognizable only by courts. Now, once for all, let me read that or-

dinance, because I will have occasion frequently to refer to it:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

It is useless to read the balance of it. In other words, that ordinance provides that a clerk should make one column with the taxes paid by those forty-eight counties between 1820 and 1861, and add them up. He should then ascertain what was a fair and reasonable share of the ordinary governmental expenses, during that period, and add it to that column. Then in another column, he should add up all the expenditures made by legislative provision within those forty-eight counties during that period and subtract the one from the other, and that, it is said, would be the just proportion of this debt that West Virginia should bear. I just pause to say that that is a statement that could be made between any county in Louisiana, Kentucky, or Massachusetts, and the State of which it forms a part, if no public debt ever existed at all. That recognizes, or involves, at least the county saying, "I will pay no more taxes, because during the hundred years past the taxes which I have paid exceeded the amount of the legislative provisions which have been expended within my borders."

That is the contract; but let us see. That convention, having passed that ordinance, and passed some other ordinances, adjourned *sine die*. This ordinance provided for the calling of a convention to frame a constitution for the new State. That election took place on the 24th of October; delegates were elected to this new convention, and the people of the forty-eight counties voted as to whether or not a new State should be erected, and they carried it overwhelmingly, and delegates were elected to the new convention which met on the 26th of November.

It is said, and this is the first proposition that I have denied, that this Wheeling ordinance, or this provision providing for the debt of the new State, was carried into the new constitution. I say that is not true. Why? Because, in the first place, here is the new constitution, and it is not there. The new constitution

does contain a provision looking to the ascertainment of the share that West Virginia should pay, but it is not this provision; it is a wholly different provision. Let me pause just a moment to bring to the attention of the Court—it is very brief—what this provision of the constitution is. I have read the Wheeling ordinance, the 9th section; now, here is the provision of the constitution.

Mr. Justice Holmes: Where is that to be found?

Mr. Conrad: On page 6 of the Attorney General's opening brief. Here is what the constitution says:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the First day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

There is no provision there, as you will see, about adding up taxes and deducting receipts of legislative provisions, but let us look further. In Section 6 it is provided:

> "That the delegates meet in the City of Wheeling on the 26th day of November next and organize themselves into a convention, and the said convention shall submit for ratification or rejection the constitution that may be agreed upon by it to the qualified voters."

That is the first provision under the constitution. In the 8th section it is provided:

> "That the Governor shall lay it before the General Assembly when it meets, votes cast in favor of the new State and in favor of the new constitution proposed, and the votes for their adoption."

The tenth section provides:

> "When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States."
>
> "The government of the State of Virginia, as reorganized by this convention, shall retain within its territory all of its powers."

Nowhere do we find in that ordinance, any intimation that the

plan proposed by it for ascertaining West Virginia's share of the debt, shall be considered or entertained or acted upon by the constitutional convention. We find that when the constitution was actually produced, when it was framed by this convention, that it contained no provision whatever such as you find in the ninth section of the Wheeling ordinance. These, with the remaining nine sections, which provide for this new convention, all relate to a political question, all relate to the erection of this new State. That went to Congress, that was considered by Congress, but nowhere we find, as is averred, again, in this brief, that Congress ever considered this provision of the payment made in the Wheeling ordinance for ascertaining West Virginia's share of the debt. On the contrary, we find from the debates that the question was asked on the floor of the Senate, "Virginia owes a large debt; what provision has been made for its payment?" And the answer was, "The constitution contains provision for its payment." "What provision is made for ascertaining West Virginia's share?" "The constitution contains the provision that West Virginia shall pay an equitable proportion of the debt," that was the answer made. Suppose that the constitution had contained in its body, in place of the section I have read, this ninth section of the Wheeling ordinance, that West Virginia's share of the debt that had been contracted forty years before, evidenced by bonds outstanding in the hands of holders for value, should be ascertained by adding up all the taxes that she had paid for forty years and deducting from them all the expenditures, all legislative appropriation within that time, and that should be her share? What if the taxes exceeded the appropriations? The creditors would go without any satisfaction of their debt. Would Congress have admitted the State upon a constitution containing that provision? Would Congress have admitted the new State of West Virginia upon any other provision than that which is expressed in the eighth section of the eighth article of the constitution? Would Congress have considered the matter at all favorably if it had been proposed to turn the creditors over to this system of jugglery that was proposed by the ninth section of the Wheeling ordinance? So I venture to say that not only was this not carried into the new constitution, but it was not considered by Congress. I need not stop to call to the attention of this Court the authorities which show conclusively and define the difference between political and judicial questions. Massachusetts *vs.* Rhode Island; Luther *vs.*

Borden; Georgia *vs.* Secretary Stanton. There the Court has pointed out with a fullness that would be vain to define here the classes of cases that fall under the head of political questions, that are cognizable only by a political department; and justiciable questions, those that relate to questions of contractual liabilities and rights with which the political departments cannot intermeddle and which are cognizable alone by the courts

Counsel for West Virginia in their brief, pages 15 and 16, again say, speaking of this new Convention, the convention that framed the constitution, the convention that met in November, say—

> "It will be noted that this language of assumption is the language of the ordinance except that word "equitable" is used in the Constitution, while the word "just" is used in the ordinance."

Again:

> "It will be remembered that this convention assembled within twenty days after the adoption of the Ordinance. Its sole warrant for assembling was the ordinance. Its authority to frame the Constitution was derived from the ordinance. The ordinance as a whole was a proposition to that Convention and, as a whole, was accepted by the Convention. The Convention complied with all the provisions of the Ordinance. The constitution was framed to meet all the requirements of the Ordinance. It was the basis of the Constitution."

Then, on the next page:

> "If the Convention had failed to comply, in the Constitution, with the requirements of the Ordinance, or had departed in any way from the conditions of Virginia's assent, as stated in the Ordinance, its work would have been nugatory. It was bound by the ordinance to carry into the Contitution the assumption by the new State of an equitable proportion of the indebtedness of Virginia prior to January 1st, 1861."

That statement means this, as I understand it, that the convention that framed the Wheeling ordinance, not only had the power to prescribe, but it did prescribe to the convention which it authorized to assemble, the duties which it was to perform. That it prescribed for it the constitution, it prescribed for it this provision, the ascertainment of West Virginia's share; it provided for the matter of the payment of the debt, and the argument is that if the convention of November that framed the constitution had departed to the extent of an iota from the

prescription of the previous convention, its work would have been nugatory.

There is a discussion between what are called "revolutionary conventions" and "constitutional conventions." It has long been a question how far a convention called for one purpose may exceed that purpose and originate work not contemplated. But the practical question is, "What would happen if it did do it?" The courts take cognizance of it; in one instance, in Pennsylvania they did, where it related to matters of personal liability and contract. But suppose a convention met, called, it may be, for one specific object, and being assembled, it went over the limits prescribed for it and made other provisions constitutional, which went into effect; would they, as this brief says, be nullities? If that is true, then all the operations at this convention were nullities, because this very convention, of November 26, actually changed the name of the State. You will find from this ordinance that the new convention was called in November to frame a constitution for the State of *Kanawha;* it is prescribed, actually, that they shall frame a constitution for the State of Kanawha, but yet, when they met there somebody says, "I do not like the name of Kanawha; let us be *West Virginia.*" An objection was made. "You cannot do it, because we were sent here to frame a constitution for Kanawha;" but they did. They did it, and it is West Virginia to-day. Nowhere do you find in this convention that met in November, nowhere do you find in the fruit that came from it, any recognition of a power in the preceding convention to limit it to any specific work. They were told to frame a constitution and they did it; they were not told to frame a constitution with certain prescribed provisions in it; they were not told to frame a constitution incorporating in it the ninth section of the Wheeling ordinance looking to the ascertainment of West Virginia's share. We recognize the fact that if a convention sends out a constitution to be submitted to the people, and sends out, as a part of it, an ordinance, and provides that that ordinance shall be submitted to the people, that that ordinance is a part of the constitution; but where a convention adopts a series of ordinances which are nothing on earth but resolutions, nothing but such resolutions as may be adopted in a legislature; when a convention does that, and at the same time frames a constitution, the ordinances are not correlated to the constitution unless in terms they are appended to it and submitted to the people. Here we find that while this convention in August did adopt an ordinance that provided for the plan, and while under that ordinance the convention to adopt a

constitution was formed and assembled, yet, where this first convention incorporated, among its political articles, one of a contractual nature relating to rights of property which was beyond its competency to deal with, you will find that the convention that met in November ignored and disregarded it, and adopted a provision of its own which is wholly different, essentially different.

It will be said, and it has been said, that this Court has decided upon the validity of the Wheeling ordinance on the demurrer. I need not argue to this Court what it has decided and what it has not; it could not decide upon the validity of the ordinance upon the demurrer. The Court did say on demurrer, in answer to a suggestion made by counsel, that there was a compact by which the legislature of West Virginia was made the sole arbiter of the fact and the amount of the debt; the Court did say that. I can reconcile that; I find that the Act of May 13, 1862, provides that it consents to this new State upon the provisions of the constitution prepared by the convention. I look at the provision of the constitution, and I find it says the legislature shall settle the debt. That may be the reference to this Wheeling ordinance referred to by the Court when it says the legislature shall ascertain the amount. It meant ascertain it according to the provision of the constitution, but that was on a demurrer; to the case stated on the face of the bill; that did not deprive the plaintiff here of the right of coming in and showing that the Wheeling ordinance was invalid, that the Wheeling ordinance had no life, no vitality, could not be recognized or enforced by the courts. On the face of the bill on the demurrer it was taken to be true.

The whole argument here is, that here was a contract, here a proposition it is said, was made by the State of Virginia. We propose to you this Wheeling ordinance with all of its provisions, and it is said that West Virginia has accepted it. Consent? Yes, to be sure. These men stood up on one side of a hall and said, "We propose to you this ordinance," and then they marched across the hall and faced about and said, "We accept the proposition that you have submitted to us." They were the same people, were they not? This whole matter came before Mr. Lincoln's Cabinet and himself, and their views are expressed. The Cabinet stood three to three, six of them expressed views on the question. Will you pardon me if I call your attention to just one word that was spoken by the Attorney General there, Mr. Edward Bates, on this subject? I am reading from a work that is called "The Rending of Virginia." It is an apology, really, for the existence of West Virginia. It contains a vast deal of historical mat-

ter relating to its early history. I have examined seven histories, the names of which I have here, and none of them gives the information that this does.

Mr. Justice White: What is that book called?

Mr. Conrad: "The Rending of Virginia," by Hall. It is not in the Congressional Library; at least, they did not furnish it to me the other day. I do not know where it is published, the name is not given. Here is what Mr. Edward Bates, the Attorney General, said upon this very question of the people who made the proposal and the people who accepted it:

> "And the Legislature which pretends to give the consent of Virginia to her own dismemberment is (I am credibly informed) composed chiefly if not entirely of men who represent those forty-eight counties which constitute the new State of West Virginia. The act of consent is less in the nature of a law than of a contract. It is a grant of power; an agreement to be divided. And who made the agreement? The representatives of the forty-eight counties with themselves. Is that fair dealing? Is that honest legislation? Is that a legitimate exercise of a constitutional power by the legislature of Virginia? It seems to me that it is a mere abuse, nothing less than an attempted secession, hardly valid under the flimsy forms of law."

Do not understand me as questioning the validity of the State of West Virginia. It is as firmly intrenched as any State in the Union, but here it is proposed to carry the consent beyond the mere political question, beyond the matter of consent to the erection of the State, carry it into a consent for the validity of the adoption of this ninth section of the Wheeling ordinance.

There have been some great men in this State of West Virginia, the greatest land lawyers, as we call them, we ever had in the old commonwealth lived on that side of the mountains. Some have survived. Mr. Charles James Faulkner, sometime Minister to France, who represented for many years the West Virginia District in Congress, closely identified in sympathy, in interest, in every way, with that State, was a lawyer of great eminence, a statesman of wide experience, and in 1884 his opinion was asked as to the liability of his State, West Virginia, on this debt, and especially under the Wheeling ordinance, and it may not be improper, with the Court's indulgence, for me to read just a line or two of it. It is a public document, dated March 29, 1884. He says he does not think the State of West Virginia ought to pay more than one million dollars. He was the counsel for West Virginia in the case in 11th Wallace. He was

the counsel for the prevailing side in the case of the State of Virginia v. West Virginia, for the two counties of Jefferson and Berkeley. He made the prevailing argument in that case. Here is what he said:

> "After a careful examination of the case of Virginia v. West Virginia, I cannot perceive that the Court attaches any peculiar legal efficacy to the ordinance of August, 1861. It is true it referred to that ordinance historically, but only for the purpose of showing that even at that early period of our history the counties of Berkeley and Jefferson were contemplated as possible additions to the State of West Virginia. My reasons for supposing that the Court might not regard the ordinance of August, 1861"—
>
> (that is, the Wheeling ordinance—)
>
> "as prescribing a binding rule for the settlement of the debt are, that by the subsequent constitution framed and adopted by the people of West Virginia, this basis of settlement is abandoned, and we are then made to assume an equitable proportion of the public debt of Virginia prior to January 1, 1861, and the legislature is directed to ascertain the same as soon as practicable. Virginia, in giving her consent to the formation of the new State in May, 1862, expressly does so upon the provisions set forth in the constitution of West Virginia. Upon these terms we were admitted by Congress as a State of the Union, and the constitution of 1863, thus ratified by the two States and by Congress, would be more likely to be taken as the basis of the contract than the effete ordinance of August, 1861."

These are not the loose words of an idle man. This is not the unconsidered opinion of a county court lawyer. Here is the opinion of a statesman who was deeply and nearly concerned in the existence of this State, who had maintained at this bar the argument by which he induced the Court, as formerly constituted, to hold the validity of the transfer of those two counties of Jefferson and Berkeley. But why need we go into that? The great ordinance of 1787, which Mr. Webster said, was prepared by Nathan Dane, provided that slavery should not exist anywhere within the limits of the territory embraced within it and that lay at the very foundation of all the States that should be carved thereafter out of that territory. It seemed to permeate and enter into the very foundation upon which all subsequent States could be built; it was a corner stone. "Slavery shall not exist," and yet, when the State of Ohio was admitted into the Union and sent her constitution to Congress, it contained a provision recognizing and allowing slavery, and an objection was made, "Why, this is diametrically opposite to the inhibition of the northwest ordinance."

This Court said, in Strawder v. Graham, in 10th Howard, "The State comes in under the provisions of its own constitution; you cannot look outside of it; you cannot look behind it; you cannot look to what preceded it. This is the final, ultimate expression of its civil and political rights and powers." So, here we have this ordinance that was merged in the constitution framed by a wholly different convention, a constitution that was framed three months later, that was voted upon by the people without reference to that ordinance, that was sent to Congress and there adopted, not upon the ordinance, but upon the constitution that was framed, and I submit, as I have indicated before, that it is reasonable to suppose that if this provision which we find now in the Wheeling ordinance for ascertaining West Virginia's share, had appeared in the constitution that the State never would have been admitted upon the constitution that contained it.

It was argued here on the demurrer that another contract existed than the contract to which I have referred. It was said that the constitution, not the ordinance, but the constitution had provided that the legislature of West Virginia should settle this debt as soon as practicable, and that Virginia, by the Act of May 13, 1862, had consented to it according to the provisions of the constitution, and it was argued that from that contract or compact the legislature of West Virginia was made an arbiter. That argument seems to be implied somewhat in the present brief of the counsel for West Virginia. I will pause only to suggest this, that if you fiind that to be a compact, if you find that the constitution and the Act of the Assembly does actually make a compact binding on these States, enforce it according to its terms. Its terms were that the Legislature must ascertain this "as soon as may be practicable," and that was nearly a half a century ago. Time was evidently made essential. It was not that "the legislature may do it at sometime," but "it must do it as soon as practicable." Time was made of the essence by the very terms of it, and yet I say that nearly half a century has passed and not one step has been taken on the part of West Virginia towards the ascertainment of her just share.

I have had to omit quite a number of views that I intended to present. But one I will present in closing. If we repel the Wheeling ordinance, if the Court finds that the Wheeling ordinance is illusory and impracticable, and that it never formed a part of any contract between the two States, that it never has been agreed upon as the basis for the ascertainment of West

Virginia's share, then where shall we look for a plan, what basis or method shall we adopt? We have stated that the amount of this debt has been practically agreed upon, thirty-three millions of dollars. It is proposed to go into the question here, of how much of it was spent in one State and how much of it was spent in the other State and strike a balance. Can you do that? Would it be just to do that? Suppose that the legislatures of Virginia from 1820 to 1861 had expended the whole thirty-three million dollars in the City of Wheeling, out in the northwest; who could question their right? They were there from every county in Virginia, senators, delegates, representing the people of the entire State. That legislature was the sole repository of power and the sole repository of discretion as to the expenditure of this money. Suppose, as I say, they had spent the whole thirty-three million dollars in the City of Wheeling, would it be just and fair now to say to the City of Wheeling, "You must account for that?" Could not Wheeling say "It was not done by me, by my power; it was done by all the people of Virginia through its legislature?" You cannot say, because this money has been poured into one place, that it was intended to benefit that one place, or that it has done it. Aesop, twenty centuries ago, showed that when complaint was made against the belly that it was idle, that it consumed all the food, and the eyes and the ears and the hands said it must stop, it did stop, and the eye grew dim and the natural force of man abated, and all his members were threatened with atrophy, until the belly said, "It is through the subtle alchemy of nature that the strength on which you live is conveyed to you by all the channels of your body from the food which I digest." And is it not true so of the body corporate and politic? Can you, when a legislature, the sole body clothed with power, puts all the money in one place, Norfolk or Wheeling, can you say it was done there for the benefit of that locality? Over in the State of Virginia, in the county of Albemarle, is a tunnel. When it was built it was said to be the longest in the world, through the Blue Ridge Mountains. It cost a million and a half of money, I believe. Would it be fair, in some adjustment of this sort, to say to that county, "You shall be charged with this." Might it not with propriety say, "It is of no benefit to me; it was put here for the good of the whole body of the State?" Can one section of a State say "There is no railroad constructed through this tier of counties, and I should be relieved from a portion of the public taxation," or "I should not be called upon to contribute to a public debt?" Would not the re-

ply be that "While it is there, it is there for your local benefit, yet it is not there for your local benefit alone; it was put there because, in the wisdom of the legislature, the whole body politic was benefited by that local application." So, I venture to suggest that it would not be fair to enter into any account, charging up improvements, as they are called, on one side, against improvements on the other. Much less would it be fair, when you find, as is charged in this bill, that the representatives in the legislature from West Virginia, these forty-eight counties, to a man voted for this debt through forty years, voted for every appropriation, while the Eastern Virginia people to a large extent voted against it. It would not be fair to yield to this suggestion of settlement, when you find the Chesapeake and Ohio Railroad, just as an illustration, was constructed up to the West Virginia line and then stopped, either by the secession of Virginia from the Union, or by the secession of West Virginia from Virginia, it would not be fair, I say, to say to Virginia, "You are chargeable with all that because all that is in your territory." We say, "It never would have been there if the debt had not been created; the debt would never have been created if you had not insisted upon it; it would never have been created at all if the legislature of Virginia, in its entirety, looking to the interests of the whole State, had not thought it best to construct this road, not to the limit where it is now stopped, but construct it through to the Ohio River, the point to which it was originally destined. I say it would not be fair and equal to halt now and say that the account must embrace all the works unfinished on the Virginia side, and not one dollar of their expenses of construction charged to West Virginia because they are not extended into or through her. They never would have been constructed but for the fact charged in this bill that the mineral wealth was west of the Alleghany Mountains, that all of these railroads, canals, turnpikes, bridges, were built with a view to the development of that wealth; they would not have been built but for West Virginia; they would not have been begun, and not a dollar of debt would have been created, but for the development of that State and of those mineral resources, and it does not come with any show of fairness, just now, for that State to say, "Because, in the Providence of God, there has been a dissolution before these works reached our limits, came into our territory, therefore we are not to be charged with them." I say that it was on account of the whole body politic that these works were begun and this debt created; that its primary object was the development of those improvements, not for the benefit of West Vir-

ginia, I do not pretend, but for the benefit and welfare of the whole Commonwealth of the State.

What is the wealth of West Virginia? How would you settle it? How does the wealth today, how does the revenue producing wealth to-day, compare with that of Virginia? It has been suggested here that when this debt was created there was no wealth in West Virginia. The Almighty had put the wealth there before man was, the gas and the oil and the lumber and the coal were there; that was the incentive to all these enterprises; that was the incentive to all the creation of this debt, and now to-day, when development has occurred, compare the revenues of Virginia with those of West Virginia. All that would have been the tax producing basis with which the Commonwealth of Virginia could have liquidated all this debt. That was what she had an eye to when the debt was created. "I am taking upon my shoulders an enormous debt now, but the time will come when we will develop these mines of hidden wealth, and from that will come a revenue by taxation that will liquidate the debt and remove the burden, and the welfare of the people of the Commonwealth of Virginia will be secured forever. It is proposed to ignore that now, and look at this thing as it stands to-day.

Ah, your Honors, how did it look when Congress was appealed to to create this State; how did it appear then? We have in the records here the arguments that were addressed by the senator from Virginia, senators representing Virginia, John S. Carlile and Waitman T. Willey; they were the senators in Congress when this State was created. John S. Carlile, who had contributed to the procreation of this State, stood by the bedside ready to destroy it upon its birth. He opposed it in the Senate. The Legislature requested him to resign, but Waitman T. Willey remained, and Waitman T. Willey, a Senator, urged the Senate, as a reason why this State should be created:

> "Here is an opportunity presented to the Senate to erect northwestern Virginia into a free State, a condition for which she was designed by the God of nature—the richest portion of this broad land in mineral resources—with inexhaustible marble quarries equal to those of Egypt and very similar; rich in inexhaustible fountains of salt and oil, and forests exceeding any of those that ever waved upon Mount Lebanon itself, that have remained from the foundation of the government of the State of Virginia, undeveloped, useless, valueless, simply because we have not been able to organize improvements within and under the control of the western section."

Again he says:

> "This new proposed State contains within its towering hills and mountains treasures richer perhaps than can be found within the limits of any other state within this Confederacy, and there they have lain ever since the establishment of this Government, undeveloped, unworked, valueless, and they must continue to remain so unless a different policy is pursued."

That was an argument presented to the Senate for the erection of this State, the enormous wealth that was there. That wealth had not been overlooked by Virginia. Since 1820 this debt had been gradually increasing by legislative enactment solely for the benefit of this defendant.

Let me make one suggestion to the Court. I do not know with what pride I can make it, but if anybody supposes that the creation of West Virginia was the offspring of what was called "loyalty," that it was an effort on the part of loyal men to get away from secession, if anybody imagines that, I pray you let me read you just a few words from this same Senator Willey. He says:

> "Mr. President, I desire to correct a misapprehension which I find is prevalent, not only throughout the country, but also here. It seems to be supposed that this movement for a new State has been conceived since the breaking out of the rebellion and was a consequence of it; that it grew out of the abhorrence with which loyal citizens of West Virginia regarded the traitorous proceedings of the conspirators east of the Alleghenies, and that the effort was prompted simply by the desire to dissolve the connection between the loyal and the disloyal sections of the State. Not so, sir. The question of dividing the State of Virginia, either by the Blue Ridge Mountains or by the Alleghanies, has been mooted for fifty years; it has frequently been agitated with such vehemence as to threaten the public peace."

Again, at a later date, he repeats it, and he says that representing the voice of Virginia he asked for freedom, he asked for severance from the eastern section of the State, "to which we have been in bondage for fifty or sixty years."

I bring this to the attention of the Court to remove an impression that may possibly exist and may insensibly control, even an enlightened judicial mind, that here was the result of a war, here was the result of men who were making a great sacrifice for conscience sake, and that burden must not be placed too heavily upon them. I want to call your attention to the historical fact, that these men were not moved, as the Senator says, by any considerations of secession or

non-secession, or loyalty or disloyalty, but they were seizing hold here of an occasion that was passing to realize hopes that had been cherished for sixty years; they were taking advantage of a condition of war, when the voices of the laws were silenced by the clangor of arms; they were taking advantage of that to gratify the expectations and desires and the efforts of half a century, and now, when they have done it, in view of all the legislation that has taken place, in view of the objects of that legislation, in view of the wealth that they have, in view of the fact that they themselves went away from us, seceded, as Attorney General Bates said, seceded, and thereby prevented the execution of these works of internal improvement, it does not do to come now and say that they shall not be called on to contribute because none of these works had as yet been extended into their territory. It does not do for West Virginia to come and say, now, that we must be content to take the difference between the taxes that she had paid forty years and moneys that have been expended in her limits during that period by legislative appropriation. If she could say that, she could say that her share was one mill on every thousand tons of coal carried through the State; she could have said that her share should be $500. Consent to such contract? Who are these people contracting? The State of Virginia and the State of West Virginia. What are they contracting about? They are contracting in order to see how little of a debt one part of them should pay, West Virginia. Who is interested? The bond holders and the creditors. Are they present consenting? No. The two debtors are together here entering into an agreement to defraud the creditors, impair the obligation of their contracts, their bonds, bonds that were issued upon an implied covenant that they should be repaid from the revenues of the State, and they come before this Court and present that contract, and they ask you to enforce it, a contreat which, on its face, undisguisedly, if it had any validity or force, was designed to weaken, impair, destroy the obligation of the bonds which the Commonwealth of Virginia had issued.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Argument of Mr. Randolph Harrison.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

ARGUMENT OF MR. RANDOLPH HARRISON
For the Plaintiff.

Mr. Harrison: If the Court please, the relief which the State of Virginia seeks in this proceeding is the equitable share of the debt of Virginia proper to be borne by West Virginia. West Virginia assumed an equitable proportion of this debt, but she has refused to recognize her obligation, and the object of this suit is to compel her to comply with that obligation. If an equitable result is attained, the method by which it is done would not be material. But as the method by which her proportion of this debt shall be ascertained may have a material bearing upon the result reached, it is important to determine the principles upon which the account between the two States shall be settled.

The Wheeling ordinance undertook to prescribe the method by which West Virginia's portion of this debt should be ascertained. If the Court should be of the opinion that the method prescribed by that ordinance is binding upon Virginia (as contended for by counsel for West Virginia) it will be important to construe its terms. If Virginia is not concluded by the plan of settlement prescribed by that instrument, the debt should be ratably apportioned according to the principles of public law and equity.

The partition of Virginia, whatever the facts may be as to how it was accomplished, has assumed the forms of consent.

Mr. Justice White: What do you mean by "has assumed the forms of consent?"

Mr. Harrison: I mean that the enactments of the so-called State of Virginia, under which her territory was divided and the State of West Virginia was created, have been recognized by all the departments of the government, as the work of Virginia. The Wheeling ordinance, which provided for the formation of the new State, was adopted on the 20th of August, 1861, by a body of men who *assumed* to represent Virginia, and who declared, in the preamble of that instrument, that it was "adopted by the people of Virginia in convention assembled." The same body of men masqueraded one day as a Virginia convention, bestowing her territory, and the next day as the representatives of the prospective State of West Virginia, receiving what they had bestowed upon themselves. In November, 1861, they framed a constitution for the new State, and substantially the same body, in May, 1862, *assuming* to act as the Legislature of Virginia, passed an Act giving Virginia's consent to the formation of the new State out of her territory, under the terms of the constitution which they had framed in the previous November. Thus these people successfully went through the *forms* of giving Virginia's consent to what was done. These forms have been recognized and acted upon by all the departments of the government as effective and binding upon Virginia, and this Court, in over-ruling the demurrer to the bill in this case, seemed to indicate an opinion that West Virginia's proportion of the debt of Virginia must be ascertained by the pursuit of the method prescribed by the Wheeling ordinance. It is due to candor to say that the decision of the Court upon the demurrer seemed to me to convey this intimation. For this reason I wish to consider the terms of that ordinance. Before passing to that subject, however, I submit that if Virginia is not shut up to the plan of settlement prescribed by the Wheeling ordinance, the portion of the debt to be borne by West Virginia should be ascertained according to the principles of equity and justice—that is to say, the debt should be ratably apportioned between the two States. Virginia is interested only in having an equitable proportion of this debt assigned to West Virginia. Any method prescribed, that does not reach that result, to that extent relieves West Virginia of the obligation which she assumed. The Wheeling ordinance is not only an illogical, but it seems on its face to be an inequitable method of apportioning the debt. The

method prescribed has no proper relation to the debt; the account under it can be stated without regard to it, and the amount of the debt would have no influence upon the result. The ordinance contemplates a balancing of accounts between two sections of the old State by charging West Virginia with a just proportion of the ordinary expenses of the State government, and with the expenditures made within the limits of her territory, and deducting therefrom the aggregate amount of taxes paid into the treasury of Virginia during a given period, the balance so ascertained to constitute West Virginia's share of the debt.

Mr. Justice Harlan: Are you alluding now to Section nine?

Mr. Harrison: Yes sir, Section nine of the Wheeling ordinance, is the only section in that instrument which relates to the debt. That section is as follows:

> "Section 9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

On its face this provision seems not only illogical but inequitable —yet, properly construed and applied it may lead to an equitable result. I am not prepared in advance to say that such would not be the case. Examining this provision in detail, we find its primary stipulation to be:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861."

That defines the obligation which West Virginia was to assume, and is the avowed purpose of the provision.

Then it is provided that this "just proportion" shall be ascertained (1) "by charging to it all the State expenditures within the limits thereof."

Mr. Justice Harlan: "Thereof;" what does that mean?

Mr. Harrison: "Thereof" means the new State—within the

limits of the new State. A question which arises on the threshold is what disbursements shall be included by the phrase "State expenditures." The Court, in advance, might not be able to make any declaration on that subject. Proceeding, the ordinance prescribed (2) "and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted."

What expenses shall be deemed "ordinary" as distinguished from "extraordinary" expenses of the State government? It will not only be necessary to determine what expenses will be classified as ordinary, as distinguished from extraordinary expenses, but it will also be necessary to determine what proportion of the ordinary expenses shall be considered a "just proportion" for West Virginia to bear. On what basis can this "just proportion" be ascertained? Will it be on the basis of the relative population of the two sections, and if so, of the population exclusive of slaves; or, on the relative amount of property in each section; or on the relative cost of government in each section? These are important questions, the decision of which will have a material bearing on the final result. (3) Having ascertained these two items of charge, the ordinance provides that there shall be deducted therefrom the "moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period;" the balance so found to constitute West Virginia's proportion of the debt as of January 1st, 1861. (4) Then again, it will be necessary to determine the time during which any part of the debt was contracted, because the statement of the account is confined to the period "since any part of said debt was contracted." There will be, I presume, no difficulty on this point, as I think it is conceded that the period began about the year 1820.

A further question to be determined in construing the Wheeling ordinance, is whether the balance ascertained and adjudged to be West Virginia's proportion of the debt shall bear interest, and if so, from what period, and during what time.

Another question is whether the property interests and credits, transferred to West Virginia under the Act of the Restored Government of Virginia, passed February 3rd, 1863, and which was not covered by "State expenditures," as specified in the Wheeling ordinance, shall be accounted for in the settlement to be had with Virginia.

If the Wheeling ordinance is construed according to the contention of the distinguished gentlemen who appear for West Vir-

ginia, it would relieve that State of all liability. While they admit that West Virginia did assume a just proportion of the debt of Virginia, it is claimed in the pleadings and in the argument, that she will be relieved of that liability because of the method prescribed of ascertaining it. In the Answer of West Virginia it is claimed that if the debt is apportioned in pursuance of the plan prescribed by the Wheeling ordinance, it will result not only in absolving her from all liability, but will bring Virginia in debt to her in the sum of $560,000; and complaint is made in the answer that Virginia has refused to accept this settlement. West Virginia's view of her liability has also been shown in numerous Acts of her Legislature, which she has filed as exhibits in this case, and in which she solemnly denied any liability to Virginia. Beginning with the year 1895, and continuously since, at every session of her Legislature, resolutions have been adopted ignoring and repudiating her liability for any part of the debt of Virginia. It will be sufficient to quote one or two of these resolutions as specimens:

> "Resolved by the Legislature of West Virginia:
> That it is the sense of this Legislature that West Virginia does not owe one cent of the so-called 'Virginia debt,' and that this Legislature is opposed to any negotiations on that subject." Adopted January 21st, 1897.

> "Resolved by the Legislature of West Virginia:
> That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on the subject. And *further*, that this Legislature declines and most emphatically refuses to take any action in regard to what is known as the old Virginia debt, or Virginia Deferred Certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee, or committees, having for their object or purpose the consideration of same; and that it is the sense of this Legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt, or certificates. Nor do we owe any other State, or territory in this Union." Adopted January 21st, 1903.

In the oral argument of this case on demurrer one of the members of the Court addressed the following questions to Professor Hogg, who appeared for West Virginia:

Mr. Justice Harlan: Does West Virginia admit that she owes anything?

Mr. Hogg: West Virginia has expressed herself in her Legislature as, on the basis adopted, owing nothing.

The "basis adopted" referred to here, is the method prescribed by the Wheeling ordinance.

Mr. Justice Harlan: Does she admit that she owes anything on any account?

Mr. Hogg: West Virginia disclaims any liability to Virginia on any account. Printed record pp. 281-2.

Notwithstanding, therefore, that West Virginia undertook to bear a just proportion of the debt of Virginia, her position before this Court is that the method prescribed for its ascertainment will not only relieve her of that obligation, but will bring Virginia in debt to her. If that is true, then the method prescribed was a sham designed to conceal her real intentions, and to perpetrate a gross fraud upon Virginia, her helpless victim. If such is the effect of the Wheeling ordinance, it is competent for this Court to strip from her the mask that has concealed her real intentions, and substitute for the method prescribed, a plan of settlement that will make her action square with good faith and the dictates of common honesty.

(At two o'clock P. M., a recess until 2:30 P. M.)

AFTER RECESS, 2:30 P. M.

Mr. Chief Justice Fuller: Judge Day is unfortunately absent today, and I wish to vouch him into this case.

Mr. Spooner: We are perfectly willing, if your Honors please.

Mr. Harrison: If your Honors please, I pointed out just before the recess that the construction of the Wheeling ordinance contended for by West Virginia will not only relieve her of all liability, but will make Virginia her debtor. If that be true, then such a method of stating the account cannot receive the sanction of a court of conscience. The contention of Virginia is that if the Wheeling ordinance constitutes a compact, or agreement prescribing the method of escertaining West Virginia's portion of the debt, it should be so construed as to lead to an equitable result, and not to an unconscionable result, as is contended for by West Virginia. To that end one of the propositions for which we contend is that whatever balance may be ascertained under that ordinance to be due by West Virginia, shall

bear interest. West Virginia contends that she is not liable for interest.

Mr. Justice White: Before you come to the question of interest you want to come to the question of principal, and you say that under the agreement as written you would owe?

Mr. Harrison: I say that West Virginia contends that under the agreement we would owe.

Mr. Justice White: Before you come to the question of interest, what do you say is your construction of the Wheeling ordinance? The interest is very immaterial unless you settle how the principal is to be arrived at.

Mr. Harrison: The principal is to be gotten at in accordance with the method prescribed by the Wheeling ordinance, if that is taken as the basis of settlement (1) by charging the new State with all State expenditures within her limits; and (2) with a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and then from the aggregate of those two items is to be deducted the moneys paid into the treasury of Virginia from the counties included within the new State during said period, the result to constitute the principal to be assumed by West Virginia. The method prescribed is arbitrary and a departure from the settled rules that govern in the apportionment of a debt in such a case, and a statement of the account would involve an exhaustive examination of records, documents and vouchers extending back over a period of eighty years. State expenditures would doubtless include public expenditures for internal improvements, but whatever may be included within the phrase "State expenditures" must be charged against West Virginia. She is also to be charged with a just proportion of the ordinary expenses of the State government during the period within which the debt was contracted, down to January 1st, 1861. It is material to determine what constitute ordinary expenses, as distinguished from extraordinary expenses, and then it is necessary to determine what would be a just proportion for West Virginia to bear. The ordinance does not prescribe the basis of ascertaining this just proportion. Counsel for West Virginia ask that it may be ascertained on the basis of population. If population is to be taken as the basis, I submit that slaves should be excluded.

Mr. Justice Harlan: Why not on the basis of voters, three-fifths?

Mr. Harrison: That might be proper; that basis prevailed to some extent in Virginia. But slaves constituted no part of the body politic; they did not vote, or participate in creating the debt, or in expending it; they contributed nothing in the way of taxes, but were themselves, property subject to taxation. If, therefore, population should be taken as the criterion for determining West Virginia's just proportion of the ordinary expenses of the State government, it should be exclusive of slaves. Her just proportion might be ascertained on the basis of property, or on the basis of the cost of government in each section, but I submit that if the view advanced by the other side is adopted, and population be taken as the basis, that it be population exclusive of slaves. Having ascertained the amount in pursuance of the method prescribed, which shall constitute West Virginia's share of the debt, I submit that it should bear interest as of January 1st, 1861, the date arbitrarily fixed by West Virginia. It is contended by counsel for West Virginia that she would not be liable for interest. If not, then the result might be so inadequate as to shock the moral sense and come near leading to the result for which she contends; but if she is made to pay interest on whatever balance may be so ascertainied, the result would be very different. I think the Wheeling ordinance would put upon West Virginia liability for interest. If it is a contract, it is a Virginia contract. It was made by a body of men, who, when the admission of West Virginia was under consideration, were characterized on the floor of Congress as a mass meeting, or a mob. But nevertheless they acted in the name of Virginia and made the contract in her name. I recognize the course of the decisions of this Court, which hold that a sovereign is not liable for interest, except it be a matter of contract, or of statutory declaration, as instanced in the case of the United States *vs.* North Carolina; but that decision was largely rested upon the decisions of the Supreme Court of North Caroline, in which State the common law rule as to interest prevails, the rule at common law being that interest is allowed as damages for the failure to comply with a contract. This rule does not prevail in Virginia. In Virginia interest is allowed as an essential ingredient of the contract, and you can only be relieved of it by an express stipulation to that effect. In Jones *vs.* Williams, decided in 1799, and reported in 2nd Call., Edmund Pendleton, the President of the Virginia Court of Appeals, and one of the great judges of this country, said

> "Interest is allowed because it is natural justice, that he who has the use of another's money should pay interest for it."

In Virginia, therefore, interest is allowed, not as damages for the failure to comply with a contract, but on the ground of natural justice. Following that decision Judge Coalter, in Hatcher *vs.* Lewis, reported in 4th Randolph, said:

> "The interest follows the principal as the shadow does the substance."

That rule of equity has been embodied for more than one hundred years in the jurisprudence of Virginia, and the same rule exists in West Virginia, not only because in her constitution she adopted the body of the laws of Virginia and made them a part of her jurisprudence, but because her decisions follow the decisions of Virginia and rest the right to interest on the ground of natural justice. The authorities are fully cited in the brief of the attorney-general of Virginia. The rule established in Virginia, not by statute but by the decisions of her court, is the law which governs a Virginia contract, and becomes a part of the contract as much so as if it had been written into it, and it would follow that when West Virginia's just proportion of the public debt of Virginia has been ascertained, as of January 1st, 1861, interest inheres in it by virtue of the law governing the contract. There is no decision that holds that a State is not as much bound as her citizens by a rule which is founded in Natural justice. But we are not left to rest our right to interest on the equitable rule which prevails in the State of Virginia. The ordinance provides:

> "The new State shall take upon itself a just proportion of the public debt of Virginia prior to the 1st. day of January, 1861."

Does not that impose an obligation to assume the debt with its burden? The public debt referred to was an interest-bearing debt. It was a debt which West Virginia had helped to create, and her citizens were as fully cognizant of its terms as anybody else in the State of Virginia. Will she now be permitted to say that she did not intend to assume liability for any part of the interest arising under the obligations which represented that debt? If so, she would not assume a just proportion of it. The interest is an inherent part of the debt; it arises under the same contract; it is an essential part of the debt; it cannot be separated from it. Who would pay the interest on the part assumed by West Virginia if she did not pay it?

Her proposition is that she is only obligated to take upon herself a part of the principal of the debt, discharged of any responsibility to pay the interest called for by the obligations which represent the debt. Then she would not do what she solemnly contracted to do. She contends that her liability arises under a contract; if so, I can say in the language of Chief Justice Marshall: "It is a contract clothed in forms of unusual solemnity." Not only does her liability for interest arise under the so-called organic law known as the Wheeling ordinance, but it also arises under her constitution framed in November, 1861, which contains the following provision:

> "An equitable portion of the public debt of the Commonwealth of Virginia, prior to the 1st. day of January, 1861, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and reduce the principal within thirty-four years."

In this provision she not only assumes an equitable proportion of the debt, but stipulates that she would pay the accruing interest on such proportion, and the principal within thirty-four years. If she is bound for interest, as I respectfully submit must be true, how long shall she be responsible for it—during the life of the bonds, or until payment? Her constitution imposed upon her the duty to speedily provide for the ascertainment and payment of her share of the debt. She had it within her power to abridge the period within which she would be liable for interest.

Mr. Justice Holmes: I do not think that the constitution of West Virginia was addressed to Virginia; it was addressed to its own citizens, was it not?

Mr. Harrison: Yes Sir, but the constitution—

Mr. Justice Holmes: Of course it was approved by Congress and all that?

Mr. Harrison: Yes, but Virginia consented to the formation of the new State on the terms stated in the constitution. According to the argument of our friends on the other side the constitution and the Wheeling ordinance, that ante-dated it by three months, together with the Act of Virginia giving her consent to the formation of the new State, and the Act of Congress admitting the State, constitute a contract. Part of that contract was the obligation to pay interest. If it be a contract it must be binding in all of its parts, as is contended for by the gentleman on the other side, except that in discussing in their brief the question of interest, they seek to escape

liability for it on the theory that interest was "outside of the contract." In other words, the compact on which they rely is valid for some purposes, but not effective as to other purposes. It would be only fair and just to require West Virginia to pay interest from the 1st. day of January, 1861, upon the amount found to constitute her portion of the debt, until the same has been paid. She cannot be permitted to solemnly assume an obligation and then repudiate it, or repudiate the larger part of it by neglecting and refusing to perform the duty imposed upon her, namely, to ascertain it and provide for its payment. It would be vastly to West Virginia's interest to postpone the ascertainment of her proportion of the debt, and postpone the payment of it indefinitely, if thereby she is to be relieved of the obligation to pay interest. Her constitution imposed upon her the duty to ascertain her part of the debt as speedily as possible, and to discharge it, principal and interest, within thirty-four years. She has chosen to neglect, and refused to do so. As I said a while ago, if she wanted to abridge the period within which interest was to run, she had it in her power to do so, but she chose not to do it. Now she asks this Court that she may be relieved from responsibility for any part of the interest, and thereby relieved, perhaps, of the larger part of the balance that would be found against her if this account is stated under the Wheeling ordinance.

This ordinance, if the plan of settlement prescribed by it is adopted, should be liberally construed in favor of Virginia, and strictly against West Virginia. Virginia had no part in framing it; it was framed by West Virginia for West Virginia, and if Virginia is to be bound by the plan of settlement prescribed by it, it is no hardship upon West Virginia to hold her to a rigid accountability under it, in order that the result reached may square with her obligation to pay a just proportion of Virginia's debt.

West Virginia would never have been admitted into the Union but for her obligation to pay a just proportion of this debt. When the bill for the admission of that State was pending in the Senate of the United States, there was strong opposition to it. Senator Powell of Kentucky said that if the Cities of New York and Brooklyn, and the Counties in which they are located, were to get up a bogus legislature and call themselves the state of New York, and ask to be admitted and cut off from the rest of the State, he would just as soon vote for their admission as to vote to admit West Virginia. Mr. Crittendon of Kentucky asked if they could lose sight of the fact that the parties applying for admission were the same parties that con-

sented to the admission. The bill passed through Congress on the ground stated by Mr. Stevens of Pennsylvania. He said he would not stultify himself by supposing that they had any warrant in the constitution for the proceeding, but that he could vote for the bill without any compunctions of conscience as a war measure and in aid of the administration's policy in respect to the border States. But even in spite of the pressure of the times, the bill would not have passed without West Virginia's assumption in her constitution of a just proportion of Virginia's debt. It only received a majority of six votes in the Senate, and voting in the negative were Senators Sumner and Wilson of Massachusetts, and Chandler and Howard of Michigan; while in the House nearly the entire Massachusetts delegation, and Mr. Conkling of New York and Mr. Conway of Kansas were recorded in the negative. I state on the authority of Senator Willey, then representing the so-called State of Virginia in the Senate of the United States, and of Senator Sherman, that the bill admitting West Virginia would never have passed but for her constitutional assumption of a just proportion of the debt of Virginia. I ask leave to read an extract from a letter written by Senator Willey to Senator Sherman some years after, and used by the latter in debate on the floor of the Senate when that subject was under discussion. The extract is as follows:

> "I have a pretty distinct recollection that while the application for admission was pending before the United States Senate, you suggested to me this very matter, and that when I pointed out to you the clause in the constitution which I have above quoted, you expressed your satisfaction and stated to me that it removed one of the difficulties which had been embarrassing you; and I say to you now, what I have said to the people of West Virginia, that but for that clause in her constitution, the State would never have been admitted. I say further that in my opinion no honest man, or honest party, in West Virginia or out of it, will deny the obligation of West Virginia to pay an equitable part of the public debt of Virginia."

After quoting this extract, and after reading the eighth clause of West Virginia's constitution, Senator Sherman said:

> "But for this stipulation in the constitution of West Virginia, which was submitted to the Senate at the time of the passage of the bill to admit that State, it never would have been a State of this Union." Congressional Record, Vol. 12, 47th Congress, p. 450.

I am justified, therefore, in stating as an historical fact that the

bill admitting West Virginia into the Union would never have passed through Congress but for her constitutional obligation to assume a proportion of the public debt of Virginia, and if Virginia is to be held to an accounting under the terms of the Wheeling ordinance, it is at least fair and reasonable that the mind shall incline to liberality in construing its provisions, so that the result may best accord with justice and common right. I ask, therefore, that if the Court feels constrained to require this account to be stated under and in pursuance of the terms of the Wheeling ordinance, that the balance found against West Virginia as of the 1st. of January, 1861, a date which she arbitrarily fixed, may bear interest from that period until settlement is made.

Another question involved is whether West Virginia is liable to account for the property which was transferred to her by the Act of the Restored Government of Virginia of February 3rd, 1863. That Act provided that "all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof, situated within the said boundaries, and now vested in this State, etc., and shall include the interest of this State in any parent bank, or branch doing business within the said boundaries," etc., enumerating at great length a great body of property. In the Fifth Section of that Act it was provided that "if the appropriations and transfers of property, stocks and credits, provided for by this Act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State."

There was no settlement to be had with Virginia except the settlement of this debt question. It is contended, however, that this Act ought not to put any liability on West Virginia because it was passed after Virginia had given her consent to the formation of the new State, but this Act was an essential part of the transactions which resulted in the creation of the new State, and its terms were expressly assented to and accepted by West Virginia in an Act passed by her Legislature in 1875, which expressly recognized the foregoing Act by its title and date, and required the Auditor to ascertain and state the property which had been acquired under and in pursuance of that

Act. This Act is quoted and referred to in the brief of the Attorney-General of Virginia.

In the brief of counsel for West Virginia one reason assigned for exempting her from liability to account for the property which passed under the Act of February 3rd, 1863, is that those grants were made "mainly to afford a ground for the claim that the property which had passed by the separation, should be accounted for in the settlement hereafter to be made." Surely it can hardly be said that the members who composed that Legislature, who were prospective West Virginians legislating in the name of Virginia for their own benefit, would be interested in passing an Act which would create a claim against themselves. Why impute to that body a sinister purpose in passing that Act? Might they not be given credit for a good motive? Does West Virginia deny them credit for a good motive lest it might subject her to some liability under that Act? West Virginia seems to feel no pride of ancestry when it conflicts with her pecuniary interest. Escape from pecuniary liability is dearly purchased at the price of violated faith. The Answer of West Virginia expressly admits liability under the Act of February 3rd, 1863, notwithstanding the ingenuous arguments of counsel to escape from it. On page 8 of the Answer it is said:

> "Respondent denies that she is chargeable for, or on account of the transfer of said property, except the stocks of companies, or corporations, and the credits," etc.;

and then the Answer takes the ground that this property, credits, etc., are of little value and would not count for much in the final result. I submit that in an accounting under the Wheeling ordinance the value of this property should be ascertained and carried into the account as part of West Virginia's just proportion of the public debt of Virginia.

The dismemberment of Virginia cannot be justified on the ground that she was more deserving of punishment than her sister States of the Confederacy. There was no ground for distressing her by penal enactments that would not apply equally to her sister States who were associated with her. Indeed her people were devoted to the Union, and her voice was for peace to the last; and yet she has been singled out of all the rest to have administered to her, in addition to what the others received, a punishment that struck down at once her prosperity and her pride of empire. She has been robbed of the power to pay her debt to innocent third parties scattered all over the North and abroad, who purchased her obligations when her credit

stood higher than any other state in this Union with the possible exception of her sister Commonwealth of Massachusetts. They were involved in the common ruin which was brought upon Virginia. She has been despoiled of one-third of her territory, by far the richest part of it, teeming with material resources that surpassed the wealth of the Incas—and all of this without her consent. West Virginia has profited by this. Is it any hardship upon West Virginia to require her now to do what she promised to do? She solemnly took upon herself the obligation when she inaugurated the proceedings that resulted in the dismemberment of Virginia and the distress brought upon her and her innocent creditors, that she would do a just part by them. Now she should be required to do it. And yet, gentlemen appeal to this Court to aid West Virginia by adopting a plan for the ascertainment of her liability, which, instead of putting upon her the burden which she assumed, would relieve her of it. I ask that the plan which shall be prescribed by this Court for the ascertainment of the proportion of Virginia's debt to be borne by West Virginia, may be a plan that will reach the result which she promised should be attained, namely, the assignment to her of a just and equitable proportion of that debt.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Argument of Hon. John C. Spooner.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant.*
v.
WEST VIRGINIA, *Defendant.*

IN EQUITY.

Original No. 4.

ARGUMENT OF HON. JOHN C. SPOONER, FOR THE DEFENDANT.

Mr. Spooner: May it please your Honors, the argument on behalf of the Commonwealth of Virginia has taken a very wide range. Many things have been stated by counsel as to purposes or attitudes of men nearly fifty years ago, which I have no means of knowing. I am somewhat surprised by the line of argument which has been pursued here. I have no harsh words to say of Virginia, nor do I think there is any justification in history for harsh words of West Virginia or the people who participated in her erection as a State. The act of the Wheeling convention and the acts which succeeded that convention, and the contract proposed by that convention and afterwards accepted by the State of West Virginia, are to be considered with reference, of course, to the situation at the time the transaction occurred.

At the Wheeling convention there were only two counties of Virginia represented, as contradistinguished from what afterwards be-

came West Virginia; there were two. The others were under a jurisdiction, not of the United States, but hostile to the United States, the officers of Virginia, and this Court has long ago drawn a well defined distinction between the state and the government of a state, so that it is not accurate to speak of the restored State of Virginia, as is sometimes done here. State is indestructible. There was no government of Virginia under the Constitution of the United States when the Wheeling Convention assembled. The ordinance of secession had been adopted in convention; it had not yet been voted upon by the people of Virginia, as I recollect it, at the date of the Wheeling Convention. The Capitol of the Confederacy has been moved from Alabama, Montgomery, as I recollect it, to Richmond, and there was no government of Virginia as a State in the Union. It is historically true, and will not be disputed, that the people of West Virginia were loyal to the Constitution of the United State and to the Union. They were not, as I have understood it, to any great extent slave owners or in favor of that institution. Of course, it was said on the argument of the demurrer that the Wheeling Convention was a revolutionary convention. True, but there was a State and the government of that State had abdicated, and were the people powerless to reofficer and rehabilitate that State? *Arma inter leges silent,* and the time comes when acts in such circumstances retain in them a validity which is as concrete as is attributable to any. The people of that part of Virginia had a right, in the situation, to organize en masse to the end that the government of Virginia under the Constitution might be reorganized and rehabilitated. That is not all, I suppose, which influenced those men, and I dwell upon it for a moment only. It is to be supposed that at that time grave doubt existed, which legitimately might, in the minds of the West Virginia people—I call them West Virginia people, but there was no West Virginia,—but in the minds of the Virginians who dwelt in what now is West Virginia, for fear the effort to take the state of Virginia and other states out of the Union might prove successful, and they were quite to be pardoned for not being willing if that misfortune should have occurred, that they should be taken under another government.

Now, Mr. Justice Harlan suggested, on the argument of the demurrer, in answer to the suggestion and the statement that it was a revolutionary convention, that there was a great deal of revolution in the air at that time, and that is true. This argument arose upon the decree tendered by the Commonwealth of Virginia which, I am

frank to say—I was not connected with the case at that time—seemed to me, from what I have known of it, to be based upon the entire misconception of the fundamental principle which should govern the case, and upon the bill, when I came to look it over, I had not supposed the validity of the Wheeling Ordinance was attacked. This bill, if the court please, asserted it, is based upon it largely, as to the property embraced by the acts of February 3 and 4, 1863. It was rested upon legislative recognition that implied obligation by the utilization of the property covered by it. But the bill set out two main grounds upon which the liability of West Virginia to account was rested. The first one was this, first the area of the territory now known as the state of West Virginia formed about one-third of the territory of the commonwealth of Virginia when this public debt was created, and its population included about one-third of the original state at the time of its dismemberment, and the state of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory. That is the international law basis, as our friends understand it, and as it may be.

> "*Second.* The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861."

Mr. Justice Holmes: What is that you are reading?

Mr. Spooner: From the bill, the second ground upon which the liability of West Virginia is rested in this bill. This volume here contains the bill and exhibits, the demurrer and the report of the arguments on the demurrer, and the briefs, and the opinion delivered by Mr. Chief Justice Fuller,

> "in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union."

The ordinance is quoted also in the bill in full, and declared upon as a basis of liability as emphatically as ever any compact or contract was declared upon in a bill in equity or an action at law. There is

not a word in the bill, from beginning to end, impeaching the validity or the binding force and effect of the Wheeling ordinance.

The two grounds of relief which I have read to Your Honors are incompatible. It would seem to be thought not, but they are absolutely antagonistic, the liability on the basis of international law and the liability on the basis of the ordinance. On the argument on the demurrer attention was called to the rule of international law, and this occurred. I am reading from page 9 of my brief:

> "One of the learned counsel for the complainant read, on the argument, from the opinion of Mr. Justice Field, who wrote for the court in *Hartman vs. Greenhow* (102 U. S., 672) this sentence:
>
> 'Where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them.'
>
> counsel added, 'That is in *Hartman vs. Greenhow.*'
>
> Justice Harlan: 'Please read that again.'
>
> Mr. Conrad: 'Where a state is divided into two or more states in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them.'
>
> Counsel added: 'That is an opinion of this court that has received no dissent.'"

After a word of tribute to Mr. Justice Field, to which no one in this country would dissent, he said:

> "But aside from this the quotation read from Mr. Justice Field did not in the slightest degree correctly put before the Court the view which he must be deemed to have entertained. We supply the deficiency, quoting all that he said:
>
> 'Writers on public law speak of the principle as well established that, where a State is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a State should be divided in respect of territory, its rights, and obligations are not impaired; *and, if they have not been apportioned by special agreement,* their rights are to be enjoyed and their obligations fulfilled by all the parties in common." (1 Com., 26); and Halleck, speaking of a State divided into two or more distinct and independent sovereignties, says: "In that case, the obligations which have accrued to the whole before the division are, *unless they have been the subject of a special agreement,* ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of courts, and the practice of nations." (International Law, c. 3, Sect. 27).'

Mr. Justice Field continues:

'In *conformity* with the doctrine thus stated by *Halleck*, both States—Virginia and West Virginia— have recognized in their constitution their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement.'"

In *Antoni vs. Greenhow* (107 U. S., 769), Mr. Justice Field said:

"It is a well-settled doctrine of public law that, upon the division of a state into two or more states, the debt shall be ratably apportioned among them (*See authorities upon this subject in Hartman v. Greenhow* (102 U. S., 672, 677)."

Phillimore, after quoting both Grotius and Kent, says:

"If a nation be divdied into various distinct societies, the obligations which had accrued to the whole before the division are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts;"

and Sir Sherston Baker in "First Steps of International Law," page 36, says the same thing.

When this decree proposed by the commonwealth of Virginia was presented, it was entirely silent upon the ordinance. As to the first provision we do not care as to the amount of public debt of Virginia as it existed on the first day of January, 1861. Second "what amount or proportion of said indebtedness and of the interest accruing thereon should, in equity, be apportioned to and be paid by the State of West Virginia," a provision entirely ignoring the ordinance upon which the bill, without challenging its validity, had based the right of recovery, incompatible with the international law basis, if the ordinance constitutes a binding agreement or compact between Virginia and West Virginia.

On the other hand, the decree proposed by the Commonwealth of West Virginia provided for an accounting on the lines of the ordinance. Now, your Honors, there was nothing said in that brief that was intended to suggest, as my friend, the Attorney General—if I may refer to him as the Attorney General—has said, that this Court was controlled by any rules in the exercise of its original jurisdiction. It is, of course, indisputable that the Court makes such rules for the conduct of a cause as it deems wise and in the interest of justice and orderly procedure, but we thought that two lines of investigation proceeding, not only upon absolutely different, but absolutely antagonistic principles, one under the Ordinance involving an investigation of the items indicated in it for forty years, and another, at the same time, proceeding upon a basis which was not defined at

all, but proposing to cast the whole case at large into the hands of a master with no indication by the court as to the principle which should govern the investigation, which would be a burden of labor, take indefinite time, cost a great deal of money, and that neither investigation would help the court in determining which of the two should be adopted, therefore we felt that the court, before referring this cause to a master to state an account, should determine, if it might do so upon the record, if there is no evidence to enable the court to determine whether the Ordinance is binding upon the two States. There is no dispute as to the manner in which this compact came about, and if it is binding, that obviously is the principle which should govern, so far as that is concerned, the accounting.

This case has been full of astonishments. There is handed to us today a proposed decree on behalf of the Commonwealth of Virginia, to a portion of which only we would care to protest. The decree states:

> "What is the just amount and proportion of said debt, including the interest thereon, which should now be apportioned to, and paid by, the State of West Virginia? Such amount and proportion of said debt the master will ascertain by charging against West Virginia:
>
> "(1) All expenditures made by the State of Virginia within the territory which now constitutes the State of West Virginia since any part of said debt was contracted.
>
> "(2) Such proportion of the ordinary expenses of the government of Virginia since any part of said debt was contracted as was fairly assignable to the counties which were erected into the State of West Virginia."

That is not in the language of the Ordinance, but I do think that the difference might not be very substantial, except that the one would be illuminating to a master, but the other has words which might confuse him. So that this proposition here tendered is for an accounting on the basis of the Ordinance.

Mr. Justice White: What is that paper you are reading from?

Mr. Spooner: I am reading from the amendment to the decree proposed by the Commonwealth of Virginia.

Mr. Justice McKenna: Is the only objection you have to it the use of words which you say would be confusing?

Mr. Spooner: No sir, that is not the only objection we have to it.

Mr. Justice White: Is that all of it you are reading?

Mr. Spooner: No, I have read the two items that relate to the Ordinance. It continues:

"In ascertaining this, the master will take as the basis or criterion upon which the apportionment of said expenses shall be made the average total population of Virginia, excluding slaves, as nearly as the same can be determined from the United States Census for each of the decades in which such expenses were incurred and paid."

I do not know that we should object to that. If population is to be made the basis of accounting, extending through forty years, it ought to be averaged, in justice. This is substantially as we proposed, with the amendment as to slaves, and it should be averaged on the basis of several ten year federal censuses, including slaves as part of the population.

"From the aggregate of the amounts thus ascertained, the master will deduct all moneys paid into the treasury of said Commonwealth from the counties included within the State of West Virginia during said period."

There is the last clause of the Ordinance again, so that we may be excused if, remembering the allegations of the bill, remembering the very explicit and strong statement by the Attorney General of Virginia, who was not only counsel for Virginia but the law officer of the State, in the argument of the demurrer, in which he asserted a position as to the Ordinance which I do not think differs from his position now except in one respect. Your Honors will find, on page 324 of the record, in the argument of Mr. Anderson, the following:

"MR. ANDERSON: In the 11th Wallace case it was established that the Wheeling government was the government of Virginia, and the effect of that decision was to uphold the validity of what is known as the Wheeling ordinance.

"Now instead of letting these questions be settled upon the principle of equity and public law, that convention prescribed this artificial and arbitrary basis of adjustment. We have to concede that we cannot go behind this, that we must accept it.

"Section 9 of the ordinance, giving the consent of Virginia to the formation of the new State, reads as follows:

"MR. JUSTICE HARLAN: What are you reading?

"MR. ANDERSON: From the Wheeling Ordinance quoted at page 3 of the brief of the counsel for the plaintiff. Section 9 of the ordinance reads as follows:

"'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Com-

monwealth from the counties included within the said new State during said period.'"

"That is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of this new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards, in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitutes a primary obligation and lies at the very foundation of the right of West Virginia to be a State.

We may be pardoned, I think, a little surprise that the validity of the Ordinance should be so vehemently attacked here as has been done today.

Mr. Justice Harlan: When you refer to the consent of the Legislature of Virginia, do you allude to the act of May, 1862?

Mr. Spooner: There was a later act, after the adoption of the amendment which was required by the Congress, an amendment to the constitution.

Mr. Carlile: December 6, 1862.

Mr. Spooner: But this, to which the Attorney referred in the brief—we had not then discovered this other act—was the act of the Legislature of Virginia of May 13, 1862, upon which Congress acted in admitting West Virginia into the Union.

Mr. Justice White: What was that act? What page is it?

Mr. Justice Harlan: Page 438.

Mr. Spooner: I have it here:

"'That the consent of the legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke and Ohio (and many other counties), according to the boundaries and under the provisions set forth in the constitution of the said State of West Virginia and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the 26th day of November, 1861.'"

Mr. Justice Harlan: That does not refer, I believe, to the Ordinance, does it?

Mr. Spooner: No sir.

> " 'Be it further enacted That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with the certified original of the said Constitution and schedules, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union.' "

It is true, and stated in this connection, that the convention which framed the constitution—we have the proceedings here, they are very dignified—repudiated the Ordinance of the session. They declared the necessity and the right that their State should have a government, and they announced their purposes in the movement and set forth at length the Wheeling Ordinance and appointed a committee to communicate to the Congress to urge the Congress to admit the State into the Union.

Mr. Justice Harlan: This was the convention of November, 1861?

Mr. Spooner: Yes sir, the convention which framed the constitution.

Mr. Justice Harlan: That is the constitution that contained those words "equitable proportion of the public debt?"

Mr. Spooner: Yes, your Honor, and the record of Congress shows that the Ordinance and the constitution, of course, and the proceedings of the convention which rehabilitated Virginia were sent to the Congress, were presented in the Senate and referred to the Committee on Territories of which Mr. Wade was the chairman.

Mr. Justice White: And yet, it being before Congress, as far as the obligation to pay a just proportion of the debt was concerned, the method was not reported by Congress.

Mr. Spooner: I do not know that it was. I do not remember any discussion on the subject except that Mr. Crittenden of Kentucky, as I recollect it, inquired whether provision had been made for the assumption of any part of the debt, and was informed that it had not, that it was in the constitution, and my associate called my attention to this document, which we deemed it would be proper to bring to the attention of the court, Miscellaneous Document No. 99, Senate, which embraces all the proceedings of the Wheeling meeting.

Mr. Justice Moody: The Wheeling Ordinance was not treated by Congress as the consent required by the constitution in the formation of a State.

Mr. Spooner: No, the Wheeling Ordinance was an enabling act, so far as it could be made an enabling act; it was a proposition, which this Court held in the case of Virginia *vs.* West Virginia, made by the convention to the people of West Virginia. It provided for the calling of a constitutional convention; it provided for the erection of the State out of the boundaries of the State of Virginia, designating the counties. It contained this provision, that the new State "shall take upon itself a just proportion of the public debt of the Commonwealth prior to January 1, 1861," to be ascertained in the way provided. Delegates were elected and the convention was held, and the constitution was adopted and submitted to a vote of the people, and adopted by the people. The legislature of the rehabilitated State of Virginia enacted, then, a law consenting to the erection of the new State and its admission into the Union under her constitution.

Mr. Justice White: Under *the* Constitution.

Mr. Spooner: Under the Constitution.

Mr. Justice White: Of course, I do not know what you are proposing to discuss now; you have directed attention to a very serious matter, the averments of these bills admitting the Wheeling Ordinance as the criterion and rule by which this can be determined. You quoted those averments in the bill, and the counsel this morning took a contrary stand; I do not know whether the State did or not, because the gentleman who opened this case was speaking as an *amicus curiae*. You have stated, too, as I understand from your argument, that the bill proceeded upon a contributory theory. It propounded the international rule as the method, and then it asserted the Wheeling Ordinance as the method. Irrespective of this question of the admission of the State and the statements made in argument, and so on, are you proposing to discuss the original question?

Mr. Spooner: I am proposing to discuss the question as to whether the Ordinance is the original agreement.

Mr. Justice White: I am listening to you as intently as I know how, and I have a thought that has been running in my mind that I would like to suggest to you. You speak of the agreement between the States, or contract. The Constitution forbids a contract between States or a compact between States, except with the consent of Congress. In view of that provision of the Constitution, can there be any agreement between States which has not been sanctioned, and if that be true, are we not to deduce the sanction

of Congress from the constitution as submitted to Congress and as recognized by that body? If that be true, and there were conflict between the Ordinance and the provisions of the constitution, must not the provision of the constitution dominate, and must not the consent of the two States be confined, and confined alone, to that agreement which finds its sanction and proof in the constitution of the State submitted to Congress? I do not know whether I make my thought clear.

Mr. Spooner: Answering the questions separately, it is undoubtedly true.

Mr. Holmes: I would like to refer you, as bearing on that, to one case you have not mentioned in your brief, the case of Wedding *vs.* Meyler, 192 U. S., 582, where the so-called Virginia compact was dealt with, under which the new States on the other side of the Ohio were called into existence. There, the preliminary act of Virginia, the statute of the United States assenting to that preliminary act of Virginia and the subsequent adoption of the constitution of the new States were held *ipso facto*, to make the new States.

Mr. Spooner: It seems to me, of course, to be true, that a contract cannot be properly made between two States without the consent of Congress, nor can a State be erected lawfully out of the territory of another State without the consent of the State and Congress. This assent and compact, of course, until the Congress admitted West Virginia into the Union as a State, that question was raised in this case of Virginia against West Virginia, reported in the 11th Wallace, and in the other case, but Virginia was held by this Court to be under that government a State competent to consent to the erection out of her territory of a new State and its admission into the Union. It was a proposition and an acceptance that amounted to nothing efficient until the Congress had consented to it. It then became a valid compact.

Mr. Justice White: It cannot be that the consent of Congress was expressed with a condition.

Mr. Spooner: I will get to that question. The condition was one which could not relate in anywise to the compact. It did not depart from the Ordinance in any respect.

Mr. Justice White: One moment. If I, for instance, were sitting on a court, and it was proposed to carve out a new State, and I said to myself, "Under my office and with the sense of the obligations which result from a public debt, no agreement between

these States to carve out another will ever be recognized or voted for by me which does not adequately provide for a just distribution of the public debt," and a provision is inserted in the act which ratifies, providing for that just distribution, but the compact itself provided for no distribution, would the compact stand and be, as a compact, directly repugnant to the act?

Mr. Spooner: Certainly not. Congress could not make the compact, but this is academic so far as the change in the Virginia constitution was concerned, because afterwards the Virginia legislature repeated its consent.

Mr. Justice Harlan: How, in what way?

Mr. Spooner: It passed another act.

Mr. Justice White: Referring to the Wheeling Ordinance?

Mr. Spooner: Neither referred to the Wheeling Ordinance.

Now, if your Honors please, I will take up this question as to which, it seems to me, the argument on the other side is unintentionally misleading, and I go now to discuss very briefly the question whether the 8th article of the constitution of West Virginia did not import into it article 9 of the Ordinance. It is too late to discuss the proposition that the Ordinance was the act of Virginia; that has been settled, I take it. That Ordinance provided:

> "That the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained"—

Why is that omitted? Upon what theory does the learned counsel read a part of the sentence—it is all one sentence—and omit the remainder of it? If it read: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," that would present an entirely different case to the court, but it does not read that way. It reads this way:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained."

Mr. Justice Harlan: Just there, Senator, do you think the effect of those words in the Ordinance is to make a provision inconsistent with the constitution in that regard?

Mr. Spooner: Not all, I think they are to be read together.

I think where the proposition had been made and accepted, and the language of the court in 11th Wallace is instructive on that subject, that they are to be read together, and that where a proposition had been made by the State of Virginia to erect herself into a new State, erect a new State out of the territory of Virginia upon condition that she should take upon herself a just proportion of the public debt of the Commonwealth of Virginia prior to the first of January, 1861, to be ascertained in a specific manner, and the convention provided for by that Ordinance meets, having complied as to the election, and all that, with the requirements of the Ordinance, and in an article, article 8, provides that the State shall assume an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, I think that was the end of the assumption by the constitution of liability.

Mr. Justice Harlan: You would have the constitution read, then, as if those words "to be ascertained," etc., had been inserted in the constitution?

Mr. Spooner: Exactly, your Honor. If I made a tentative agreement with my learned friend and assumed an equitable proportion of a certain indebtedness in the settlement of some matter between us to be ascertained in a particular way, and should evidence my agreement by a bond to be executed later, and I executed a bond assuming an equitable proportion of that indebtedness and agreeing to discharge it, I think the two would, of necessity, be read together. I think the definition of what was agreed between us should constitute an equitable proportion.

Mr. Justice White: Suppose there was a third party having absolute power over your ability to contract and the power of your minds to meet depended upon his assent, and he was concerned merely with seeing that an equitable proportion was assumed, and when he came to ratify that contract, he said, "You shall assume an equitable proportion," but did not give any reason or any expression of opinion as to the method by which it could be shown; in other words, he put the general obligation without any expression of the method, and it all depended upon his consent.

Mr. Spooner: That goes back to the question whether this Ordinance should be held to be an invalid one, that is, entirely ineffective—

Mr. Justice White: Until Congress assented to it, yes.

Mr. Spooner: (Continuing) in its relation to the constitution.

Mr. Justice White: Until Congress assented to it.

Mr. Spooner: Until Congress assented to it. That would seem to depend upon whether the Ordinance is to be read as incorporated in section 8 of the constitution.

Mr. Justice White: I want to call your attention to another thing which occurred to me this morning. That act of Virginia to which you refer, that subsequent act, as ratifying in express terms, refers, not to the Ordinance, but says "as stated in the constitution."

Mr. Spooner: Virginia, your Honor, recognized this Ordinance by law after the war.

Mr. Justice White: I did not know anything about that, that is why I asked it.

Mr. Spooner: The foundation of her refunding act was recognition of this Ordinance.

Mr. Justice Harlan: Are the proceedings of that Wheeling convention in print?

Mr. Spooner: Yes sir, I think they are, they are in the Library.

Mr. Justice Harlan: Are you able to say whether there is anything in the proceedings directly referring to the Ordinance?

Mr. Spooner: I have not examined them. I tried to find the proceedings in the Library to which I have access, but I could not find them. It has been recognized by Virginia as having been imported into the constitution. Your Honors will find many places in the bill and in the exhibits to the bill, legislative recognition by Virginia that the Ordinance was imported into the constitution. It cannot be thought that the convention intended to assume in the constitution a larger liability than was embodied in the act of Virginia which led to the calling of a convention and led to the adoption of the constitution.

Mr. Justice Holmes: I do not suppose there is any doubt that if that Ordinance alone had been passed and thereupon the convention had been called, simply purporting to call the State of West Virginia into existence subject to the approval of Congress, and Congress had approved, and that was all, and nothing whatever had been said about that clause, that thereupon, by the coming into existence of West Virginia, there would have been a contract made between the new State and the old.

Mr. Spooner: I think that is very clear from the decision in Green *vs.* Biddle, and also in the case in 11th Wallace. In 1871, when the legislature of Virginia passed this first act, the refunding act (page 24 of my brief) under which it declared that it was liable for two-thirds of the debt on the basis of international law, and proceeded to issue a great many millions of dollars of certificates to be accounted for by West Virginia as her portion of the debt, including the Ordinance, in the preamble they say:

"Whereas, in the formation of the State"—

This is not the voice of counsel, this is the voice of Virginia after carpet-baggism had passed away and she came to her own--

> "Whereas, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and
>
> "Whereas, in the ordinance authorizing the organization of such state it was provided that the said State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and
>
> "Whereas, the people of this Commonwealth are anxious for the prompt liquidation of her portion of said debt,"

recognized by the legislature of Virginia as of efficiency, and the foundation of West Virginia's liability to account on the basis of the Ordinance. There are so many recognitions of it from first to last, and today counsel criticized West Virginia for some of her adverse legislation. There is much to be said in criticism, in a friendly, decent way, of the conduct of Virginia toward West Virginia preventing an adjustment upon the basis of the Ordinance. So that, if the Court please, it seems to me, in view of this detailed agreement or proposition from Virginia of what would, in her judgment, be accepted as a just proportion of her contribution, that it cannot be ignored, and that West Virginia can be said to have assumed at large, without any reference to the Ordinance whatever, an equitable or just proportion of the indebtedness. Counsel are very accurate when they say that this Ordinance does not deal in terms with the debt; that is true, it is no assumption of any part of the debt as such. West Virginia never agreed, if this Ordinance is to be read as part of the con-

stitutional provision, to assume any portion of the debt as such. All that can be said of the Ordinance, if it be binding, there is no reason to suppose that West Virginia would have accepted Statehood if it had been the understanding that she should be liable upon the basis of international law for one-third of thirty-three millions of dollars then due by Virginia to her creditors, evidenced by her bonds. My learned friend who spoke before me spoke about what a trap this would have been for West Virginia, supposing she had assumed in her constitution, what had been agreed between Virginia and her convention should constitute her equitable contribution to West Virginia on account of her debt, rub out the Ordinance, obliterate it, treat it as it never had existed and as if, independent of it, there was a mere absolute agreement or compact on the part of West Virginia to bear an absolutely indefinite portion of the debt.

This Ordinance is called by our friends one of the constating instruments which underlies the existence of the State. Is it not? It defined the boundaries of the State, it continued the laws of titles in the new State; it perfected the conditions which must be embodied in the constitution. Was it necessary to repeat, in section 8 of article 8 of the constitution, the Ordinance? Is there any theory compatible with the method employed by judicial tribunals in dealing with contracts to dislocate entirely from the constitutional provision the Ordinance or proffer? The court said, as to the boundary, in the case in 11th Wallace, that it was a proposition made by Virginia to the people of West Virginia, and was accepted by the convention and became subject to the approval of Congress, a contract or compact between the States.

The Chief Justice, in the opinion on the demurrer, reads the Ordinance and the constitutional provision together. True, it was in deciding against the contention that West Virginia had entered a compact with Virginia, under which she, West Virginia, was to be the sole arbiter in determining the amount under the Ordinance. The court is asked to ignore absolutely, in construing this constitutional provision assuming an equitable proportion of the debt, the Ordinance, which has not seemed to us possible. It was perfectly competent, and it was not unreasonable, either, at the time of it, that the condition defined in the Ordinance should have been imposed. Your Honors will remember that it is alleged in the bill and admitted by the answer that the thirty-three millions of dollars of bonds, or nearly all, were issued by Virginia for the purpose of constructing public works, and it is ad-

mitted in the bill that very much the greater portion of the money was expended in what is now Virginia. It is alleged in the answer that a third of it was expended in what is now West Virginia, or I should say, three million dollars of it. It would not be an unnatural or unreasonable thing, it having been a debt created for works of internal improvement, the greater part of which, very much greater part of which, upon a division of the two States would remain within the limits of Virginia, canals, railways, and other public works, that she would charge to West Virginia all the money expended within her limits for works of internal improvement, because they would remain within the limits of the new State. If that was their view, they could not be criticised as imposing a condition of assent which was, in itself, unjust, and the ordinary expenses of the government, a just proportion, for forty years, were, in addition, to be charged to West Virginia. If it had been adjusted seasonably, if your Honors please, it would not have seemed an unfair proposition. But in the lapse of years for which both, so far as delay is concerned, have been responsible, West Virginia's development has made her very rich, so far as taxable values are concerned, and as the answer alleges, great deposits of minerals have been developed in Virginia, and the Virginia today, in point of wealth, is not the Virginia of 1861, in spite of all the waste and loss incident to the war.

We do not agree upon the question of interest. I have thought that question did not now arise. If the accounting is to be under the Ordinance, it certainly does not now arise, and testimony need not be taken in regard to it, nor need the court, as it would not without further argument, pass upon it. It is not necessary, in order to a full ascertainment of the liability under the Ordinance. No interest was to be paid under the provisions of the Ordinance. No interest was to be paid on the moneys expended by Virginia in what are now the limits of West Virginia. No interest was to be charged on the ordinary expenses; no interest was to be credited to West Virginia on the third item with which she was to be credited, all moneys paid into the treasury of the Commonwealth from the counties now a part of West Virginia from 1820 to 1861, so that if the Ordinance is to govern, the constitution read in the light of the Ordinance as we contend it should, this accounting can go on, and the question of interest will arise later, because if interest is to be paid, it is agreed among us all it is to be paid on the amount found due under the Ordinance if the Ordinance is to govern. The Attorney General says in his brief

which is, of course, an able presentation of his view, served on us yesterday, at page 6:

> "While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that Ordinance, reasonably and fairly construed, and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII of the Constitution under which West Virginia became a State, was not binding on both States."

Counted upon in the bill, admitted by the law officer of the Commonwealth in his argument, embodied in the decree which is proposed as an amendment as to govern the accounting, the dispute being only as to the question of interest, and restated in a strong way in the brief of the Attorney General, it would seem to us that the binding effect of the Ordinance was not open to question in this Court.

Now, if your Honors please, we should want some time to file a brief upon this question of interest, if it shall become necessary. It was briefly discussed in the argument which we filed in connection with the statement that we did not regard it is necessary at this time to decide it, which we still assert, but if it is to be decided, I deny utterly the contention of the learned counsel on the other side that that constitutional compact, that compact, in other words, created by article 8 of the constitution, can be construed as any agreement upon the part of West Virginia to pay interest. The vice of the argument on the other side seems to be in assuming that West Virginia, by her constitutional provision, if the Ordinance were omitted, took upon herself a part of the debt as such. I will not say, if the Ordinance were omitted, but what was to be ascertained under the 8th section of the constitution. It would probably be on an international law basis, as they understand it, population and territory; that would not require very much ascertainment, but all that they are required to do under this constitutional provision. I think it is argued in the brief, that the provision that the legislature of West Virginia should ascertain as soon as practicable the amount and should make provision for a sinking fund for the payment of accruing interest thereon, and the principal when due, excludes absolutely the notion that West Virginia was contracting to pay any back intetrest or accrued interest as contradistinguished from accruing interest. There is not only a philological difference, but there is

a legal difference between the two which has often been recognized by the courts.

Mr. Spooner: At the adjournment of the Court I was speaking of the liability of West Virginia to pay interest.

I had called the attention of the Court, I think, to paragraph 6 of the interlocutory decree now proposed by Virginia, after having remarked that as to the remainder of the proposed decree there was very little difference between the State of Virginia and the State of West Virginia as to the main contention. It is asked that the Court will instruct the master thus, after making the accounting under the Ordinance, and also taking an account of the value of the property granted to West Virginia by the act of the Virginia legislature of February 4, 1863:

> "The balance thus ascertained, with interest thereon from the 1st day of January, 1861, until the same shall be paid, will be the amount and proportion of the debt of the Commonwealth of Virginia existing before that date, assignable to West Virginia and which that State should pay."

To that, upon any hypothesis, we object. As I said yesterday, the Ordinance, whether it be taken as a compact or as an agreement between the two States definitive of article 8 of the constitution, that is, as to what would constitute the equitable proportion which West Virginia should contribute to the State of Virginia, said nothing about interest, nor is there anything in the constitutional provision, section 8, which bears, we think, the construction contended for in the brief of the distinguished Attorney General. Article 8 of the West Virginia constitution provided:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for part of the debt as such, bearing interest as it did, but was to assume the payment of a sum of money to be ascertained upon a basis defined in the Ordinance, to be paid by West Virginia to Virginia. She might pay it to her creditors or she might do otherwise if she chose. That payment by West Virginia was to be on account of the public debt; it was to relieve her of her share of any burden of the public debt."

Now, if I may call the Court's attention again to this language:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the yeare one thousand eight hundred and sixty-one, shall be

> assumed by this State; and the Legislature shall ascertain the same,"

that is, the equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861. That proportion was what was to be ascertained:

> "and provide for the liquidation thereof,"

the proportion to be ascertained as between Virginia and West Virginia, which West Virginia shall pay to Virginia,

> "by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The theory of the learned Attorney General is this, that this amount being ascertained, the State of West Virginia is bound under this constitutional provision, or under the Ordinance, as he reads the Ordinance into the constitution, and Virginia treats it as a binding compact or definition of what was to constitute an equitable proportion, just as we do, the interest on the same thus ascertained is to accrue from the first day of January, 1861. Upon what theory? Upon the theory, so far as the brief indicates, that West Virginia had assumed an equitable proportion of the debt, and the debt was an interest bearing debt and therefore West Virginia assumed to pay an equitable proportion of the debt ascertained in this way, and interest from the date of the secession of Virginia. There are many authorities in the brief in support of the proposition that under the laws of Virginia, between private parties interest goes with the debt; it follows as the shadow follows the substance, but there are no authorities in the brief in support of the proposition that under the laws of Virginia the Commonwealth of Virginia pays interest, or that the Commonwealth of West Virginia pays interest, except where the sovereign has contracted to pay interest, either by agreement or by an enactment by law. I did not have time to run through all the authorities, but I have examined such as I could, and I found that as early as 1831 the supreme court of Virginia had stated in an opinion that in a particular case, which was a tobacco warehouse case, there was no liability for interest. There had been other cases, apparently, under that system, in which the State officer had been charged with interest, the party defendant representative of the State, and the State had paid interest, but it is expressly declared in the opinion that the general question whether the State is liable for interest, except by express agreement, is not decided, and I was unable to find, as far as I have examined, any authority for the proposition that

without agreement or statute either Commonwealth, either sovereign, was bound to pay interest.

But it is perfectly clear to me that the distinguished Attorney General misconstrues this constitutional provision upon which he relies as a compact or contract, the constitutional provision as constituting an agreement in execution of which the court would require interest on the portion ascertained from the first day of January, 1861. That would not be implied; it especially would not be implied where the language of the provision is such as to exclude it, and the language of this provision is such as to exclude it: "shall be assumed by this State, and the Legislature shall ascertain the same as soon as it may be practicable and provide for the liquidation therefore." It has never been liquidated, never has passed from the realm of liability through the status of debt: "ascertain it and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest."

At the adjournment yesterday I was remarking upon the difference, both in law and philologically, between the word "accrue" used in such a connection, and the word "accruing." I had this brief but half a day before the case was called, and found a decision in 159 Pennsylvania, Gross v. Partenheimer, where the question was precisely presented to the court. The statement of the case is very brief. In April, 1893, plaintiff agreed to purchase from defendant a lot for eight thousand dollars, payable five thousand dollars in cash on delivery of deed, and the residue by plaintiff's assumption of a mortgage for three thousand dollars then on the lot, plaintiff to pay also the accruing interest on said mortgage not exceeding six months. The six months' interest from date of mortgage to February 26, 1893, was past due and unpaid, and to avoid foreclosure proceedings, plaintiff was compelled to pay the same. He then brought suit to recover the amount thus paid, the vendor claiming that the vendee was obliged to pay it under the agreement. The court said:

> "This contention hinges entirely on the proper construction of the clause in the contract of sale, above referred to, wherein the plaintiff agrees to pay 'the accruing interest on said mortgage not exceeding six months.' There is nothing in the affidavit of defence that can in anywise aid or control the construction of this clause. If 'accruing interest' means interest which, according to the terms of the security, was due and unpaid at the date of the contract, the defendant's construction should prevail; but, we cannot agree that these words mean any such thing. Such a construction would be strained and wholly unwarranted by the language em-

ployed. As generally understood, 'accruing' interest means running or accumulating interest as distinguished from accrued or matured interest. When we speak of interest which is from day to day accumulating on the principal debt, but which is not yet due and payable, we call it accruing interest. When we refer to interest heretofore payable, but still remaining unpaid, we speak of it as overdue interest, arrears of interest, or interest in arrear, just as we speak of rent in arrear. We are therefore of opinion that the words 'accruing interest' do not refer to, nor in any manner embrace any part of the six months' interest which was then overdue and unpaid. That interest was an incumbrance on the lot, which the defendant was bound to remove. He refused to do so; and the plaintiff, who was compelled to pay it in order to prevent foreclosure of the mortgage, etc., is entitled to recover the amount thus paid with interest from date of payment. The learned court was clearly right in adjudging the affidavit of defence insufficient and entering judgment against defendant for the amount claimed by plaintiff."

I will take no more time upon that, but I have this further to say on this question of interest, and it bears on the suggestion which I made to the Court yesterday, that it is not necessary now to determine the question whether the sum, when found due on an accounting under the direction of the Court, bears interest or not, or from what time it bears interest, because, even if the construction contended for by the distinguished Attorney General were correct, or be sustained by the Court, on the obvious face of this case, the interest could not be demanded from the first day of January, 1861. In 1866 the State of Virginia brought a suit against West Virginia in this Court; not to be reprobated for it; it had a perfect right to do it, but it brought a suit to have determined the counties of Virginia, what counties were in Virginia. That cause was depending in this court undecided until 1871, and it needs no argument to show that until the boundaries of West Virginia were determined, until it could be known what counties were in West Virginia, it would be absolutely impossible, under the Ordinance, and I am speaking on the assumption that the Ordinance will be read with the constitution, thereby making definite what otherwise would be indefinite, and what the parties evidently intended should thereby be made definite, so that by the act of Virginia an ascertainment was deferred and rendered impossible until 1871, and the court will find in the papers in the bill and exhibits, and otherwise, various occurrences and facts which delayed and rendered impossible for years by Virginia an ascertainment by concurrence of the two States in the amount under the Ordinance or otherwise.

Mr. Justice Holmes: I do not think I quite appreciate that argument. If you put it as if it is entirely clear about the ascertainment of the boundaries, on the same principle that you announced a little while ago that the State of Virginia, however much diminished, remains the single debtor on the public debt, why does not the State of West Virginia, however bounded, remain the single contractor on the contract that your are assuming existed?

Mr. Spooner: Oh, I am arguing on the basis of it coming under the Ordinance.

Mr. Justice Holmes: Yes.

Mr. Spooner: And under the Ordinance the first item is all expenditures made by Virginia.

Mr. Justice Holmes: I did not follow that; I see now.

Mr. Spooner: During the forty years within the limits of West Virginia as to the ordinary expenses, a third of the moneys paid into the treasury during that period from the counties of West Virginia.

Mr. Justice Holmes: Yes, I did not understand that at first.

Mr. Spooner: So much for that. I cannot take the time to discuss further the question as to the relation of the Ordinance and the constitutional provision. I have not been able to change my conviction that the two must be read together. If the Ordinance had contained no provision in regard to the assumption of any part of the debt, it is not to be supposed that the constitution would have contained any assumption of an equitable proportion of the debt. It was in the Ordinance as to the debt as it was in the constitution, the clause that follows this provision about the debt in the same section 9:

> "All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the State of Virginia."

That was carried into the constitution. Our view is that it was no more carried into the constitution than the Ordinance was, as to the debt, by the general language of assumption, and I agree entirely with the suggestion of his Honor, Mr. Justice Holmes, and we had argued it in the brief, that the direction of the legislature to ascertain the debt and the provisions which follow as to establishment of a sinking fund are not a part of the assumption of the new State: That assumption was complete with the first sentence and it, we claim, was an assumption of a proportion which had been defined between the parties. The remainder of it was an injunction by the constitution of West Virginia upon the legislature of West Virginia. If the Or-

dinance has nothing to do with this constitutional provision, if it is to have no influence in the determination of the controversy here, then the equitable proportion of the debt assumed by West Virginia in the constitution was not pursuant to a proposition made by Virginia in the Ordinance to the people of the proposed new State, nor a condition nor assent to the erection of the proposed new State. It was a purely voluntary assumption by West Virginia. If a purely voluntary assumption by West Virginia, it can be recovered upon only, or reliance be put upon it only, as West Virginia assumed it, and if the Ordinance is left altogether out of consideration here, it is almost an irrefutable proposition that when the legislature of Virginia passed the act consenting to the admission of the State under this constitution, it was agreed that the proportion of that debt which West Virginia was to bear, I mean the sum which West Virginia was to pay on account of that debt to Virginia, was to be ascertained by the legislature of West Virginia. Call it a compact or not, that contention was made to the court on the argument to the demurrer, and the court overruled it. The court said it was not a compact, but the court defeated it by a resort to the Ordinance, and the court, in the opinion delivered by his Honor the Chief Justice, said that the Ordinance, being *in pari materia*, the Ordinance being read in connection with the constitutional provision, that where the constitution provides that the legislature shall ascertain, it means that the legislature shall ascertain as provided by the Ordinance.

Now, your Honors, one thing further. This controversy has lasted a great many years. The nearer Virginia and West Virginia can come together in this cause, looking to the elimination of the harassment and cause of bitterness which this unsettled affair has caused through many years, the better. I called the attention of the Court yesterday to the attitude of the pleadings on the subject of the Ordinance, and I quoted from the Attorney General's argument when the demurrer was pending before the Court. I called attention, in addition, to the fact, which ought not be forgotten, that the decrees about which we differed, so far as Virginia was concerned, have been practically withdrawn, and the decree now tendered by Virginia is, except as to the matter of interest, and perhaps one or two matters upon which counsel could doubtless agree, in accordance, substantially, with our contention and the contention of West Virginia. The learned Attorney General says, in his new brief, on page 6:

> "We are constrained to recognize the following propositions as true:
>
> "(a) That the State of West Virginia could have no legal

birth or existence without the consent of the Legislature of Virginia.

"(b) That the only Legislature of Virginia which ever gave its consent to the formation of West Virginia, was the Legislature of the Restored Government which, sitting at Wheeling on the 13th of May, 1862, gave its consent to the formation of the new State, 'according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th of November, 1861.'

"(c) That the Act giving such consent and the Legislature which passed it, depended for their validity upon the validity of the Wheeling Ordinance under which the Restored Government of Virginia was organized."

That is true.

Mr. Justice Holmes: What are you reading from?

Mr. Spooner: I am reading from page 7 of the Attorney General's reply brief, the brief which accompanies this new draft of the interlocutory decree.

"(d) That said Convention, and its acts, and the Government which it established, have been legitimated, by recognition by every department of the Government,—by the President of the United State in his official intercourse and dealings with the Governor and officials of said Restored Government, by approving the bill for the admission of West Virginia, and by his proclamation announcing the admission of the new State into the Union; by the Congress of the United States in the admission of Senators Willey and Carlisle elected by the Legislature of the Restored Government, by the passage of the Act approved December 31, 1862, admitting West Virginia into the Union, and by other acts; and by the United States Supreme Court, by its decision in Virginia v. West Virginia, 11 Wallace, p. 39, in which the Wheeling Convention and this very Wheeling Ordinance and the Wheeling Legislature of Virginia, are recognized as being a Convention, and Ordinance, and a Legislature of the Commonwealth of Virginia."

No man speaking for West Virginia could more strongly state our position than the learned Attorney General states it.

"We are forced by these considerations to conclude that it is too late now to question the binding effect of the Wheeling Ordinance."

And in addition to that, as I brought to the attention of your Honors yesterday, the legislation of Virginia, the first refunding act,

in its preamble referred to this Ordinance as the congenital liability, the foundation, the fundamental liability of West Virginia in respect of the contribution which she has to make to Virginia.

I suppose we may have liberty to file additional briefs if it is desired.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Argument of Hon. John G. Carlisle.

IN THE SUPREME COURT OF THE UNITED STATES.

VIRGINIA *VS.* WEST VIRGINIA.

ARGUMENT OF HON. JOHN G. CARLISLE.

For the Defendant.

Mr. Carlisle: If your Honors please, as this argument is upon a motion to enter a decree of reference, many questions, or at least several questions, which might be open for discussion on a final hearing of the case on its merits, are not open now, and so it seems to me that this discussion must be confined to very narrow limits.

A great deal has been said, not only in the oral arguments, but in the briefs, in regard to the alleged delinquency of West Virginia in the matter of making a settlement, and she has been somewhat severely criticised by counsel on that account. The facts are, as the Court judicially knows, as a matter of history, that on the 17th of April, 1861, the State of Virginia, or at least a large part of the people of Virginia, in convention passed an ordinance to secede from the Union, and a war ensued between the Government of the United States and the State of Virginia and the other States united with her in the South, which continued until 1865. Of course it was not possible for West Virginia to settle the debt, or to take any steps towards its settlement, during that period. All the records, all the vouchers, all the documents, of every kind, relating to this pupblic debt and having a bearing upon the question as to West Virginia's just proportion of it, were in the possession of a hostile government; they were at Richmond, in Virginia, the capital of the Confederate States and the capital of the State of Virginia, and were wholly inaccessible to West Virginia.

At the close of the war, in 1865, the only government existing in Virginia was what was called the restored State government, which embraced only a small part of the territory, and for a long

time during the existence of that government it was impossible to make a settlement of this debt.

Then, in 1867, Congress passed an act declaring that this provisional, or so-called restored State government, which had continued and was the only one that was existing at that time, was illegal and unconstitutional; that it was no government at all, and a military government was established in its stead; and that state of affairs continued, I believe, until January, 1870. In addition to that, as has already been stated by my associate, Virginia brought an action in this Court in December, 1866, to determine the boundaries of the two States, and until those boundaries were determined, it was impossible to make any settlement under the terms of the Ordinance. That suit was decided by this Court in March, 1871. Immediately after that, as the Court will see from the answer filed by West Virginia, which gives a complete history of all the efforts that have been made to adjust this debt, West Virginia began to take action and to appoint commissions from time to time. One of these commissions went to Richmond and requested the auditor of the State to furnish copies of the vouchers and records, which he refused to do; and his letter refusing the request is exhibited with the answer. From 1873, after West Virginia had made these efforts to get into communication with Virginia, asking for commissions to be appointed by Virginia, and after she had made the effort to secure the necessary evidence upon which she could make a settlement, neither of the States took a single step towards the settlement of this debt until 1894. The reason was that Virginia was settling with her creditors at two-thirds of the debt and interest, and the claim that West Virginia was liable for one-third was an effective weapon with which she could beat down the demands of her creditors. So she took no steps whatever from 1871 to 1894, although West Virginia had, after 1871, and up to 1873, endeavored to secure a settlement. But in 1892 Virginia had completed the settlement with her creditors for two-thirds of the debt, and then she began to move in regard to a settlement with West Virginia; and what did she do? Her legislature passed a joint resolution on the 6th of March, 1894, which provided for the appointment of commissioners to settle the debt with West Virginia. That was the first step taken by Virginia since 1871 with regard to this matter. But it was provided in that resolution:

> "But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall

have been received from the holders of a majority in amount of said certificates, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. But said commission shall in no event enter into any negotiation thereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof."

That was the only kind of negotiation proposed by Virginia, and was in fact no negotiation at all. It should not be entered upon except upon the basis that old Virginia's share of the debt was only two-thirds. Of course, if her share was only two-thirds, it followed necessarily that West Virginia's share was one-third. That part of the resolution has never been repealed to this day. There was a joint resolution passed in 1900 which authorized the same commission to bring a suit or to make a settlement, but this clause of the joint resolution passed in 1894 was not then repealed and has never been repealed, either in terms or by implication.

Some resolutions were read yesterday showing that West Virginia had refused to enter into negotiations. The first resolution ever passed by the legislature of West Virginia refusing to enter into negotiations with Virginia with relation to this debt was passed in 1895, after the passage of the resolution of Virginia which required her to enter into negotiations upon the basis I have stated. Here is the resolution:

"House Joint Resolution No. 10, Concerning the Virginia Debt. (Adopted February 7th, 1895)."

That is just eleven months, almost to a day, after Virginia had passed the joint resolution requiring negotiations to be conducted on the basis that she owed only one-third of the debt. It reads:

"That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution."

Afterwards there were others declining, but all of them, as I have stated, were passed after this arbitrary basis had been laid down by the State of Virginia, which precluded free negotiation and fixed the amount substantially which West Virginia was to pay.

Mr. Conrad: Mr. Carlisle, you know that the Virginia Legislature has frequently, by joint resolution, denied that any liability for any part of this debt existed.

Mr. Carlisle: Yes, under the Ordinance; I was going to speak of that. In 1871 when West Virginia appointed a commission which, as I have said, went to Richmond, but could get no information, it then assembled at Parkersburg—

Mr. Conrad: To be entirely accurate, that commission called upon the auditor of Virginia to furnish them full copies of all records. The auditor said he had no clerical force with which to make the copies and no money with which to do it, but that the books were all open to that commission and they could make any copies they wanted.

Mr. Carlisle: I am not now criticising Virginia; I am simply accounting for the delay about which complaint has been made. The commission went there and attempted to secure these copies from the auditor, and he did not furnish them. I am not saying whether he was right or wrong, but it is a fact which produced delay; and then this commission reported the fact to the West Virginia Legislature, that it had attempted to procure the copies, and being unable to do so, it had proceeded to make an investigation itself as best it could, with such information as it had; and that commission found that West Virginia was indebted about $953,000, I think. Then, in 1873, Virginia having been quiet all this time, the Legislature of West Virginia—

Mr. Justice Peckham: What year was that when the $900,000 accounting was made?

Mr. Carlisle: 1871, but that settlement was not made upon the basis of the Ordinance. The Commission reported, but no attention was ever paid to it by the Legislature of West Virginia, as it did not conform to the Ordinance, and the commissioners themselves reported that it was incomplete for want of the necessary data.

In 1873, two years after that report, when Virginia was still silent and inactive, the Legislature of West Virginia passed a joint resolution directing the finance committee of the Senate to make an investigation of this matater, and its report is attached

to the answer. It undertook to follow the Ordinance, but I must say frankly that it did not follow it in all respects, and the result of its investigation would not be satisfactory to me personally. It found what was stated by counsel for the plaintiff yesterday, that upon a settlement West Virginia would be entitled to credit—not that Virginia would owe West Virginia, because she has no claim against Virginia—but that West Virginia had over-paid $512,000, not $560,000, as was erroneously stated yesterday. That report was made to the Legislature, and thereafter the Legislature of that State passed several resolutions, denying any indebtedness at all, if a settlement was made under the Ordinance.

Mr. Conrad: It does not limit it to a settlement under the Ordinance, it denies any liability whatever.

Mr. Carlisle: I have the answer here. The answer states—it is quite long and I will not detain the Court by reading from it—but it states that West Virginia is now ready and willing, and has always been ready and willing, to settle the debt under the terms of the Ordinance. This Senate committee had as its chairman Mr. Bennett, who was the auditor of the old State of Virginia for several years before the war, and all through the war, up to the evacuation of the City of Richmond in 1865. The ex-auditor of the State of Virginia, who was more familiar with the financial records of the State than any other man, was the chairman of this committee of the West Virginia Senate which made this investigation, and the report to which I have just referred was signed by him. After that, the Legislature of West Virginia denied that the State was indebted to Virginia on account of the public debt.

This is, in brief, the history of the attempts to settle this debt between the two States, and I submit to the Court that when your Honors read that history, as it is set out in the answer, you will not be disposed to criticise West Virginia very harshly. I think I was justified in making the statement that old Virginia did not want West Virginia's just proportion of that debt ascertained, or settled, or made public, until she had settled with her creditors in 1892, upon a basis of two-thirds; it was an argument to the creditors to induce them to scale down their claims against old Virginia herself, which they did.

My associate has gone over this case so thoroughly that I am at a loss to know what topics I ought to take up. It is now conceded by the Attorney General, the official representative of the

State of Virginia, the plaintiff in the action, that the Ordinance is valid and must govern in the making of the settlement. That would seem to eliminate all discussion upon that question, and yet some suggestions have been made in the argument which it may be proper to notice. I want to call the attention of the Court, however, before passing to that, to one other point.

Mr. Anderson: I hope my silence will not be construed into an acquiescence in the correctness of that statement.

Mr. Carlisle: I will not read your statement again; it has already been read by my associate. It is as plain an expression as can be made in the English language.

Mr. Anderson: I stand by that.

Mr. Carlisle: That is all we ask. We will be perfectly satisfied if the Court will stand by the propositions so clearly stated by the Attorney General who officially represents the plaintiff. I want to call the attention of the Court, however, to one statement made by the Attorney General which is very forcible and ought to be conclusive upon one point; and it is absolutely correct. It is this: The Attorney General has spoken of the act of Virginia of May 13, 1862, and he might have stated there, as he does afterwards state in his brief, that there was another act passed by the Virginia Legislature on the 6th day of December, 1862, after the House of Representatives in Congress had passed the bill for the admission of West Virginia, with the provision in it that the constitution should be changed with reference to the subject of slavery. On the argument on the demurrer considerable stress was laid upon the fact that the constitution which was before the Legislature of Virginia, when that body passed the act of May 13, 1862, asking for the admission of the State, had been changed afterwards by Congress. Our reply to that was that it was not changed in respect to anything connected with the Ordinance, that it was changed simply by requiring the new State, by a vote of its people, to prohibit slavery or provide for a gradual emancipation of the slaves: but that act with that provision in it had passed the House of Representatives, and while it was pending in the Senate, the Legislature of Virginia on the 6th day of December, 1862, passed a joint resolution and sent it to the Senate of the United States, asking that body to pass the act for the admission of the State of West Virginia into the Union with this change in it, so that the argument which was made here, even if it had any force, cannot be urged now, because Virginia approved of the admission, agreed to the separation and the ad-

mission of the State into the Union, after that change had been made in the bill pending in Congress. The Attorney General says:

> "That the Act giving such consent and the Legislature which passed it, depended for their validity upon the validity of the Wheeling Ordinance under which the Restored Government of Virginia was organized."

The very body which Congress recognized as competent to give the consent of Virginia to the creation of a new State within the limits of her territory, depended for its validity, according to the Attorney General, upon this Ordinance; but this is now controverted by one of the counsel who has addressed the Court. It is neither controverted nor admitted by the counsel who addressed the Court yesterday, and who stated all his propositions hypothetically. One of the counsel denies the validity of the Ordinance absolutely and assails it, not because it is illegal, not because the Government which passed it has not been recognized by all the political departments of the United States, but because it is unfair, he says; and another reason—

Mr. Conrad: Oh, no.

Mr. Carlisle: And because, as I understand him it was substantially enacted and promulgated by the same men who formed the new State, or who controlled the new State, and who adopted the constitution of the new State; but we submit that is a matter which this Court can not take into consideration.

Mr. Conrad: That is a matter with which the plaintiff itself had no power to deal.

Mr. Carlisle: With all due respect to my friend, I do not think we need argue that question. Section 9 is a part of the Ordinance just as much as any other section, and as the Attorney General says, the whole structure of the restored Government which followed depended for its validity upon the validity of this Ordinance, not a part of the Ordinance, but the whole Ordinance, and the whole Ordinance was before Congress when the act for the admission of West Virginia was passed. I have in my hand the report made by the Committee on Territories to the Senate of the United States to which the bill had been referred, and the copy of the Ordinance in full accompanies the report.

It has been suggested, rather than argued, that perhaps Congress did not give its assent to the Ordinance, because it was not recited in the act of Congress for the admission of the State or referred to in it. If that was a sound argument, then no part of

the Ordinance is valid, because no part of it is referred to in the act of Congress; but this Court has said that it is not necessary that an act of Congress providing for the admission of a new State into the Union, when it has been formed within the limits of another State, and a compact exists, should restate the provisions of the compact. The act of Congress admitting the State into the Union under a constitution formed in pursuance of this compact, was necessarily an approval and ratification of the entire compact and of every step that was taken in the process of forming the new State, and especially when it is shown by this official document, of which the Court will take judicial notice, that the Ordinance was before the body which passed the act as reported to it by one of its committees. This Court has held that the consent of Congress may be given previously to the compact, or it may be given afterwards, and that it may be inferred, from the mere act of admitting the State into the Union. There can be no force in the argument that the whole Ordinance was not approved by the act of Congress when it admitted the State into the Union which was created under that Ordinance.

Mr. Conrad: Ten sections of the Ordinance had already been completely executed when this matter was before Congress. It was the 9th section alone that remained executory, and of that Congress took no notice.

Mr. Carlisle: The act of admission took no notice of the others, either.

Mr. Conrad: Because they were executed.

Mr. Carlisle: My argument is that the Ordinance is a whole, and that Congress did not, by the admission of West Virginia into the Union, approve a part of it and reject the remainder. As has been stated here very forcibly, by one of the counsel for the plaintiff, the Ordinance was the genesis of the State government; it was the foundation upon which the whole proceeding was based; it was before Congress, and knowing what the compact was, knowing what all the provisions of the Ordinance were, the State of West Virginia was admitted into the Union as a State upon an equal footing with the other States.

Mr. Justice Harlan: When did the Ordinance and the constitution ever get any validity?

Mr. Carlisle: The constitution was submitted to the people and adopted by their votes.

Mr. Justice Harlan: It did not, then, become a valid instrument.

Mr. Carlisle: No, not until Congress admitted the State into the Union. There were people there and a constitution was framed for their future government, but the constitution was not in force, because there was no state yet. The constitution and the ordinance took effect only when Congress admitted a State into the Union.

Mr. Justice Harlan: The Ordinance took effect immediately, by what authority?

Mr. Carlisle: By the authority exercised by the Wheeling convention.

Mr. Justice Harlan: By what authority did it act?

Mr. Carlisle: The people of West Virginia—the history of the matter is well known—assembled; they called themselves the people of Virginia, because it was Virginia; a large part of the people of Virginia in that troublesome time finding that they had a government at Richmond which had severed its political relations with the general Government and with the other States which were adhering to the Union, finding themselves without a government with which they could have communication, finding themselves with a government hostile to themselves, waging war against them, determined that they would create the restored government, they would create another government to take its place, and all the political departments of the Government having recognized it, it is too late now for us to inquire by what authority they assembled.

I may be devoting too much time to this Ordinance, especially in view of the admission made by the Attorney General, as I understand his admission, but the Ordinance is of vital importance in this case, because it lies at the very foundation of the whole controversy; it is the bed-rock upon which the State of West Virginia is founded, and if it is invalid, West Virginia is not a State in the Union. This Court said in the case of Green *vs.* Biddle, when an argument was made that Congress had not approved the compact between the State of Kentucky and the State of Virginia:

> "Now, it is perfectly clear that although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State without the assent of Virginia or upon terms variant from those which Virginia had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed by a solemn act the consent of that body to the separation. The

terms and conditions, then on which alone the separation could take place, or the act of Congress become a valid one, were necessarily assented to; not by a mere tacit acquiescense, but by an express declaration of the legislative mind, resulting from the manifest construction of the act itself. To deny this is to deny the validity of the act of Congress without which Kentucky could not have become an independent State; and then it would follow that she is at this moment a part of the State of Virginia, and all her laws are acts of usurpation. The counsel who urged this argument would not, we are persuaded, consent to this conclusion; and yet it would seem to be inevitable, if the premises insisted upon be true."

Henry Clay was the attorney who insisted, on the argument of that case, that the compact had not been assented to by Congress.

Mr. Conrad: Was Congress concerned in any other feature of this Ordinance than that which gave the consent of Virginia? Need it have looked to any other?

Mr. Carlisle: It has been argued here that if there had not been an assumption of a just share of the public debt, the State would not have been admitted into the Union. It has been argued elaborately that that was the only condition inquired about on the floor of Congress.

Mr. Conrad: That is in the constitution, not in the Ordinance. I asked the question, would Congress have admitted this State into the Union if the constitution had not provided for the debt? The question that I now venture to ask you is, would Congress have looked any further into this Ordinance than to see that Virginia had consented?

Mr. Carlisle: I suppose it would have looked at the whole Ordinance.

Mr. Conrad: Chief Justice Taney, in a dissenting opinion in the Wheeling Bridge case, said not, that Congress would not look to the compact clause between Kentucky and Virginia, making the Ohio a free river.

Mr. Carlisle: Yet the Court held it was a valid compact.

Mr. Conrad: Oh, yes, but Congress could not be supposed to have looked to that feature at all in that case; that was a dissenting opinion, to be sure.

Mr. Carlisle: Certainly, but the court in that case decided that it was a good compact, whether Congress looked at it or not. Congress passed an act for the admission of Kentucky, with the con-

sent of Virginia, and there was a compact between the parties. I do not propose to go over the ground again to show how the compact in controversy in this case was entered into; that is known to the Court, and besides, it is stated fully in our briefs. In the case of Wedding *vs.* Meyler, 192 U. S., 573, 582, it is said:

> "Under article 4, section 3, of the Constitution, a new State could not be formed in this way within the jurisdiction of Virginia, within which Kentucky was recognized as being by the words last quoted, without the consent of the legislature of Virginia as well as of Congress. The need of such consent also was recognized by the recital in the act of Congress. But as the consent given by Virginia was conditioned upon the jurisdiction of Kentucky on the Ohio river being concurrent only with the States to be formed on the other side, Congress necessarily assented to and adopted this condition when it assented to the act in which it was contained. Green *vs.* Biddle, 8 Wheat. 1, 87. Thus, after the passage of the two acts, it stood absolutely enacted by the powers which between them had absolute sovereignty over all the territory concerned that when states should be formed on the opposite shores of the river they should have concurrent jurisdiction on the river with Kentucky. 'This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?' Pennsylvania *vs.* Wheeling & Belmont Bridge Co., 13 How., 518, 566."

It seems, therefore, to be a well recognized rule in this Court that Congress, by the admission of a State into the Union, approves and ratifies the steps which have been taken to create the State.

Mr. Justice White: Let me ask, for information, is there any act which concerns this case particularly? Is there anything done by Congress which would have been construed as a condition of the State of Virginia as organized, and as an approval of this compact prior to the act of Congress which admitted West Virginia into the Union?

Mr. Carlisle: Any action of Congress on that particular subject?

Mr. Justice White: Yes.

Mr. Carlisle: Not that I know of. They had admitted John S. Carlisle and Mr. Willey as Senators from the restored State, and quotations have been made here from their speeches in that body. Representatives from the restored State had also been admitted to seats in the House.

Mr. Justice White: Not before the adoption of the constitution?

Mr. Carlisle: Yes, before the adoption of the Constitution of West Virginia.

Mr. Justice White: Before the adoption of this constitution by Congress, the ratification and admission of this constitution?

Mr. Carlisle: Yes, they went further.

Mr. Conrad: Senators from Virginia, not West Virginia, were received in Congress on the 25th day of July, 1861.

Mr. Carlisle: Several months before this constitution was framed.

Mr. Justice White: That answers my question.

Mr. Conrad: But the State had been recognized before that by the Secretary of War, some time before.

Mr. Carlisle: Yes. The restored State was represented in the Senate and in the House, before the Ordinance of 1861 was passed, but your Honors will bear in mind that the consent of the legislature of the State is not required by the Constitution of the United States to make a compact with other States. The consent of the legislature of the State, however, is required to form the new State, to create the new State within its territory. The constitutional provisions are separate.

Mr. Conrad: Mr. Lincoln denied that. You will find, in Nicolay and Hay, the action of the cabinet upon this matter, the 6th volume of Nicolay and Hay.

Mr. Carlisle: The Constitution of the United States provides that:

> "No State shall, without the consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into an Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay."

There is nothing about the legislature giving consent to a compact. The States may make compacts by conventions, as Kentucky did, I believe, when a compact was made with Virginia. The constitutional convention in Kentucky accepted it and put it in the constitution of the State. The other clause is different; it provides that Congress may admit new States into the Union from time to time, but that no State shall be created out of the territory or within the jurisdiction of another State without the consent of the legislatures of both States. So that the validity

of this compact does not depend upon anything that the legislature of Virginia did or could do to affect it, except that perhaps the legislature might have taken some action to withdraw the proposition made to West Virginia before it had been accepted, or before it had been fully carried out; but that is a question which does not arise in the case.

The substitute decree now proposed by the Attorney General for the plaintiff follows the Ordinance almost strictly, except that it uses the words "fairly borne," which, I suppose, mean the same thing.

Mr. Conrad: I have never had the opportunity of examining that; I never heard of it.

Mr. Anderson: That is on the basis that it is made on the Wheeling Ordinance.

Mr. Carlisle: You say it ought to be made on that basis?

Mr. Anderson: No.

Mr. Carlisle: Well, I so understand it, and I must stand on that opinion, which I think is correct.

Mr. Conrad: Has that been filed?

Mr. Carlisle: I do not know.

Mr. Conrad: It has not been shown to me.

Mr. Chief Justice Fuller: Is that not the pamphlet that was put on the files here a few days ago? What is that?

Mr. Carlisle: This is a proposed substitute for the second clause of the decree heretofore presented by the State of Virginia.

Mr. Justice White: Has that been handed to us?

Mr. Carlisle: I do not know, sir; I saw it first yesterday morning. The Attorney General says he sent it to my house several days ago, but I was absent and did not see it.

Mr. Anderson: In the event that the Wheeling Ordinance shall be adopted by the Court as the basis of settlement.

Mr. Chief Justice Fuller: Do you wish that to be looked at and examined by the Court?

Mr. Anderson: I wish to use this in argument, if your Honor please.

Mr. Chief Justice Fuller: Let it be distributed.

Mr. Anderson: It has been handed to the Court.

Mr. Carlisle: I have here what my associate read from; it was a brief. This is a separate and distinct paper, which is offered now, as I understand it, as a substitute for the second clause of the decree heretofore proposed by Virginia. The de-

cree originally proposed, as your Honors will perceive, throws the whole question open before the master; it does not state any basis at all upon which he shall make the settlement, but leaves him to decide all questions of law; not only to take the account, but decide upon what basis the account shall be taken, and provides that either party, at his own expense, may have him take alternative accounts. That is to say, if West Virginia wants an account taken under the Ordinance, she would have a right to go to the master and deposit money—I think $3,000 is what Virginia has to deposit—and have him take the account under the Ordinance. West Virginia would be at the expense of that; old Virginia would be to no expense. She holds the contracts of the owners of the certificates in which they bind themselves to defray all expenses in connection with this proceeding. This substitute provides that the master shall ascertain:

> "What is the just amount and proportion of said debt, including the interest thereon, which should now be apportioned to, and paid by, the State of West Virginia? Such amount and proportion of said debt the master will ascertain by charging against West Virginia:
>
> "(1) All expenditures made by the State of Virginia within the territory which now constitutes the State of West Virginia since any part of said debt was contracted.
>
> "(2) Such proportion of the ordinary expenses of the government of Virginia since any part of said debt was contracted as was fairly assignable to the counties which were erected into the State of West Virginia."

It is substantially the Ordinance, except instead of using the words "justly" or "equitably" it says "fairly," which, I suppose, means the same thing.

Mr. Anderson: Yes.

Mr. Carlisle: Then as to the ordinary expenses, the proposed substitute provides:

> "In ascertaining this, the master will take as the basis or criterion upon which the apportionment of said expenses shall be made the average total population of Virginia, excluding slaves, as nearly as the same can be determined from the United States Census for each of the decades in which such expenses were incurred and paid."

Our decree, which we have proposed as an alternative to their original decree, provides that the whole population shall be taken into account, not excluding slaves. There were comparatively very few slaves in that part of the territory which afterwards con-

stituted the State of West Virginia, whereas they constituted a very large part of the population in Old Virginia. Government is for people; it is the duty of the government to protect the people to govern the people, and we think that the true rule is to take the entire population. Slaves had to be governed by the law as well as the white population. In fixing the basis for representation in the House and Senate of Virginia three-fifths of the slaves were included. Therefore, the voters in that part of the territory which now constitutes the State of Virginia had far more power in the legislature than the same number of people living in that part which now constitutes West Virginia could possibly have, because of the fact that nearly all the slaves lived within the limits of what is now Virginia.

Then the proposed decree provides that the master shall ascertain the interest which West Virginia shall pay on her proportion of the public debt. I do not want to repeat the arguments made by my associate, and yet I think it proper to make one or two suggestions on that subject. The method of settlement agreed upon and embodied in the 9th section of the Ordinance has no relation to the actual amount of the public debt.

Mr. Justice McKenna: Say that over again.

Mr. Carlisle: I say that the method of settlement provided for in the 9th section of the Ordinance has no relation to the amount of the public debt of Virginia existing on the first day of January, 1861. In other words, it is wholly unnecessary, in making a settlement under the terms of that Ordinance, to ascertain what the amount of Virginia's public debt was on the first of January, 1861. If Virginia, on that date, only owed five millions of dollars, the Ordinance would be the basis of the settlement, and the amount which West Virginia would be found liable for would be just the same, except that if the debt had been larger, Virginia might have expended a larger sum of money in West Virginia with which that State would be charged in the settlement; but West Virginia did not assume to pay the creditors, but she assumed to pay Virginia a certain sum of money to be ascertained in a certain way.

Mr. Justice White: Then, if that provision for settlement has no relation and does not concern itself at all with a just proportion of the public debt, which you say is the case, is there not an absolute incompatibility of the constitution with the provision of the Ordinance?

Mr. Carlisle: This Court has said they must be read together.

Mr. Justice White: That is not answering the question, saying the question has been decided. I take it that the demurrer does not foreclose the question; I am asking it as a generic question, if it be that the method provided in the Wheeling ordinance has no relation and no concern with a just proportion of the public debt, then is the necessary induction from that that there is an irreconcilable conflict between the constitution and the Wheeling Ordinance?

Mr. Carlisle: Unless, if your Honor please, I am right in my contention that the two papers must be read together, and that the legislature was to make the settlement according to the method prescribed in the 9th section of the Ordinance; if that is true, there is no conflict. If you do not take them together, there may be a conflict between them, and West Virginia then would have voluntarily assumed to pay a just proportion of the public debt without regard to the Ordinance. What I mean by saying that the method of settlement has no relation to the public debt is this, that suppose the master should find the public debt of Virginia on the first day of January, 1861, was one hundred million dollars; West Virginia would not be required to pay a cent more under this method of settlement than she would if it was ten millions of dollars, because a certain result is reached by this calculation, and whatever that result is, it fixes the amount that West Virginia is to pay, without any regard to the amount of the public debt. The parties, when they entered into this contract, knew what the public debt was; it was about thirty-three millions of dollars. Now, they concluded that the public debt being thirty-three million dollars, or thereabouts, a settlement made upon this basis would result in charging West Virginia with her just share of that debt.

Mr. Conrad: They propose to ascertain, under the Ordinance, what a just or equitable proportion was, by deducting the amount of appropriation and the amount of taxes.

Mr. Carlisle: Oh, no, charging West Virginia with State expenditures and her just proportion of ordinary expenses.

Mr. Conrad: That is the Wheeling Ordinance.

Mr. Carlisle: Of course, the Court knows what the Ordinance is. Therefore, while we do not object to the provision in the decree that the master shall ascertain the amount of the public debt on the first day of January, 1861, it has no bearing whatever upon the settlement, no bearing whatever upon the amount which West Virginia may be found liable for, and the counsel on the other

side agree to that. West Virginia, then, did not agree to pay a part of the public debt to the creditors or a part of the public debt to Virginia; she agreed that because there was a public debt which had been incurred by Virginia while she was a part of that State, she would pay a certain sum to Virginia, which would be ascertained by the method prescribed in the Ordinance. In other words, it was a primary obligation to the State of Virginia to pay her whatever might be found by this process. Does that bear interest until it is ascertained? Can you go back to 1861, including the ten years when there could be no settlement made, and charge West Virginia interest on this liability, not a debt, because the debt begins when the sum is ascertained, and West Virginia's constitution provides for that, as has already been shown; the legislature was to ascertain the amount and provide for the payment of the amount ascertained, with interest thereon, not that the legislature should ascertain what interest had accrued upon the sum which had not yet been ascertained, during the last forty-five years, but provide, by creating a sinking fund, for the payment of the principal and interest which should accrue upon it after it had been ascertained.

The doctrine that a State is not liable for interest, unless it has expressly contracted for it by a statute or otherwise, is so well settled in this country that it is hardly necessary to cite authorities. I have a long list of authorities here which I will not take the time to read. However, I will call the attention of the Court to them.

Mr. Anderson: Furnish us a copy of that.

Mr. Carlisle: I would like to have them in the record.

Mr. Anderson: You can furnish us a copy of them.

Mr. Carlisle: This list of authorities begins with the case of United States *vs.* North Carolina.

Mr. Chief Justice Fuller: Will you hand that to the clerk?

Mr. Carlisle: Yes sir, I will do that; the gentlemen on the other side will probably desire to see it.

Mr. Chief Justice Fuller: And have copies for each member of the Court.

Mr. Carlisle: They are all on one sheet; it was prepared for a brief.

Mr. Chief Justice Fuller: One for each member of the Court is enough.

Mr. Carlisle: I can have it printed, then.

Mr. Chief Justice Fuller: Yes.

Mr. Carlisle: Yes sir, I will do that.

Mr. Justice Moody: I would like to ask a question for my own information. If I understand you correctly, you agree to the form of the decree proposed by the State of Virginia with three exceptions, first, the amount of the public debt; second, the question of interest upon the balance found due; and third, the question of including the slaves in a basis of settlement. Otherwise than those three things, you do not contest the decree proposed by the State of Virginia?

Mr. Carlisle: And I do not really contest that that part which directs the master to ascertain the amount of the public debt, because it is not material and it is easily ascertained. The statement of Mr. Justice Moody is correct as to my position with reference to this proposed substitute, but there are some things in the original proposition made by the State of Virginia to which we object. For instance, that provides, as I have just said, that the master may take alternative accounts, provided the party who asks for them pays for them, and because, under that decree, everything is cast before him without any rule for his guidance whatever, and it provides also that the acts and the public records of the two States shall be competent evidence before the master. We have no objection to that except to this extent: the State of Virginia adopted an ordinance on the 17th of April, 1861, by which, as I have said before, it severed its political relations with the United States Government and with the other States adhering to the Union, and after that date, whatever Virginia did was *ex parte*, so far as West Virginia was concerned; practically West Virginia was no longer a part of that State, and her acts since that time ought not to bind West Virginia.

Mr. Anderson: We simply want to introduce them as evidence.

Mr. Carlisle: You say they may be objected to as immaterial, but they must be admitted if they are immaterial. I understand it to be a fact—I state it subject to correction—that in 1861 or 1862, after the State had passed the ordinance of secession, a commission, or some official of the State, made out a very long and complicated account of the public debt and the expenditure of the money. Am I correct?

Mr. Conrad: Mr. Bennett, to whom you have referred, has made an official report as Auditor of Virginia, down to September, 1862, which leads to quite different results from the report he made later.

Mr. Carlisle: Yes, of course. Mr. Bennett was at that time

an official of the State of Virginia, but we think that some period ought to be fixed after which the public acts and records of the State of Virginia should not be received as evidence against West Virginia, because the two States were in fact entirely separate after April 17, 1861.

Mr. Conrad: They became separate in June, 1863.

Mr. Carlisle: It seems to me that the question of interest is one which cannot only be appropriately postponed until the final hearing of the case, but ought to be postponed. When the master has found the amount and reported to the Court, it will not be difficult then for the Court to decide whether it shall bear interest. There is no interest to be counted on the money expended in West Virginia, no interest to be counted on her just proportion of the ordinary expenses, no interest to be counted on the money which she paid into the treasury; the master will simply take the original sums and include them in his report.

Mr. Justice White: Let me ask you a question. I do not know that it has any concern with what you have said, but there is some claim made in the original application made by Virginia for a decree, concerning some property passing under some act. Is that necessarily involved in what you have said?

Mr. Carlisle: I am much obliged to your Honor for calling my attention to that. I had thought Mr. Spooner fully discussed that question. Your Honor refers, of course, to the acts of February 3 and 4, 1863, which were passed by the legislature of Virginia after Congress had passed the act admitting West Virginia into the Union. One of those acts simply directs the proper official of the State, the auditor, I think, to pay over to West Virginia certain amounts of money then in the treasury of the restored government of Virginia. That act says nothing about a settlement with West Virginia for that money, and, in fact, it was West Virginia's money in this sense, it was money which had been collected by the restored government of Virginia from the counties which now constitute the State of West Virginia. It was in the treasury when Congress passed the act for the admission of the State into the Union, and the legislature of Virginia provided it should be paid over to West Virginia; it was her own money. The act shows this; the other act purports to transfer to West Virginia certain property.

Mr. Conrad: All property of every description, real and personal.

Mr. Carlisle: Yes; real and personal. The public land I sup-

pose, you have reference to. That act provides that this shall be accounted for in the settlement hereafter to be made with West Virginia, which, I presume, means the settlement under this Ordinance. Our contention is, and I think we are fully sustained by the authorities on international law, that the mere fact of the separation of the State from the mother State, unless there was some provision to the contrary in the original agreement or compact, conferred upon the new State the public property within its limits, that that was a part of what Virginia consented should be taken into the new State.

Mr. Justice White: Let me ask you, was this public property, used for the purpose of governmental business, Mr. Carlisle?

Mr. Carlisle: I suppose so; it says "buildings," and mentions other property also.

Mr. Justice White: It was to be land which the State used?

Mr. Carlisle: Yes, it says "lands;" and several other things, buildings and lands and roads, bridges and uncollected taxes.

Our contention is that as to the public property owned by Virginia within the limits of the new State it passed by operation of the separation itself to that State, the land, the charitable institutions, the roads, the bridges, and there was some stock in banks localized within the State of West Virginia; there is some doubt in my mind, and there has always been, whether Virginia's shares of stock in banks located in West Virginia, the old State not being the sole proprietor of the bank, would pass by the mere act of separation, but the public property localized did pass, unquestionably, and all the effect that this act of 1863 has, is as evidence of title; it does not confer title. West Virginia had the title by reason of the separation. This decree, the first one proposed by Virginia, provides that the master shall take that property into account, and I suppose, charge West Virginia with its value as if this act passed the title, or in other words, as if this had been the first time West Virginia acquired it. We say that if West Virginia is to account for this property at all, or any part of it, it is to be accounted for under the terms of the Ordinance. That is to say, West Virginia is chargeable with the money which old Virginia expended within her limits during the time that this debt was created, which might include whatever money Virginia expended within the territory which now constitutes West Virginia, in procuring this property.

Mr. Justice White: That would cover, undoubtedly, the court houses and other things, but I am speaking of land, now; for in-

stance, land that Virginia owned from her colonial times, which passed to her as a sovereign.

Mr. Carlisle: That passed by virtue of the separation, according to most of the authorities on international law, and especially Hall. Your Honors will find it in his work, I think section 27, page 58—I have a long extract from it here, but will not read it. All those things go along with the territory; they go to the new State, and why should they not? What would be the situation if they did not? The State of Virginia would own the court houses and the charitable institutions and the roads and the bridges in West Virginia; and the public lands if there were any. West Virginia would have no jurisdiction over them. One State would own all this property in another State and control it absolutely under its own laws, without regard to laws of the new State. Virginia would continue to administer, I suppose, the affairs of the charitable institutions, continue to keep the bridges and roads in repair. It seems absurd that such consequences could legally follow the consent to the formation of a new State. It must go out as a State and must come into the Union endowed with all the rights and privileges of a sovereign State over the territory within its limits, and if Virginia owned territory there, it went to West Virginia just as the public lands in Texas would have gone to the United States by the annexation if the act of Congress had not provided that the old State or Republic could retain them.

Mr. Conrad: Do you contend that the settlement provided for in the acts of the Assembly can be made within the terms of the Wheeling Ordinance?

Mr. Carlisle: I think there is no doubt of it. I understand your argument is that it would not be a fair settlement, but I will not discuss that.

It has been argued that the provision contained in the constitution of West Virginia assuming an equitable proportion of the public debt is inconsistent with the Ordinance of the Wheeling Convention on that subject. Now, the Ordinance provided that the new State should assume a just proportion of the public debt created prior to the 1st of January, 1861, to be ascertained, first, by charging to the new State all state expenditures within her limits during the time when the debt was being created; second, by charging to the people of the new State, or to the new State, their just proportion of all the ordinary expenses of the whole State during the same time; and third, by crediting the new

State with all the money paid into the State treasury from the counties included in it during the time the debt was being created.

Mr. Justice White: If the words "ordinary expenses" be construed as relating merely to the ordinary expenses for carrying on the government, and exclude all the sums spent by the State of Virginia for public works and public improvements—

Mr. Carlisle: Within her own borders.

Mr. Justice White: Within the borders of the State, her own borders, West Virginiia being a part of her territory, and thereby, under the calculation now made by West Virginia, brought Virginia out $500,000 in debt to them, you say she had no claim for it; your conception is that that coincided with and was coincident with an obligation to pay a just proportion of the debt?

Mr. Carlisle: It is a part of the Ordinance, whatever construction the Court may put upon it.

Mr. Justice White: That question addresses itself to whether Congress in recognizing the situation, may not well have said: "I will not ratify unless there is a just proportion paid," and thereby eliminated that thing, which, in the very nature of things, was destructive of the obligation to pay a just proportion. Of course, I am not dealing now with the admissions of the State of Virginia made at the bar by the Attorney-General in the briefs.

Mr. Carlisle: Of course, the only way Congress could say that would be in its legislation; we have no means of ascertaining what Congress thought about it except from the act passed by that body admitting West Virginia into the Union under that constitution. What some member of Congress may have said upon the floor in expressing his own individual views is wholly immaterial here; in fact, I do not know what they did say.

West Virginia is to be charged, then, with all the State expenditures made within that territory by the State of Virginia during the period that this debt was being created, and her just proportion of the ordinary expenses of the State during the same period. The court will see that such a provision, of course, makes West Virginia account for every dollar expended there for internal improvements within her limits. Therefore, we are obliged, under the terms of this Ordinance, to separate ordinary expenses from other expenses, because if you first charge West Virginia with all the money expended by the State of Virginia within the counties now composing that State, and then charge her with her just share of all the ordinary expenses of the whole State, you

may charge her twice for a large sum of money, because a large part of the ordinary expenses were also paid in those counties. So you have to separate them. The first class means, of course, those expenditures that we call "extraordinary expenses," expenses for internal improvements, for charitable institutions, for bridges and roads and various other things of like character. Then West Virginia is to have credit for the money she has paid in. That is the Ordinance, and it has been suggested that the provision of the constitution, article 8, is inconsistent with that, and is an absolute assumption of a just and equitable proportion of the public debt of Virginia without regard to the Ordinance or the method of ascertaining it. Now, I submit that this Court has taken a different view of it. This Court said, in its opinion overruling the demurrer, on page 433 of the printed record:

> "The Act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia,"—

That is not the case now. It is admitted now, in the brief recently filed, that the legislature was properly called by proclamation by the governor.

> "but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided 'for the formation of a new State out of the territory of this State,' and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should 'ascertain the same as soon as practicable,' it referred to the matter of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the 'Legislature shall ascertain' was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained."

This Court did not treat that provision in the 8th article of the constitution of West Virginia as voluntary, or as a new and independent assumption of a just proportion of the public debt of Virginia.

Mr. Conrad: Was that question before the Court at all on demurrer, or argued before it?

Mr. Carlisle: Undoubtedly, because we argued that under the constitution of West Virginia, which we contended, and in which contention we were overruled, that the constitutional provision formed a part of the compact. Our argument was that Virginia had made a proposition in the 9th section of the Ordinance and tendered it to West Virginia; that when West Virginia's convention assembled, which was the first time that State could speak upon the subject, it accepted that proposition with the addition to it, that the Legislature of West Virginia should be the tribunal to ascertain her just proportion of the debt, and that Virginia, subsequently by the passage of the act asking for the admission of West Virginia into the Union under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it. So we argued that the compact consisted not only of the 9th section of the Ordinance, but of the whole of the 8th section of the West Virginia constitution, including that part of it, of course, which provided that the legislature should ascertain the just proportion. Now, the Court discussed that very question, and said that the legislature was to ascertain it in the method prescribed by the Virginia convention, and that the legislature was not to sit as a court, as a tribunal, and hear the evidence and make the investigation by its members, but that it was to provide for the settlement "in the method prescribed." The Legislature could have appointed a commission, or it could have authorized the Governor alone, or any other official, to make the settlement, but it must be made in the method prescribed by the Ordinance. So, there is no inconsistency between the Ordinance and the constitutional provision as interpreted by the Court.

The second clause of the 8th article of the constitution of West Virginia, as has already been stated by my associate, constitutes no part of the assumption of the debt. That clause was simply a delegation of authority and a direction to the Legislature as to what it should do, that is, it should ascertain the State's equitable proportion of the public debt and provide for its payment by the creation of a sinking fund sufficient to pay the principal and interest within thirty-four years. The argument which I am trying to answer, if correct, would result in this, that, the Ordinance being out, because it is invalid, West Virginia's constitutional convention, being under no obligation to do it all, as it was not a condition upon which the new State was to be formed, or a condition upon which Virgina was to give her consent to its formation, voluntarily assumed to pay a just proportion of the public

debt. As was well said this morning, if that is true, then that provision constitutes the whole assumption, and what West Virginia volunteered to do was to pay her just proportion of the public debt to be ascertained by her own legislature and provided for by her own legislature. If the Ordinance is out, there is nothing in the case, except the 8th section of the constitution, pledging West Virginia to pay her just proportion of the debt. It is true some argument has been made as to her liability under international law. I do not know where our friends on the other side found any international law to the effect that the obligations of a State divided should be apportioned ratably between the two parts according to territory and population; that is the argument—

Mr. Conrad: Not mine.

Mr. Carlisle: The argument on the demurrer; it is also relied on in the bill.

Mr. Conrad: No, I wrote the bill. I will say there are four grounds stated in that one section of the bill that relate to an admission of liability alone, and this is instanced as one of the incidents to liability. That is the first section of the Wheeling Ordinance, that the State shall assume a just proportion.

Mr. Carlisle: How can this Ordinance be taken as a valid admission if the Ordinance is not valid?

Mr. Conrad: Because a man may make an admission in a deed that is fraudulent as to grantee and as to creditors. There is a solemn admission in the recognition of debts.

Mr. Carlisle: It is alleged that the new State included one-third of the territory, and one-third of the population. Now, in the books on international law, I venture to say that the words "territory" and "population" cannot be found anywhere in connection with the adjustment of the debts under such circumstances as exist here. They are not found in any of the quotations you made, Mr. Anderson; they are not found in any of the books I have read. What the authorities say is that, in the absence of an agreement on the subject, all debts shall be apportioned ratably without stating what the basis of apportionment shall be. Of course, each case would depend upon its own circumstances. But all the authorities are that if there is a special agreement, that rule does not apply, and Mr. Hall says, in his work on international law, that the rule does not apply in a case where a state or nation is divided and the old State still remains, or, as he expresses it, when its personality still continues. There, he says,

the new State goes out free from all the old obligations, but he admits it is a sound doctrine when applied to a case where a State or nation is so destroyed that all its parts are separated and the old State disappears, and then its separate parts, which represent the old State, must divide the pre-existing debts among themselves in the proper proportions.

Mr. Conrad: Some of the authorities hold that each party is liable for the entire debt.

Mr. Carlisle: I have seen no such authority.

Mr. Conrad: I ventured to cite them in the brief I have filed.

Mr. Carlisle: Let us see what you have cited. I know what you cited, the case of the division of the Persian Empire.

Mr. Conrad: No, I do not go that far back; I did not think Alexander's generals were called upon to pay any part of the debt, if there was any.

Mr. Carlisle: I think you did, Mr. Conrad. I do not want to make any misstatement, but I am quite sure I saw that in one of the briefs.

Mr. Conrad: I saw that somewhere, but it is not in my brief.

Mr. Carlisle: I think I saw it in your brief, but I may be mistaken. It was certainly in one of the briefs; it may be in the Attorney General's brief. It was a case, where, during Alexander's wars, the Persian Empire was divided, and ceased to exist.

Mr. Anderson: Grotius.

Mr. Carlisle: Yes, you quote from Grotius. There the old State was extinguished entirely, and the new States represented the whole of it, and of course they were responsible for the whole debt; they took the place of the old State.

In conclusion, I repeat the West Virginia constitutional provision cannot be regarded under the decision of this Court, or logically, I think, upon the historical facts connected with this subject, as constituting the entire compact. It was simply an acceptance of Virginia's proposition, with the addition to it that the Legislature of West Virginia should ascertain the debt and provide for its settlement, in the method prescribed by the Ordinance. The State of Virginia, in her constitution, had the same provision; that is, she had a provision that her legislature should provide for the settlement of the debt, but that did not take the place of the Ordinance, which, as we insist, is still in full force and must govern in making the settlement.

MEMORANDUM FOR DEFENDANT.

Showing State Not Chargeable with Interest.

It will be observed that in paragraph II of this draft of a decree the master is not only directed to ascertain the amount and proportion of said indebtedness, but "of the interest accrued thereon."

Counsel for the defendant object further to this paragraph because there is no legal ground for directing the ascertainment of interest. The State of West Virginia has not obligated herself in any manner for the payment of interest. The principal is well settled that a State is not liable to pay interest unless it has expressly contracted to do so.

In support of this proposition this Court, in United States *vs.* North Carolina, 136 U. S., 211, said:

> "A State is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of its legislature, or by lawful contract of its executive officers."

Following the principle thus announced by this Court, many of the State courts have laid down in distinct terms the same proposition. Among the decisions of these courts are the following:

Sawyer *vs.* Colgan, 102 Cal., 293; 36 Pac., 583.
Hawkins *vs.* Mitchell, 34 Fla., 421, 422; 16 So., 316.
Molineux *vs.* State, 109 Cal., 380; 50 Am. St. Rep., 50; 42 Pac., 34.
Flint, etc., R. R. *vs.* Board of State Auditors, 102 Mich., 502; 60 N. W., 971.
Carr *vs.* State, 127 Ind., 204; 22 Am. St. Rep., 624.

In Carr *vs.* State, 127 Ind., 204, 22 Am. St. Rep., 624, this principle is announced as one of the points decided:

> "A sovereign State is not bound to pay interest unless it has contracted to do so."

The court, in the course of its opinion in this case, says:

> "In the case of State *ex rel. vs.* Board, etc., 36 Ohio St, 409, it was held that in the absence of a promise to pay interest none can be recovered against a State, and that a State is not within the provisions of a general statute providing for the payment of interest in cases where money is wrongfully withheld from a creditor. The court put its decision upon the familiar rule that a sovereign is not bound by the words of a statute unless it is expressly named, and in support of its conclusion cited these cases: Trustee,

etc., *vs.* Campbell, 16 Ohio St., 11; Joselyn *vs.* Stone, 28 Miss., 753; State *vs.* Kinne, 41 N. H., 238; Attorney General *vs.* Cape Fear, etc., Co., 2 Ired. Eq., 444; Auditorial Board *vs.* Arles, 15 Tex., 72; State *vs.* Thompson, 10 Ark., 61. In Wightman *vs.* United States, 23 Ct. of Cl., 144, the general rule was stated, and it was said: 'Hence there is no law fixing a rate of interest for all classes of the public debt, and a long-established public policy has been to pay interest only where it is a subject of express agreement or of positive enactment.' It was held in the case of Tillson *vs.* United States, 100 U. S., 43, that a statute referring a claim did not authorize a recovery of interest, in the absence of words expressly providing for the payment of interest. It is impossible to escape the effect of these authorities, and considerations may be readily suggested which increase their force. One is, that there is no right to coerce the payment of a debt due from a sovereign, and, of course, a sovereign may impose limitations upon its liability."

In a note appended to this case as reported in 22 American State Reports, at page 448, we find the following:

"With respect to the obligation of the State to pay interest upon its indebtedness, the principal case is well established by other authorities upon the same subject. In nearly and perhaps all of the States there are statutory provisions providing that moneys, after they become due, shall, in the absence of express contract to the contrary, bear the rate of interest specified in such statutes; but, acting under the old common-law rule that the king or sovereign is not bound by a statute unless expressly named therein, it has been uniformly held that these statutory provisions respecting interest did not apply to any obligation either of the State or of the national government, and therefore that interest is never allowed upon such obligations, in the absence of some special statute clearly manifesting the intention of the sovereign to be bound for the payment of interest upon the particular obligation or class of obligations under consideration (United States *vs.* North Carolina, 136 U. S., 211; State *vs.* Thompson, 10 Ark., 61; State *vs.* Board of Public Works, 36 Ohio St., 409; State *vs.* Bank of Washington, 18 Ark., 554; United States *vs.* Sherman, 98 U. S., 565; United States *vs.* Bayard, 127 U. S., 251; Tillson *vs.* United States, 100 U. S., 43; *In re* Gosman, 17 Ch. Div., 771; Attorney General *vs.* Cape Fear N. Co., 2 Ired. Eq., 444; Bledsoe *vs.* State, 64 N. C., 392; Trustee *vs.* Campbell, 16 Ohio St., 11; Joselyn *vs.* Stone, 28 Miss., 753; Wightman *vs.* United States, 23 Ct. of Cls., 144)."

Supreme Court of the United States.

OCTOBER TERM, 1907.

Argument of Hon. William A. Anderson,

Attorney General of Virginia,
for the Complainant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA, *Defendant*.

In Equity.—Original No. 4.

ARGUMENT OF HON. WILLIAM A. ANDERSON,

Attorney General of Virginia, for the Complainant.

Mr. Anderson: If your Honors please, a large portion of the time of the distinguished counsel who last spoke in this case (Mr. Carlisle) was consumed in discussing questions which have little or nothing to do with the merits of the cause. The questions which he discussed at great length related to the occasion of the delay in bringing about a settlement between the two States. The proposition he attempted to maintain was that West Virginia was no more culpable than Virginia for this delay. I cannot see that that has any bearing, directly or indirectly, upon the important issues of this case; but if I were disposed to go into a discussion of that matter, I think I could satisfy your Honors, and I think a careful examination of the record will convince your Honors, that the gentleman is mistaken in his position.

He says that the reason that West Virginia has taken no steps towards the settlement of this debt since 1871 is because of Virginia's attitude to the question. That statement is in conflict entirely with the allegations of his answer. At pages 14 and 15 of the defendant's answer the defendant makes the following averment:

"The State of West Virginia has never receded from the

provisions contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made."

If your Honors please, as stated in the answer, the reason why there has been no settlement of this debt has been that West Virginia, or one house of her General Assembly, appointed a committee of its own body to examine into this question, and that committee (in 1873) made a report, ostensibly upon the basis of the Wheeling Ordinance, which ascertained, not only that the State of West Virginia did not owe anything on account of the debt, but that the State of Virginia owed the State of West Virginia over $500,000; and because Virginia would not agree to a settlement upon that basis, West Virginia has refused to negotiate with her. I leave that proposition where the answer of the defendant has placed it.

Now, if your Honors please, it will be my effort, as rapidly and concisely as possible to direct the attention of the Court to the essential issues now presented to it upon this motion for a decree for an account. In the first place, I would ask your Honors to carry in your minds what is the basic principle of our suit, what is the controlling ground upon which the plaintiff, throughout the litigation, through the pleadings and in the argument, has invoked the jurisdiction of this Court. That is, that having failed, after patient and exhaustive efforts to bring about an amicable settlement with West Virginia, Virginia has been constrained, for her own protection, as well as in the discharge of her duty to the common creditors of Virginia and West Virginia, to resort to this Court for relief; and what is the relief that we ask? It is that West Virginia shall be required to account equitably for her just proportion of the common debt. It is an equitable claim that we are asserting here; it is West Virginia's equitable liability which we insist is the measure of her responsibility. I know that it will be the province of this Court to reach a result in this case in

accordance with justice and equity, and that neither technicalities nor quibbles will be allowed to deter it from coming to a conclusion, if it is possible to reach one, which is in accordance with the principles of equity.

It may be that counsel, in the argument of the case, have been in some instances, perhaps, inaccurate in stating the conclusions of law which they have deduced from the facts in the record; but if that be so, the Court will not hold them or their clients bound by an erroneous deduction of that kind.

The distinguished counsel who have spoken for West Virginia have repeatedly said that I, as the law officer of Virginia, have conceded the validity of the Wheeling Ordinance. That is true. I cannot be uncandid with this Court or with the learned counsel. I have said more than once, and I frankly say now, that under the averments of our bill and upon the indisputable facts of the case, I am constrained to the position that the Wheeling Ordinance, viewed from the standpoint of today, was a valid enactment.

Mr. Justice Peckham: Was a valid enactment?

Mr. Anderson: The Wheeling Ordinance was a valid enactment. The Wheeling Ordinance was adopted by a convention, sometimes called a "mass meeting," undoubtedly a revolutionary body, but a body which, though at the time that it sat and enacted this Ordinance, if the issue could have been made up then, must have been held to have been an illegal convention, a body which was, in fact, so far as it could be regarded at that time as a convention of Virginia, a mere fiction. But that body and its acts have been recognized by every department of the Federal Government, directly or indirectly, and it has been recognized by the government of Virginia.

Mr. Justice Harlan: What body?

Mr. Anderson: The Wheeling convention that framed this Ordinance; that convention or its acts have been recognized.

Mr. Justice Harlan: How did the United States ever recognize that mass meeting.

Mr. Anderson: The United States recognized the acts of the Legislature of the restored government of Virginia, which depended for its existence and its organization upon the acts of the Wheeling convention. There could have been no legal legislature of the restored government of Virginia unless there was a legal Wheeling convention to create it. It was a legal fiction, if your Honors please, but by this post-natal recognition, what was a mere

fiction, has become a legal fiction, possessing all the force, if not all the virtue, of a legal verity. But while this is true, I have never committed my mind to the proposition that the Wheeling Ordinance taken by itself, controlled this situation. Disjointed remarks having no reference to this main question precisely, which have been made in the argument of this case, and in the briefs which have been filed, could not be construed into an unqualified admission as to the meaning and effect of the Wheeling Ordinance. Speaking for myself I can say that I have never acknowledged or believed that the Wheeling Ordinance, taken by itself, prescribed the terms upon which the settlement should be made between the two States.

There has been some divergence of views between the distinguished counsel who appeared on behalf of some of the ultimate beneficiaries of any recovery here, and myself, a divergence of views which it seemed to be impossible to reconcile, but the questions propounded by his Honor, Mr. Justice White, on yesterday, which went to the very heart of this case, confirm me in the view that there is no necessary antagonism between the conclusions and results of Major Conrad's main argument as presented yesterday in this case, and the views which I have maintained and which I shall endeavor to present to this Court.

The position taken by Virginia in reference to the Wheeling Ordinance and its effect will be found stated in the complainant's Bill, paragraph 10, (page 6 of Attorney General May's compilation of the record in this case), and in paragraph XVIII of the Bill, (page 11 of Attorney General May's compilation), in both of which the Ordinance is set out and relied upon as one of the grounds of recovery but not the only one; and in paragraph X of the Bill, in which Section 8 of Article 8 of the first West Virginia Constitution, and in paragraphs VIII and IX of the Bill, in which the Acts of the Wheeling Legislature of February 3rd and 4th, 1863, are alleged and relied upon.

The fallacy of the position of my distinguished friends is that they have ascribed to me the concession, which I have never made, that the Wheeling Ordinance prescribes the only ground upon which the settlement can be made. If they had read my opening brief, filed upon this very motion, they would have found their mistake; if they had read the bill in this case carefully, and the opening brief of Major Conrad and myself, filed upon the demurrer, they would have found their mistake; and if they had read my reply brief filed in this case in the last few days, they

would have found they were in error. It is not true, as I view the law and the facts of this case, that the Wheeling Ordinance dominates the situation as to the basis upon which the settlement shall be made, unalterably and irrevocably. As the counsel for plaintiffs have always claimed, the Wheeling Ordinance, section 8 of article 8 of the Constitution of West Virginia, and the act of the Wheeling Legislature of February 3, 1863, must be taken together, must be read together, as prescribing the terms upon which the settlement shall be made.

Mr. Justice Harlan: If they are to be read together, how do you get out of the case the purpose of this settlement, to ascertain the rights of the parties, those words "to be ascertained," and so forth, in the Ordinance?

Mr. Anderson: If your Honor pleases, I think that that question can be answered. The considerations that I was about to present, I think, furnish an answer to it, and a conclusive answer.

I said "read together, taken together." When two acts passed by the same legislative body, or by different legislative bodies having jurisdiction of the same subject, are enacted with reference to that subject, and there is a conflict between them, I would like my learned friend (Mr. Carlisle) to inform me which of those acts would prevail? As legislative enactments they are all valid; none of them could be impeached. But the last is inconsistent with the first, or the first is in conflict with the last. In that condition of things I state it as an elementary, incontrovertible proposition of the law as to the construction of statutes, that the last statute would prevail and supersede the first.

Now, if your Honors please, what was the dominant purpose according to its own expressed language, of the Wheeling Ordinance? The language of that Ordinance is, that the new State shall take upon itself "a just proportion of the debt of the Commonwealth of Virginia existing prior to January 1, 1861." That is the controlling mandate of that enactment. The subsequent and subordinate provisions and details of that enactment must be construed by a court of equity so as to lead to the result which was the purpose of the enactment.

But suppose I am mistaken in that—and I hardly think that I can be—here was this organic law of the Commonwealth of Virginia.

Mr. Justice White: What do you mean by "this organic law of the Commonwealth of Virginia?"

Mr. Anderson: I mean an ordinance of a convention that purported to be a convention of the sovereign people of Virginia.

Mr. Justice White: Oh, yes; I beg your pardon.

Mr. Anderson: It did not have the weight of a constitution; it did not tie the hands of the Legislature of Virginia, whose powers were only limited by the Constitution of the Commonwealth of Virginia at that time, and which, according to the decisions of the Supreme Court of Appeals of Virginia, repeatedly enunciated, was supreme and omnipotent, except where its powers were limited by some express provision of the Federal or State Constitution, or by necessary implication from some express provision of those Constitutions.

And so matters stood in that way on and after the 20th of August, 1861. On the 26th of November, 1861, a convention convened pursuant to that Ordinance, in the City of Wheeling, for the purpose of framing a Constitution for the State of West Virginia. Acting for West Virginia, that convention could undoubtedly when its acts should have been sanctioned, by the vote of the people of the State of West Virginia, with the consent of Virginia, have altered the Wheeling Ordinance. I am indebted to the pertinent inquiries of the Honorable Judge, Mr. Justice White, for the suggestion which confirms this view.

They could alter the Wheeling Ordinance, and they did alter it in a material particular.

Mr. Carlisle: You mean to say that they could do it after West Virginia had accepted the Constitution.

Mr. Anderson: No, I say if they chose to do it in that Constitution, and the people of West Virginia at the polls sanctioned that Constitution, and the Legislature of Virginia sanctioned it and gave their consent that the new State should come into the Union under its provisions, they could have wiped out the Wheeling Ordinance and abrogated it, or they could have amended it, and they did amend it. They constituted the supreme law making power of both States, and to their concurrent act was added the sanction of the Congress of the United States, without which the Constitution, the creation of the new State, and the compact arising from the Constitution and the consent given by Virginia to the admission of the new State to Statehood, would have been nullities, or abortions.

Is there any fallacy in that proposition? Is it possible for human ingenuity successfully to attack it?

If I am right, then the Wheeling Ordinance must be taken and read, as this Court has said it should be, in connection with section 8 of article 8 of the Constitution of West Virginia.

We must apply the Wheeling Ordinance, carry it out if it can be done, without conflicting with the provisions of the subsequent enactment.

If the two enactments can be made to stand together, they must be made to stand together; but if there is an irreconcilable or a substantial conflict between them, the first enactment goes down and the last stands; and so, if, when we come to apply the requirements of the Wheeling Ordinance and carry out the scheme of the Wheeling Ordinance, in stating this debt, it shall be found that any such result is reached as was reached by the Senate committee of the General Assembly of West Virginia, in 1873, the Wheeling Ordinance will have been shown to be in conflict with the essential requirements of the 8th section of the 8th article of the West Virginia Constitution which provides that the State of West Virginia shall assume an equitable proportion of the public debt of the Commonwealth of Virginia existing before the first day of January, 1861.

And so here I am glad to discover that my honored friend, Major Conrad, and myself, come together. We differed as to the validity of the Wheeling Ordinance; we do not differ at all as to its legal effect, if it shall, when applied, lead to an unconscionable or inequitable result.

If it should turn out, upon applying the scheme of the Wheeling Ordinance, that only one-tenth of this debt would be assigned to West Virginia, it would be an inequitable result. There is no man who is familiar with the facts of this case, the history of this debt, the relations of West Virginia to it and of Virginia to it, who must not say that any such result would be inequitable, if not iniquitous. If it should be ascertained that one-fifth of the debt was the proper portion of West Virginia, when you apply the scheme of the Wheeling Ordinance, if that one-fifth bears interest, as the original debt bore interest, I am not prepared to say that it would be an inequitable or an unconscionable settlement, or in conflict with the dominant provisions of the Wheeling Ordinance and of section 8 of article 8 of the Constitution. I am very hopeful that some such result will follow a fair and reasonable application of the provisions of the Wheeling Ordinance, because I am firmly convinced that the makers of West Virginia, in framing that Ordinance, builded fairer than they knew.

Mr. Justice Moody: I do not see how your present position is consistent with the amended proposal that you filed for a decree, and I will just point out my difficulty, and then perhaps you can clear it up, because in the original decree you propose that the master should find what would be the equitable amount and the proportion to be paid. Now you propose to strike out that paragraph and substitute a direction to the master to make a finding which is based exactly on the Wheeling Ordinance. How do you reconcile your present position with that amended paper?

Mr. Anderson: I wish merely to offer that amendment for consideration and adoption by the Court, in the event that they shall adopt the Wheeling Ordinance as a basis of stating this account.

Mr. Justice Moody: Then instead of this being a substitute, you propose this as an alternative?

Mr. Anderson: That is a correct statement of my purpose. The caption of that decree is erroneous. It was an error on my part to which I do not wish to be committed, nor desire my client to be committed. I do not ask that that paragraph of the decree shall be substituted for paragraph II of the original draft, but shall be an alternative or additional direction or paragraph; or if it be treated as a substitute, a substitute only in the event that the Court shall decide that the settlement must be made on the basis of the Wheeling Ordinance and the constating enactments.

If my learned and distinguished friend, (Mr. Carlisle), if he will allow me so to style him, will examine the principal brief of counsel for complainant upon this demurrer in this case, at pages 227, 228 and 229 of May's compilation, and will examine my opening brief upon this motion, at pages 5 and 6, and also at pages 7 and 8, and my reply brief on this motion at pages 16, 17 and 18, he will find that the statements of my position there are entirely in accord with the position which I now occupy, and which I am satisfied, with a clearer vision than I ever saw it before, is the correct position to take in this case.

I will now briefly address myself to the terms of that proposed alternative direction to the master, and the residue of my argument will be largely directed to this view of the case.

As has been repeatedly said by counsel for complainant in this case, as was said by myself upon the argument on the demurrer, the Wheeling Ordinance, upon its face certainly prescribes an arbitrary and an inequitable scheme for the settlement of these ac-

counts. After a somewhat exhaustive investigation of the authorities and of the history of this question, I have been unable to find any precedent or authority anywhere that sanctions any such scheme of settlement for ascertaining the liability of two Commonwealths which have been formed out of one original Commonwealth. In the appendix to the reply brief for the complainant I have quoted a large number of those authorities and there are others that I have examined. Not one of them sanctions any such principle as is embodied in the Wheeling Ordinance as a basis of settlement. So that I feel justified in saying that the requirements of that Ordinance are in conflict with the common law of the civilized world, and contrary to all the precedents established by the nations of the earth in dealing with this subject. I say also, without any likelihood of contradiction, that upon its face it is contrary to common right.

As counsel have already shown in the case, more ably than I could possibly do, there is no principle of justice or equity which is satisfied by the terms of the Wheeling Ordinance. If this be true, it goes without further argument that that Ordinance must be strictly construed, so as if possible to give it an equitable effect; that it must be construed liberally as to Virginia, who was not, as a matter of fact, its enactor; that it must be construed strictly against West Virginia, who was to be the beneficiary under it.

Not for that reason only must it be so construed, but because it is contrary to common law and to common right.

I need not cite many of the numerous authorities for that proposition. I will, however, call attention to Brown *vs.* Berry, 3rd Dallas; Shaw *vs.* Railroad Company, 101 U. S., 557; New York *vs.* Wheeler, 48 N. Y., and a large number of other cases cited by Mr. Enlich, at section 127, and referred to in my brief, sustaining this rule.

But we have more conclusive authority than those adjudications. We have repeated decisions of the Supreme Court of Virginia before the formation of West Virginia, and which constituted a part of the body of the laws of West Virginia, and decisions also of the Supreme Court of Appeals of West Virginia to the effect that where a law is contrary to common law, and particularly where a law is contrary to common right, it will be strictly construed so as if possible to give it an effect which will not operate an injustice and a wrong. Those cases are cited on page 14 of my reply brief.

What I claim is that, conceding, for the purpose of argument, that the Wheeling Ordinance can stand, notwithstanding its conflict with section 8 of article 8 of the Constitution of Wset Virginia, that the principle which a court of chancery and a court of conscience will adopt in administering such an Ordinance, is that the enactment will be interpreted and applied so as not to defeat the dominant equitable purpose declared upon its face, *ut res majus valeat quam pereat.*

Mr. Justice Holmes: Suppose I should be of opinion, as you and Mr. Conrad both seem to be, that the Wheeling Ordinance was a swindle in its inception and was gotten up in fraud of the rights of Virginia, and that among other things it put in a provision that was intended to bear down hard upon Virginia, but I now find myself in the position that I am bound to carry out that Ordinance, am I, because of the principles of equity or anything of that sort, to give the words any meaning other than that which I honestly believe they bear? Am I not to construe it as those who intended to put the screws upon you meant to have the thing come out?

Mr. Anderson: No, if your Honor pleases, in that case all I claim is you would have, in construing it and applying it, to give Virginia the benefit of any reasonable doubt; that is what we ask.

But in that connection, and in farther response to the suggestion of his Honor, Judge Holmes, I think it perhaps proper to emphasize more than I have done the position that I have taken, and which seems to me to be unanswerable, that if this Ordinance does not result, if you apply the scheme which it prescribes, in assigning to West Virginia an equitable proportion of this debt, that then the settlement must be made under section 8 of article 8 of the Constitution, so as to satisfy the paramount requirements of that section. My friends admit that that is a compact in one part of their brief, for one purpose, but deny that it is a compact for another purpose. They are guilty of the same inconsistency, if I understand their position, which they inaccurately ascribe to us.

On page 10 of their brief, at the bottom of the page, after quoting Mr. Justice Field on the subject of the proper apportionment of a debt between two sovereignties formed out of one divided Commonwealth, it is said:

> "It is apparent that Mr. Justice Field, in the clause last above quoted, referred to the special agreement."

What special agreement? The agreement which is stated in their brief as being, "evidenced by section 9 of the Ordinance and the first clause of section 8 of Article VIII, of the West Virginia Constitution."

If those two enactments constituted a compact or a special agreement for one purpose, I would like to know by what process of reasoning they would not operate to create a contractual relation for all purposes. And I would like still more particularly to know, how they can show that, if that concurrent action would constitute a contract, the fact that the Legislature of Virginia gave its consent by the act of May 13, 1862, to the formation of the State of West Virginia under the provisions of that first West Virginia Constitution, did not constitute a compact.

That transaction is defined still farther as a special agreement on page 11 of their brief; and my distinguished friends say on page 8 of their brief, and I agree with them in the proposition, that where a State has once committed itself to an agreement of this kind, particularly where it has received the approval and consent of Congress, as this compact has, it cannot withdraw from it afterwards by repealing the Constitution, or the enactment by which that contract was created.

Now, I pass on rapidly to discuss other important questions, the first of which will arise and have to be decided by this Court no matter which basis of settlement is adopted, whether we are constrained to make this settlement under the Wheeling Ordinance, or under the Wheeling Ordinance and the constating enactments; or to make it under section 8 of article 8 of the Constitution.

That question is—and it is one of the most important this Court will have to adjudicate in this cause—whether West Virginia is bound to pay interest, and if so, from what time, and until what time she will be required, as a matter of equity and justice, to pay interest? This interest question is necessarily an exceedingly important one, because where a debtor has been in default and refused to carry out and perform his obligations for forty years, the interest necessarily amounts to a great deal more than the principal. It is, therefore, a most important question in this case. And in this connection, without dilating upon it at all, because my colleague has already discussed it fully and cited the authorities which are given in our reply brief, we must remember that this was a Virginia contract, and that the rule in Virginia in regard to the liability of a debtor to pay interest is different from

the common law rule, and different from the rule prevailing in North Carolina. In North Carolina, I understand the rule to be, as was stated by this Court in U. S. *vs.* North Carolina, 136 U. S., 211, that interest was allowed in that State, as it was at common law, as damages for the detention of money. In Virginia it is allowed as an inherent and essential incident of the contract, and as due upon the principles of natural justice and equity. That principle has been repeatedly enunciated in Virginia as shown by the authorities cited in our reply brief, and there is nowhere any contrary ruling.

Mr. Justice White: Whether that be true or not true, how does that question arise? That is a mere computation of interest. The matter that will go to the master is an examination into the facts. The matter of the interest is a mere arithmetical calculation if the amount should be found to be due, and what is the necessity of us now considering the matter of interest at all?

Mr. Anderson: It is necessary to find out how much is due at any given time.

Mr. Justice White: The question of calculating the interest, how much is due, is a mere arithmetical calculation, and it does not take any great service of the master to do that. Anybody can calculate that.

Mr. Anderson: That can be done when the amount is ascertained, but the question has been raised, and it is important that it shall be decided.

Mr. Justice White: That is raised because you asked a decree concerning the interest. What I am asking you is, what in the world has the question as to when the interest shall begin to run on an amount to be found due to do with the question of sending this to a master? That is a matter that can be calculated by a school boy, if the principal is fixed and the rate of interest is fixed.

Mr. Anderson: That is true, if your Honor pleases, but our friends on the other side deny that any interest is due, and we want the principle settled.

Mr. Justice McKenna: If you claimed it as damages, you would not be entitled to it as damages until the decree was passed.

Mr. Anderson: We claim interest here as a part of the contract. We claim, first, that it is an inherent incident, and is essential incident, to any contract under the laws of Virginia, under

which interest is due not as damages for the detention of money, but as an obligation of justice and good conscience.

Mr. Justice Holmes: Are you sure this contract is a Virginia contract, a contract by Virginia with another State?

Mr. Anderson: I think it is a Virginia contract. At the time this contract was written, the new State had not been created. It became a contract with the creation of the new State.

Mr. Justice Holmes: Was that not merely an offer?

Mr. Anderson: If your Honors please, the law of West Virginia is identical with the law of Virginia on that subject, as settled by the cases which I have cited in the reply brief.

Mr. Justice White: You submit a lot of propositions here about what the master should do, what he should find, which involves some matter, of course, of serious consideration. In order to arrive at the proper amount due, your master has nothing to do with what interest it shall bear or when it shall bear interest. That is a mere matter that can be fixed.

Mr. Anderson: I will not follow that question further. My colleague has argued it fully, and it is very fully discussed in the brief. If the Court does not decide the question now, it will be reserved for future consideration and future argument; but I had hoped it would be decided now.

Mr. Chief Justice Fuller: The question is whether if we do not decide it now, we shall be privileged to listen to another argument on the question of interest, so can it not be decided now?

Mr. Anderson: I cannot conceive, if your Honor pleases, any facts that can ever be put into this record that can throw any light on that question that are not in the record now. It can be decided now as well as it can ever be decided.

Mr. Chief Justice Fuller: I do not insist upon it.

Mr. Justice Holmes: I do not wish to have it assumed that I may not be prepared to deal with that question, as well as others, at the present moment; I have not made up my mind.

Mr. Anderson: I will only say that under its language the Wheeling Ordinance requires West Virginia, the new State, to take upon itself, what? A particular sum of money, as the distinguished counsel (Mr. Spooner) has argued, a lump sum of money, as he argues? No, but to take upon itself a proposition, "a just proportion," of the debt of the Commonwealth of Virginia.

Mr. Justice Harlan: As of what date?

Mr. Anderson: As of the 31st of December, 1860.

Mr. Justice Harlan: Then you ask your interest from that date?

Mr. Anderson: From that date.

Mr. Justice Harlan: That is in effect, then, saying that the debt of that State includes that interest?

Mr. Anderson: Includes that interest. It certainly includes interest from the time the stipulation went into effect, and I think it should be construed to relate back to the arbitrary date fixed by both Virginia and West Virginia as of which this settlement should be made. To do justice they must do that; but if interest is to be charged only from the date when West Virginia became a State, June 20, 1863, that would be to leave out the interest for only about two years. But by both the Ordinance and the first West Virginia Constitution, January 1, 1861, was fixed as the date as of which the settlement was to be made. Section 8 of article 8 of the West Virginia Constitution did not require the new State to pay any cash sum to Virginia, and the learned counsel (Mr. Spooner) is mistaken in his quotation and in his interpretation of that section. It required the new State to assume an equitable proportion of that debt. He says there is no reference to the debt; there is a reference to the debt, but no reference to any sum of money. The only reference is to the debt, and the only assumption which the new State was required to take upon its shoulders was a proportion of the debt of the old State; and that debt was an interest bearing debt. That section of the Constitution made it the duty of the government of West Vrginia to provide for the payment of the accruing interest and to provide for the payment of the principal within thirty-four years, with this significant circumstance, which I will take only a moment to mention, that it was provided in that section that the new State should create a sinking fund which would do this thing. The terms in which that sinking fund is defined are identical with those prescribed in the then Constitution of Virginia in reference to the creation of a sinking fund which that Constitution required should be created for the purpose of extinguishing the debt of the Commonwealth. That sinking fund provided for the accruing interest and the payment of the principal within thirty-four years.

Mr. Carlisle: There is no controversy between us about the interest after the debt is ascertained.

Mr. Anderson: Now, if your Honors please, there is another

important point, to which I have deemed it my duty to invite the attention of the Court, and which will have to be decided now, which cannot be postponed, and it seems to me that there is enough in the record to enable the Court to decide now, and that is, if this account is taken under the Wheeling Ordinance, there must also be included in the debit charges against West Virginia, the value of all property which that State has received under the act of February 3, 1863. Our friends on the other side say that West Virginia is not bound by that act, because the consent of Virginia had already been given to her creation into a State.

Mr. Justice Holmes: They also say they did not receive anything under it.

Mr. Anderson: That is a question of fact, if your Honor pleases. We will be prepared to show they received a great deal. They admit that they received some bank stock.

Mr. Justice Holmes: I should like to call your attention in that connection, because I do not think it is mentioned, to a portion of article 9 of the Wheeling Ordinance:

> "No grants of lands or land warrants, issued by the proposed State, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last."

This language seems to assume on the face of it that all the public land that is in the proposed new State will fall to the new State and be the subject of land warrants from the moment that the new State comes into existence.

Mr. Anderson: No sir, I think not; I hardly think that is a necessary inference, particularly as there is this provision in the same Ordinance, section 11:

> "The government of the State of Virginia, as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States, and nothing in this Ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the reorganized State government in any county, which shall not be included within the proposed State."

In other words, the State reserved its plenary authority and power over all the property and the people within the proposed

State of West Virginia until the new State should be actually admitted into the Union, and under that reservation, if it had been necessary to make any such reservation, it was competent for the Legislature of Virginia to pass this Act of February 3d, 1863. If your Honors please, besides the other sanctions mentioned in the reply brief for Virginia, this Act has additional and conclusive sanction; it has been accepted by the Legislature of West Virginia. The property has been accepted under this Act, and the Act has been recognized by West Virginia. The Act of February 3d, 1863, turned over a great variety of properties to the new State, all taxes due to the old Commonwealth of Virginia, running back to 1831, or to a very remote period—I believe taxes prior to 1831 had been then released; all the delinquent lands were transferred to the new State; all recognizances and judgments; and all property, of whatever character, belonging to Virginiia, which had its situs in the new State, was transferred by the Act to the new State. Now, on the 26th day of February, 1864, at one of the first sessions of the Legislature of West Virginia after the creation of the new State, the Act was passed, a copy of which has been filed in the record, and it goes on to prescribe the mode in which, and the officers by whom, these claims which have been transferred to the State of West Virginia by the State of Virginia shall be collected by the government of West Virginia. That was undoubtedly a recognition of this Act by the government of West Virginia and the acceptance of its provisions, which bind West Virginia.

Mr. Justice White: Did that Act contain a provision that West Virginia should pay for that property?

Mr. Anderson: The Act of February 3d, which transferred all of this property, provided that West Virginia should pay for it, "should duly account for the same in the settlement to be hereafter made" with Virginia,—and there was no settlement to be made except the settlement of the debt.

Mr. Justice Holmes: Look at that very Act. The language is: "has become the property or has been transferred;" so I should say that very phrase left it open.

Mr. Anderson: If your Honor pleases, here is a clear and a positive sanction by West Virginia of that grant. There has been no property transferred to West Virginia except that transferred by that Act of February 3d, 1863. West Virginia's acceptance of a portion of the property granted thereby, was an acceptance of the whole Act.

A great deal of that property would, under no principle of public law, have gone to West Virginia. It is that property, as well as property that, under principles of public law, where there has been no convention between the two States, no treaty or agreement on the subject, which was transferred to, and accepted by, West Virginia under the provisions of that Act.

I now refer to another and an express sanction by West Virginia of the Act of February 3d, 1863. It is the statute found on page 41 of my reply brief. It is the 8th section of the Act approved December 20th, 1875, Acts of the Legislature of West Virginia, session of 1875, page 126, which is as follows:

> "The Auditor shall institute all the necessary and appropriate measures for the collection of all claims for taxes and other demands transferred by the Commonwealth of Virginia to this State by an act of the General Assembly of said Commonwealth entitled 'an act transferring to the proposed State of West Virginia, when the same shall become one of the United States, all the State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments in counties embraced within the boundaries of the proposed State aforesaid;' passed on the third day of February, 1863."

There is here a direct reference to, and acceptance of, the provisions of the Act of February 3d, 1863, which commits West Virginia irrevocably to the terms of that Act.

But, referring to the inquiry made by His Honor, Mr. Justice Holmes, I wish to say farther that under the Wheeling Ordinance West Virginia would not take any of this property, not even such of it as she would take according to the authorities on international and public law, if there had been no agreement between the two States. Here there was an elaborate and minute specification of all the rights of the new State, and no disposition is made of the property the title to which was in the Commonwealth when that Ordinance was passed in August, 1861, and which remained in the Commonwealth after its enactment. The title to that property could not be taken out of the Commonwealth without adding a new term to that Ordinance and to any contract or campact which could be implied from it; and no new term could be added to it without the consent of Virginia. The men who framed that Ordinance recognized that proposition of law to be true. The same men were, to a large extent, members of the Legislature of 1863, which passed the Act which transferred to the new State, when it should be admitted into the Union, all the property within the

limits of West Virginia, the title and ownership of which had been vested in the Commonwealth anterior to the admission of West Virginia, and other property therein mentioned, but upon the terms that the new State should account for it in the settlement to be made between the States.

And so I say the parties themselves have made an agreement upon terms different from those which would have resulted if there had been no convention or treaty or compact between them.

There is only one other matter to which I deem it proper to ask your Honors' attention in this connection, and that is to the principles upon which an apportionment shall be made of the ordinary expenses of the State government. Of course, we cannot determined in advance what you will regard as ordinary expenses. It will be difficult to define them. I suppose they will include all the regular payments, whether annual or otherwise, all the regular and ordinary disbursements of the Government,—

Mr. Carlisle: To conduct the Government.

Mr. Anderson: Or to meet its obligations.

Mr. Carlisle: Oh, no.

Mr. Anderson: Interest on its debt. One of the most regular and ordinary expenses of the Government of Virginia was interest on its debt, and unless that shall be included as an item, great injustice will be done to the Commonwealth, and it will be impossible that there should be any equitable result without it.

But how shall these ordinary expenditures be apportioned? That is a matter which can be passed upon, perhaps, intelligently and satisfactorily by the Court from the data already in the case, or from the facts that are conceded by counsel.

The learned counsel for the defendant say it ought to be apportioned on the basis of aggregate population. Why should the slaves be included? They constituted no part of the body politic; they had nothing to do with the making of the debt; the debt was made exclusively by the white population. The slaves owed no part of the debt. Indeed, they were taxed as property, all of the slaves, except those under twelve years of age, who were regarded as being a burden rather than an advantage to their masters.

Mr. Carlisle: That is, the masters were taxed.

Mr. Anderson: The masters were taxed as upon other property. They were property. They were not persons under the then law, not citizens under the laws of the United States and of Virginia.

The debt was made exclusively by the white population and for its benefit; and the citizenship of the State, the white population, were alone looked to for the payment of the debt. Under these circumstances it seems to me to be just and equitable that the proportion should be upon the basis of the aggregate population after deducting slaves; not only for the reason just cited, but because the slaves added very little to the cost of administering the government. They were policed by their masters upon their plantations. They were regulated by their masters. The records of crime will show that the percentage of crimes among them was insignificant as compared to what it has been among the free population of the country after the negroes were emancipated.

So, upon all these considerations, it will be just and right that the proportion should be made upon the basis of the white population, or, if there is a doubt about that, the benefit of the doubt should be given to Virginia.

I find that I have exceeded the time which the Court has been kind enough to allow me. I beg leave to say one thing more, and that in response to statements made in the argument of the learned counsel for West Virginia. This suit was brought against West Virginia in no spirit of revenge. It was brought in sorrow rather than anger, and not with any desire or purpose of injuring or punishing West Virginia. We do not want West Virginia to be "punished" for anything she has done; neither do we wish the Commonwealth of Virginia or the common creditors to be punished; but what we desire is that this case shall be decided and that the proportion of this debt to be borne by the new State shall be ascertained upon the same principles of justice and equity, which would apply to the apportionment of a common debt between joint owners of property who, under similar circumstances and similar covenants, had divided their patrimony between them.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Decree Referring the Cause to a Master.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

In Equity.—Original, No. 4.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

DECREE REFERRING THE CAUSE TO A MASTER.

This cause coming on this day to be heard upon the complainant's bill and the exhibits filed therewith, the answer of the defendant, with the exhibits filed therewith, and the general replication filed by the complainant thereto, was argued by counsel. On consideration whereof it is adjudged, ordered, and decreed that this cause be referred to , who is hereby appointed a special master herein, who, after giving not less than ten days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will without delay ascertain and report to the court:

I.

The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

What amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to and be now paid by the State of West Virginia.

III.

He will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court.

It is further adjudged, ordered, and decreed as follows:

(1) To the end that full and complete information may be afforded the master as to all matters involved in the inquiries with which he is charged by this decree, the Commonwealth of Virginia and the State of West Virginia shall each of them respectively produce before the master, or give him access to, all such records, books, papers, and public documents as may be in their possession or under their control and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to visit the capitals of Virginia and West Virginia, and to make or cause to be made such examinations as he may deem desirable of the books of account, documents, and public records of either State relating to the inquiries he is directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All published records published by authority of the Commonwealth of Virginia prior to the creation of the State of West Virginia and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the partition of her territory which, in the judgment of the master, may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master. The public acts and records of the two States since the creation of the State of West Virginia shall be evidence if pertinent and duly authenticated; but all such testimony tendered by either party shall be subject to proper legal exception as to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

(2) The master is authorized and empowered to employ such accountants, stenographers, or other clerical assistance as he may find it desirable to employ, and to secure such rooms or offices as he may require, in order to the prompt and efficient execution of

this order of reference, and to agree with such accountants and stenographers, typewriters, and the owner of such room or rooms for such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

(3) The complainant will cause the sum of three thousand dollars to be deposited with the marshal of this court to the credit of this cause, on account of the costs and expenses of executing this decree and of this suit, and the complainant will cause such farther sums as may be necessary to defray the costs and expenses of executing this decree to be from time to time in like manner deposited with said marshal. In the event that the defendant shall desire any special statement or accounts to be made, she shall in like manner, before the taking of any such account or the making of such special statement, cause the sum of dollars to be deposited with the marshal.

And the master is authorized from time to time to draw upon the funds so deposited by Virginia for the compensation of the accountants and other clerical assistants whom he may employ, and for any other costs or expenses, including stationery, printing, and room rent, which it may in his judgment be necessary to be incurred in promptly and efficiently executing this order of reference or making up any special statement or accounts asked for by the plaintiff, and the same will be charged up as part of the complainant's costs; and he will draw upon the fund deposited by the defendant for any costs which may be incurred in making up any special statement or accounts which may be desired by the defendant to be specially stated, which drafts, accompanied by proper vouchers, the marshal of this court will pay, and the same will be charged up as part of the defendant's costs in the cause.

And the said marshal is allowed to have and retain a commission of five per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

IV.

The first notice of the time and place fixed by the master for beginning the taking of the accounts directed by this decree shall be given at least thirty days before the date fixed by him there-

for, provided that the date so fixed by the master for beginning the taking of said accounts shall not be a day earlier than February 20, 1907. The master may adjourn his sittings from time to time and place to place without notice to the parties. He will cause to be kept, in a minute book to be provided for the purpose, a journal or minutes of his sittings in the execution of this decree, showing the counsel present, if any, any adjournments which may be taken by him from time to time or place to place, and any other matters which the master may deem it proper to mention therein, which minute book or journal he will return with his report.

V.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys-General of the respective States.

RICHMOND, VIRGINIA, *December* 7, 1907.

To Hon. CLARKE W. MAY,

Attorney-General of West Virginia:

Please take notice that on the meeting of the court on Tuesday, the seventeenth instant, we will move the Supreme Court of the United States to enter in the above-entitled cause the decree of which the above is a copy.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Motion to Modify Decree of Reference.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant,*

against

WEST VIRGINIA, *Defendant.*

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

> "5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

CLARKE W. MAY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Brief of Defendant in Support of Motion to Modify Decree of Reference.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA,

vs.

WEST VIRGINIA.

BRIEF OF DEFENDANT IN SUPPORT OF MOTION TO MODIFY DECREE OF REFERENCE.

Paragraph 2 of the decree of reference entered herein on the 4th day of May, 1908, directed the special master to ascertain—

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately."

As a substitute for this the defendant proposes the following:

> "2. The *territorial area* and *assessed valuation* of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately *stated, including in the latter State the counties of Berkeley and Jefferson.*"

We respectfully submit that unless the official assessments of the territory and slaves in both sections of the State are made the basis of the valuation of the master, it will be impossible for him to comply with this part of the decree in a manner satisfactory to the court or the parties. Forty-five years have elapsed since the date fixed in the decree for the valuations, and it is scarcely possible that witnesses can now be produced whose testimony upon the subject will be conclusive or satisfactory. Moreover, the introduction of parol

evidence to prove values as they existed forty-five years ago, in a State consisting of more than 60,000 square miles of territory and containing many thousands of slaves, would necessarily prolong the investigation to an unreasonable extent and subject the litigants to a very large and, we think, useless expense. At best, the witnesses could only state their opinions, and upon such a subject they would differ so widely that it would not be possible to reconcile them so as to reach a satisfactory conclusion. The decree provides:

> "All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency."

The authentic official evidence thus provided for in the decree would seem to be sufficient to secure a reasonable degree of accuracy in the valuations ordered to be ascertained by the master without encumbering the record and protracting the investigation by the introduction of unreliable opinions, which must, under the circumstances, be mere guesses.

The assessments are parts of the public records of the State and constituted the basis of taxation in both sections, and their accuracy ought not be impeached at this late day by the mere opinions of witnesses based upon their recollections of the situation as it then existed. These opinions as to the value of the territory of West Virginia would be largely influenced by the developments of her mineral and other resources and the internal improvements made in that State since 1863, and the testimony would be quite different from what it would have been if it had been taken at that time. It was then known, as is alleged in the bill, and was known when Virginia began to create the debt, that these resources existed, and it is to be presumed that the officials in assessing the value of the land took them into consideration. Most of the land was not arable and was valuable mainly, if not entirely, because of the forests and minerals. It would be manifestly unfair to West Virginia to receive as evidence, for the purpose of increasing the valuations, the mere opinions of

witnesses as to the values of gas, coal, iron, and timber separately from the land in which the minerals were deposited or on which the timber was grown, and then add that value to the assessment which already included them. It is stated in the brief filed for Virginia on this motion that these minerals and other resources were not included in the assessments "as distinct subjects of valuation;" but it is said "their presence was considered in estimating the value of land in transactions between vendor and vendee," and that the property was assessed at two-thirds its value. That would be, we suppose, at two-thirds of its market value, including, of course, the minerals and other resources. The same rule of assessment prevailed in both sections of the State, and therefore the relative proportions which the value of property in one section bore to the value in the other would be precisely the same as if it had been assessed at its full market value.

If the assessments are not to govern, what is to be the test value? It would be impracticable to prove the market value of the land and slaves in 1863, but if assessed values are to be ignored or contradicted, we know of no other test except market value that could be properly applied.

For two years prior to June, 1863, a large part of the territory which now constitutes the State of Virginia was occupied by the two armies, and not only was much valuable property destroyed or carried away, but all values, and especially the values of slave property, were greatly depreciated. The people of West Virginia were not responsible for this condition and they ought not to be prejudiced by it in ascertaining the relative values of the property in the two States at that date.

Paragraphs 3, 4, 5, and 6 read as follows:

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.
>
> "4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia with and without slaves, as shown by the census of the United States.
>
> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.
>
> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West

Virginia during the period prior to the admission of the latter State into the Union."

The defendant asks that these paragraphs be so modified as to read as follows:

"3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of said debt was contracted, *and prior to January 1, 1861.*

"4. The ordinary expenses of the government of Virginia since any of said debt was contracted *and prior to January 1, 1861*, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

"5. And also on the basis of the *assessed* valuation of the property, real and personal, by counties, of the State of Virginia during the same period.

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia, during the said period, *and prior to January 1, 1861.*"

Unless some date is fixed by the court at which the investigation shall stop, the master will be required to decide what seems to us some very difficult questions. On the 17th of April, 1861, Virginia passed an ordinance of secession from the Union, and from that time on until long after West Virginia was admitted as a State the two sections were substantially as separate and distinct as they are now. Not long after the passage of the ordinance of secession the restored government of Virginia was organized, composed almost entirely of the counties now constituting the State of West Virginia. These counties paid nearly the whole of the revenue of the restored State until the admission of the new State into the Union. Is West Virginia to be charged in this proceeding with money expended in what is now her territory during that time, and with her just proportion of the ordinary expenses of the government up to June 30, 1863? That was the only recognized government existing in Virginia during that period. We do not suppose it will be claimed that West Virginia is liable for any part of the ordinary expenses of the government at Richmond after the passage of the secession ordinance. To make such a charge against her would be to compel her to contribute to the support of a government in rebellion against the United States. Under the Wheeling ordinance she ought to be charged with money expended in her counties and with her share of the ordinary expenses and credited with money paid into the State treasury during *the same period*, whatever that period may be; and it should be prescribed by the court, not left to the master.

Most of what we have said concerning paragraph 2 of the decree is also applicable to paragraph 5. It does not appear to us at all practicable to ascertain, by the testimony of witnesses, what was "the fair estimated valuation of the property, real and personal, by counties" forty-five years ago. According to the position taken by counsel for Virginia, the valuation is to be ascertained by considering the oil, gas, iron, coal, and timber separately from the land in or on which they were situated, and then, of course, it would be necessary to ascertain the value of the land separately, without the minerals or timber, in order to secure the entire valuation. This tedious process would have to be adopted in both States, if it was adopted in one, and the investigation would consequently be almost interminable. It is well known that Virginia had vast and valuable deposits of coal and iron and large forests of timber, as well as many other natural resources and advantages which West Virginia did not possess, such as navigable waters, access to tide water, with large bays and fine harbors. Are all these assets to be valued separately also, or did they, like the minerals and timber in West Virginia, affect the value of land and other property of the State and thereby increase the valuation in the official assessments?

The fact that assessments were not made annually, but only once in ten years, is not very material when they are introduced as evidence of values in any intermediate year. The United States census is taken only at the end of each decade, but each decennial census and each decennial assessment shows a certain rate of increase or decrease, as the case may be, since the last one was taken, and it is not difficult, therefore, to calculate with reasonable accuracy what the values are in any particular year. Such evidence is certainly far more reliable than the memories and opinions of witnesses who are called to testify after the lapse of nearly half a century.

In plaintiff's brief on this motion it is said:

> "The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made."

On the 19th day of June, 1861, the convention which had assembled at Wheeling on the 8th of June, 1861, adopted an ordinance for the reorganization of the State government, and the restored State government was organized immediately thereafter by the election

(by the convention) of a governor and other State officials. Senators were elected to the Congress of the United States on the 9th day of July, 1861, and they were admitted to seats in the Senate on the 13th day of the same month. This government continued until 1867, and it defrayed all its own expenses as long as it existed. As already stated, nearly the whole of its revenue was paid by the counties now composing the State of West Virginia until the admission of that State into the Union; the old Commonwealth of Virginia paid no part of the expenses. It had not only withdrawn protection from the persons and property of the people in West Virginia, but was waging war against them, having, as early as April 24, 1861, seven days after the passage of the ordinance of secession, entered into an agreement with the Confederate States transferring the control of the State to the Confederacy. We are not aware of the existence of any acts of the legislature showing that any part of the expenses of the restored State government was paid "from the funds of the Commonwealth of Virginia," unless the restored government is meant; and if this is the meaning of the statement, the people of West Virginia have paid once for the support of their government and for the protection of their territory and property, without any assistance from the old State, and that State ought not now to have any credit on account of these ordinary expenses.

We respectfully submit that, whatever date may be fixed with respect to the closing of the other accounts in controversy, it is clear that West Virginia should not be charged with any part of the ordinary expenses of the State government after the actual separation and the withdrawal of protection by Virginia in this respect.

WM. G. CONLEY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Brief of Plaintiff Against Motion of Defendant to Modify the Order of Reference.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant*,

vs.

STATE OF WEST VIRGINIA, *Defendant*.

BRIEF OF PLAINTIFF AGAINST MOTION OF DEFENDANT TO MODIFY THE ORDER OF REFERENCE.

The complainant, by her counsel, respectfully objects to the modifications proposed by the defendant to the order of reference, and for grounds of objection indicates the following, *viz:*

(1) The order of reference directs the master to ascertain and report:

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863," etc.

The proposed modification of this section is as follows, *viz:*

> "The territorial area and *assessed* valuation of the States of Virginia and West Virginia June 20, 1863."

The inquiry should not be restricted to the *assessed* value of the territory, but should be allowed to embrace every reasonable and proper means of ascertaining the actual value of all of the elements of wealth that together made up the value of the State. When one State is spoken of as wealthier than another, reference is not had to the *assessed* valuation of the lands, but to all of the resources of the State which are available for producing revenue.

The elements of wealth of West Virginia, even between Jan-

uary, 1861, and June, 1863, were the *coal,* the *oil,* the *gas,* and the *hardwoods,* which then as now abound throughout its eastern half. These elements of wealth have no place in the assessments for taxation which existed at the dates named. The assessments of land were made in Virginia every ten years. The assessment next preceding January, 1861, and June, 1863, was made in 1856, and manifestly affords no just ground for ascertaining the relative values of the two States as a basis on which the common public debt may justly or equitably be apportioned between these States.

In this connection we may say that there is now before us a copy of the official Report of the Auditor of Virginia, giving in tabulated form exact and full statements of the area and *assessed* value of each of the counties in the old State, of the lots in each of the cities and towns, and the value of all the personal property within the limits of the State. These tables of statistics, occupying nearly seven hundred pages of closely printed matter, give all the information that can be desired as to the *assessed valuation* of the real and personal property within the State in the years 1860 and 1861. But this apportionment of the common liability of the two States for the public debt should not and cannot equitably be made on the basis of the *assessed* values of the property of the States, because the assessed value was not in any case intended to express the actual value. Indeed, it was not intended to be more than two-thirds of the actual value of the property.

The assessment of 1856 did not embrace any of the elements of wealth which since 1861 have formed the principal basis of the wealth of the counties forming the State of West Virginia.

(2) It is proposed to modify the third paragraph of the order of reference by adding to it, at the end, the words "prior to January 1, 1861," the effect of which would be to direct that, even although the Commonwealth of Virginia had expended money within the territory now constituting West Virginia since the first of January, 1861, and prior to June 20, 1863, she should not be credited therewith in this account. Why not?

The "restored State of Virginia" had no existence prior to July, 1861, aand then only to a limited extent and for certain purposes; but even that phantasm of a State, although "what seemed its head the likeness of a kingly crown had on," yet in time, when it had served its purpose, it faded back into the name and body of the present Commonwealth of Virginia. So

it would seem to be but just that if Virginia had at any time prior to the creation of West Virginia expended money within these western counties, and West Virginia reaped the benefit of it, she should be made to account for it.

(3) The fourth paragraph of the order of reference provides as follows, *viz:*

> "4. Such proportion of the ordinary expenses of the government of Virginia, since any of the debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the average to the population of Virginia, with and without slaves, as shown by the census of the United States."

Defendant proposes to modify this as follows, *viz:*

> "The ordinary expenses of the government of Virginia, since any of said debt was contracted, *and prior to January 1, 1861,* on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

As stated, the proposed modification, standing alone, is unintelligible. The object of the inquiry is to ascertain what proportion of the ordinary expenses of the State government should be charged to the counties now forming West Virginia.

The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made.

(4.) Paragraph 5 of the order of reference is as follows, *viz:*

> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

Defendant asks to modify as follows, *viz:*

> "5. And also on the basis of the *assessed valuation* of the property, real and personal, by counties, of the State of Virginia during the same period."

We have already called attention to this attempt to restrict the inquiry to the assessed valuation, in commenting upon the proposed modification to paragraph No. 2. The assessed value of real property never exceeded two-thirds of its market value, and,

as appears from the Auditor's Report of 1860 and 1861, the assessments of all lands in Virginia were made in 1856, and none later than that date. This assessment did not embrace, as distinct subjects of valuation, coal, or gas, or oil, or hardwoods, which constitute the basis of the large wealth of West Virginia. These all existed in 1861, and their presence was considered in estimating the value of land in transactions between vendor and vendee. Oil was produced in immense quantities in 1862, and was prepared for market at the town of Elizabeth, in West Virginia, in that year. These elements of wealth and value would have been taken into account in any proceeding for partition between joint owners, but were not considered in assessment for taxation.

From 1861 to 1865 West Virginia was the seat of war; few, if any, actual transactions of sale of lands took place, and no normal standard of valuation existed. The difficulties are great enough in the way of reaching the actual values of land in that State during that period without adding the inequitable standard of assessment for taxation.

(5) Paragraph 6 of the order of reference provides as follows, *viz:*

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The defendant proposes to modify this section as follows, viz:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

That is, the defendant wishes to limit the period within which the Commonwealth should be charged with moneys received from the western counties to the 1st of January, 1861, while the court would extend that period to June 20, 1863. As we do not think that either date will make any difference in the account, we leave this matter to the court.

Defendant, in proposing the names of gentlemen from which a selection may be made by the court of a special master to state the account in this cause, has found it needful to advise the court that it has deemed it right not to consider any citizen of centers where "West Virginia certificates" are owned, or sold,

or traded in, and then it proceeds to nominate Mr. Charles E. Littlefield, of Maine.

We state for the information of the court that one of the largest certificate-holders who has made himself known to us during this litigation is a good citizen of the State of Maine. The two gentlemen named by defendant are altogether unimpeachable personally. We would not have nominated them because Mr. Littlefield lives so far away from the counsel and from the records from which all the information required is to be had, and because Mr. John W. Yerkes is at present a member of the firm of Hamilton, Yerkes & Colbert, who are the counsel for the Baltimore & Ohio Railroad Co., which is the largest tax payer in West Virginia, contributing, as we are advised, one-eleventh of the taxes paid into the treasury. It has, therefore, a large interest in reducing the burdens which may rest upon that State and thereby lead to an increase of taxation.

On behalf of the Commonwealth of Virginia, we announced to counsel for West Virginia our purpose to present to the court the name of Mr. John Prentiss Poe, of the city of Baltimore, but were informed by them that Mr. Poe was counsel in a chancery cause of Maryland *vs.* West Virginia, pending in this court, and was on that account ineligible. In this we concurred at the moment, but have since learned from unquestionable sources that Mr. Poe did file such a bill in his official character of Attorney General of Maryland, but that since the expiration of his term of office, now many years ago, he has been in nowise concerned in the cause. We therefore add his name to those already presented, and say that Mr. Poe is a graduate of Princeton, some time a bank clerk, and since 1858 a lawyer of recognized standing in the courts of Maryland and its neighboring States, and for many years a counsellor on the rolls of this court. He is the author of the standard works of Law and Equity Practice in Maryland and was some time the Attorney General of that State.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

I concur in the above.

HOLMES CONRAD,
Of Counsel.

May 19, 1908.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Report of Commission.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.

Filed as an Exhibit for the Complainant.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore reprinted and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer

of Virginia; and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

> "The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.
>
> "A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbrier, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.
>
> "A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier, and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen of

the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, surveyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

STATE OF VIRGINIA.

Inland Navigation and Improvements.

PREAMBLE AND RESOLUTION,

For Re-printing the Report of the Commissioners on the Navigation of the Great Kanawha, &c.

[*Agreed to by both Houses of Assembly, February 14, 1814.*]

Whereas, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia, at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanawha, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth

be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS OF THE COMMISSIONERS.

Letter of Mr. Marshall, One of the Commissioners.

A communication from the Governor, enclosing a letter from the Honorable John Marshall, and a report from the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said letter and Report were read as follows:

Richmond, December 26, 1812.

Sir:—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excellency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,

Sir, with great respect,

Your obedient servant.

J. Marshall.

His Excellency Governor Barbour.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary preparations having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlaps-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate, they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys; distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presumed that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with

certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shallows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expensive, be rendered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlap's-creek, the difficulties become more considerable, and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlap's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most commonly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable, depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as for as Dunlap's-creek, more

water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlap's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles; the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crows Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches; making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlap's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlap's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlap's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlap's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlap's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlap's-creek, a direction, as is understood from some of the inhabitants of that neighborhood, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because guides could not readily be procured, and your Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses How-

ard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horizon. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shallow for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were unable to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn; and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testimony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidedly of opinion, that its navigation may be rendered as safe as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose, and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howards-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanawha which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanawha.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable,

of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with movable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanawha, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same distance, is greater than above. For a part of this space, the scene is awful and dis-

couraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed of rugged and perpendicular cliffs or entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanhawa. The height of these falls is twenty feet four inches. With its name, the river loses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshets, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interests of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanhawa. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyers Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed; but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all danger of

being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanhawa, will probably require and admit of a different course.

The first of these which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursuing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel, but the toil of ascending must, at this place, be considerable.

At the Great Falls of Kanhawa, there is, near Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be en-

tirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that a moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanhawa, they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following propsition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly

obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the Great Falls of Kanhawa and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanhawa and Bowyer's Ferry; your Commissioners are entirely persuaded of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty hase been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional

men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork through Rockbridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanhawa, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over

other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlap's-creek to the mouth of Howard's creek, is twenty-six miles and forty-four poles. For the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horizon of less than three-quarters of a degree. From the summit of the mountain to the mouth of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horizon an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part; next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlap's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture would mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western counties, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring

to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawha and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commercial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different countries, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but in the vicissitudes of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their preservation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belong to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will render this disparity between the commercial and agricultural capital still more sensible. It will tend still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsiderable magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory; that the island of Cuba and the coast of East Florida completely guard the passage from its mouth

to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or

down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlap's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanhawa, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanhawa, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so laborious as to be little less expensive than carriage by land, will never change the channels in which this trade already flows.

The advantages to accrue to the United States, from opening

this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanhawa. A similar necessity may often recur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL,
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Order Amending Decree of Reference.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

ORDER AMENDING DECREE OF REFERENCE.

On consideration of the motion to modify the decree of reference herein,

IT IS NOW HERE ORDERED BY THE COURT that said motion be, and the same is hereby, sustained so far as to make the first line of paragraph 2 read "The extent and assessed valuation," and in all other respects that said motion be, and the same is hereby, denied.

June 1, 1908.

A true copy.

Test: JAMES H. MCKENNEY,

(SEAL) *Clerk of the Supreme Court of the United States.*

Supreme Court of the United States.

OCTOBER TERM, 1907.

Order Appointing Special Master.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

ORDER APPOINTING SPECIAL MASTER.

It is ordered by the Court that MR. CHARLES E. LITTLEFIELD, a member of this Bar, be, and he is hereby, designated and appointed as Special Master under the decree entered herein on May 4, 1908.

June 1, 1908.

A true copy.

Test: JAMES H. MCKENNEY,

(SEAL) *Clerk of the Supreme Court of the United States.*

APPENDIX.

Substitute for House Joint Resolution No. 25.

(Adopted February 21, 1908.)

Raising a Committee to consult with the Board of Public Works concerning the Virginia Debt.

WHEREAS, The defense of this State in the Equity Suit of the Commonwealth of Virginia vs. West Virginia, is now vested in the Attorney General and the Board of Public Works of the State; and,

WHEREAS, said Attorney General and Board have expressed a wish that a non-partisan Committee of citizens and property holders be appointed with whom they can advise and take counsel as to the matters involved in said suit; therefore, be it

Resolved, That John W. Mason and William G. Bennett, of the First Congressional District, Frank M. Reynolds and John J. Cornwell of the Second Congressional District, William A. MacCorkle and Samuel Dixon of the Third Congressional District, E. M. Gilkeson and George W. Curtin of the Fourth Congressional District, C. W. Campbell and Isaac T. Mann of the Fifth Congressional District, and Nathan Goff, Johnson N. Camden, John K. Thompson and F. B. Enslow at large, be and they are hereby appointed such Committee; and it shall be their duty to advise with the Board of Public Works of the State and make such recommendations as they may deem best to protect the interests and welfare of the people of the State in said matters.

The members of said Committee shall take the oath provided by the Constitution, which shall be filed with the Governor. It shall convene on the call of the Governor, and shall make report to the Legislature from time to time of its proceedings. Vacancies in said Committee by death, resignation, failure or refusal to serve or otherwise, shall be filled by the Board of Public Works.

Judge Mason's Letter to Governor Dawson.

"FAIRMONT, W. VA., May 29, 1908.

"HON. WM. M. O. DAWSON, *Governor.*

"DEAR SIR: The Legislature of West Virginia at its last session by joint resolution adopted February 21, 1908, appointed me a

member of a non-partisan committee with whom the Attorney General and the Board of Public Works might advise and counsel in regard to the matters involved in the suit in equity of the Commonwealth of Virginia vs. State of West Virginia, now pending in the Supreme Court of the United States.

"I am profoundly grateful for the compliment done me by the legislature, and have very reluctantly reached the conclusion that I cannot accept the appointment without vacating the position I now hold as Circuit Judge. It was the purpose of the framers of the Constitution of this State not only to separate and keep distinct the legislative, executive and judicial departments, so that neither shall exercise powers properly belonging to either of the others, and that no person shall 'exercise more than one of them at the same time, except that justices of the peace shall be eligible to the legislature,' as provided in article 5, but they also deemed it wise to prohibit judges from holding any other office under this or any other Government, hence the provision contained in section 16, Article VIII, 'No Judge, during his term of office, shall practice the profession of law or hold any other office, appointment or public trust, under this or any other government, and the acceptance thereof shall vacate his judicial office.' I have reached the conclusion that persons serving on this committee will do so by 'appointment within' the meaning of the Constitution. The resolution in express terms provides that the persons named 'be and they are hereby appointed such committee,' and then defines the duties required of them, and requires each member to 'take the oath provided by the Constitution' and file it with the Governor. The oath meant, I assume, is the oath required by section 5, of Article IV. To comply with this requirement each member must take an oath to support the Constitution of the United States and the Constitution of this State, and to faithfully discharge the duties of the office to the best of his skill and judgment. After taking and subscribing such oath and filing it with the Governor, the person doing so could scarcely be heard to deny that the position is an 'office' or 'appointment.'

"I have reached this conclusion with regret. The suit referred to is a very important one—involving the property and the honor of the people of our state. As a citizen, and, consequently one of the defendants, I would gladly aid in preparing our case and in doing all within my power to have it properly presented to the distinguished Court which is to pass upon it. It is more than a mere

law suit. The honor of two commonwealths is involved. The people of Virginia, so far as they have any control of the case, will not demand of us anything more than a fair and just settlement of this account, and all loyal West Virginians will join in this demand and require nothing more of Virginia. But, unfortunately, Virginia's case has passed almost entirely beyond her control and into the hands of speculators who are conducting this suit for the money there is in it for them. This combination may not be more corrupt than other combinations formed for speculative purposes, but it is well that we realize that there is behind this movement an unlimited amount of money and an unscrupulous combination of Wall Street stock gamblers. But if we are true to ourselves, they are absolutely powerless to harm us; all their efforts and intrigues will come to naught if our case is properly prepared and all the facts laid before the Court. We must not lose sight of the fact that the case is to be heard and determined by the greatest Court in the world. If we lose in this Court it will be because our cause is bad, or the facts are not all brought before the Court. We go into Court handicapped, to some extent, by a sentiment which these speculators have been laboring for years to create:—that West Virginia is in some way endeavoring to evade settlement with Virginia.

"As evidence of this, they point to the so-called West Virginia Certificates and say we repudiate these evidences of indebtedness. Certainly we repudiate every liability on account of them, and most solemly protest against having anything to do with them, or the holders thereof. The issuing of these certificates was a great wrong. The men of Virginia, then in power, hard pressed by the creditors of the State and perhaps somewhat piqued by the action of our people in forming the new state, did great injustice to West Virginia and placed our people in an improper light before the world, when they issued these certificates. We have persistently and continuously refused to recognize them. We have always been ready and willing to settle with Virginia, but not with the holders of these bonds. If any part of the Virginia debt is properly chargeable to West Virginia, we want to pay it. We don't want the people of Virginia to pay anything that we should pay. We asked for an accounting with Virginia long before she issued these certificates and were refused consideration, or even the courtesy of a hearing. It is the grossest injustice to charge

us with attempting to evade an accounting and settlement with Virginia.

"We are now in a Court of Justice where these charges will have no bearing on the merits of the case. The Court will proceed to make a settlement without any regard to the question as to why it was not made sooner. We are now most concerned in preparing our side of the case. We are represented in Court by learned and distinguished counsel. They will look after the law and properly present our case, but we must furnish them the evidence. We know we don't owe anything on account of these so-called West Virginia Certificates, and we believe we should not, in equity and good conscience, be required to pay any of the debt, but whether we should pay any part of the debt depends wholly upon the facts. We have been told by our fathers that in the distribution of the money for which Virginia issued her bonds there was not a 'fair divide.' Practically all of the money was spent in improvement east of the Alleghanies, and we paid more than our share before the separation.

"The men who had control of public affairs in Virginia during the time this debt was being contracted had no confidence in the ability of the people inhabiting the mountain counties to pay anything, and hence dealt with them on a cash system. They never expected any money spent here to be returned, and hence they doled it out to us with a parsimonious hand.

"For many years prior to 1861 the people living in northwestern Virginia had complained bitterly of the basis of legislative representation, unequal taxation, and a selfish distribution of the public revenues and funds. Dr. Alexander Campbell and Philip Doddridge and other prominent men of the west, in the great Constitutional Convention of 1829-30, warned the people of the east what would be the result if this injustice continued.

"It is not true that the demand for the formation of the State of West Virginia arose out of the differences of opinion in relation to the civil war. The real trouble long antedated 1860. We were simply submitting to injustice and biding our time. The peculiar condition created by the attempted secession of some of the people of Virginia afforded that opportunity and we availed ourselves of it and the state was formed in strict compliance with law. We would have demanded the new state in the course of time, no matter whether living under a new Confederacy or the United States Government. When the new state was formed

it provided by its Constitution of 1863, Article VIII, section 8, that 'An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty one, shall be assumed by this State,' and section 9 of the Ordinances of the State of Virginia, passed August 19, 1861, provided how this debt shall be ascertained.

"The State of Virginia has permitted the use of her name in this suit and the Court, so far, has held that we are properly in Court and must make our defense. It is now for us to make good our contention. After the lapse of many years, and the death of the men who were personally acquainted with the facts together with the difficulties of tracing these transactions, it is no easy task to ascertain the whole truth.

"There seems to be a disposition on the part of some of our people to criticize, rather than aid, the persons charged by law with the duty of preparing our case. They seem to think that the present State administration and the dominant party alone are sued, and are almost willing that these Wall Street speculators may succeed, provided it may embarrass their political antagonists. This is not only bad politics, but it is unwise and unpatriotic. If there is any honorable way to get rid of this suit, why don't they suggest it? If they are in possession of any facts necessary for the defense, why don't they make them known? If the case is not being properly defended, by all means tell us why. We hear much talk about compromise and settlement out of Court. All law suits arising out of controversies of this character are simply involuntary arbitration, and I know of no body of men to whom this controversy can be submitted with such confident assurance that it will be fairly, properly and justly settled, as to the Supreme Court of the United States.

"I wish that those of our people who have been tempted to criticize could see the folly of such a course and remember that we are all parties to the suit and that contentions among co-defendants will benefit none but the plaintiff.

"You will please say to the members of the Board of Public Works that while I cannot act officially as a member of the Advisory Committee, for the reasons stated above, yet it will afford me great pleasure to aid them in any way that I can. I am, my dear sir,

"Yours very truly,

(Signed) JOHN W. MASON.

Part of Speech of Hon. Waitman T. Wiley,

IN THE UNITED STATES SENATE, JULY 14, 1862, ON THE ADMISSION OF WEST VIRGINIA INTO THE UNION.

(See Congressional Globe, Part 3, 2d Sess. 37th Cong., p. 2415.)

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Mr. President, before I answer this question,* I desire to correct a misapprehension which I find is prevalent, not only throughout the country, but likewise here. It seems to be supposed that this movement for a new State has been conceived since the breaking out of the rebellion, and was a consequence of it—that it grew alone out of the abhorrence with which the loyal citizens of West Virginia regarded the traitorous proceedings of the conspirators east of the Alleghanies, and that the effort was prompted simply by a desire to dissolve the connection between the loyal and disloyal sections of the State. Not so, sir. The question of dividing the State of Virginia, either by the Blue Ridge mountain, or by the Alleghanies, has been mooted for fifty years. It has frequently been agitated with such vehemence as to threaten seriously the public peace. It has been a matter of constant strife and bitterness in the Legislature of the State. The animosity existing at this time between the North and South is hardly greater than what has at times distinguished the relations between East and West Virginia, arising from a diversity of interests and geographical antagonisms. Indeed, so incompatible was the union of the territory lying west of the Alleghany mountains with the territory lying east thereof, under one and the same State municipality, that so long ago as 1781, several of the States insisted that Virginia should include in her act of cession all her trans-Alleghany territory making the Alleghany mountains her western, as they were her natural, boundary. A committee in the Federal Congress about this time, made a strong report, suggesting such a boundary; and Mr. Madison records that—

"From several circumstances, there was reason to believe that Rhode Island, New Jersey, Pennsylvania, and Deleware, if not Maryland likewise, retained latent views of confining Virginia to the Alleghany mountains."—Madison's Debates, Vol. 1, pp. 463-465.

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*This was a question asked by Senator Willey of the United States Senate whether or not Congress ought to give her consent to the admission of West Virginia into the Union.

Secondly. I respectfully solicit the attention of Senators to the geographical position of the proposed new State. Look at the map. Observe how this territory lies, like a wedge driven in between the State of Ohio on one side, and the States of Pennsylvania and Maryland on the other, and is completely cut off from all convenient intercourse with East Virginia by the Alleghany mountains, the sky-kissing summits of which are proposed as the eastern boundary of the new State. How is it possible to identify these two sections of the State of Virginia in a common State policy, or system of internal improvements, or economical interests? You have only to examine the geography of the State to see that this is impracticable. It never has been done. It cannot be done. Hence the revenues of the State heretofore, with slight exceptions, have all been expended in the construction of lines of improvement avoiding those impassable mountain barriers, and leading to the South and Southwest in directions which have not only not benefitted the northwest section of the State, (that part contained in the new State), but have, indirectly, operated to its serious disadvantage. This sectional appropriation of the State's revenues has long been inveighed against as unfriendly and unjust, and has engendered bitter sectional animosity between the counties lying east and those lying west of the Alleghanies. But, perhaps, it might be more charitable to attribute this policy to an absolute necessity growing out of the utter impracticability of constructing any improvement connecting the two sections of the State.

Third. This application for admission as a new State is predicated on considerations of industrial and commercial necessity. The people living within the limits of the projected new State never had, and never can have, any trade or commerce with Eastern Virginia. There is no means of getting back and forth between the two sections by any direct and convenient way. There never has been; there never can be. The impediments are insuperable. Trans-Alleghany sells nothing to cis-Alleghany; and vice versa. The traffic and commerce between the two sections has not amounted to fifty thousand dollars in the last twenty years. The natural and best markets of West Virginia are Baltimore, Pittsburg, Cincinnati, &c. If Eastern Virginia were willing to do so, she has not the ability to push her railways and other means of transportation and travel into the northwest; and if she had both the will and the ability, all such improvements in

Virginia could only carry the trade and staples of West Virginia beyond better and nearer markets.

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(See Congressional Globe, Part 4, 2nd Sess. 37th Cong., p. 3317.)

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Now, sir, I wish to make another remark in answer to the Senator from Illinois. He seems to have fallen into the mistake, common to almost every person, that this movement was conceived in a desire to separate ourselves from the disloyal portion of the State of Virginia, that it grew out of our national difficulties, out of the secession of Virginia from the Federal compact. No, sir; no. These circumstances may have precipitated action upon it; they may have given us the opportunity to effect the long-cherished desire of our section of the State; but this controversy is older than I am; I have heard it ever since I can remember anything. It grows not out of these national dissensions; it grows not out of loyalty or disloyalty to the Government; it grows not out of this question of secession; but it grows out of the social, geographical, commercial, industrial distinction and antagonisms that never can be reconciled by the power of man. The Almighty, with his own eternal hand, has marked the boundary between us. We live upon waters that flow into the valley of the Mississippi; our eastern brethern live upon waters that flow into the Potomac and the Chesapeake; and there is a chain of impassable mountain barriers between us that prevent, and will forever prevent, all connection, all social relations, all interchange of traffic and commodities by any convenient means of transportation. Owing to these facts, we ask this separation, and we place it upon these large national grounds; not upon the questions of secession and disloyalty. If those were the only questions at issue, I would say to the western people, as I have hitherto said to them, stand fast, not only until the Union is restored, but until all Virginia again is made loyal to the national flag, and until we all dwell together again beneath its ample folds in peace and in security. But, sir, we never can dwell in harmony, not because now we are separated by principles of secession and anti-secession, or loyalty and disloyalty, but because the Almighty, with His own hand, has placed barriers between us that separate our trade and our intercourse, because our social relations are different, because our places of market are different, because our industrial interests are different, and because, on account of these facts, our internal resources have never

been developed, and never can be developed while we are connected with Eastern Virginia.

This new proposed State contains within its towering hills and mountains, treasures richer, perhaps, than can be found within the limits of any other State within this Confederacy, and there they have lain, ever since the establishment of this Government, undeveloped, unworked, valueless, and they must continue to remain so unless a different policy be pursued. Is it just to the people there? Is it just to the loyal people of Virginia that they shall be thus trampling under their feet treasures which, if developed, would be of untold value, but are valueless beneath their feet in consequence of the antagonisms of State policy which must ever exist, until there is a separation between the sections?

Upon these grounds, then, we place this issue; not upon those other grounds. If those other grounds were alone the consideration which moved us, I, for one, would cast my fortunes in the common bark, and when Virginia went down, if she did, I would go down with her, as I intend to do anyhow, so far as our natural fortunes are concerned.

But the Senator from Illinois takes occasion to say that a division of the State will operate against the reorganization of the eastern section of Virginia; that the Wheeling government, as he calls it, is a neucleus around which the other counties as they are relieved of the pressure that is upon them, can be brought under the State authority. Sir, where is the county east of the Blue Ridge today that can be recognized by any other power than that of military authority? not one. You tell me of Alexandria. How long would Alexandria acknowledge the authority of the government at Wheeling if you were to withdraw your soldiers?

How long would any other county east of the Blue Ridge do it? There is not a county, in my estimation, and much as I regret to have to say it, let me tell the Senator from Illinois that the only mode by which Virginia can be brought into subjection again to the State and national authorities is by the stern power of the military arm. If this new State is established it leaves the laws of Virginia as they now exist, both in the new State and in the old State precisely the same as before. There is the revised code, there are all the officers, there is all the machinery of the law. What are they worth in a civil point of view? Nothing. You have today to enforce authority by the sword, and you will

have to do it still if you continue with the old state, and you will have this embarrassment, you will have a civil authority in the western part of the State incapable of exercising any power in the eastern part of the State, and it will be obligatory upon the United States, before this rebellion is subdued in Eastern Virginia, to appoint a military Governor, and therefore you will have in the State of Virginia a military Governor and a civil Governor. Separate the sections and each can govern itself according to the civil laws, and you will not be embarrassed by the civil government in one section of the State, and you may be left free to exercise the necessary military authority in the other portions of the State. All this matter about granting letters of administration can be done about as well in the State after the division as it can be now under the existing state of affairs.

Again: the Senator undertakes to say, and urges as another reason why this State should not be divided, and the new State received into the Union, that it would be the admission of another slave State. So far as the slaves themselves are concerned, what is the fact? If you do not admit the State, what is the fact? Every one of them will remain in perpetual bondage. I am arguing the case now on his own principles; I am not saying whether slavery is right or wrong; but I am speaking gratia argumenti. Taking his own premises as true, and his views of slavery as true, what will be the result of this policy? If you do not divide the State, it follows that every slave within the limits of the proposed new State will remain in bondage forever. And yet the people who desire to become a new Commonwealth make a proposition here today that all slaves born after the 4th of July next shall be freed, and that all slaves over ten years of age shall be free at twenty-one, and all over fifteen shall be free at twenty-five. With what proffer to the honorable Senator from Illinois, he would rather have no State at all, because it would bring in a slave State, and keep these slaves forever in bondage. There is an old maxim, a homely one, but it is very true, that half a loaf is better than no bread sometimes.

There is another remark which I wish to answer. I happened to say the other day, and I reiterate it now, upon the authority of personal communication with a great many citizens of Northwestern Virginia, and upon the authority of a great many letters which I have received within the last fort-night, that unless the relief is granted to the people of that section of the State which

this bill will afford, thousands upon thousands of them will take up the little all they have and find a home elsewhere. Such is my information, and I believe it. But the honorable Senator inquired, how will the erection of that section of the State into a new State relieve us from the difficulties of which we complain, how will it bring about security and peace that will retain those citizens within its limits? So far as the enemy abroad are concerned, they can invade us as well if we are erected into a new State, as they can without it; but we do not fear the enemy, we do not fear the national foe, we fear the guerrillas in our midst, we fear the slumbering secessionism that remains there, as my colleague has stated; but give us this new State, and you destroy at once that singular sentiment of State pride, and the new State having once been established, those people will go with the State, acknowledging, singular as it may seem, a supreme allegiance to the State rather than to the United States.

These are some of the reasons, but I want to show to the honorable Senator from Illinois how this thing will operate. Suppose the rebellion is put down all over Eastern Virginia; suppose, as I hope will be the case, that this prediction will be fulfilled and that those secessionists may be driven out: will our condition be any better? Our difficulties are geographical; they are sectional. Look at the state of facts in Eastern Virginia. The State of Virginia is indebted to almost every man east of the Blue Ridge; almost every man has scrip for a horse, or a wagon, or a bag of wheat furnished to the confederate troops. Carry us back to Eastern Virginia, and what is the result? This people to whom the State government is thus indebted will send to the Legislature men who will reflect their will, and what will that be? They will enact laws not only to prevent our receiving any benefit of the State revenues for improvements in our western section, as we have always been prevented, but we shall have imposed upon us, through the overwhelming majority, through the influence of the popular will, the payment of the debts which eastern Virginia has contracted in sending men across our borders to murder our citizens and burn our houses, besides having furnished ten thousand men in resisting them, and paying our proportion of the national debt. That will be our condition if we are carried back into Eastern Virginia; and it is no wonder our people are excited; it is no wonder that by scores they have been beseeching the members of the Committee on Territories, coming here from their

homes at their own expense, beseeching that now when they may, they may have a separate and independent existence. It will injure no one; it will not injure Virginia; it will not injure the Union. It will give to this Union, and to those who desire it, in due time a free State.

Part of the Speech of Hon. Jacob B. Blair

OF VIRGINIA, IN THE HOUSE OF REPRESENTATIVES, JULY 16, 1862, ON THE ADMISSION OF WEST VIRGINIA INTO THE UNION OF STATES.

(*See Congressional Globe, Part 4, 2nd Sess. 37th Cong., p. 327.*)

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MR. Speaker, having now, as I think, shown that the Legislature of the restored government of Virginia is the legitimate and constitutional Legislature of Virginia, and consequently possessed of full power to give the consent required by the Constitution of the United States to the formation and erection of the proposed new State, I now propose to offer some reasons why Congress should not withhold its consent to the admission of West Virginia into the Union. But before proceeding to do so, I desire to disabuse the minds of all those who may be laboring under the impression that this project of erecting a new State within the jurisdiction of Virginia has been set on foot and the idea suggested since the commencement of this war. Nothing, sir, could be further from the facts. The question of the division of the State has not only been suggested, but to a greater or less extent agitated for the last forty years.

The desire of the people west of the Alleghany mountains to be separated from those residing east of the mountains, has grown out of causes wholly unconnected with the war, and of which I will speak before I conclude my remarks.

I have always thought, and still think, that there are but few who will take the trouble to examine the map of the State of Virginia who will not be convinced that not only justice demands that the people occupying the western slope of the Alleghany mountains should be permitted to form a new State out of that

territory in order that they might pass laws suitable to their own wants and peculiar condition, but that it is the interest of those residing east of that range of mountains that such a separation should be made. What commercial intercourse, let me ask, exists between them? None, literally none. My colleague in the Senate in that excellent speech of his delivered on presenting the memorial to that body asking that Western Virginia might be admitted into the Union, gave it as his opinion that there had not been over fifty thousand dollars of traffic and commerce between the two sections during the last twenty years. I thought the estimate a high one, and so remarked to my colleague from the tenth district, (Mr. Brown), who replied that there never had been but one commercial transaction come under his observation, and that was an exchange of two dogs. How could it be otherwise when there are no railroads, canals, or water communication between the two sections of the State? There stand the Alleghany mountains, between the valley and the great Northwest, with their immense base and lofty summits speaking by the authority of the God of nature to those who reside on either side, saying, "thus far shalt thou come, and no further."

Mr. Speaker, Virginia has spent millions upon millions in wild schemes of internal improvements, and not withstanding she has had Henry A. Wise for her Governor, a man in whose head, I will venture to say, more wild impracticable, and, I might as well add, devilish schemes originated than in the brain of any other man, yet he never seriously dreamed of, much less suggested, the idea of pushing a railroad through the Alleghanies. Deprived, therefore, of any road connecting the two sections of the State, except two narrow mud turnpike roads, the location of either of which, in many places, would puzzle the most skillful engineer to find, it may be imagined that the commerce between the eastern and western parts of the State is not very extensive, and the intercourse between the people somewhat limited.

The two roads I have referred to are the Staunton and Parkersburg and the Northwestern turnpike roads. The former is located from Staunton to Parkersburg, and the latter from Winchester to Parkersburg. It is my fortune, Mr. Speaker, to reside at the city of Parkersburg, on the bank of the river Ohio, where, as I have always said, these two roads terminate. I know, therefore, whereof I speak when I declare that there are not one hundred travelers that pass over these two roads from Staunton or

Winchester to Parkersburg, or *vice versa*, during an entire year. Before this war commenced, our delegates to the General Assembly, and all others who desired to visit the city of Richmond, the capital of the State, were of necessity compelled to leave the State in order to get there, unless they went by way of Staunton and Winchester, over one of the roads I have mentioned.

Again: the habits, tastes, and industrial pursuits of the people residing in the two sections of the State are as unlike each other as perhaps any two States in the Union. Those who reside east of the Alleghany mountains have long been distinguished as the F. F. V.'s. They are a kind and hospitable people, generally men of wealth and ease. They know but little and care less about the arts and sciences of the day. They raise but little more corn or wheat than is necessary for their own use, depending entirely on raising a crop of young negroes to add to their yearly wealth. Not so with the people of the west. They are generally limited in means, but a hardy, industrious, and energetic people. While they do not claim by birth or otherwise to be superior to their eastern brethren or their countrymen at large, they do maintain they are the equals of either. This difference in the interests, habits, and social institutions of the two sections of the State, coupled with the fact that there can never be to any extent any commercial intercourse between them, renders it almost if not quite impossible to enact laws suitable to the wants and circumstances of both. That negro slavery requires laws of a more stringent and peculiar character than any other species of property, I think all will admit; and that these laws are distasteful if not inimical to the interests of those who do not own slaves, I think is equally clear.

Now, if this be clear of negro slavery generally, is it not doubly so in a State like Virginia, where all, or nearly all, of those who own slaves reside east of the Alleghany mountains? If any one has doubted the truth of this proposition, I think in the history of the legislation of Virginia may be found the most conclusive evidence. Prior to the year 1850, that part of Virginia lying between the Blue Ridge and the Alleghany mountains, known as the valley of Virginia, was almost as much neglected by the State as that part lying west of the Alleghanies. The two sections contained a white population of nearly one hundred and fifty thousand more than the residue of the State, and yet they were in a minority in both branches of the General Assembly. It was in the year

1850, Mr. Speaker, that the convention was called which formed the present constitution of Virginia. It is a period in the history of the State which will long be remembered by not only those who were members of that convention, but by the people of the State at large. The people of the west and valley, smarting under the wrongs and injustice that had been done them through a long series of years, laid aside for once all party considerations and elected their best and truest men to represent them in said convention, and instructed them to demand that the representation in the Legislature should thereafter be based on the white population of the State, and not on the mixed or arbitrary basis as it then was. As soon as the convention met it was apparent that the eastern part of the State was not disposed to yield to the demands of the valley and the west. Day after day, and week after week passed, until several months were spent in discussing what was called the white and mixed basis, and so violent was the discussion at times that it was feared that a compromise of conflicting views was impossible, and that the convention would break up in a row and leave the difficulty to be settled at the point of the sword. But finally the slave interest triumphed, and by the terms of the compromise the rights and interests of the people residing west of the Alleghanies were wholly disregarded, and the people doomed to perpetual bondage unless released of the passage of this bill. It was, in truth and in fact, a compromise between the valley, the former ally of the west, and the eastern part of the State, to which the delegates west of the Alleghanies were compelled to give their consent. How was this compromise effected, and what were its terms? The delegates residing east of the Blue Ridge said in substance to the delegates residing in the valley, "you know that part of Virginia lying west of the Alleghany mountains is principally settled by emigrants from western Pennsylvania, the State of Ohio, and the New England States. You also know that they are opposed to the institution of slavery, and if they were not, slavery can never exist there to any extent for two obvious reasons: first, because the laws of climate forbid it, and secondly, a slave has but to cross the line into Pennsylvania, or the Ohio River into the State of Ohio, and he is free. This being the case, slavery, has only a nominal existence there. Now, you people of the valley, like we of the east, have sprung from quite a different stock. We do not belong to the 'mudsills' of society. You, like we, are largely in-

terested in not only protecting but continuing the institution of slavery. This being the case, come let us reason together; let us compromise this matter, and take care of ourselves; and let this mongrel race beyond the Alleghanies take care of themselves;" and, Mr. Speaker, to make a long story a short one, the east and the valley struck a bargain by which they secured for themselves the control of the legislative department of the State until the day of judgment and a day after, and leaving those residing west of the Alleghanies to shift for themselves the best they could. They formed a constitution for the State of Virginia, and to show the House how shamefully the west was treated, I will read three or four lines of the twenty-third section of article four of that delectable instrument:

> "Every slave who has attained the age of twelve years shall be assessed with a tax equal to and not exceeding that assessed on lands of the value of $300. Slaves under that age shall not be subject to taxation."

Here you will perceive that all slaves over twelve years of age are only taxed equal to and not to exceed that assessed on land of the value of $300, while all slaves under twelve years of age are wholly exempt from taxation. By this little provision no less than $200,000,000 worth of property of the citizens of the valley and those residing in the eastern part of the State was relieved from taxation, while every knife and fork; every bed, whether feather or straw; every horse, mare or gelding, whether blind, spavined, or wind-broken; every old clock, whether it had refused to tell of the passing hours or not; in a word, every species of property, real, personal, and mixed, west of the Alleghany mountains, was taxed, taxed, taxed!

Now, Mr. Speaker, where and how was this money spent, thus wrung from the hard earnings of the people of the west? Look upon the map, and you will find the question incontrovertibly answered. See how the eastern part of the State is checkered over with railroads in every direction—no less than five, and perhaps more, running to and through the city of Richmond—all having been built, either in whole or in part, at the expense of the State. Now, sir, look west of the Alleghanies, and see how many you will find there. Here is the Baltimore and Ohio railroad, running along the line between Virginia and Pennsylvania, and terminating at the city of Wheeling. How much did the State contribute to that great improvement? Not a dollar! On the contrary, it

was years before she would even give her consent that it should be built at all over the soil of Virginia. Then, again, here is a branch of the same road, known as the Northwestern Virginia road, which has its terminus at the city of Parkersburg, not one dollar to build which did the State contribute. Sir, we petitioned the Legislature of the State for fifteen or twenty years for the privilege of building that road over our own soil, with our own means, before our prayer was granted. Why, Mr. Speaker, this partial legislation? Why was the west deprived of the benefits so lavishly showered upon the east? We all know in the west the reason. They did not attempt to conceal the fact that they regarded us unsound on the slavery question; and that every railroad and turnpike made through the western part of the State would induce emigration to that part of the State; and that every man that settled there added that much to the strength of the west. Hence it was the policy of our eastern brethren to retard in every way possible the settlement of the west.

Now, sir, I ask whether it is possible for a State to prosper where such antagonistic interests exist. Is it not the interest of both that a division should take place, that each may pass such laws as their respective wants and interests may require?

But it is argued by those who oppose this bill, that we should wait until the whole State is restored and every county in the State is fully represented in the Legislature, and then get the consent of the Legislature, and Congress will admit us at once. In reply to this reasoning I have this to say; that the people of the west are not disposed to let the present opportunity pass, when they can accomplish that which they have so long desired to attain, and which justice and right demand should be done. History affards but few instances where men clothed with power voluntarily give it up. It was once said by Virginia's most gifted sons, that there was no way of judging the future but by the past; and if we look in this instance to the past to ascertain what our eastern brethren would be most likely to do in regard to this question when (if ever) they shall be fully represented in the Legislature of the State, we are forced to the conclusion that, instead of giving their consent to the erection of a new State within the jurisdiction of Virginia, they would, if possible, rivet the chains more tightly upon us, and compel us to pay not only our just proportion of the debt of the State before the passage of the ordinance of secession, but any debt that has been con-

tracted by Letcher & Co. in prosecuting this unholy war against the United States.

Again, it is argued that if the Legislature of the State, when the whole State is restored, will not give its consent to the erection of the new State, a convention of the people of the State can be called, and a new Constitution be framed, and many if not all the grievances now complained of by the west will be corrected, and a division of the State rendered unnecessary. This reasoning, Mr. Speaker, is fallacious. By an examination of the constitution of Virginia it will be seen that the valley and eastern part of the State have a majority in both branches of the General Assembly, and is it reasonable to suppose that they will consent to the calling of a convention to frame a new constitution in order to yield to the west that which has heretofore been denied her, and which will greatly and materially abridge the rights of the east? Certainly not. But, sir, if a convention was called, the delegates from the east and the valley would form a majority of the convention, and consequently the west would be still at their mercy; for let it be borne in mind that while the valley was, to some extent, prior to the year 1850, identified with the west, since that period, by the clause in the constitution of 1850 to which I have already referred, and by connecting the valley and the east together by building the Tennessee, the Central, and the Manassas Gap railroads, it is now fully identified with the east. Now, I ask any candid man to tell me what relief have we residing west of the Alleghanies to expect by waiting until the whole State is restored for anything else that can or may happen in the future. Sir, we are doomed to perpetual bondage unless Congress grants us relief by the passage of this bill. And instead of being a bill entitled "A bill for the admission of the State of Western Virginia into the Union, and for other purposes," it ought to be entitled "A bill for the release of three hundred and thirty-four thousand white people residing west of the Alleghanies from a worse than Egyptian bondage, and for the admission of the new State of West Virginia into the Union."

Sir, if peace to our distracted country was proclaimed tomorrow, and every sword now drawn in deadly strife returned to its scabbard, it would bring no peace to Western Virginia. The old feuds and differences existing between the two sections of the State, arising out of the conflict of interests that I have already mentioned, intensified by what has grown out of this war, pre-

clude the idea of the two sections of the State ever living in peace under the same State government again. The boundary of the proposed new State embraces an area of twenty-four thousand square miles, and an aggregate white population of over three hundred and thirty-five thousand; also an aggregate slave population at the beginning of the war of a little over twelve thousand, which it is reasonable to suppose is not now more than half that number. It is the opinion of everyone, I believe, without an exception, who has written about or examined the internal wealth of the several States of the Union, that Virginia contains more resources of wealth than any other State; and that these resources are principally confined to that part of Virginia embraced within the lines of the new State all will admit. Look at her wells of oil on the banks of the Little Kanawha river, pouring forth their hundreds of barrels per day; her immence beds of bituminous cannel coal, her deposits of ore, her water-falls, and her forests of timber. Then, sir, look at her lands; say nothing about their adaptation to the growth of wheat, corn, and for grazing; as a wool-growing country it has no superior, if it has an equal on the globe. Many have already embarked in that enterprise and have met with the most gratifying success, and I will venture to predict that before many years West Virginia will be the great wool-growing as well as manufacturing region of the United States.

Mr. Speaker, Virginia is one of the oldest States in the Union. As I have remarked before, it is conceded that she possesses more elements of wealth than, perhaps, any other State, and yet it is a humiliating fact that she is at least fifty years, if not more, behind her daughter Ohio in population, wealth, and nearly everything that makes a State great and prosperous. Why is this? I repeat the question, why is this? Sir, to my mind the reason is obvious. When not affirming and reaffirming the resolutions of 1798-99 and discussing political abstractions, we were wasting our time and energies in the vain endeavor to reconcile irreconcilable interests between the two sections of the State, instead of dividing the State on the line made by nature into two independent States, that the inhabitants of each might develop their own internal wealth and pass laws suitable to their own wants and conditions. Sir, we cannot, even with your aid, recall the past, but we may with it improve the future.

Mr. Speaker, in reference to the question of slavery in the new State, I have but a word or two to say. The laws of climate

forbid its existence there, nor is it the desire or wish of the people that it should be a slave State. Hence it was that I cheerfully consented that that question might be settled at once by inserting the clause contained in this bill. The further extension of slavery under this Government has become an absolute idea. And if one of the results of this war be the extinction of slavery in the border States, and the shaking to its very center the institution in every southern State, let the South remember that it was she who filled the goblet, and if she is compelled to drink its contents to its very dregs, she cannot say to the border States, "you did it."

Mr. Speaker, there is another consideration which, although not germane to this bill, I cannot refrain from alluding to before closing my remarks. It is the noble and patriotic stand taken by the people of northwestern Virginia at the very commencement of this causeless and unfortunate war. Yes, sir, the news had hardly reached the patriotic people of northwest Virginia that an ordinance of secession had passed withdrawing Virginia from the Union, before they had met, and, kneeling before the altar of their country, they resolved that, come what might, they would stand by the old flag and the Union which their fathers had bequeathed to them. How they kept their resolve, let incontrovertible facts answer.

The tenth congressional district, represented on this floor by my colleague, (Mr. Brown,) and my own district, the eleventh, containing together a white population of not over one hundred and twenty-five thousand, have now in the service of the United States over eleven thousand men exclusive of those who have come from other parts of the country and enlisted in Virginia. Sir, one little county in my district—a county within whose limits a traitor dare not enter—with a voting population of about one thousand, has sent to the field four hundred and sixty men. I allude to the glorious and patriotic county of Ritchie. Tell me, sir, where are the two congressional districts and where the county that has in proportion to its population turned out as many men for this war? They cannot be found.

Mr. Speaker, when the impartial historian shall write the history of this war, the heroic and patriotic course of the people of northwestern Virginia will form not only one of its most interesting but brightest chapters. Sir, bound as we are to the great West by ties made by the God of nature, we could not if we would,

and would not if we could, change our relations to the Government of the United States; no, sir, no. Let me say to the Representatives on this floor from Ohio, Indiana, Illinois, and other western States, that your destiny is ours, and that whatever is in store for you in the impenetrable future is likewise in store for us. Come, therefore, and aid us in the passage of this bill, to the end that we may be erected into a new State, that you with us may share in the riches and blessings that will flow by developing the incalculable mineral wealth of northwest Virginia, which will, in the future as in the past, unless our request is granted, remain buried in the bosom of our mountains.

Mr. Speaker, one word more and I have done. It is said by those who desire some excuse, if I may so speak, to oppose this bill, that they cannot bear the idea of dividing the old Commonwealth of Virginia, which has given birth to so many great statesmen, and around whose history so many delightful associations cluster. Sir, I yield to no man in the regard, not to say love, I have for the good old Commonwealth. It was on her soil I first opened my eyes to the light of heaven. I read with childish pride, and point with delight to her history and the part her sons have taken heretofore in the councils of the nation. Nay more, I would obliterate, if possible, from the memory of man the humiliating and unjustifiable position she now occupies towards that Government she has contributed so largely to build up. But what of all this? Did she lose any of her historic renown when she ceded to the General Government the territory now comprising the great Northwest, or when she permitted her daughter, Kentucky, to set up for herself, that she might have a name in history? No, sir, no! And thus it will be if her youngest daughter, West Virginia, is permitted to assume all the responsibilities of one of the States of this Union. Instead of detracting from her fame and history, it will add to both, and the time will come when she will point with pride and pleasure, as did the Spartan mother, to her children, and say "these are my jewels."

Mr. Speaker, pass this bill and you will carry joy and gladness to every loyal heart in northwestern Virginia. Pass it, and you buoy up the hearts and strengthen the arms of those that have grown faint and weak in defending their homes, and maintaining that Government which is the hope of the friends of constitutional liberty throughout the civilized world. Yes, pass it, and you will do that which justice and right demand, and we will ever eel-

ebrate the event as we do the birthday of our national existence, with bonfires and illuminations, and songs of thanksgiving and praise.

Part of the Speech ot Hon. William G. Brown,

IN THE HOUSE OF REPRESENTATIVES, DECEMBER 9, 1862, ON THE ADMISSION OF WEST VIRGINIA INTO THE UNION.

(See Congressional Globe, Part 1, 3d Sess. 37th Congress, p. 41.)

* * * * * * * * * * * * * * * *

Mr. Brown, of Virginia. I was about leaving the question of legitimacy of the government of Virginia, when I was interrupted by the order of the day. I have already referred to the convention of May, 1861; but I beg leave to read some of the resolutions of that convention. I do so because the gentleman from Kansas was pleased to speak of that body as a mob. Sir, I wish the gentleman from Kansas could have looked upon that convention of five hundred men. I have never served in a body more conspicuous in point of talent or appearance. And if gentlemen will only read the resolutions passed by that body, and compare them with the views of the gentleman from Kansas, I think they will find them to compare very well in point of ability.

* * * * * * * * * * * * * * * *

If the views, then, of the gentleman from Kansas be correct, I have no right to a seat upon this floor. If Virginia is a Territory, then by the unauthorized and illegal act of secession of that State I have no business to a seat upon this floor. The Wheeling convention resolved that it would hold elections for Congressmen and for members of the State Legislature upon the regular day of Election. Upon that day, sir, there was a larger vote given in my district than had ever been given before. I was returned to the House of Representatives by a majority of more than fifteen thousand over all the other persons voted for. The vote was almost unanimous for me. The delegates to the Virginia Legislature were also elected by the people of Virginia by a large vote. But I need not advert to my own district as the only one where this was the case. The adjoining district of my colleague (Mr. Blair) voted in the same way. My colleague was also elected by a very large majority. The vote in West Virginia was larger than had ever been given before. The members to the General Assembly

were elected on the day fixed by law for their election. They were elected for the very purpose of reorganizing the State government, and maintaining their allegiance to the Constitution and the laws of the United States. They denied the power of the separate action of the Richmond usurpation to sever them from this government, and to destroy their right to the enjoyment of the laws of Virginia as they were.

I will insert in my remarks, if I should see proper, the resolutions passed by the convention of the 11th of June, 1861, which reestablished the loyal government of Virginia.

Mr. Speaker, I will remark before I take my seat, that the extent of territory of West Virginia is larger than some of the old thirteen States of the Union, embracing some twenty-four thousand square miles. Its population is larger than some of those old states. We have a population of three hundred and thirty thousand, giving us, under the apportionment of 1860, three Representatives upon this floor, which is all we claim in the pending bill, leaving eight representatives to the remaining portion of old Virginia. So much for that matter.

With regard to our revenue, I will add a word. The revenue collected within the boundaries of the new State in 1859 can be stated. I have no accurate estimates since that year. I hold in my hand the report of the Auditor, which fixes the revenue in the forty-eight counties included in the bill of the Senate, for the year 1859, at $620,061.39, a sum larger than is collected in many of the old States of the Union.

Now, sir, there are other considerations why this House should admit West Virginia into the Union. The bill ought to be passed at once as a matter of expediency. It is not a new question with the people of West Virginia. They have been struggling for it for forty years. They were on the point of revolution in 1829-30, when Eastern Virginia yielded a small pittance of the power to them—not what they were entitled to, but enough to reconcile them for the moment. In 1850 we were again upon the point of revolution because we were denied our proper representation in the Legislature of Virginia. They then yielded to us our proper representation in the House of Representatives, but they denied them to us in the Senate. They fixed the Senate upon the mixed basis, as they called it. They gave us our proper weight in one branch of the Legislature, but in the other they held the power to control us. As an equivalent for what they gave us, they retained in the constitution the provision

that was most oppressive and unjust. They retained a provision that the Legislature should not tax negroes under twelve years of age at all. I need not tell you, sir, that the negro population is to be found in Eastern Virginia. All that valuable class of property, many of them then worth from a thousand to fifteen hundred dollars—the negroes under twelve years of age—was entirely exempt from taxation, and the remaining portion of the negro property was only taxed as property at the value of $300. Although the negroes should bring more than a thousand dollars it was fixed that they should only be valued at $300 each. While every article of our property was taxed at its full value, the negro was almost exempt from taxation. We protested against it, but we were powerless because they retained in the Legislature an undue proportion of the representative power.

But, sir, that is not all. They raised—not upon the property in these negroes—large sums of money for the purpose of constructing railroads. They collected of the $600,000 a large amount for the purpose of constructing railroads in Eastern Virginia — railroads they are now using for our subjugation and for the destruction of the Union. They built them out of our money. They raised revenue in an undue proportion upon us, and then expended it within their own localities. A greater outrage was never committed upon a loyal people.

But, sir, I could assign another reason. Our relations, always unfriendly and unkind in consequence of their oppression, are doubly so now, because of our loyalty. We, sir, are the only people within the limits of a seceded State that declared open resistance to the revolution. The five hundred delegates who assembled at Wheeling to inaugurate the project of reestablishing the government of Virginia upon a loyal basis, went with their lives in their hands. They were threatened with expulsion from the State. They were threatened with the gallows. At the time we assembled there the southern troops were marching with all possible speed for the purpose of intimidating us, and to prevent us from the exercise of our allegiance to the laws. They were, sir, within fifty or sixty miles from Wheeling. A people never did exhibit more firmness and more determination than the loyal people of Virginia on that occasion. So far as we had any intimation from this Government, it was through the last message of Mr. Buchanan, who denied that it had the right to coerce a seceded State. Virginia had seceded and annexed herself to the Southern confederacy; and here were about three hundred thousand loyal people of Virginia, without any assurance of aid from

this Government, determined that if the policy of the incoming Administration should be the same as that of Mr. Buchanan, and would not give us aid, we would, for the love of the Government of our fathers, take up arms and resist the southern confederacy ourselves. And, indeed, we did not know but that this Government, under the views of Mr. Buchanan, might aid the southern confederacy in suppressing us as an insurrection. It was a new question; but we were resolved upon one thing, and that was, that if we were carried out of the old State of Virginia, and our connection with this government broken up, it should be done by force and at the point of the bayonet.

How does that people now stand? We have in the field, fighting for this Government, sixteen regiments raised almost exclusively within the limits of the new State. We have supplied more than our full quota, and that not by drafting but by volunteering. When the last requisition was made upon us, we furnished the number promptly. In my own county and district nearly every fighting man is now in the army. Are we to be turned back to the old Commonwealth, there to be oppressed by her to be driven from the borders, if persecution can drive us from our homes? Many of our citizens say they will leave the homes of their fathers and seek new homes in the West unless they can be relieved from this threatened load of oppression and danger. My advice to them has been otherwise. I have told them not to run after liberty in another land, but swear by the God of their fathers that they will bring liberty to their own homes; and we will do it by the aid of this Government and the blessing of God, and we will be a free people.

I received this morning from the Legislature of the State of Virginia, sitting at Wheeling, a dispatch containing a resolution passed by that body, asking this House to pass the Senate bill just as it passed the Senate. I had the honor yesterday of presenting petitions from the people of Virginia, numbering some five thousand, asking the same thing. My colleague (Mr. Blair) presented a batch of similar petitions. There is but one voice among our constituents, and this is in favor of a division of the State.

Mr. Bingham. Will the gentleman from Virginia allow me to say that I am prepared to make a report upon those petitions which were referred to the Committee on the Judiciary, to the effect that the prayer of the petition be granted?

Mr. Brown, of Virginia. I desire to put this House right upon one further point, and then I will leave this question to the House

for their final action, so far as I am concerned. It has been asserted, and understood in some quarters, that the organization of the government at Wheeling was for the purpose of forming a new State. I am prepared to say that when that convention originally met in Wheeling, although there were a few radicals there who wanted to form a new State without reinstating the old State of Virginia, we voted them down, and commenced the exercise of our original rights as freemen to build up the loyal government of Virginia; and, although we designed eventually to ask for this separation, and it was what we anxiously desired, yet we determined to be a law-abiding people, and ask for what we desired through the forms of law. We think we have brought ourselves within the forms of law, and we think we have conducted ourselves in such a manner as to recommend us favorably to the consideration of this body; and now, in the name of my constituents, and of the loyal men of Virginia, I most earnestly appeal to this body to give us the relief we ask, and grant us the prayer we have made. With these remarks I shall leave the case with the House. The following are among the proceedings of the convention assembled on the 11th of June, 1861:

A DECLARATION OF THE PEOPLE OF VIRGINIA, REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING,

THURSDAY, JUNE 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed; and when any form or organization of government proves inadequate for or subversive to their purpose, it is the right, it is the duty of the latter, to alter or abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the convention which assembled at Richmond in February last, without the previously expressed consent of such a majority, was therefore a usurpation; and the convention thus called has not only abused the powers nominally intrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the Government of the United States, and against the citizens of neighboring

States, with whom they have heretofore maintained friendly, social, and business relations.

It has attempted to subvert the Union founded by Washington and his copatriots, in the former days of the Republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country. It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees.

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes.

It has, in conjunction with the State executive, instituted, wherever their usurped power extends, a reign of terror intended to suppress the free expression of the will of the people, making elections a mockery and a fraud.

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of property of the Federal Government, and by organizing and mobilizing armies with the avowed purpose of capturing or destroying the captial of the Union.

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances treason against the former.

We, therefore, the delegates here assembled in convention to devise such means and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the universe for the recititude of our intentions, do hereby, in the name and on behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said convention and executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said convention and executive, whether legislative, executive, or judicial, are vacated.

AN ORDINANCE FOR THE REORGANIZATION OF THE STATE GOVERNMENT, PASSED JUNE 19, 1861.

The people of the State of Virginia, by their delegates assembled in a convention at Wheeling, do ordain as follows:

1. A Governor, Lieutenant Governor, and Attorney General for the State of Virginia shall be appointed by this convention, to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the State, and to continue in office for six months, or until their successors be elected and qualified; and the General Assembly is required to provide by law for an election of Governor and Lieutenant Governor by the people as soon as in their judgment such an election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the Governor respecting such matters pertaining to his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the Governor.

3. The Delegates elected to the General Assembly on the 23rd day of May last, and the Senators enittled under existing laws to seats in the next General Assembly, together with such Delegates and Senators as may be duly elected under the ordinances of this convention, or existing laws to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the Legislature of the State, to discharge the duties and exercise the powers pertaining to the General Assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling, on the 1st day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-fourth section of the fourth article of the constitution of the State.

4. The Governor, Lieutenant Governor, Attorney General, members of the Legislature, and officers now in the service of the State, or of any county, city, or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of

the militia, and officers and privates of volunteer companies of the State, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

I Solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the 13th of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the 11th day of June, 1861.

If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the Governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy, at some convenient and early day to be designated in said writ; of which due publication shall be made for the information of the persons entitled to vote at such elections; and such writ may be directed, at the discretion of the Governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the Governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the Governor, he shall fill the vacancy without writ; but if such officer be appointed otherwise than by the Governor or by election, the writ shall be issued by the Governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

WASHINGTON HALL.

THE BIRTH-PLACE OF WEST VIRGINIA.

This building stood on the northeast corner of Market and Monroe streets—now Market and Twelfth streets—Wheeling. Within it, on the second door, the Conventions of 1861, which reorganized the Government of Virginia and provided for the formation of West Virginia, held their sessions. It was erected in 1851 by a corporation known as the Washington Hall Association, at a cost of $46,000.00. It was first opened on January 1, 1853, when the citizens of Wheeling gave a banquet in honor of the President of the Baltimore and Ohio Railroad, together with his guests from the City of Baltimore and the States of Virginia and Maryland, who arrived at the City of Wheeling on that date, having been carried thither by the first through train from the Atlantic Ocean to the Ohio River. It was totally destroyed by fire November 30, 1876.

HOW WEST VIRGINIA WAS MADE.

PROCEEDINGS OF THE FIRST CONVENTION

OF THE

PEOPLE OF NORTHWESTERN VIRGINIA

—AT—

WHEELING

MAY 13, 14 AND 15, 1861,

AND THE

JOURNAL OF THE SECOND CONVENTION

OF THE

PEOPLE OF NORTHWESTERN VIRGINIA

AT

WHEELING,

WHICH ASSEMBLED, JUNE 11TH, 1861, AND CONTINUED IN SESSION UNTIL JUNE 25TH. ADJOURNED UNTIL AUGUST 6TH, 1861. REASSEMBLED ON THAT DATE, AND CONTINUED IN SESSION UNTIL AUGUST 21ST, WHEN IT ADJOURNED *sine die.*

WITH APPENDIXES

AND AN

INTRODUCTION, ANNOTATIONS AND ADDENDA

BY

VIRGIL A. LEWIS, M. A.,

STATE HISTORIAN AND ARCHIVIST.

PUBLICATION DIRECTED BY HON. WILLIAM G. CONLEY, ATTORNEY-GENERAL OF WEST VIRGINIA, DECEMBER 1, 1909.

NEWS-MAIL COMPANY
PUBLIC PRINTERS
Charleston, W. Va.

PREFATORY AND EXPLANATORY.

Sources of Information..

Forty-eight years have come and gone since the two Conventions of the people of Northwestern Virginia assembled at Wheeling in the year 1861, and yet their proceedings were never printed in book form. The Secretaries of the First Convention, were Judge Gibson Lamb Cranmer, of Ohio County; Charles B. Waggener, of Mason County; and Marshall M. Dent, of Monongalia County. Judge Cranmer was the Secretary of the Second Convention, and was the custodian of the manuscript proceedings, journals, and other documents of these Conventions. What became of this manuscript material? Judge Cranmer died several years since. Hon. Granville D. Hall, who was the stenographic reporter of the proceedings of both these Conventions for the *Daily Intelligencer* of Wheeling, and who is still living, and residing at Glencoe, Illinois, had some correspondence with Judge Cranmer in 1899, concerning the manuscript material of these Conventions, and he has kindly furnished us with the following extracts from letters which he received from Judge Cranmer, whose home was on Wheeling Island. Under date of March 28, 1899, he said:

"During the flood of 1884, as you are doubtless aware, I lost my manuscripts (which were voluminous,) since when, I have lost courage in attempting to duplicate them to any extent."

Under date of December 4, 1899, he said:

"As you are probably aware, the manuscript I had prepared concerning the re-organization of Virginia, was destroyed in the flood of 1884, together with my data; and since then I have not undertaken to re-write it."

Under date of December 28, 1899, he said:

"I am not sure whether or not, I have informed you of the disposition of the papers referred to in your letter of December 4th. Under the instructions of the Governor at that time, I shipped all papers and documents in my possession, as secretary, to Alexandria, Va., at the time when the seat of government of the re-organized Government of Virginia was removed to that city."

Query:—Were the journals of these Conventions a part of the manuscript documents sent to Alexandria, at the time of the removal of the seat of Restored Government from Wheeling to that place in 1863; or were they included in those ruined in the

residence of Judge Cranmer on Wheeling Island, at the time of the great flood in the Ohio river, in February, 1884? Judge Cranmer does not say whether these journals were included in the manuscript material sent to Alexandria in 1863, or in that lost in his home in 1884. As to this, the fact will in all probability never be known. The writer has made diligent inquiry at Alexandria, and also at Richmond, but found no trace of these journals; and two years since, was informed by Hon. D. Q. Eggleston, Secretary of the Commonwealth, that no such documents are in the possession of the State of Virginia. The inference therefore, is, that they were lost in the flood referred to by Judge Cranmer. This would indicate that the only records of the Proceedings and Journals of these Conventions, now in existence, are those printed in the *Daily Intelligencer*, of Wheeling. This newspaper was founded in 1852, the first issue thereof appearing on the 24th of August, that year. Its founders were E. B. Swearingen and Oliver I. Taylor; the latter and Joseph H. Pendleton being the editors. Later, the publishers were Pendleton and Beatty, who in 1856, sold the paper to Archibald W. Campbell and John F. McDermot, the former becoming the editor-in-chief. He speedily rose to a prominent place among the newspaper men of the Ohio Valley, a position which he continued to occupy to the end of his life. He was a delegate to the Convention which nominated Abraham Lincoln for the Presidency, and the *Intelligencer* supported him for that position in the ensuing campaign. There were then, weekly, tri-weekly, and daily editions, the last being a four-page, twenty-inch, seven-column paper. Its editor most vigorously opposed the secession of Virginia, and with like interest, supported the movement of Northwestern Virginia which resulted in a Restored Government, and the formation of the new State of West Virginia. He gave himself, without reserve, to the work of educating and preparing the people of Northwestern Virginia for the high destiny he had faith to believe awaited them. On the exchange list of the *Intelligencer*, were all the other newspapers published in Northwestern Virgina, and from them a vast mass of history material was reproduced. Hence its files covering the years of the Civil War are priceless. But two of these are believed to be in existence; one being in the public library in the city of Wheeling; the other in the possession of the State Department of Archives and

History. It is from this last that the Proceedings and Journals of the two Conventions of 1861, are herewith printed. They are, no doubt, as accurate, and fuller and more complete, than the routine journals kept by the Secretaries of these Conventions. In addition to the record of routine business, they contain much of the discussions and debates, with addresses to the people, and ordinances, and other documents not usually found in the journals of deliberative bodies. Because of this, they are far more complete than are the journals of the State Convention at Richmond a few months before; or is that of the Constitutional Convention at Wheeling, a few months later. For these reasons, the files of the *Daily Intelligencer* are, and must continue to be, the chief sources of the history of the organization of the Restored Government of Virginia, and the formation of the State of West Virginia. From these the following records of the Proceedings and Journals of the First and Second Conventions of the people of Northwestern Virginia in 1861, have been accurately transcribed; the only changes made being the re-arrangement of the list of delegates, and the use of full given names, instead of initials, in cases where the said names are well known.

When an omitted word or phrase has been supplied, it has been enclosed in brackets, thus [——]; and if of an explanatory character, curves have been used to enclose it, thus (——). In some instances, abbreviations have been expanded, that their meaning might be rendered plain.

December 12, 1909. V. A. L.

CHAPTER I.

INTRODUCTION—EXTRA SESSION OF THE GENERAL ASSEMBLY OF VIRGINIA—THE STATE CONVENTION—ORDINANCE OF SECESSION—ALLIANCE BETWEEN VIRGINIA AND THE CONFEDERATE STATES—ADOPTION OF THE PROVISIONAL CONSTITUTION OF THESE STATES—A PROVISIONAL ARMY—CITIZENS OF VIRGINIA ABSOLVED FROM THEIR ALLEGIANCE TO THE UNITED STATES—THE STATE ADMITTED AS ONE OF THE CONFEDERATE STATES OF AMERICA.

The New Year—that of 1861—was inaugurated throughout Western Virginia with as bright a winter day as ever dawned over this Trans-Allegheny Region. The early morning was sharp and frosty, but the sun shone out gloriously, and long before noon the frost, together with the light snow that here and there covered the earth along the northern hillsides, with other evidences of winter, were dispelled; and a warm balmy breeze came from the Southwest, as if to complete the delusion that nature had gone back to the autumn-time again. There was on every hand the same holiday appearance as of yore; fire-crackers, torpedoes, the discharge of fire-arms, cakes, candies, feasting, clean clothes and friendly salutations, with the compliments of the season, in fifty thousand homes which dotted the wide expanse all the way from where the Ohio rolls its onward course to the Gulf, across the mountains to where the waves of the Chesapeake dash against the shore-lands of Virginia. Thus began in Western Virginia—the year 1861—the most memorable in all American history.

But, even then differences existed between the Southern and Northern sections of the country, which threatened not only to destroy the Union, but to wreck society itself, and which did produce the most terrible civil war of all time. On the 20th of the preceding December, South Carolina had adopted an Ordinance of Secession declaring that the Union hitherto existing between South Carolina and the other States was dissolved.

This sentiment spread with great rapidity and by the first of February, 1861, five other States—Mississippi, Florida, Alabama, Georgia, and Louisiana — had all taken similar action. The Senators and Representatives of these States resigned their seats in the National Congress and returned to their homes to become leaders of the fortunes of their people. On the 4th day of February, 1861, delegates from six of the seceded States assembled at Montgomery, Alabama, and formed a new Government called the Confederate States of America. Four days later, this was organized by the election of Jefferson Davis, of Mississippi, as Provisional President, and Alexander H. Stephens, of Georgia, as Vice-President.

An Extra Session of the General Assembly of Virginia.

Very soon Virginia became a theatre on which were enacted most remarkable scenes in the tragedies and dramas of history. Under the provisions of her Constitution adopted in 1851, the General Assembly held biennial sessions. The winter of 1860-61, was the period of vacation. Influenced by the pressure of events, Governor John Letcher, on the 15th day of November, 1860, issued a proclamation convening the General Assembly in extra session, on Monday, January 7, 1861. In this, he said: "Great excitement prevails in the public mind, and prudence requires that the representatives of the people of this Commonwealth should take into consideration the condition of public affairs and determine calmly and wisely what action is necessary in this emergency."

In obedience to this proclamation of the Governor, the General Assembly convened in the Capitol at Richmond, on the date fixed,—January 7, 1861. In his message to this body, Governor Letcher said:

"The proposition for the call of a State Convention, to determine the position which Virginia shall take, in view of passing events, appears to have been received with very general favor. As this subject has been much discussed by the people in their primary meetings, it is not only proper, but it is doubtless expected that I shall refer to it in this communication. * * * I have my convictions upon this question, and I give expression to them in declaring my opposition at this time, to the call of a State Convention. I see no necessity for it at this time, nor do I now see any good practical result that can be accomplished by it. I do not consider this a propitious time to moot the question, and I apprehend

from indications that have been exhibited, that serious difficulties and embarrassments will attend the movement."[1]

Speedily the views of a majority of the members of the Assembly became known, and they were at variance with those of the Governor. On the second day of the session, that body adopted Resolution No. 1, relating to the coercion of a State, the text thereof being as follows:

1. "Resolved by the general assembly of Virginia, that the Union being formed by the assent of the sovereign states respectively, and being consistent only with freedom and the republican institutions guaranteed to each, cannot and ought not to be maintained by force.
2. "That the government of the Union has no power to declare or make war against any of the states which have been its constituent members.
3. "Resolved, that when any one or more of the states has determined, or shall determine, under existing circumstances, to withdraw from the Union, we are unalterably opposed to any attempt on the part of the federal government to coerce the same into re-union or submission, and that we will resist the same by all the means in our power."[2]

On the 21st day of January ensuing, another resolution was adopted by the Assembly. This was "Joint Resolution No. 2, concerning the position of Virginia in the event of the dissolution of the Union". It was as follows:

"Resolved by the general assembly of Virginia, That if all efforts to reconcile the unhappy differences existing between the two sections of the country shall prove to be abortive, then, in the opinion of the general assembly, every consideration of honor and interest demands that Virginia, shall unite her destiny with the Slaveholding States of the South."[3]

The Assembly continued in session until April 4, 1861. Other resolutions similar to the foregoing were adopted and many acts of general legislation were enacted.

The State Convention and the Ordinace of Secession.

A majority of the members of the General Assembly differed in their opinions from that of Governor Letcher, and on the 14th day of January, but seven days after the session began, an act was passed providing "For electing members of a Convention and to convene the same." Never before in the history of Virginia had there been a State Convention which had not been authorized by a majority vote of her people. Now this was changed, the Assembly assuming the right to provide for and call a Convention. The dele-

1. See message of Governor Letcher, pp. 21-22—printed in the Senate Journal of Extra Session of the General Assembly, convened at Richmond, January 7, 1861.
2. See Acts of the General Assembly—Extra Session convened January 7, 1861—p. 337.
3. See Acts of the General Assembly—Extra Session convened January 7, 1861. p. 337.

gates thereto were to be elected on the 4th of February, 1861, and at the said election the Commissioners were required to "Open a separate poll to take the sense of the qualified voters as to whether any action of said Convention dissolving our connection with the Federal Union or changing the Organic Law of the State, shall be submitted to the people for ratification; and in order to ascertain the sense of the voters upon the question aforesaid, the said officers shall cause to be kept a poll-book to be headed "Upon the question of referring such action to the people for their decision", which poll-book shall have two columns—the one headed "For referring to the people," and the other "Against referring to the people," and the names of those who vote for the former shall be written under the former heading, and those who vote for the latter, under the latter heading."

The date fixed for the assembling of the Convention was Wednesday, the 13th of February. The number of Delegates was one hundred and fifty-two, of whom forty-seven were from counties now included in West Virginia. The Convention assembled on the date fixed, and on that day there was a memorable scene in and around the old State House at Richmond. There Virginia had convened her renowned jurists, profoundest thinkers and literary characters. There sat ex-President John Tyler, Henry A. Wise, ex-Governor of the Commonwealth, and many others who had held high positions in the councils of the State and Nation.

A temporary organization was effected by the election of James H. Cox of Chesterfield County; and he was escorted to the chair by George W. Summers and Spicer Patrick, the delegates from Kanawha County—now in West Virginia. Then William F. Gordon, clerk of the House of Delegates, was appoined temporary Secretary. A permanent organization was declared to be in order and John Janney, of Loudon County, was elected President. In his address to the Convention, he said:

"I tender you my sincere and cordial thanks for the honor you have conferred upon me, by calling me to preside over the deliberations of the most important Convention that has been assembled in this State since the year 1776 * * * It is not my purpose to indicate the course which this body will probably pursue, or the measures it may be proper to adopt. The opinions of to-day may all be changed to-morrow. Events are thronging upon us, and we must deal with them as they present themselves. * * *

Gentlemen: There is a flag which for nearly a century has been borne in triumph through the battle and the breeze, and which now

floats over this capitol, on which there is a star representing this ancient Commonwealth, and my earnest prayer, in which I know every member of this body will cordially unite, is that it may remain forever; provided always that its luster is untarnished. We demand for our own citizens perfect equality of rights with those of the empire States of New York, Pennsylvania and Ohio; but we ask for nothing that we will not cheerfully concede to those of Delaware and Rhode Island. * * *

Gentlemen: This is no party Convention. It is our duty on an occasion like this to elevate ourselves into an atmosphere in which party passion and prejudice cannot exist—to conduct all our deliberations with calmness and wisdom, and to maintain with firmness, whatever position we may find it necessary to assume."[4]

When the President finished his address, John L. Eubank of the city of Richmond, was elected permanent Secretary. A Committee on Federal Relations, consisting of twenty-one members, was appointed February 16, 1861. It consisted of Robert Y. Conrad, of Frederick County; Henry A. Wise, of Princess Anne County; Robert E. Scott, of Fauquier County; Wm. Ballard Preston, of Montgomery County; Lewis E. Harvie, Amelia and Nottaway Counties; William H. Mcfarland, Richmond City; William McComas, Cabell County; Robert Montague, Matthews and Middlesex Counties; Samuel Price, Greenbrier County; Valentine W. Southall, Albemarle County; Waitman T. Willey, Monongalia County; James C. Bruce, Halifax County; William W. Boyd, Botetourt and Craig Counties; James Barbour, Culpepper County; Samuel C. Williams, Shenandoah County; Timothy Rives, Prince George and Surry Counties; Samuel McD. Moore, Rockbridge County; George Blow, Jr., Norfolk City; Peter C. Johnson, Lee and Scott Counties; John B. Baldwin, Augusta County; John J. Jackson, Wood County —seventeen from what is now Virginia, and four from what became West Virginia.

On the same day the President appointed the following Committee on Elections, viz: Alpheus F. Haymond, of Marion County, (now in West Virginia); William L. Goggin, of Bedford County; William G. Brown, of Preston County, (now in West Virginia); J. R. Chambliss, of the Greeneville-Sussex Delegate District; Allen T. Caperton, of Monroe County, (now in West Virginia); William Ambler, of Louisa County; Algernon S. Gray, of Rockingham County; Eppa Hutton, of Prince William County; John A. Campbell, of Wythe County; William M. Tredway, of Pittsylvania

4. See Journal of the Convention.—pp. 8, 9, 10.

County; and Addison Hall of the Lancaster-Northumberland Delegate District.

The business of the Convention was now fairly begun, and resolutions were poured upon the Convention with great rapidity, far the greater number being referred to the Committee on Federal Relations. They were expressive of divers sentiments and conflicting opinions. The Governor was requested to furnish the number of Enrolled Militia and the number and character of arms distributed to Volunteer companies. A select Committee of five was appointed to report speedily whether any movements of arms or men had been made by the Federal government to any fort or arsenal in or bordering on Virginia indicating a preparation for attack or coercion.

The 18th day of February was set apart for the reception of the Commisioners appointed by the States of South Carolina, Georgia and Mississippi, to the Convention to ask the co-operation of Virginia in establishing and maintaining a government in the seceded States. The first speaker was Hon. Fulton Anderson, the Commissioner from Mississippi. He began his remarks by a graceful adulation of Virginia, in attributing to her the honor of leadership in the struggle for independence with the crown of Great Britain. He then rehearsed the action of his own State in her secession from the Union; and closed by saying that Virginia held in her hands the destiny of a Southern Confederacy, and that by uniting with her Southern sisters, a revolution would be accomplished, bloodless and peaceful in its character, and no more threats of coercion would be heard. Hon. Henry L. Benning, from Georgia, was next introduced. He urged separation as the only remedy for existing evils. "What" said he, "shall influence a nation to enter into a treaty with another nation?" It is, he argued, interest—material, social, political and religious interest. A long array of statistics and figures were presented to show how Virginia would be benefited by joining her fortunes with those of the seceding States. Then came Hon. John S. Preston, the Commissioner from South Carolina, who stated that his mission was "to communicate to the people of Virginia the causes which have impelled the people of South Carolina to withdraw from the United States". He believed that the time had come when the slaveholding States should resume the powers hitherto granted to the General Government. He closed with an earnest appeal to Virginia to assume that position which her past greatness indicated, and with her

voice hush the storm of war and keep the ancient glory of her name. The Commissioners were representative men of their respective States, and the addresses of all were resplendent with rhetorical flourish and literary excellence. All portrayed the danger to Virginia by remaining longer in the Union, and held up to view a new government of a new nation of which Virginia, should she pass an Ordinance of Secession, would become the chief corner-stone. The effect produced by this visit of the Commissioners was indeed powerful. By resolution, each Commissioner was requested to furnish the manuscript of his address and three thousand copies were ordered printed for the use of the Convention.

The citizens of many of the eastern counties, in convention assembled, urged the Convention to immediate action. At a meeting in Bedford County, March 6, 1861, the following was adopted:

"*Be it resolved*, That we will resist any and every attempt at coercion, and respectfully request our delegates in the Convention to use every means in their power to dissolve the connection of Virginia with the Federal Government."[5]

At a meeting of the citizens of Smythe County, at their Courthouse, March 9, 1861, they adopted the following:

"Resolved, That the honor, the duty, and the interests of Virginia, imperatively demand that she should immediately resume all her rightful sovereignty and stand prepared for war."[6]

On the 6th of March, Alpheus F. Haymond, Chairman of the Committee on Elections, reported to the Convention, that returns from the election held on the 4th of the preceding February, had been received from all of the counties of the State (except Buchanan, Cabell, Elizabeth City, Greene, Logan, McDowell and Wise), and that the total number of votes reported cast, was 145,-697, of which 100,536 were in favor of referring the action of the Convention to the People for ratification or rejection; and 45,161, against referring to the people.[7]

On Saturday, April 13th, it was reported in Richmond that the South Carolina forces had attacked Fort Sumter, and Governor Letcher sent a telegram to Governor Pickens of that State, making inquiry as to whether the report was true. To this the latter replied, saying: "It is true, and it still continues. No damage to any on our side or to our works. Great damage to Fort Sumter." Later in the day Governor Pickens sent another telegram saying: "That Fort Sumter was bombarded all day yesterday * * * The war has commenced. Please let me know what Virginia will

5. See Journal of the Convention—p. 95.
6. See Journal of the Convention—p. 99.
7. See Documents of the Convention—No. IX. p. 6.

do?" To this, Governor Letcher replied by saying: "The Convention now in session will determine what Virginia will do."[8]

An Ordinance of Secession.

This determination by the Convention was soon reached, as Governor Letcher said it would be. Henceforth there was much confusion, and excited discussions continued until April 16th, when, with the Convention in secret session, William Ballard Preston reported from the Committee on Federal Relations the following Ordinance:

"AN ORDINANCE TO REPEAL THE RATIFICATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, BY THE STATE OF VIRGINIA, AND TO RESUME ALL THE RIGHTS AND POWERS GRANTED UNDER SAID CONSTITUTION.

The people of Virginia, in their ratification of the Constitution of the United States of America, adopted by them in Convention on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, having declared that the powers granted under the said Constitution were derived from the people of the United States, and might be resumed whensoever the same should be perverted to their injury and oppression, and the Federal Government having perverted said powers, not only to the injury of the people of Virginia, but to the oppression of the Southern Slaveholding States.

Now, therefore, we, the people of Virginia, do declare and ordain, That the ordinance adopted by the people of this State in Convention, on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified; and all acts of the General Assembly of this State ratifying or adopting amendments to said Constitution, are hereby repealed and abrogated; that the union between the State of Virginia and the other States under the Constitution aforesaid is hereby dissolved, and that the State of Virginia is in full possession and exercise of all the rights of sovereignty which belong and appertain to a free and independent State.

And they do further declare, That said Constitution of the United States of America, is no longer binding on any of the citizens of this State.

This Ordinance shall take effect and be an act of this day, when ratified by a majority of the votes of the people of this State, cast at a poll to be taken thereon, on the fourth Thursday in May next, in pursuance of a schedule hereinafter to be enacted."[9]

The next day, Wednesday, April 17, 1861, was the most eventful one in the annals of Virginia. At 1:30 P. M., a vote was taken and the Ordinance of Secession was adopted—yeas 88; nays 55—a majority of 33.

The crisis had been reached and passed, but the result was not known until the next day. Upon its anncuncement all East Virginia was wild with excitement. That evening a great mass meeting was held at the Metropolitan Hall in the city of Richmond, and the following resolutions unanimously adopted:

8. See Journal of the Convention—pp. 153-155.
9. See Ordinances of the Convention—pp. 3-4.

"*Resolved, unanimously*, That the thanks of this Convention be cordially tendered to the State Convention for the noble act of patriotic duty which they have just performed; and forgetting all past dissentions, we will rally with united hearts and hands in defense of the *honor, safety* and *independence* of Virginia, and the Confederate States."

"*Resolved unanimously*, That the members of this Convention do here, in the presence of the Almighty God and of each other, pledge themselves and each other, their fortunes and sacred honors, in defense of their native soil."[10]

The same evening Col. S. Bassett French, "with a heart too full for utterance", enclosed copies of these resolutions to the President of the Convention, stating that they had been "adopted by the people under the deepest sense of their responsibility to Almighty God and their beloved State." That night bonfires illuminated the public squares in Petersburg and Fredericksburg, and at interior towns the booming of cannon fired in celebration of the event, died away in prolonged echoes along the eastern base of the Blue Ridge. From the mountains to the sea all was enthusiasm.

A SCHEDULE accompanied the Ordinance of Secession. In this it was provided that the vote of the people upon the adoption of said Ordinance should be taken on the fourth Thursday in May following: That the poll-books used should be headed "The Ordinance of Secession" with two columns, one headed "For Ratification" and the other "For Rejection." That all qualified voters who might be absent from their county, or corporations in the Military Service of their State, might vote for the ratification or rejection of the said Ordinance at such place within the encampment as their Commanding Officer might designate; that the Governor should without delay make proclamation of the result, stating therein the aggregate vote for and against ratification; the same to be published in the newspapers of the State. The ninth section of this Schedule read as follows:

"The election for members of Congress for this State to the House of Representatives of the Congress of the United States, required by law to be held on the fourth Thursday in May next, is hereby suspended and prohibited until otherwise ordained by this Convention".[11]

Alliance Between Virginia and the Confederate States.

On the 18th of April the Convention adopted the following:

"*Resolved*, That the Governor of this Commonwealth be requested to communicate, immediately to the President of the Confederate States, the fact that this Convention, on yesterday, adopted an Ordinance resuming the powers delegated by Virginia to the Federal Government, and to express to the said President the earnest desire of Virginia to

10. See Documents of the Convention—No. XVIII., p. 6.
11. See Ordinances of the Convention—p. 5.

enter into an alliance, offensive and defensive, with the said Confederate States.[12]

The next day Governor Letcher complied with the request in this resolution, and in reply thereto, received a telegram from the President of the Confederate States in relation to an alliance between them and the Commonwealth of Virginia.[13]

TELEGRAM FROM THE PRESIDENT OF THE CONFEDERATE STATES.

"To his Excellency, John Letcher,[14]

Governor of the State of Virginia, &c., &c., &c.

Sir:—In response to your communication, conveying to me on behalf of the State of Virginia, the expression of the earnest desire of that Commonwealth to enter into an alliance offensive and defensive with the Confederate States, and being animated by a sincere wish to unite and bind together our respective countries by friendly ties, I have appointed Alexander H. Stephens,[15] Vice President of the Confederate States, as special commissioner of the Confederate States to the Government of Virginia; and I have now the honor to introduce him to you, and to ask for him a reception and treatment corresponding to his station, and to the purposes for which he is sent. Those purposes he will more particularly explain to you.

Hoping that through his agency these may be accomplished, I avail myself of this occasion to offer to you the assurance of my distinguished consideration. JEFFERSON DAVIS.

Montgomery, April 19, 1861."

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12. See Journal of the Convention—p. 165.
13. See Journal of the Convention—p. 168.
14. See Documents of the Convention, No. 54, p. 3.
15. ALEXANDER H. STEPHENS' COMMISSION TO TREAT WITH VIRGINIA.

"Jefferson Davis,
President of the Confederate States of America.
TO ALL WHOM THESE PRESENTS SHALL CONCERN, GREETING:[16]

Know ye, that for the purpose of establishing friendly relations between the Confederate States of America and the Commonwealth of Virginia; and reposing special trust and confidence in the integrity, prudence and ability of Alexander H. Stephens, Vice President of the Confederate States of America, appointed special Commissioner of the Confederate States to the Commonwealth of Virginia, I have invested him with full and all manner of power, and authority for, and in the name of the Confederate States, to meet and confer with any person or persons authorized by the Government of Virginia, being furnished with like power and authority, and with him or them to agree, treat, consult and negotiate of, and concerning all matters and subjects interesting to both republics; and to conclude a treaty or treaties, convention or conventions, touching the premises; transmitting the same to the President of the Confederate States for his final ratification, by and with the advice and consent of the Congress of the Confederate States.

In testimony whereof, I have caused the seal of the Confederate States to be hereunto affixed.

Given under my hand, at the city of Montgomery, this nineteenth day of April, A. D. 1861.

By the President: JEFFERSON DAVIS.
ROBERT TOOMBS,
Secretary of State."

16. See Documents of the Convention. No. 54 p. 5.

On the 22d day of April, the President of the Convention reported to that body that he had received from the Governor the credentials of Vice-President Alexander H. Stephens, a special Commissioner from the Confederate States of America, to the Commonwealth of Virginia. The same day Vice-President Stephens arrived in Richmond, and the next day he addressed the Convention upon the object of his mission to that city; at the afternoon session the following was adopted:

"*Resolved*, That a Committee of five be appointed to confer with the Hon. Alexander H. Stephens, Commissioner from the Confederate States, to arrange with him the terms of union or alliance between this State and the said Confederate States, subject to the ratification of this Convention."[17]

In compliance with this resolution the, President of the Convention immediately appointed as members of such Committee, ex-President John Tyler, of the Charles City-James City-New Kent Delegate District; William Ballard Preston, of Montgomery County; Samuel McD. Moore, of Rockbridge County; James P. Holcombe, of Albemarle County; and James C. Bruce, of Halifax County. By a motion, Lewis E. Harvie of the Amelia-Nottaway Delegate District, was added to the Committee, thus making it to consist of six members.[18] There was prompt action. In less than twenty-four hours (on April 24th) ex-President Tyler, Chairman of the Committee, reported to the Convention, for its consideration, a convention or agreement entered into between Alexander H. Stephens, Commissioner on the part of the Confederate States, and the Committee on the part of Virginia. This was as follows:

CONVENTION
between the
COMMONWEALTH OF VIRGINIA
and the
CONFEDERATE STATES OF AMERICA.

The Commonwealth of Virginia, looking to a speedy union of said Commonwealth and the other slave States with the Confederate States of America, according to the provisions of the Constitution for the Provisional Government of said States, enters into

17. See Journal of the Convention—p. 189.
18. See Journal of the Convention—p. 190.

the following temporary convention and agreement with said States for the purpose of meeting pressing exigencies affecting the common rights, interest and safety of said Commonwealth and said Confederacy:

1st. Until the union of said Commonwealth with said Confederacy shall be perfected, and said Commonwealth shall become a member of said Confederacy according to the Constitutions of both powers, the whole military force and military operations, offensive and defensive, of said Commonwealth, in the impending conflict with the United States, shall be under the chief control and direction of the President of said Confederate States, upon the same principles, basis and footing as if said Commonwealth were now, and during the interval, a member of said Confederacy.

2nd. The Commonwealth of Virginia will, after the consummation of the union contemplated in this convention, and her adoption of the Constitution for a permanent Government of said Confederate States, and she shall become a member of said Confederacy, under said permanent Constitution, if the same occur, turn over to said Confederate States all the public property, naval stores and munitions of war, etc., she may then be in possession of, acquired from the United States, on the same terms and in like manner as the other States of said Confederacy have done in like cases.

3d. Whatever expenditures of money, if any, said Commonwealth of Virginia shall make before the union under the Provisional Government, as above contemplated, shall be consummated, shall be met and provided for by said Confederate States.

This Convention, entered into and agreed to, in the city of Richmond, Virginia, on the twenty-fourth day of April, eighteen hundred and sixty-one, by Alexander H. Stephens, the duly authorized commissioner to act in the matter of the said Confederate States, and John Tyler, William Ballard Preston, Samuel McD. Moore, James P. Holcombe, James C. Bruce and Lewis E. Harvie, parties duly authorized to act in like manner for said Commonwealth of Virginia—the whole subject to the approval and ratification of the proper authorities of both governments respectively.

In testimony whereof, the parties aforesaid have hereto set their hands and seals, the day and year aforesaid, and at the place aforesaid, in duplicate originals.

JOHN TYLER, [Seal.]
WILLIAM BALLARD PRESTON, [Seal.]
SAMUEL MCD. MOORE, [Seal.]
JAMES P. HOLCOMBE, [Seal.]
JAMES C. BRUCE, [Seal.]
LEWIS E. HARVIE, [Seal.]
Committee of the Convention.

ALEXANDER H. STEPHENS, [Seal.]
Commissioner for Confederate States.

There was no delay on the part of the Convention. The next day (on April 25th), the foregoing convention or agreement was, by that body, fully and completely ratified as follows:

"Be it ordained by this Convention. That the Convention entered into on the twenty-fourth day of April, eighteen hundred and sixty-one, between Alexander H. Stephens, Commissioner of the Confederate States, and John Tyler, William Ballard Preston, Samuel McD. Moore, James P. Holcombe, James C. Bruce, and Lewis E. Harvie, Commissioners of Virginia, for a temporary union of Virginia with said Confederate States, under the Provisional Government adopted by said Confederate States, be and the same is hereby ratified and confirmed on the terms agreed upon by said Commissioners."[19]

Constitution of the Provisional Government of the Confederate States Adopted by the Virginia Convention.

On the same day—April 25th—on which the Convention ratified the agreement between the Commissioner of the Confederate States, and those on the part of Virginia, it adopted the following:

"An ORDINANCE for the adoption of the Constitution of the Provisional Government of the Confederate States of America:

"We, the delegates of the people of Virginia, in convention assembled, solemnly impressed with the perils which surround the Commonwealth, and appealing to the searcher of hearts for the rectitude of our intentions in assuming the grave responsibility of this act, do, by this ordinance, adopt and ratify the constitution of the provisional government of the Confederate States of America, ordained and established at Montgomery, Alabama, on the eighth day of February, eighteen hundred and sixty-one; provided, that this ordinance shall cease to have any legal operation or effect, if the people of this Commonwealth, upon the vote directed to be taken on the ordinance of secession passed by this convention on the seventeenth day of April, eighteen hundred and sixty-one, shall reject the same."[20]

Two hundred copies of this Document were ordered printed for the use of the members of the Convention.[21]

Capture of Government Property—The Organization of a Provisional Army.

On the same day on which the Ordinance of Secession was adopted the State Government took steps to possess the Government property within its jurisdiction. The first movement was against Harper's Ferry. This was begun in compliance with the following telegram:

"General Headquarters,
Adjutant General's Office, April 17, 1861.

Brigadier General James H. Carson, *16th Brigade*,
Frederick County, Virginia.

Sir,—You will issue instant orders to the volunteer force of your brigade, to hold itself in readiness for service at a moment's warning, and

19. See Ordinances of the Convention—p. 4.
20. See Ordinances of the Virginia Convention—p. 6.
21. See Journal of the Convention—p. 190.

support any movement that may be made by the State troops, upon the Arsenal and works at Harper's Ferry. They will probably be joined by the volunteers of Augusta and Rockingham, &c. If necessary, you will assume the command of the entire force.[22]

By order of the Commander-in-Chief,

WM. H. RICHARDSON, A. G.

The following telegram was sent from Richmond the next day:

"General Headquarters,
Adjutant General's Office, April 18, 1861.

General Thomas Haymond, *Commanding 3rd Division:*

The Governor directs that you give orders to the volunteer corps, in your Division, to be ready for service at a moment's notice, and to the Brigadier Generals to be prepared for service. That you take measures effectually to prevent the passage of the Federal or any other troops from the West, eastward on the Baltimore and Ohio Rail Road.

The Brigadier Generals of your Division are Buckner Fairfax, of Preston County, 10th Brigade; James H. Carson, Frederick County, the 16th; James Boggs, Pendleton County, 18th; C. B. Conrad, Gilmer County, 20th; John J. Jackson, Wood County, 23d; and Bushrod W. Price, Marshall County, 24th; and to them, your orders should be addressed, promptly.[23]

By Command. WM. H. RICHARDSON, A. G."

April 19th—Major-General Kenton Harper, commanding at Harper's Ferry, telegraphed Adjutant-General William H. Richardson, saying: "I am forwarding to Winchester, with all dispatch possible, the arms and machinery at this place, retaining only such of the arms which are complete, and rescued from the burning, as are thought necessary to equip the troops, imperfectly armed, as they come in." * * * There are now about thirteen hundred men here, and I expect reinforcements to the number of five hundred in a few hours, and I have information of about a thousand now on the way."[24]

April 21st.—Flag Officer French Forest, took possession of the Norfolk and Gosport Navy Yards, together with vessels, steam engines, machinery, tools, supplies, and other property valued at $2,497,130.92; together with the old and new custom houses at Norfolk, valued at $207,000.00.[25]

The same day on which the movement was made against Harper's Ferry,—April 17th—the Convention provided for a State Military force. This was done by the adoption of "An Ordinance to call the volunteers into the service of the State and for other purposes." This was as follows:

"*Be it ordained*, That the governor of the commonwealth be and he is hereby authorized and required to call into the service of the State as many volunteers as may be necessary to repel invasion, and protect the citizens of the State in the present emergency, which volunteers he

22. See Documents of the Convention—No. 35 p. 83.
23. See Documents of the Convention—No. 35, p. 85.
24. See Documents of the Convention, No. 35, p. 79.
25. See Documents of the Convention, No. 35, pp. 15-47.

will receive in companies, and organize into regiments, brigades and divisions, according to the force required; and the governor shall appoint and commission the general, field and staff officers, of said volunteers, and proceed to have them organized and instructed; and that he shall immediately invite all efficient and worthy Virginians and residents of Virginia in the army and navy of the United States to retire therefrom, and to enter the service of Virginia, assigning to them such rank as will not reverse the relative rank held by them in the United States Service, and will at least be equivalent thereto.

"2d. *Be it further ordained*, That the governor shall repel invasion, and see that in all things the commonwealth take no detriment; and shall exercise for this purpose the powers conferred upon him by the constitution and laws of the state.

"3d. *Be it further ordained*, That to enable him to carry out the resolution aforesaid, the sum of one hundred thousand dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated.[26]

On the 19th of April, the office of Major-General of the Military and Naval forces of the State was created. Three days later Governor Letcher nominated Robert E. Lee for this office which was promptly confirmed by the Convention.[27] April 27th an Ordinance providing for Enlistment in the Provisional Army was adopted. It provided that all free, able-bodied, effective men, between the ages of eighteen and forty-five might be enlisted, and the enlistment should be binding on minors, provided they be allowed four days to reconsider and retract their enlistment.[28]

On the 29th of April, five Congressmen were elected to represent Virginia, in the Provisional Congress of the Confederate States, about to assemble at Montgomery, Alabama. These were Hon. R. M. T. Hunter, of Essex county; William C. Rives, of Albemarle county; Hon. John W. Brockenbrough, of Rockbridge county; Walter R. Staples, of Montgomery county; and Judge Gideon D. Camden, of Harrison county.[29]

By another Ordinance adopted April 30th, the term of service of all volunteers called into service under the Ordinance of the 17th of April, 1861, was twelve months, unless sooner discharged.[30]

All Citizens of Virginia Absolved from Their Allegiance to the United States.

On the first day of May, 1861, the Convention adopted its forty-first Ordinance which was as follows:

"An ORDINANCE to release the Officers, civil and military, and the citizens generally of the State of Virginia, from all obligations to sup-

26. See Ordinances of the Convention—p. 8.
27. See Journal of the Convention—pp. 185, 186.
28. See Ordinances of the Convention—p. 11.
29. See Journal of the Convention—p. 213, 214, and Journal of the Second Session—pp. 23, 24, 25, 26, 27, 28, 29.
30. See Ordinances of the Convention—p. 13.

port the Constitution of the late Confederacy, known as the United States of America.

"*Be it ordained*, That all Officers, civil and military, and the people generally of this State, be and they are hereby released from any and all oaths which they may have taken to support the Constitution of the late Confederacy, known as the United States of America; and that said oaths and the said Constitution are inoperative and void, and of no effect, and that the eleventh section of chapter thirteen of the Code of Virginia of eighteen hundred and sixty, be and is hereby repealed."[31]

On the 7th of May, copies of the Ordinance of the Convention, adopting the Constitution of the Provisional Government of the Confederate States of America; also of that of the election of Congressmen by the Convention to represent the State of Virginia in the Congress of the Confederate States, were read in said Congress.[32]

The same day, Hon. Walker Brooke, of Mississippi, announced to the Confederate Congress the presence of John W. Brockenbrough and Walter R. Staples, Delegates from Virginia; and on motion of Hon. Robert B. Rhett, of South Carolina, they were admitted to seats.[33]

(N. B.—R. M. T. Hunter took his seat May 10th; and William C. Rives on May 14th ensuing. Gideon D. Camden never appeared to take his seat.)

A Resolution adopted by the Congress of the Provisional Government, ratified the terms of alliance entered into on the 24th of the preceding April, by and between Alexander H. Stephens, the Confederate Commissioner and the Commissioners of Virginia, and the old Commonwealth was thus formally admitted into the Confederate States of America May 7th, 1861.[34]

A BRIEF SUMMARY—The Convention having adopted an Ordinance of Secession; forbidden the election in the State of representatives to the Federal Congress; effected an Alliance, offensive and defensive, between Virginia and the Confederate States; adopted the Constitution of the Provisional Government of said States; elected five members of the Confederate States Congress, four of whom hastened to take their seats; released all officers from the oaths they had taken to support the Constitution of the United States, and absolved all the people of Virginia from their allegiance to the said United

31. See Ordinances of the Convention—p. 33.
32. See Journal of the Provisional Congress of the Confederate States—Vol. I, p. 192.
33. See Journal of the Provisional Congress of the Confederate States—Vol. I, p. 192.
34. See Jaurnal of the Provisional Congress of the Confederate States. Vol. I, p. 193.

States; captured the property of the National Government at Harper's Ferry; took possession of the Norfolk and Gosport Navy Yards ,with the property connected therewith; occupied the custom-houses at Norfolk and Richmond; and made arrangements by which the State was formally admitted a member of the Confederate States—the whole done before the time arrived for the people to vote for the ratification or rejection of the Ordinance of Secession —the Convention adjourned until June 12th ensuing.

NOTE—The Sessions of this Convention were as follows:
Regular Session began Wednesday, February 13, 1861, and ended May 1, 1861.
First Adjourned Session began Wednesday, June 12, 1861, and ended July 1, 1861.
Second Adjourned Session began Wednesday, November 13, 1861, and ended December 6, 1861, when it adjourned *Sine die*.

CHAPTER II.

CONDITIONS IN NORTHWESTERN VIRGINIA—OPPOSITION TO SECESSION—PUBLIC MEETINGS IN THE INDIVIDUAL COUNTIES—UNITED ACTION SECURED BY THE CONVENTION AT CLARKSBURG.

A very large majority of the men of Western Virginia regarded Secession as ruinous; they did not believe that it was a remedy for the ills complained of by the men of Eastern Virginia. They therefore determined that if that part of the Commonwealth chose to cast its fortunes with the seceded States, they would endeavor to save the Trans-Allegheny Region to the Federal Union. Their position was that they would do all possible against Secession, and thereby keep Virginia—all of it—in the Union; but if this could not be done, then they would, if possible, secure a division of the Commonwealth. Having determined upon this course, they hastened to give expression to their views, and to act in accordance therewith. The first public meeting held for the purpose of giving utterance to these sentiments, assembled at the court-house in Preston County, on the 12th day of November, 1860—six days after the Presidential election—and three days before Governor Letcher issued his proclamation convening the General Assembly in extra session. Men of all parties participated in the proceedings. The partisans of the two democratic candidates, who had waged a furious warfare but one short week previously, met in honest and earnest council to give expression to their views upon the result of the late election, and the questions that were rapidly assuming a dangerous tendency thereunder. The supporters of the Bell and Everett ticket joined in the deliberations, and the few but independent and active adherents of the successful party added their voice. After little delay and no discussion, so united were the men of all parties, that they passed a series of resolutions strongly opposing Secession, and declaring that any attempt upon the part of the State to secede, would meet with the unqualified disapprobation of the people of the county.[1]

A meeting was held in Harrison County, on the 24th day of November—four days after South Carolina adopted an Ordinance

of Secession—under circumstances similar to those in Preston County; and it declared that the people would first exhaust all constitutional remedies for redress, before they would resort to any violent measures; that the ballot-box was the only medium known to the Constitution for a redress of grievances, and to it alone would they appeal; that it was the duty of all citizens to uphold and support the lawfully constituted authorities.[1]

An assemblage of people, at the court-house of Monongalia County, on the 26th of November, in which the acknowledged leaders of all parties took part, resolved unanimously that the election of the candidates of the Republican party did not justify Secession, and that the Union of the States was the best guarantee for the present and future welfare of the people. The people of Taylor County assembled at their court-house on the 3d day of December, ensuing, and resolved unanimously that they were opposed to taking any steps looking to the dissolution of the Union for existing causes.[1]

On the 14th of December, 1860, there was a great gathering of the citizens of Ohio County in the Athenæum in Wheeling; much enthusiasm was manifested Hon. Andrew Wilson, Mayor of the city, was called to the chair, and Nathan Wilkinson was appointed Secretary. Hon. Sherrard Clemens, member of Congress, was the orator of the evening and in a speech resplendent with rhetoric and literary flourish, he portrayed the evils of Secession. A preamble expressed a strong Union sentiment and the eighth in a series of resolutions adopted, was as follows:

"*Resolved*, That we deplore all attempts to abolish or destroy the Constitution of the United States. We do not see that our condition would be improved, if this were done; on the contrary, we have reasons to fear that whatever evils we suffer now, they will be greatly increased with manifold others, 'that we know not of.' Of the broken fragments of our present glorious Union, we should despair of building another in which we could have any confidence. Avowedly a league to be dissolved at pleasure or any caprice, passion, disappointment, or supposed interest of stability could be expected in another Confederacy. Virginia is bounded by the Ohio river and the state of Pennsylvania for upwards of 400 miles. A great body of her people reside near the Ohio river, and on the hills and valleys penetrated by the many streams and rivers which enter it. They have their commerce and intercourse chiefly with the great West; and are deeply interested in preserving the perfect integrity and Union of the States. We deprecate being placed in the position of a border frontier, and we think Virginia should hesitate long before she aids or abets the disruption of the present Constitution, and places her people in such position."[2]

1. See Hagans "Erection and Formation of West Virginia."—p. 37, printed in Vol. I. W. Va. Supreme Court Reports.
2. See Wheeling Daily Intelligencer—Dec. 15-16, 1860.

On the 21st of December, a meeting was held at Bethany, the seat of old Bethany College, in Brooke County, at which a number of the members of the faculty of that institution took an active part.[3] At Hartford City, Mason County, a citizens meeting resolved that the election of Abraham Lincoln in accordance with the express provisions of the Constitution, was not a just cause for the dissolution of the American Union.

On January 1, 1861, the largest and most enthusiastic meeting of citizens that, up to that time, had ever assembled in Wood County, convened in Parkersburg, and with but one dissenting voice, adopted the following:

"*Resolved*, That the doctrine of Secession of a State has no warrant in the Constitution, and that such doctrine would be fatal to the Union, and all the purposes of its creation; and in the judgment of this meeting, Secession is revolution * * * * We are deeply impressed with the conviction that our national prosperity depends on preserving the Union as it is; and we see nothing in the election of Abraham Lincoln to the Presidency of the United States—as much as we may have desired the election of another—as affording any just or reasonable cause for the abandonment of what we regard as the best Government ever yet devised by the wisdom and patriotism of men. That the result of calling a Convention to consider what position Virginia shall assume in the revolutionary movements of South Carolina, will be the means of precipitating the State into a connection fatal to her credit, her prosperity and the happiness of her people."[4]

On the 5th of January—two days before the meeting of the General Assembly in extra session at Richmond—a Workingmen's Union Meeting assembled at Wheeling; it was the largest that ever convened within the walls of the Atheneum, the audience being estimated at three thousand, nearly all of whom were men who seldom took any part in politics; among the resolutions adopted were these:

"*Resolved*, That we will not be bound by the acts of any Convention, no matter how called or organized, the purpose of which is to alter or in any manner change the relation which Virginia bears to the Government of the Union."

"*Resolved*, Further, That any Convention which may be called, should take such action to amend the Constitution of Virginia as to bar representation in the General Assembly upon the free, white popuation of the State and ultimately establish the *ad valorum* principle of taxation as well for slaves as for other property."[5]

At a meeting at Sand Hill, in Marshall County, January 5th, at which eighty voters were present, it was resolved:

"That we will stand by the Union and resist to the utmost of our ability, every and all attempts to dissolve the Union; and we further pledge ourselves not to vote for any man to hold office or represent us, unless he is in favor of the Union, and will give it his support."[6]

3. See Wheeling Daily Intelligencer—Dec. 22, 1861.
4. See Wheeling Daily Intelligencer—Jan. 4, 1861.
5. See Wheeling Daily Intelligencer—Jan. 7, 1861.
6. See Wheeling Daily Intelligencer—Jan. 9, 1861.

On January 7th, a large and enthusiastic meeting of citizens of Mason County assembled at Point Pleasant, and passed a series of resolutions strongly favoring the Union, and denouncing the policy of Secession. The foremost men of the County participated in the Convention.[7]

On the 19th of January ensuing—but five days after the General Assembly passed the bill providing for a Convention—a mass meeting at Clarksburg, in Harrison County, unanimously resolved:

"That we will not support any man who believes that the Convention to assemble at Richmond on the 13th of February, 1861, or any other State authority, can absolve the citizens of this State from their allegiance to the General Government; and that we will support no man who believes that the Federal Government has not the right of self-preservation."[8]

A large number of citizens of Ohio County assembled at West Liberty, January 19th, and declared that in view of the present alarming crisis of the Federal Relations of the State, it was the duty of each citizen of the State to stand by the Union.[9] Two days later the people of Hancock resolved:

"That in our several capacities as citizens of the United States, and of this State, we can remain loyal to both, but in the event of Secession being forced upon us, we will not recognize any power claimed thereby to alter or impair our fidelity and allegiance to the General Government, but will resist all such assumed power to the past extremity."[10]

On January 22nd, the citizens of Triadelphia, in Ohio County, declared by resolution that Virginia had suffered no wrongs at the hands of the General Government that will afford sufficient pretext for open and forcible opposition to the Federal authorities, and that the election of Mr. Lincoln was in form prescribed by law, and that they would vote for no man for a seat in the State Convention, until he pledged himself to vote in that body against the Secession of Virginia.[11]

A large mass meeting of the people at Sistersville, in Tyler County, on January 24th, gave the first utterance to State division by resolving:

"That in case of the firm determination of Eastern Virginia to secede, that we will instruct our delegate and pledge him to stand by the Union in every emergency. *And that if Eastern Virginia secedes*[12] *we are in*

7. See Cincinnati Commercial—Jan. 8, 1861.
8. See Wheeling Daily Intelligencer—Jan. 24, 1861.
9. See Wheeling Daily Intelligencer—Jan. 22, 1861.
10. See Wheeling Daily Intelligencer—Jan. 26, 1861.
11. See Wheeling Daily Intelligencer—Jan. 24, 1861.
12. RESOLUTION OF HON. JAMES BURLEY, THE DELEGATE FROM MARSHALL COUNTY, IN THE RICHMOND CONVENTION, MARCH 16, 1861.

Mr. Burley who sought to know why, if Virginia seceded from the Union, one part of a State might not separate from the other part,

favor of striking West Virginia from Eastern Virginia and forming a State independent of the South, and firm to the Union."[13]

On the 26th of January, a large number of voters assembled at Cameron, in Marshall County, and declared that it was "their duty as well as interest to make their sentiments known, and they are, that we are unfaltering in our devotion to the Union as bequeathed our fathers; that the Union and Constitution have committed no wrong, but have secured most graciously and admirably in our mission, and continue so to do, if they are maintained."[14]

On January 29th, a County Convention in Ohio county, declared as follows:

"In the name and on behalf of the people of Ohio County, we do solemnly declare and say "That the unity of Government which constitutes one people, is still dear to us. It is a pillar in the edifice of our real independence; the support of our tranquility at home—our peace abroad; of our safety, of our prosperity; of that liberty which we so highly prize."[15]

Another meeting in that county on the same day resolved:

"That we are loyal to the Constitution and the Union of the United States, but we are unalterably opposed to Secession as being a doctrine, in our opinion wholly unauthorized by the Constitution as in no degree a remedy for any of the evils of which we complain; whatever may be the doctrine of the Convention as to coercion.[16]

On February ——, 1861, a meeting of the citizens of Brooke county resolved:

"That of all the people of these United States, we, the people of the so called Pan-handle Region of Virginia, are the most to be affected by the Secession of this State. By it we would be put in an "inferior condition to these herein mentioned," and subject only to taxation to support a Government in the extreme South, in which we have no interest in common with the people."[17]

submitted a series of resolutions of which the following was the last; this, on his motion, was laid on the table, and ordered to be printed:

"Resolved, That the right of revolution above recognized can be exercised as well by a portion of the citizens of a State against their State government, as it can be exercised by the whole people of a State against their Federal Government; and, when the powers of a State Government are used for purposes of unjust discriminations against a portion of the citizens or a particular section of the State, in imposing upon one portion or section an undue proportion of the burdens of the State Government, and in exempting from taxation a peculiar species of property belonging, to a great extent, to another portion of the citizens and located mostly in another section of the State, thus increasing taxation upon all other interests in order to favor a "peculiar interest"; the people thus oppressed after having exhausted all constitutional efforts to obtain redress, would be justified in resisting the collection of all revenue from them until the injustice aforesaid was removed. And that any change of the relation Virginia now sustains to the Federal Government, against the wishes of even a respectable minority of her people, would be such an act of injustice perpetrated upon the rights of that minority as to justify them in changing their relation to the State Government by separating themselves from that section of the State that had thus wantonly disregarded their interests and defied their will—particularly when the cause assigned for the change of Virginia's relation to the said Federal Government is the alleged insecurity in the said last mentioned Government of the peculiar species of property thus protected by the organic law of the State from contributing its due share to the support of the said State Government by prohibiting the taxing of a large portion of said property, and limiting the portion subject to taxation to a specific tax far less than that imposed upon every other species of property." See Journal of the Convention—March 16, 1861. p. 104.

13. Published in the Plain Dealer and copied into the Wheeling Daily Intelligencer—Feb. 4, 1861.
14. See Daily Intelligencer—Jan. 29, 1861.
15. See Daily Intelligencer—Feb. 1, 1861.
16. See Daily Intelligencer—Jan. 30, 1861.
17. See proceedings of meeting in Wellsburg Herald, copied into Wheeling Intelligencer, Feb. 4, 1861.

As stated in Chapter I, page 14, the Convention sitting at Richmond, adopted an Ordinance of Secession, April 17, 1861. We have seen that because of this action on the part of the Convention, there was great rejoicing not only in Richmond, but throughout all Eastern Virginia. But, how different were the conditions in Northwestern Virginia. There anxious thousands impatiently awaited intelligence from the capital city on the James. But none came, for at that time, there was but one line of telegraph connecting the East with the West and that night—April 18th—it was broken at Harper's Ferry. On the streets of Morgantown, Clarksburg, Weston, Parkersburg, Wheeling, Wellsburg, and other towns, earnest men looked each other in the face to see reflected back an expression of the feeling which agitated their own breasts. Nothing definite was known in some of the counties until the arrival home of delegates from Richmond. Then a thrill of excitement shook the country from the Alleghenies to the Ohio, and but a few days sufficed to fan into flame the sectional jealousies of other years.

As previously stated, there were forty-seven members in that Convention representing counties in Western Virginia—now West Virginia. They were as follows, that is to say, from:

Barbour County—Samuel Woods.
Berkeley County—Allen C. Hammond and Edmund Pendleton.
Braxton, Nicholas, Clay and Webster—Benjamin W. Byrne.
Brooke County—Campbell Tarr.
Cabell County—Wm. McComas.
Doddridge and *Tyler*—Chapman J. Stuart.
Logan, Boone and *Wyoming*—James Lawson.
Marion County—Alpheus F. Haymond and Ephraim B. Hall.
Marshall County—James Burley.
Mason County—James H. Couch.
Mercer County—Napoleon B. French.
Monongalia County—Waitman T. Willey, and Marshall M. Dent.
Fayette and *Raleigh*—Henry L. Gillispie.
Gilmer, Wirt and *Calhoun*—C. B. Conrad.
Greenbrier County—Samuel Price.
Hampshire County—Edward M. Armstrong and David Pugh.
Hancock County—George McC. Porter.
Hardy County—Thomas Maslin.
Harrison County—John S. Carlile and Benjamin Wilson.
Jackson and *Roane*—Franklin P. Turner.
Jefferson County—Alfred M. Barbour and Logan Osburn.
Kanawha County—George W. Summers and Spicer Patrick.
Lewis County—Caleb Boggess.
Monroe County—Allen T. Caperton and John Echols.
Morgan County—Johnson Orick.
Ohio County—Sherrard Clemens and Chester D. Hubbard.
Pendleton County—Henry H. Masters.
Pocahontas County—Paul McNeil.
Pleasants and *Richie*—Cyrus Hall.
Preston County—Wm. G. Brown and James C. McGrew.
Putnam County—James W. Hoge.
Randolph and *Tucker*—John N. Hughes.
Taylor County—John S. Burdett.
Upshur County—George W. Berlin.
Wayne County—Burwell Spurlock
Wetzel County—Leonard S. Hall.
Wood County—John J. Jackson.

Of these members from what became West Virginia those voting against the Ordinance of Secession, were:

Edward M. Armstrong, George W. Berlin, Caleb Boggess, Wm. G. Brown, John S. Burdett, James Burley, Benjamin W. Byrne, John S. Carlile, Sherrard Clemens, C. B. Conrad, James H. Couch, Alpheus F. Haymond, Chester D. Hubbard, John J. Jackson, Wm. McComas, James C. McGrew, Henry H. Masters, Logan Osburn, Spicer Patrick, Edmund Pendleton, George McC. Porter, Samuel Price, David Pugh, Marshall M. Dent, Ephraim B. Hall, Allen C. Hammond, James W. Hoge, Burwell Spurlock, Chapman J. Stuart, George W. Summers, Campbell Tarr and Waitman T. Willey —thirty-two in all.

Those voting for the Ordinance were:

Allen T. Caperton, John Echols, Napoleon B. French, James Lawson, Johnson Orick, Henry L. Gillispie, Cyrus Hall, Leonard S. Hall, John N. Hughes, Samuel Woods and Franklin P. Turner—eleven in all.

Those not voting upon the question were Thomas Maslin, Benjamin Wilson, Alfred M. Barbour and Paul McNeil—four in all.

Those who voted in the negative and afterward changed to the affirmative, were George W. Berlin and Alpheus F. Haymond.

Those who did not vote, but afterwards signed the Ordinance of Secession, were Alfred M. Barbour and Paul McNeil.

The Western members who voted against the Ordinance hastened to leave Richmond. John S. Carlile departed for his home in Harrison County, the evening of the same day on which the vote was taken. The next day there was a meeting of delegates from the Western part of the State, in the room of Sherrard Clemens at the Powhatan (now Ford's) hotel in the city, to determine upon a course of action. Among those present were James Burley, Sherrard Clemens, Marshall M. Dent, Ephraim B. Hall, Chester D. Hubbard, John J. Jackson, James C. McGrew, Spicer Patrick, Chapman J. Stuart, George McD. Porter and Campbell Tarr. Neither Waitman T. Willey nor William G. Brown was present, they not having been present when the call was made for the hurried gathering. General Jackson acted as chairman; and it was resolved that all should leave the Convention city for their homes on the first train, proceeding by way of Alexandria and Washington, Chester D. Hubbard and Sherrard Clemens, the latter of whom was still suffering from a wound received in a duel with O. Jennings Wise, proceeded to Baltimore, and thence by way of Har-

risburg and Pittsburg to Wheeling, where they arrived on the 19th of April. Waitman T. Willey, William G. Brown, Caleb Boggess and others speedily reached their homes over the Baltimore and Ohio Railroad. A day or two later George W. Summers, James H. Couch, James W. Hoge and others left Richmond for their homes by way of Staunton and Lewisburg; and thus the membership from the Western part of the State was greatly reduced.[18]

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18. WEST VIRGINIANS EXPELLED FROM THE CONVENTION—VACANCIES FILLED.

As stated elsewhere, the State Convention at Richmond held one Regular Session and two Adjourned Sessions. The Regular Session began Wednesday, February 12, 1861, and ended July 1, 1861. The Second Adjourned Session began Wednesday, November 12, 1861, and ended December 6, 1861.

On Thursday, June 20, 1861, Algheus F. Haymond, one of the Delegates from Marion County, West Virginia, and Chairman of the Committee on Elections and Privileges, presented a "Report in Relation to Absent Members" in which it was stated that this Committee "had come to the following conclusions and observations, to-wit:

First, As to the members of the Convention who are absent: Caleb Boggess, of Lewis county; Sherrad Clemens, of Ohio county; John Echols, of Monroe county; James W. Hoge of Putnam county; Thomas Maslin, of Hardy county; Spicer Patrick, of Kanawha county; Edmund Pendleton, of Berkeley county; Burwell Sourlock, of Wayne county; Franklin P. Turner, of Jackson county; and Benjamin Wilson, of Harrison county, who have not as yet attended the Convention during its present session (the first adjourned session); some are in the field serving the State; some are detained on account of sickness, and others are absent from causes unknown to the Committee. It has not been able to ascertain that these members are absent from their seats by reason of disloyalty to Virginia or sympahy with her enemy.

Secondly, As to certain other absent members:—It appearing to the satisfaction of the Committee that William G. Brown and James C. McGrew, of Preston county; James Burley, of Marshall county; John S. Burdett, of Taylor county; John S. Carlile, of Harrison county; Marshall M. Dent and Waitman T. Willey, of Monongalia county; Chester D. Hubbard, of Ohio county; George McC. Porter, of Hancock county; Chapman J. Stuart, of Doddridge county; Campbell Tarr, of Brooke county; and John J. Jackson, of Wood county, elected members of this Convention, have been engaged in a conspiracy against the Commonwealth of Virginia, and are now engaged in aiding and abetting the open enemies of Virginia:—Therefore, RESOLVED, That the said William G. Brown, John S. Burdett, John S. Carlile, Marshall M. Dent, Waitman T. Willey, Chester D. Hubbard, John J. Jackson, George McC. Porter, Chapman J. Stuart and Campbell Tarr, be and they are hereby expelled from this Convention and that their seats be and are hereby declared vacant.

Thirdly, The Committee further report that James H. Couch, of Mason county; and George W. Summers, of Kanawha county, have resigned their seats; that elections to fill their vacancies have been held, but official information has not been received as to who is elected.

On motion, the Report was laid on the table, ordered printed, and the Committee instructed to report the tesimony on which the Report was based. See Journal of the Convention. Vol. I, p. 257; and Documents No. XXVII, of the Convention.

On June 28th, the Resolution in the above Report came up for action. A division of the question was demanded and ordered. The next day the name of William G. Brown, of Preston county, was called and he was expelled by a vote of seventy-three yeas to eleven nays. Then James Burley and John S. Burditt were expelled the same day the vote standing eighty-five yeas; nays one. Next came the name of John S. Carlile who was expelled, the vote being eighty-two yeas; nays one. Then the seats of Marshall M. Dent, Ephraim B. Hall, and Chester D. Hubbard were declared vacant, John J. Jackson was expelled at the same time, the vote sanding seventy-nine yeas and six nays. The question was then severally put on the Resolution so far as it related to James C. McGrew, George McC. Porter, Chapman J. Stuart and Campbell Tarr, and they were expelled. Mr. Haymond of Marion county, the chairman of the Committee, then moved that so much of the Resolution as related to Waitman T. Willey be recommitted to the Committee. This was on Saturday, June 29th, and on Monday, July 1st, the Convention adjourned to meet again on the 13th of November ensuing.

It reassembled at the time, this being the beginning of the second adjourned session. Three days later—November 16th—the Convention adopted the following resolution:

"*Resolved*, That Waitman T. Willey be and he is hereby expelled as a member of this body on account of his disloyalty to the Confederate States and his adherence to the enemies of the same" (See Journal of the Convention, Vol. I, p. 326.) Meantime, John N. Hughes, the delegate from Randolph county, had been killed in the Confederate army at the Battle of Rich Mountain, July 11, 1861.)

By the 20th of April a number of the returned delegates from the Northwest were narrating to great gatherings of interested hearers their recent experiences, and urging them to prepare for resistance of the Secession movement at the ballot-box, on the following 23rd of May. Now it was that there began a series of meetings which have no parallel in the history of our country, nor elsewhere, unless it be the citizen assemblies in the early days of the French Revolution; and this too, in a sparsely settled region where the facilities for convening were of the most primitive character.

At an immense mass meeting in Monongalia County, April 22d, at which Hon. Francis H. Pierpont and Hon. William G. Brown were the orators: it was resolved that:

The time had come when every friend of the Union should rally to the support of the flag of his country, and defend the same; that the people of Monongalia, regardless of past affiliations, hereby enter their solemn protest against the Secession of the State; and that they owed undying fidelity to the Union: and that they would cling to it despite

November 18th, Mr. Haymond reported Document No. 34, which provided for filling vacancies in the membership of the Convention. During the recess between July 1st and November 13th, elections were held in the Confederate military camps, from the West Virginia counties, in which there were vacancies, and the soldiers voted for successors to the members who had been expelled. Six soldiers from Marion county voted at the Court House in Richmond and elected a successor to Ephraim B. Hall.

On the 19th of November the Convention adopted a Preamble and Resolution as follows:

"*Whereas* vacancies have occurred in the representation of the counties of Ohio, Brooke, Marshall, Marion, Monongalia, Preston, Taylor, Harrison and Wood, by the expulsion of the late delegates from the said counties; and in the Randolph-Tucker Delegate District by the death of John N. Hughes, killed in the battle of Rich Mountain.—

"*And Whereas*, These vacancies could not be filled in the mode prescribed by law, in consequence of the occupation of said counties by the public enemy—

"*And Whereas*, The Governor in order to provide for the exigency, issued a proclamation (advisory in its character) inviting the loyal citizens of those counties to vote in their respective camps for delegates to fill these vacancies. Under said proclamation, elections were accordingly held in several camps, at which elections Joseph H. Pendleton was chosen as the successor of Chester D. Hubbard of Ohio county; Joseph D. Pickett, to succeed Campbell Tarr of Brooke county; Jefferson T. Martin to succeed James Burley of Marshall county; Stephen A. Morgan as the successor of Ephraim B. Hall of Marion county; Jonathan M. Heck to succeed Marshall M. Dent of Monongalia county; Robert E. Cowan and C. J. C. Cresap to succeed William G. Brown and James C. McGrew, respectively, of Preston county; John A. Robinson to succeeed John S. Burdett of Taylor county; William P. Cooper to succeed John S. Carlile of Harrison county; Edward D. McGuire as the successor of John J. Jackson of Wood county; and Jacob W. Marshall to succeed John N. Hughes of the Randolph-Tucker Delegate District.

"*Be it Therefore Ordained*, That said elections be and the same are hereby ratified, and the said Joseph H. Pendleton, Joseph D. Pickett, Jefferson T. Martin, Jonathan M. Heck, Robert E. Cowan, C. J. C. Cresap, Stephen A. Morgan, John A. Robinson, William P. Cooper, Edward D. McGuire and Jacob W. Marshall, are hereby admitted to seats in this Convention." This was adopted November 19th, by a vote of seventy-nine yeas to twenty nays. All occupied their seats:—Pendleton, Martin, Heck, Cowan, Cresap, Morgan, Cooper, Marshall and McGuire,—on November 20th; Robinson on the 27th; and Pickett on the 4th of December, ensuing.

On the 22d of November, the Committee on elections was instructed to inquire into the absence of Sherrard Clemens, a delegate from Ohio county; Benjamin Wilson from Harrison county; and Caleb Boggess from Lewis county; and report to the Convention whether such absence was due to their disloyalty to the State or Confederate States, and if so whether they should not be expelled.

November 29th, the Committee submitted a report stating that its members were satisfied that Sherrard Clemens and Caleb Boggess were absent from the Convention by reason of disloyalty to the Commonwealth of Virginia and the Confederate States; and should therefore be expelled from the Convention; that the Committee had no evidence of the disloyalty of Benjamin Wilson nor to explain his absence. This was laid on the table. December 4th, Franklin P. Turner of Jackson county, endeavored to secure action on this Report, but was unable to do so. Two days later it was again called up but action postponed. It was the last day of the Convention and the matter was nevermore heard of.

the efforts of the people of Eastern Virginia to precipitate them into the gulf of Secession, and consequent ruin.[19]

By a great mass meeting of the citizens of Wetzel County, at New Martinsville, April 22d, it was resolved:

"That Secession is not the remedy for the troubles so unfortunately resting upon our country, and we believe it would be for the interest of Virginia to remain in the Union, believing that our rights can be maintained in the Union, but that they will certainly be endangered out of it." *Further*, they resolved, "That the Union sentiment of this people is such that we pledge our votes against any act of Secession which would sever us as a State from the Federal Government."[20]

THE CONVENTION AT CLARKSBURG IN HARRISON COUNTY—CALL FOR UNITED ACTION.

All had been independent action in the individual counties, but now they were to act together. It remained for a call for united action to go out from Clarksburg—the birthplace of Stonewall Jackson. There, on Monday, April 22d, 1861, nearly twelve hundred citizens of Harrison County convened in compliance with a call issued forty-eight hours previously. The Convention was organized by the election of John Hursey, as Chairman, and John W. Harris, Secretary. There were eminent speakers present, and great enthusiasm prevailed. Before adjournment, Hon. John S. Carlile, submitted the following preamble and resolutions which were adopted without a dissenting voice:[21]

PREAMBLE AND RESOLUTIONS.

WHEREAS, The Convention now in session in this State, called by the Legislature, the members of which had been elected twenty months before said call, at a time when no such action as the assemblage of a convention by legislative enactment was contemplated by the people, or expected by the members they elected in May, 1859, at which time no one anticipated the troubles recently brought upon our common country by the extraordinary action of the State authorities of South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, and Texas, has, contrary to the expectation of a large majority of the people of this State, adopted an ordinance withdrawing Virginia from the Federal Union.

And WHEREAS, By the law calling said Convention, it is expressly declared that no such ordinance shall have force or effect, or be of binding obligation upon the people of this State, until the same shall be ratified by the voters at the polls.

And WHEREAS, We have seen with regret that demonstrations of hostility, unauthorized by law, and inconsistent with the duty of law-abiding citizens, still owing allegiance to the Federal Government, have been made by a portion of the people of this State against the said Government.

And WHEREAS, The Governor of this Commonwealth has, by proclamation, undertaken to decide for the people of Virginia, that which they have reserved to themselves, the right to decide by their votes at the polls, and has called upon the volunteer soldiery of this State to report to him and hold themselves in readiness to make war upon the

19. See Hagan's "Erection and Formation of the State of West Virginia." p. 39.
20. See Wheeling Daily Intelligencer—April 25, 1861.
21. See J. H. Diss Debar's "Hand-Book of West Virginia," pp. 13, 14, 15. Also the Wheeling *Daily Intelligencer* of April 26, 1861.

Federal Government, which Government is Virginia's Government, and must in law and of right continue so to be, until the people of Virginia shall, by their votes, and through the ballot-box, that great conservator of a free people's liberties, decide otherwise.

And WHEREAS, The peculiar situation of Northwestern Virginia, separated as it is by natural barriers from the rest of the State, precludes all hope of timely succor in the hour of danger from other portions of the State, and demands that we should look to and provide for our own safety in the fearful emergency in which we now find ourselves placed by the action of our State authorities, who have disregarded the great fundamental principle upon which our beautiful system of Government is based, to-wit: "That all governmental power is derived from the consent of the governed," and have without consulting the people, placed this State in hostility to the Federal Government by seizing upon its ships and obstructing the channel at the mouth of Elizabeth river; by wresting from the Federal officers at Norfolk and Richmond the custom houses; by tearing from the Nation's property the Nation's flag, and putting in its place a bunting, the emblem of rebellion, and by marching upon the National Armory at Harper's Ferry; thus inaugurating a war without consulting those in whose name they profess to act.

And WHEREAS, The exposed condition of Northwestern Virginia requires that her people should be united in action, and harmonious in purpose—there being a perfect identity of interests in times of war as well as in peace—Therefore,

Be it RESOLVED, That it be and is hereby recommended to the people in each and all of the counties composing Northwestern Virginia to appoint delegates, not less than five in number, of their wisest, best, and discreetest men, to meet in Convention on the 13th day of May next, to consult and determine upon such action as the people of Northwestern Virginia should take in the present fearful emergency.

RESOLVED, That Hon. John S. Carlile, Waldo P. Goff, Hon. Charles S. Lewis, John J. Davis, Solomon S. Fleming, Lot Bowen, Dr. William Dunkin, William E. Lyon, Felix Sturm and James Lynch, be and are hereby appointed delegates to represent this county in said Convention.

JOHN HURSEY, President.

JOHN W. HARRIS, Secretary.

That evening, Mr. C. E. Ringler, editor and proprietor of the *Western Virginia Guard*, published at Clarksburg, issued an extra edition of his paper in which was printed an "Address of the Convention to the people of Northwestern Virginia." In this the foregoing "Preamble and Resolutions" were embodied. Messengers mounted on horse-back, bore copies of the *Guard* to Weston, Kingwood and Morgantown, and to adjoining and adjacent counties. Other copies were distributed along the lines of railroad westward to Wheeling and Parkersburg; eastward to Martinsburg, and even to the Lower Potomac. The time was short—but twenty days—the emergency great, and from Hancock County to Wayne and from Wood, to Berkeley, the people hastened to comply with the request of the Clarksburg Convention. Public meetings were held in counties, in cities, in towns, at churches, school-houses, and cross-roads, and delegates appointed to the proposed Convention at Wheeling. Days seemed weeks, but time passed and brought the eventful 13th day of May, 1861.

PROCEEDINGS
OF THE FIRST CONVENTION OF
THE PEOPLE OF NORTHWESTERN VIRGINIA AT
WHEELING, VIRGINIA.[1]

FIRST DAY.

(See Roll of Members at end of the Second Day's Proceedings.)

MONDAY, MAY 13, 1861.

FORENOON PROCEEDINGS.[2]

"The Convention of Delegates from twenty-seven Western Virginia Counties assembled in this city, at Washington Hall, yesterday at 11 o'clock. On motion of Chester D. Hubbard, Maj. William B. Zinn, of Preston county, was called to the chair. Hon. John S. Carlile, of Harrison County, conducted Mr. Zinn to the chair. Mr. Zinn returned thanks for the honor conferred upon him in appointing him temporary chairman of the Convention; craved the indulgence of the house, and said he would discharge the duties to the best of his humble abilities. (Applause.) George

1. Hon. Granville Davidson Hall who was the stenographic reporter of the First and Second Conventions of the People of North Western Virginia in 1861, was born in Harrison County, now West Virginia, September 17, 1837. He received a liberal education and was early interested in literature. In 1859 he entered the employ of the *Wheeling Intelligencer*. In 1860 he was one of the Virginia State Electors on the Lincoln and Hamlin ticket. The following pages of this work give evidence as to the character of his work in reporting the Proceedings and Journals of the Conventions of 1861. He was the first clerk of the West Virginia House of Delegates, his term beginning June 20, 1863—the natal day of the State. In 1864, he was elected Secretary of State for the term of two years, serving from March 4, 1864, to March 3, 1867. He declined a re-election, having with Hon. William P. Hubbard, purchased a half-interest in the *Intelligencer* of which he was Editor-in-Chief for five years. In September, 1873, he removed to Chicago, Illinois, and is now residing at Glencoe, that State. He is the author of several literary works—that of greatest historic interest being "The Rending of Virginia," published in 1902. —V. A. L.

2. It has been stated that this was a Mass Convention. This is not true. The members were chosen as delegates by the people of their respective counties in compliance with the "Call" sent out from Clarksburg. In Wood county and, perhaps, one or two others, it was resolved that any good Union men therefrom, present at the Convention, should be delegates therein. On the first day a Committee on Credentials was appointed, Andrew Flesher, a delegate from Jackson county, being Chairman thereof. At three o'clock this Committee reported duly accredited delegates from the counties of Hancock, Brooke, Ohio, Marion, Monongalia, Harrison, Preston, Wood, Ritchie, Lewis, Upshur, Gilmer, Wirt, Jackson, Mason, Wetzel, Pleasants, Barbour, Hampshire, Berkeley, Taylor, Tyler, Doddridge, Roane, Frederick, and Marshall—twenty-six in all. The total vote by counties for President at the last election was made the basis of representation.—V. A. L.

R. Latham, of Taylor, was appointed temporary secretary. On the suggestion of General John J. Jackson,[3] of Wood county, Rev. Peter T. Laishley, a delegate from Monongalia County, offered a prayer. In the course of his prayer he said:

"May the Almighty grant that the stars and stripes of the flag of our country, ever wave over all this land, from the Atlantic to the Pacific, and from Maine to the Gulf of Mexico. O! may those who would plunge us into the horrors of civil discord be overreached by the omnipotent arm of Almighty God. O! do Thou grant, we pray Thee, that this Convention, met here for the purpose of consulting upon the best interests of our own beloved Virginia, may act promptly, decisively and harmoniously. May it act with reference to peace principles and the universal happiness of our citizens and the country at large."

GENERAL JACKSON, of Wood county, then moved that any gentleman who was present from any county of Northwestern Virginia, be received as a delegate for such county, and be invited to take a seat on the floor of this Convention.

JOHN S. BURDETT, of Taylor county, moved to amend by including gentlemen from the Shenandoah Valley.

HON. JOHN S. CARLILE said he trusted that it would be the pleasure of his friend from Wood to withdraw the proposition. "I would defer upon any and all occasions to his better judgment, where there was a doubt upon my own mind; but, sir, I trust that this is to be a deliberative body; I trust that it is to be a body composed only of gentlemen who come clothed with the authority conferred upon them by the people of their counties when they appointed them. I would not wish to prevent any gentleman from Northwestern Virginia, or anywhere else, from taking a seat on this floor, or from listening to the deliberations of this body; but I desire, whatever act may be performed here by this Convention, shall be sanctioned by the authority of the people. In my county, at least, they selected the men to whom they entrusted the

3. There were two delegates of the name of Jackson on the Wood county delegation. These were General John Jay Jackson, and John J. Jackson, Jr. The former was the father, the second the son. General Jackson was born in Wood county, February 13, 1800, and educated at Clarksburg, and in Washington College, Pennsylvania; then became a cadet at West Point, from which he was graduated July 24, 1818; commissioned Second Lieutenant in the Regular Army and served at Norfolk, Virginia, and then in the Fourth Infantry in the Seminole War. In 1823 he entered upon the profession of law, locating at Parkersburg. Because of his military training he was long connected with the military establishment of Virginia; and in 1842, was commissioned Brigadier-General of the Twenty-third Brigade. He died at Parkersburg January 1, 1877. His son, John Jay Jackson, Jr., was born at Parkersburg, August 4, 1824. Appointed by President Lincoln a Judge of the Federal District of Western Virginia in 1861; and of the new District of West Virginia in 1863; he continued to serve in this capacity for nearly forty-three years. His name will long be an honored one in the judicial history of the State. V. A. L.

high and important interests which they believed to be involved in the call of this Convention. I trust, therefore, the motion will be withdrawn, and the first thing we will do will be to provide for a permanent organization of this body, by the appointment of a Committee on Credentials, who will report to the body those gentlemen who are really the representatives of the people."

GENERAL JACKSON said he would with pleasure adopt the suggestion of Mr. Carlile, but he could not see the force of it, but thought it would be difficult to discover who the real representatives of the people were. "It may be that there has been a lot of individuals at the Court Houses who may have acted on the nominations of those who have been sent here. He said, on behalf of the delegation from Wood county, that they were prepared to take the responsibility of acting as delegates, though they were not appointed as such." He had no doubt "the gentlemen had been sent here by a proper and responsible body, but if we are to take great and momentous action let us have our whole people with us. Let us take solemn deliberation, and reach a conclusion we will be able to stand by in the hour of triumph." He declined to withdraw the proposition.

MR. CARLILE said, in reply: "I regret exceedingly that I am compelled, as the gentleman refused to withdraw the motion, to appeal to this body to vote it down. It is unfortunate, sir, that at the very threshold of our proceedings there should be a division of sentiment exhibited, and if I did not conceive that the adoption of this motion would prove fatal to every step we may hereafter take, I should certainly have remained quiet in my seat. I do not go upon presumptions. Mr. Chairman, I am here by the voice of the legal qualified voters of my county, greater than was given to me at the polls on the 6th day of last February, at the election for delegates to the Virginia Convention. All my colleagues are here by the same voice and power. No Court House cliques in my county sent delegates here. It is the Court House cliques that have thus far brought this good old State to the very brink of ruin; and has it now bristling with bayonets from the Chesapeake to the Blue Ridge, and across to the mountains of the Alleghenies. Sir, I look upon this body as possessing all the power it could possess if it were a legislative body, elected under the forms of law—and who ever heard of a legal deliberative assembly being composed of gentlemen who may happen to be present from the various counties in the State in which they reside? Sir, we want a

deliberate body. We came here as the accredited representatives of the loyal people of Virginia, and we intend, I trust, before we go away as such, sent here by such a voice and power, to put our feet upon the usurpations of power that have been exercised in the last two weeks. I trust it will be the pleasure of the Convention to proceed (applause) as a deliberative body, and that none will act in this body save and excepting those who have been sent here by their people. Our fellow-citizens who are here can occupy the rear of the hall, and they can see what is going on and give us the beenfit of an outside pressure, as has been done elsewhere for our injury and enslavement." (Applause.)

GENERAL JACKSON wished to ask a question—How are we, said he, to ascertain who are the accredited members of this Convention?

MR. CARLILE. "My answer is this—When we get a permanent Chairman and Secretary, we will appoint a committee who will tell us."

MR. JACKSON. "Until there is some authority to appoint a President, there can be no President. I do not know that I am a member here. When you go into a Convention you appoint a Committee on Credentials—but can they devise any plan to find out whether I am here by authority or not? I am a citizen of Northwestern Virginia, and thought my friends here would be glad to see me. There can be no legal means whatever to determine by what authority a gentleman can be here. I wish to include all the gentlemen who are here from any counties in this part of the State, and also from Frederick and Berkeley counties." Mr. Jackson referred to the precedent set by Rucker, in the Convention that nominated Polk.

MR. CARLILE said that the illustration given by the gentleman was a most unfortunate one. I hope the gentleman does not desire to Ruckerize this Convention, as he will do if his proposition is adopted by this body.

MR. JACKSON said he spoke of the Rucker case as a precedent.

MR. CARLILE said: "We are proceeding here without anything like order. You do not know who is here. There may be 'a chiel amang you takin' notes.' I trust the same disorder will not be persisted in, but that the legal and parliamentary precedents, which have been resorted to in England, in this country, and in all countries where deliberative bodies have assembled, will be followed by this Convention. There are gentlemen here who

have served in the Legislature of our own State, and gentlemen who have been in Congress, and those who have been in the Conventions of our State, and is there one who has had any parliamentary experience that does not know that the suggestion that I indicated, and trusted would be acted upon by this body, is the precedent that has always been followed. You meet and, for the mere purpose of calling the body to order, put some one in the chair. The next step is to elect a permanent presiding officer and secretary, whose business it is to record your proceedings, and who is responsible for them. The next is to appoint a Committee on Elections, and that committee reports to the body who are entitled to seats in it. I trust we shall follow this precedent here, and that the grave authority that always clothes every deliberate body will clothe this one. I may be enthusiastic—I may be ahead of the times, or I may be behind the times,—but I believe, as much as I believe in the existence of a God, that our own salvation, and it may be the salvation of our whole country depends on the deliberations of this body, and its action, and I want it to go abroad all over the land, with every sanction of our people, and with all the prestige that parliamentary usage can give it."

JOHN J. JACKSON, Jr., of Wood, made some remarks, favoring the proposition of General Jackson. He knew counties where meetings had been held appointing any good Union men as delegates who might happen to be present at the Convention. Such had been the case in Wood county, and said the adoption of the suggestion of Mr. Carlile would disfranchise all the gentlemen from Wood.

MR. CARLILE said the proceedings of the meeting in Wood would be before the Committee on Credentials, and whoever the Committee appoints as delegates will be entitled to seats on the floor.

MR. JACKSON made some further remarks in favor of the proposition, saying that he did not understand that the Convention was here for the purpose of forming a Provisional Government, but for deliberation and conference.

MR. CARLILE again replied, urging that the deliberations of the Convention should be conducted in order, and in accordance with the usual forms and precedents of such bodies. "Have we merely met here," he continued, "to consult and adjourn and go home. If this is true, I have no further interest here. The people whom I represent expect that we will never adjourn till their

safety is secured beyond a doubt in the Union and under that flag (cheers). If we temporize now and consult and adjourn to come back here again, before that day arrives, you will have sworn allegiance to the rattlesnake flag. That is the true condition in which we are now placed." Mr. Carlile continued at some length to speak of the urgency of instant action.

MR. PIERPONT, [Francis H.] of Marion, made some remarks in a general way, and concluded by suggesting to General Jackson the propriety of withdrawing his motion, to make room for another, a Committee on Credentials to be appointed of one from each county, and let the delegation report to that Committee the delegates from the counties, and when we vote upon resolutions it will be on the basis of the population of the counties.

GENERAL JACKSON said he had no sort of objection, but according to the proposal of the gentleman from Harrison, all those delegates not formally appointed would be excluded. A convention such as that gentleman wanted would not have such an effect as it would to admit the mass of those who had come here as citizens rather than as delegates. It would not look so much like an upheaving of the people.

After some further running debate between Messrs. Carlile, Jackson and others,

MR. BURDETT, of Taylor, said he for his part did not come here to talk. He came here for action. "While we are talking the chains have already been forged for us, and the bayonets are threatening invasion. In my town of Grafton, Letcher has ordered his troops to rendezvous. I tell you it is no time to debate and evince feeling. I trust there will be no more of this, but calm, solemn, stern deliberation, and a resolve to do what is right to defend and protect ourselves. Let us act and go back to our counties."

After some remarks by Mr. Tarr, of Brooke, Chester D. Hubbard, of Ohio county, moved that a committee, composed of one member from each county represented on this floor, be appointed, to whom shall be referred the subject of representation; and also the nomination of permanent officers for the Convention, which motion was adopted and the committee appointed.

MR. SENSENY, of Frederick, said he had come up through the dangers that environed a Union man in his part of the State, and he would be glad to be permitted to act as a delegate from that county, although not formally appointed.

On motion of GEORGE H. KIDD, of Preston,

RESOLVED, That the Convention adjourn till 3 o'clock P. M., and in the meantime each delegation from the different counties represented here shall report to the President one of their number, who shall represent them on the Committees on Representation and Permanent Organization.

On motion, it was ordered that each delegation from the respective counties meet as soon as possible, to consult as to the selection of members of the Committees.

The Convention adjourned to meet again at 3:00 P. M.

AFTERNOON SESSION.

3:00 O'Clock P. M.

The Convention reassembled at the appointed hour, and Mr. Flesher of Jackson county, Chairman of the Committee on Representation and Permanent Organization, submitted the report of that Committee partially as follows: The nomination for permanent President, Dr. John W. Moss, of Wood County, a list of Vice Presidents, the names of whom the reporter was unable to procure; and Secretaries, Colonel Charles B. Waggener, of Mason; Marshall M. Dent, of Monongalia, and Gibson Lamb Cranmer,[3] of Ohio county.

The Committee asked to be allowed further time for the consideration of the credentials of members.

On motion, the report as far as made was adopted.

On motion of MR. CARLILE, Messrs. Pierpont of Marion and McNeal [McNeeley?] of Monongalia, were appointed a committee to conduct the President to the chair.

DR. MOSS, on taking the chair, said: "Permit me to express my grateful acknowledgments for the very distinguished honor you have conferred upon me in selecting me to preside over the deliberations of this highly respectable body. It is hardly necessary for me to say that the occasion which has called us together is one of no ordinary character.

"We have met for the purpose of considering the unhappy condition of our country, and particularly of deliberating calmly and dispassionately upon the position Northwestern Virginia should assume in this momentous crisis of our country's history.

3. This name appears as Chandler, but it is an error. The name should be that of Gibson Lamb Cranmer.—V. A. L.

"Pardon me for saying, gentlemen, that the destinies of thousands are involved in the result of your action here, and permit me, therefore, to express the hope that your deliberations will be conducted with that solemnity befitting the occasion, and that they will be characterized by that harmony and conciliation so necessary to the success of any movement that may be inaugurated by this Convention. I again thank you, gentlemen, for the honor you have conferred upon me."

On motion it was ordered that the Clergymen of this city, be requested to alternate in opening each day's session of this Convention, with religious exercises.

MR. BURDETT moved the appointment of two Door-Keepers, and a Sergeant-at-Arms. And on motion of Mr. Pierpont, the Committee to Superintend the Hall, was requested to make the selection.

The following gentlemen were appointed: Sergeant-at-Arms, James R. Ewing; Door-Keepers, A. Clemens and R. Higgins.

MR. CARLILE offered the following resolution:

That when this Convention adjourns to-day, it adjourn to meet on to-morrow, and on each succeeding day while in session, at 10 o'clock A. M.

On motion of General Jackson, the resolution was amended by adding, "to adjourn at 12 o'clock M., and reassemble at 2 o'clock P. M.," and as amended was then adopted.

MR. WILLEY (of Monongalia), offered a resolution similar in purport to the one offered by Mr. Tarr, (of Brooke), relative to the appointment of a Committee on Federal Relations, and laid on the table previously, but no action was taken.

GENERAL JACKSON, of Wood, obtained the floor for the purpose of defining his position which he did in a speech of such great length as to preclude the possibility—together with the lateness of the hour of the adjournment, of giving a report of it here. He was opposed to the Convention taking any definite or decisive action; thought it would be premature, and would be revolutionary and altogether unwise. He was in favor of the Convention passing a series of resolutions expressive of its sense of the wrongs of the Northwest, and their adjourning at least until after the election, and urged that meanwhile the counties should be canvassed to defeat the Ordinance of Secession.—When this had been done and every peaceable method of defense exhausted he would then go in for a division of the State. He characterized the policy

indicated by Mr. Carlile as calculated to place the North-West at once in the midst of a civil war. He believed we might, after a while, and by going about it in the right way, effect a peaceable division of the State, but he urged that the people of the interior counties were not ready for it yet.

MR. BURDETT interrupted at one point and asked—supposing in the mean time, while thus waiting, Letcher should throw his troops into this part of the State to intimidate the Union men and carry the election by violence and force, as they will do in the East, what he proposed to do in such a case. "We must meet this emergency now," said Mr. Burdett. (Applause.) "Are we to wait till a military despotism pervades our country from one end to another, and freemen's mouths are closed and you threatened with ropes around your necks?"

After Mr. Jackson had concluded his address, Mr. Carlile replied at some length. He said that if he had supposed the deliberations of this body were to be limited to the adoption of a few paper resolutions, he should not have endured the fatigue, and passed the many sleepless nights, and expended the hundreds of dollars he had for the furtherance of what he supposed would be the action of this Convention—in furtherance of the efforts that are necessary to maintain the liberties of a patriotic people. (Applause.)

"Need my friend from Wood, be informed that the day has gone by for plunging the people of the Northwestern part of this State into revolution, as he terms it. We are already in a revolution, not by our own act, but that of the usurpers of the people's power sitting in dark conclave at Richmond. I presume it was the mission of this body, to devise such measures as would protect us from the consequences, which must inevitably flow from that usurpation. (Applause.) We are the only portion of this State, that is not now under a military despotism. The order has gone forth and is even at this hour being executed, by which we are to share the same fate that has been imposed on other portions of the State. The soldiers have been ordered to rendezvous at various points in this part of the Commonwealth.

"No people ever remained free, or ever will, that were not willing to spill their last drop of blood for the maintenace of their liberty. No people who contented themselves with paper resolves while bayonets were bristling all around them, and war had been brought up to their very doors as rapidly as it could be, ever maintained

their freedom in this way. Show yourselves worthy to be free; and while I am not a professor of religion, yet I have the confidence which a pious mother instilled into me to believe that the Almighty, Who seems to be distrusted now, will come to our aid and protect us in our freedom.

"Sir, when has there ever been in the whole records of the past such an utter contempt, on the part of any despot, for the people, as has been exhibited here in what was once free Virginia, by the Richmond Convention? You determine at the polls, by a vote of more than 50,000 of a majority, that no act of that Convention could change your relations with the Federal Government without first being submitted to you; and before even the Ordinance is passed, they place you in hostility to that Government."

He proceeded to show in answer to what General Jackson said about canvassing, that in many counties such a thing was not permitted, as in many counties even in the Northwest, the military was in the hands, and under the control of Letcher; and Union meetings were broken up, and Union speakers not allowed to address them.

GENERAL JACKSON wished to know how prompt action would overcome the difficulty.

MR. CARLILE—"Let this Convention show its loyalty to the Union, and call upon the government to furnish them with means of defence, and they will be furnished. (Applause.) There are 2,000 Minnie muskets here now (Cheers); and more on the way, thank God. (Cheers).

"I went on last Tuesday, after an absence of twelve days from home, without ever stopping there, to Lewis county, where they have been under a system of intimidation; and despite the threat of arms and mob, and the charge of the judge to hang me for treason, I addressed that people and they are represented here to-day, and if they are not intimidated they will give 1,000 majority against the ratification of the ordinance of secession.

"Let us act; let us repudiate these monstrous usurpations; let us show our loyalty to Virginia and the Union; and let us maintain ourselves in the Union at every hazard. It is useless to cry peace when there is no peace; and I for one will repeat what was said by one of Virginia's noblest sons and greatest statesmen, "Give me liberty or give me death!" (Great and continued applause.)

The Committee on Credentials then made their supplemental report, showing duly accredited delegates from the counties of

Hancock, Brooke, Ohio, Marion, Monongalia, Harrison, Preston, Wood, Ritchie, Lewis, Upshur, Gilmer, Wirt, Jackson, Mason, Wetzel, Pleasants, Barbour, Hampshire, Berkeley, Taylor, Tyler, Doddridge, Roane, Frederick, and Marshall; and reporting the following resolutions:

"*Resolved*, That the President be authorized to present cards of admission, to the floor of this Convention, to such citizens from other parts of the State now in attendance, as sympathize with the objects of this Convention, and are good and true friends of the Union.

"*Resolved*, That each member of this committee present to the secretaries of this Convention a fair list of the delegates now in attendance from the county represented by such member in this Convention.

"*Resolved, further*, That the vote of the Convention upon any question when demanded by twenty-five members shall be taken by giving to such county the aggregate vote cast by such county at the last Presidential election; such vote to be given by the chairman of the county delegation. On all other questions the vote shall be taken *per capita*."

MR. TARR, of Brooke, then offered the following resolution, which was adopted:

"*Resolved*, That a committee of one member from each county represented here be appointed by the President as a Committee on State and Federal Relations, to whom shall be referred all resolutions of this body looking to action by the Convention."

The following is the Committee appointed by the President in accordance with the foregoing resolution:

Campbell Tarr, Brooke; Waitman T. Willey, Monongalia; John S. Carlile, Harrison; General John J. Jackson, Wood; Charles Hooton, Preston; Daniel Lamb, Ohio; George McC. Porter, Hancock; Jos. S. Machir, Mason; Daniel D. Johnson, Tyler; James Scott, Jackson; George W. Bier, Wetzel; R. C. Holliday, Marshall; Alexander Scott Withers,[4] Lewis; E. T. Graham, Wirt; F. H. Pierpont, Marion; Spencer Dayton, Barbour; George S. Senseney, Frederick; John S. Burdett, Taylor; A. R. McQuilkin, Berkeley; Friend Cochran, Pleasants; Irwin C. Stump, Roane; S. Martin, Gilmer; C. P. Rohrbaugh, Upshur; Capt. Owen D. Downey, Hampshire; A. J. Foley, Doddridge.[5]

MR. WILLEY, of Monongalia, being entitled to the floor, proceeded to deliver a speech of great length, which for reasons already enumerated, we are compelled to omit. He occupied substantially the same grounds taken by General Jackson, and was followed by Campbell Tarr, of Brooke, who reviewed his positions and those of Jackson with a good deal of severity. He declared boldly for the position taken by Mr. Carlile; that the time for compromise

4. Author of "Chronicles of Border Warfare," published at Clarksburg, Western Virginia, in 1831.

5. A. J. Foley was incorrectly credited to Ritchie. He was certainly a delegate from the county of Doddridge.—V. A. L.

and talk had passed; that now nothing but decisive and prompt action could avert the impending dangers. This was the time to strike, and he knew a response to that declaration would come up from the entire valley of the Ohio to the Alleghenies.

The Convention then adjourned.

THE SECOND DAY,

TUESDAY, MAY 14, 1861.

FORENOON PROCEEDINGS.

The Convention assembled at 10 o'clock Tuesday morning, according to adjournment. The religious exercises of the morning were conducted by Rev. Wesley Smith.

The minutes of the previous day's proceedings were read by the Secretary. At the suggestion of Mr. Carlile, the county of Frederick was stricken from the list of counties which had accredited delegations on the floor, as enumerated by the report of the Committee on Credentials. It would place the gentleman from Frederick in an unpleasant position; and it would appear to the country, if he were admitted here as a fully accredited delegate, without having been appointed as such by any meeting, that perhaps the rest of the delegations were here in the same unauthorized way.

The CHAIR stated that he has issued a card of admission, under the resolution of the Committee on Credentials, to the gentleman from Frederick.

Some other amendments were made to the minutes, and they were adopted.

MR. LAZIER, of Monongalia, hoped the Convention and those outside the bar would refrain from any expressions of applause or disapproval, during the sittings of the Convention.

MR. WILLEY rose to a privileged question. He had been, it seemed, misunderstood in his remarks last evening defining his position. He had been understood to say that his view of the proper course of the Convention was, that it should adjourn until after the ensuing election, without taking any action whatever. He had intended to say that he differed from Mr. Carlile in the views that gentleman entertained in regard to the proper course

to be pursued here. Nevertheless he wished to declare a distinct and unequivocal position in condemnation of the usurpation at Richmond, and lay down a platform upon which to organize the public sentiment for a separation of the State. He said further, that previous engagements would necessarily call him away from the Convention to-morrow, and he would have to ask to be released from his position in the Committee on State and Federal Relations.

MR. WILLEY was released with the understanding that he continue to serve while present.

GENERAL JACKSON moved that the Convention adjourn till 2 o'clock, P. M., when the Committee will probably be able to report, with the understanding that if the Committee cannot report then this body stand adjourned till 5 o'clock P. M..

COLONEL WHEAT, (James S.,) of Ohio, asked the gentleman to withdraw his motion a few minutes till he could have an opportunity to read a few resolutions. He then read the following, which were afterwards referred to the Committee on State and Federal Affairs:

MR. WHEAT'S RESOLUTION.

"1. *Resolved*, That in our deliberate judgment the ordinance passed by the Convention of Virginia on the 17th day of April, 1861, commonly known as the ordinance of secession by which said Convention undertook in the name of the State of Virginia, to repeal the ratification of the Constitution of the United States of America, by this State, and to resume all the rights and powers granted under said Constituion, is unconstitutional, null and void.

"2. *Resolved*, That the schedule attached to said ordinance suspending and prohibiting the election for members of Congress from this State, to the House of Representatives of the Congress of the United States, required by law to be held on the 4th Thursday of this month, is a manifest usurpation of power, to which we as Virginia freemen ought not, cannot, and will not submit.

"3. *Resolved*, That the Convention of the 24th of April, 1861, between the Commissioners of the Confederate States and this State, and the ordinance of the 25th of April, 1861, approving and ratifying said Convention, in agreement by which the whole military power and military operations, offensive and defensive of the Commonwealth, were placed under the chief control and direction of the President of the Confederate States, upon the same principle and footing as if the Commonwealth were now a member of said Confederacy, and all the actings and doings of the executive officers of our State under and in pursuance of said agreement are plain and palpable violations of the Constitution of our State, and are utterly subversive of the rights and liberties of the good people thereof.

"4. *Resolved*, That it be earnestly recommended to our fellow-citizens of this State, at the approaching election to vindicate their rights as Virginia freemen by voting against said ordinance of secession, and all other measures of like character, so far as they may be made known to them.

"5. *Resolved*, That it be also urged upon them to vote for members of Congress of the United States, in their several districts, in the exercise of the rights secured to us by the Constitution of the United States, and of Virginia.

"6. *Resolved*, That it be also recommended to the citizens of the several counties to vote at said election for such persons as may entertain the opinions in the foregoing resolutions, as members of the House of Delegates of our State.

"7. *Resolved*, That it is the imperative duty of our citizens to maintain the Constitution and the laws thereof, and all officers there-under acting in the lawful discharge of their respective duties.

"8. *Resolved*, That in the language of George Washington in his letter of the 17th of September, 1787, to the President of Congress: 'in all our deliberations on this subject we keep steadily in our view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our property, felicity, safety and perhaps our national existence.' Therefore we will maintain and defend the Constitution of the United States and the laws made in pursuance thereof, and all officers acting there-under in the lawful discharge of their respective duties."

These resolutions were referred to the Committee on Federal Relations.

MR. CARLILE then with a view of harmonizing and ascertaining the sentiments of the Convention, he had drawn up a resolution which he desired to submit, and to accompany with some few remarks by way of explanation. He understood, he thought, one thing at least, that it was the unanimous determination of this body to consent under no circumstance, to their transfer to the so-called Southern Confederacy. The only diversity amongst them was as to the means of resistance—the means by which this determination could be made effectual. Of course the proposition he should submit would come with no authoritative expression of opinion, but just as if emanating from any other of the body. It was, however, the result of many long, well-considered and well-matured opinions and convictions. He would add that they were given shape and form this morning, after a night spent without sleep. He then read the resolution as follows:

MR. CARLILE'S RESOLUTION.

"*Resolved*, That the Committee on State and Federal Relations be instructed to report an ordinance declaring that the connection of the counties in this State composing the Tenth and Eleventh Congressional Districts, to which shall be added the county of Wayne, with the other portions of the State is hereby dissolved, and that the people of the said counties are in full posession and exercise of all the rights of sovereignty which belong and appertain to a free and independent State in the United States and subject to the Constitution thereof; and that the said committee be instructed to report a constitution and form of government for said State, to be called the State of New Virginia; and also that they report a declaration of the causes which have impelled the people of the said counties thus to dissolve their connection with the rest of the

State, together with an ordinance declaring that said constitution and form of government shall take effect and be an act of this day when the consent of the Congress of the United States and of the Legislature of the State of Virginia is obtained, as is provided for by section 3, Article 4 of the Constitution of the United States."

MR. CARLILE then proceeded with his explanation, when

MR. WHEAT called him to order. He raised the point of order that every proposition like this must be referred to the committee without debate or further explanation.

MR. CARLILE replied that they had adopted a resolution in the Richmond Convention by which all resolutions touching federal relations were to be referred "without debate," as the resolution said. And yet, they were engaged for weeks in the discussion of resolutions of instruction to that committee. This is a resolution of instruction, and even if it were but of inquiry, the resolution adopted yesterday does not prevent debate on it. There were very good precedents for the course he proposed.

MR WILLEY read the resolution creating the Committee on State and Federal Relations, and said the first business was to refer the resolution to that committee.

MR. CARLILE replied that his resolution contemplated a reference to that very committee. The ultimate action of this body of course takes place after the report of that committee.

MR WHEAT regretted that his friend from Harrison should try to forestall the action of the Convention. The resolution instructed the Committee to make a specific report involving questions of great magnitude. It instructs the Committee to report an ordinance to establish an independent government within the State of Virginia. He presumed the Convention was not unprepared to meet that question but this was not the proper mode by which to do so.

MR. CARLILE said: "With a view to conciliation and harmony, I am perfectly willing to put it in the shape of a resolution of inquiry."

MR. WHEAT. That will do.

MR. JACKSON said the resolution ought to be referred. He had intended to move an adjournment, but had given way in order that the gentleman (Mr. Wheat) might read his resolutions. If this proposition was to be entertained a moment, he would take his hat and leave the hall, and the delegation from Wood would go with him. He insisted that his motion to adjourn should be put.

MR. CARLILE said the motion to adjourn had been withdrawn and was not in order, and besides it would be the grossest injustice not to permit him to explain the motives he had in offering his resolution.

GENERAL JACKSON objected, and insisted that his motion to adjourn was in order.

The CHAIR said it was his opinion that no debate upon any proposition looking to the definite action by the Convention was in order until the Committee on State and Federal Relations had reported.

MR. CARLILE. Then I appeal from the decision of the Chair.

GENERAL JACKSON. It is not in order.

MR. CARLILE. The question of order decided by the Chair is not the question before the committee. My resolution as I said is merely one of inquiry. I merely wish to explain.

The CHAIR. He has the right to explain the resolution to be submitted to the committee.

MR. CARLILE: "Mr. President, it is due to me, due to the correct understanding of the country, and due to the position I occupy before the country, that I shall be allowed to make this explanation. It is represented that a proposition looking to a separate State government is revolutionary in its character. I deny it. It is the only legal, consitutional remedy left this people if they do not approve the action of the Virginia Convention.

"I, like the gentleman from Monongalia, desire to exhaust all the legal and peaceable remedies before ever we are compelled to the *ultima ratio* of nations. But is there, can there be, aything revolutionary in availing ourselves of the constitutional means provided in the organic law of the land, for the very purpose of protecting our interests? Is it possible that a gag law is in force, and that thought and freedom of speech have ceased to exist in this once free land? Is it revolutionary or illegal to discuss the propriety of availing ourselves of a constitutional right? The Constitution of the United States, which is also the Constitution for Virginia; which is the supreme law of the land; which is to be obeyed and respected by all, even by the Constitutions of the several States—which makes null and void every constitutional provision of a State, and every legislative enactment which is in conflict with that instrument—and is there a man here that needs to be told it that the Constitution of the United States provides ex-

pressly and in terms plain and unmistakable for the separation of a State and the erection of a new State within the boundaries of a State out of which a new State is to be formed? If that be true, and no man can deny it—if there be such a provision in the Constitution of the United States, pray tell me where is there anything revolutionary in discussing and deliberating and exercising a privilege thus secured to them by that instrument? I desire once for all to say to gentlemen, they are endeavoring to evade the issue by attempting to alarm the fears of men by stigmatizing the exercise of a plain and constitutional right as revolutionary. It is a peaceful, legal, constitutional remedy secured to us by the same instrument which secures freedom of speech and the right of trial by jury. Nor is there anything in this right inconsitent with what gentlemen are pleased to term their 'allegiance' to either the State or Federal Government. There is no treason, as gentlemen would endeavor to impress. There is no perjury in it, as they have attempted to assume. Sir, you may swear to support the Constitution of your State and the Constitution of the United States, but is it a violation of your oath to exercise a plain constitutional right secured to you in the very instrument and by the very instrument you swear to support? Therefore do I beg members of this Convention to weigh well all arguments that may be addressed to their fears. He who takes counsel from his fears is ill fitted for the emergency in which this people is now placed. (Applause.)

"But it has been said that this Convention was called here alone for consultation. Sir, it happens to be my pride that I had the honor to draw up the preamble and resolutions which were adopted by the meeting in my county and which have resulted in the bringing together of this Convention. Now let us see what was contemplated in our assembling here. Every meeting held, and which has appointed delegates here, has been held in response to those resolutions. Those resolves, among other things, say that this Convention was called 'to consult and *determine upon such action* as the people of Northwestern Virginia should take in the present fearful emergency.'

"That is the call, and such is your duty. It contemplated 'action' that would keep us in the Union, and would preserve to us and to our children and to all posterity, the liberties achieved by the illustrious dead.

"It is said we are not prepared to take action. Sir, when will we be better prepared? If this action be our constitutional right,

who will dare to say that anywhere within the limits of this Union, any man is authorized to resist such action? Who dare to say that this remedy can be exercised only by virtue of force? Sir, all the privileges of freemen may be attempted to be suppressed by bad men, and will be, if they can, and if we have not the nerve and courage to repel such force and sustain ourselves in our constitutional rights.—And, sir, there is no more reason why action on the part of this Convention, looking to a separation from another portion of the State, under the Constitution and laws of the land, should not be taken, than there is to resist, by force, the assertion of any other constitutional right. But those who would endeavor to alarm us and deter us from entertaining, and considering, and exercising this right by terming it revolutionary, make the assertion with nothing on earth to sustain it, that we are not in a state of preparation. Sir, we will never be in a state of preparation if we are not now. What means of defense or protection are we likely to have within the next six or twelve months that we have not to-day."

MR. WHEAT called Mr. Carlile to order.

MR. CARLILE. The gentleman will reduce his objections to writing.

MR. WHEAT, after having done so: The gentleman from Harrison by extending his remarks beyond what is known as an explanation is arguing the merits of the proposition contained in his resolution and opening the door to general debate, and denying all other members the right to reply to his arguments, thus forestalling the independent action of the Committee.

MR. CARLILE had understood the Chair to say if he confined himself to an explanation he was in order. He had been explaining the first and most important branch of his resolution, which is the peaceful constitutional right of this separation, as I have shown by authority. Any gentleman had the same right to discuss the question that he had.

The CHAIR said that any general debate was out of order until the Committee on State and Federal Relations had reported, but the gentleman had a right to make an explanation. The Chair thinks though he is now out of order.

MR. CARLILE. "I will try to confine myself to an explanation. I desire to say that this resolution does not contemplate that all action shall be deferred until the country gets into a better

state of preparation' than now; and I desire to put the inquiry to the Convention, when will we be better prepared to avail ourselves of this constitutional right than now? *After the 23d of this month it will not be a Constitutional right.* We will have been transferred to the Southern Confederacy, and the Constitution of the United States, under the theory of those who advocate this doctrine of withdrawing from the Union at will, will no longer shield and support us; the soil upon which we stand will be no longer the soil of the United States; and if every member of the Legislature of Virgina, and every man, woman and child in the State were willing for our separation, the separation could not be made without the consent of the Montgomery government, and that could only be obtained by treaty, and negotiations by ministers on the part of the two hostile governments, as they are now, and as they may remain. And no treaty negotiations can ever be had until the hostility ceases, and the Southern Confederacy is recognized by the Government of the United States. This is where we''—

MR. LAZIER, of Monongalia—It would certainly be better to leave the discussion of this until the report of the Committee.

The CHAIR said he felt compelled to arrest the discussion now.

GENERAL JACKSON claimed the floor. He insisted that his motion to adjourn had precedence. Mr. Carlile, he said, was out of order.

MR. CARLILE then appealed from the decision of the Chair, but subsequently, for the sake of harmony, as he said, withdrew the appeal, and gave way for the motion to adjourn.

GENERAL JACKSON withdrew his motion to adjourn, and on his motion it was ordered that all gentlemen who had propositions to submit to the committee on State and Federal Relations, be requested to hand them in, and that the committee be instructed to consider them. He then renewed his motion to adjourn till 2 o'clock, and the Convention then adjourned.

THE AFTERNOON SESSION.

The Convention met at the appointed hour and was called to order.

MR. LAZIER said he had just returned from the room of the Committee on State and Federal Relations. The Committee are not prepared to report now, and will not be by 5 o'clock. I there-

fore move that the convention do now adjourn to meet this evening at 7 o'clock. The motion was put and the Convention adjourned.

EVENING SESSION.

The Convention met at 7 o'clock, and the Chairman stated the first business before the body would be to receive the report of the Committee on State and Federal Relations.

GEORGE McC. PORTER, of Hancock, Chairman, reported on behalf of the committee, a series of resolutions, comprising those offered in the morning session by Mr. Wheat, with the addition of the following:

"*Resolved*, That in view of the geographical, social, commercial and industrial interests of North Western Virginia, we pronounce the policy of the Convention in changing the relation of the State to the Federal Government, and annexing us to the Confederate States, unwise and utterly ruinous and disastrous to all the material interests of our section, severing all our social ties and drying up all the channels of our trade and prosperity.

"*Resolved*, That should the Ordinance of Secession be adopted, then we recommend to the several counties with us, to hold elections at the several precincts therein, on the 4th day of June, 1861, for delegates to a General Convention, to be held at Wheeling on the 11th day of June, 1861, to devise such measures, and take such action as the safety and welfare of Virginia may demand; each County to appoint a number of representatives to said Convention equal to double the number to which it will be entitled in the next House of Delegates; and that the Senators and Delegates to be elected on the 23d instant, to the next General Assembly of Virginia by the Counties referred to, be declared members of said Convention.

"*Resolved*, That inasmuch as it is a conceded political axiom, that government is founded on the consent of the governed and is instituted for their good, and it cannot be denied that the course pursued by the ruling power in the State, is utterly subversive and destructive of our interests, we believe we may rightfully and successfully appeal to the proper authorities of Virginia, to permit us peacefully and lawfully to separate from the residue of the State, and form ourselves into a government to give effect to the wishes, views and interests of our constituents.

Resolved, That the public authorities be assured that the people of the Northwest will exert their utmost power to preserve the peace, which they feel satisfied they can do, until an opportunity is afforded to see if our present difficulties cannot receive a peaceful solution; and express the earnest hope that no troops of the Confederate States be introduced among us, as we believe it would be eminently calculated to produce civil war.

"*Resolved*, That ———— be appointed a Committee to prepare an address to the people of Virginia, in conformity with the foregoing resolutions, and cause the same to be published and circulated as extensively as possible."

MR. CARLILE moved to re-commit the report with instructions, and after reading the resolution which he offered in the morning's ses-

sion, and submitting it as a resolution of instruction, proceeded to address the Convention at considerable length, in advocacy of the motion, and urging that the convention should take some action more effective than the mere adoption of paper resolutions. (We will, at the earliest possible moment, publish a verbatim report of the speech of Mr. Carlile.—Editor. See Appendix.)

After MR. CARLILE had concluded, MR. WILLEY obtained the floor and proceeded at great length to reply to the propositions and arguments of Mr. Carlile. He said the proposition of Mr. C. was a violation of the law, and it was treason not only against the Constitution of Virginia, but against the Constitution of the United States. He assumed all the way through that such action would of necessity bring on war in our midst. After he had concluded,

On motion the Convention then adjourned to 9 o'clock tomorrow.

After the adjournment some one proposed three cheers for New Virginia, which went up with a wild and almost ferocious yell. Three more were given for Carlile, and the spectators and delegates dispersed.

LIST OF DELEGATES TO THE CONVENTION BY COUNTIES.

Barbour County.—E. H. Menafee, Spencer Dayton and John H. Shuttleworth.

Berkeley County.—A. R. McQuilkin, John W. Dailey, and J. E. Bowers.

Brooke County.—Adam Kuhn, David Hervey, Campbell Tarr, Nathaniel Wells, J. R. Burgoine, James Archer, Jesse Edgington, R. L. Jones, James A. Campbell, Robert C. Nicholls, Joseph Gist, John G. Jacob, Eli Green, John D. Nicholls, Bazeleel Wells and Montgomery Walker.

Doddridge County.—J. Chevront, S. S. Kinney, J. Smith, James A. Foley, J P. F. Randolph.

Frederick County.—George S. Senseney.

Gilmer County.—S. Martin.

Hampshire County.—Owen D. Downey, George W. Broski, Dr. B. B. Shaw, George W. Sheetz, George W. Rizer.

Hancock County.—George McC. Porter, W. L. Crawford, Louis R. Smith, J. C. Crawford, B. J. Smith, Thomas Anderson, William B. Freeman, W. C. Murry, J. L. Freeman, John Gardner, Geo. Johnston, J. S .Porter, James Stevenson, J. S. Pomeroy, R. Breneman, Daniel Donahoo, D. S. Nicholson, Thayer Melvin, Ewing Turner, James H. Pugh, H. Farnsworth, James G. Marshall, Samuel Freeman, John Mahan, David Jenkins, William Hewitt, William Brown, A. Moore, D. C. Pugh, Johnathan Allison, John H. Atkinson, Joseph W. Allison.

Harrison County.—John S. Carlile, Thomas L. Moore, John J. Davis, Solomon S. Fleming, Felix S. Sturm, James Lynch, William E. Lyon, Lot Bowen, Dr. Duncan, Waldo P. Goff, Benjamin F. Shuttleworth.

Jackson County.—Andrew Flesher, David Woodruff, C. M. Rice, Geo. Leonard, J. F. Scott, G. L. Kennedy, J. V. Rowley.

Lewis County.—T. M. Chalfant, Alexander Scott Withers, J. W. Hudson, Perry M. Hale, J. Woofter, W. L. Grant, J. Ames, J. A. J. Lightburn.

Marion County.—R. R. Brown, J. C. Beeson, Isaac Holman, Thomas H. Barnes, Hiram Haymond, Harvey Merrifield, G. W. Jolliffe, John Chisler, Thomas Hough, William Beatty, James G. Beatty, Aaron Hawkins, Jacob Sturm, Francis H. Pierpont, Jesse Shaw, Joshua Carter.

Marshall County.—John H. Dickey, John Parkinson, Thomas Morris, W. Alexander, John Laughlin, W. T. Head, J. S. Parriott, William J. Purdy, H. C. Kemple, Joseph Turner, Hiram McMechen, E. H. Caldwell, James Garvin, L. Gardner, H. A. Francis, Thomas Dowler, John R. Morrow, William Wasson, Nat Wilson, Thomas Morgan, S. Dorsey, Jr., R. B. Hunter, J. W. McCarriher, J. B. Morris, R. C. Holliday, William Collins, W. R. Kimmons, G. W. Evans, William McFarland, J. Hornbrook, John Reynolds, Remembrance Swan, J. B. Hornbrook, James Campbell, F. Clement, J Winders, William Baird, Dr. Marshman, William Luke, J. Garvin, S. Ingram, William Phillips, Jr., A. Francis, Thomas Wilson, Lot Enix, G. Hubbs, John Wilson, John Ritchie, J. W. Bonar, J. Alley, S. B. Stidger, Asa Browning, Samuel Wilson, J. McCondell, A. Bonar, D. Price, G. W. Evans, D. Roberts, George Hubbs, Thomas Dowler, R. Alexander, E. Conner, Charles Snediker, John Winters, Nathan Fish, V. P. Gorby, Alfred Gaines, J. S. Riggs, Alexander Kemple, Joseph McCombs, W. Alexander.

Mason County.—Joseph S. Machir, Lemuel Harpold, William E. Wetzel, John Godley, Wyatt Willis, William Wiley Harper, William Harpold, Daniel Polsley, Samuel Davies, J. N. Jones, Samuel Yeager, R. C. M. Lovell, Barney J. Rollins, David C. Sayre, Charles H. Bumgardner, John O. Butler, Timothy Russell, John Hall, A. A. Rogers, William Hopkins, Eugene B. Davis, David Rossin, Asa Brigham, Charles B. Waggener, John M. Phelps, Stephen Comstock, W. C. Starr, John Greer, Apollo Stevens, Major Brown, John J. Weaver.

Monongalia County.—Waitman T. Willey, James Evans, Leroy Kramer, William A. Hanaway, William Lazier, Elisha Coombs, George McNeeley, Henry Dering, Dr. H. N. Mackey, Evans D. Fogle, James T. M. Lasky, James T. Hess, Charles H. Burgess, John Bly, William Price, Dr. A. Brown, Dr. J. V. Boughner, D. P. Fitch, E. B. Taggart, Alpheus Garrison, Dr. John McCarl, J. A. Wiley, Joseph Snyder, Joel Bowlsby, Amos S. Bowlsby, A. Derrant, N. C. Vandervort, Daniel White, Dr. D. B. Dorsey, Jacob Miller, Dr. Isaac Scott, Marshall M. Dent, Rev. Peter T. Laishley, Edward P. St. Clair, William B. Shaw, P. L. Rice, Joseph Jolliffe, William Anderson.

Ohio County.—John Alman, L. S. Delaplain, J. R. Stifel, Gibson Lamb Cranmer, Alfred Caldwell, John McLure, Jr., Andrew Wilson, George Forbes, A. J. Woods, Thomas H. Logan, James S. Wheat, George W. Norton, N. H. Garrison, E. Buchanan, John Pierson, P. Witham, Perry Whitten, E. McCaslin, A. B. Caldwell, John R. Hubbard, A. F. Ross, William B. Curtis, John Steiner, Daniel Lamb, Chester D. Hubbard, H. Armstrong, S. H. Woodward, James W. Paxton, A. A. Handlan, Stephen Waterhouse, J. Hornbrook, L. D. Waitt, John K. Botsford, George Bowers, Robert Crangle, J. M. Bickel, James Paull, John C. Hoffman, Jacob Berger, A. Bedillion, Sr., George Tingle, Samuel McCulloch, J. C. Orr.

Pleasants County.—Friend Cochran, Robert Parker, R. A. Cramer, James W. Williamson.

Preston County.—Harrison Hagans, R. C. Crooks, W. H. King, James W. Brown, Charles Hooton, Summers McCrum, William B. Zinn, W. T. Brown, Reuben Morris, D. A. Litzinger, John Howard, G. H. Kidd, James A. Brown, William P. Fortney.

Ritchie County.—Noah Rexroad, D. Rexroad, J. P. Harris, A. S. Cole.

Roane County.—Irwin C. Stump.

Taylor County.—J. Means, J. M. Wilson, T. Kennedy, Thomas Cather, John S. Burdett, J. J. Allen, B. Bailey, George R. Latham, T. T. Monroe, J. J. Warren.

Tyler County.—Daniel D. Johnson, Daniel Sweeny, V. Smith, W. B. Kerr, J. C. Parker, James M. Smith, J. H. Johnston, Isaac Davis, S. H. Hawkins, D. King, William Prichard.

Upshur County.—W. E. Williams, C. P. Rohrbaugh.

Wayne County.—William W. Brumfield, C. Spurlock, F. Moore, William H. Copley, Walter Queen.

Wetzel County.—F. E Williams, Joseph Murphy, Elijah Morgan, William Burrows, B. T. Bowers, J. R. Brown, J. M. Bell, Jacob Young, Reuben Martin, R. Reed, Sr., Richard Cook, A. McEldowney, B. Van Camp, John McClaskey, S. Stephens, R. W. Lauck, John Alley, Thomas McQuown, George W. Bier, William D. Walker, R. S. Sayers.

Wirt County.—Henry Newman, E. T. Graham, B. Ball.

Wood County.—S. L. A. Burche, John J. Jackson, Sr., J. D. Ingram, A. Laughlin, Wellington Vrooman, J. C. Rathbone, G. E. Smith, D. K. Baylor, M. Woods, Andrew Alls, Joseph Dagg, Jr., N. W. Warlow, Peter Riddle, John Paugh, T. E. McPherson, Thomas Leach, S. S. Spencer, E. Deem, N. H. Colston, A. Hinckley, Bennett Cook, George W. Henderson, George Loomis, J. L. Padgett, S. D. Compton, S. N. Peterson, G. H. Ralston, V. A. Dunbar, A. R. Dye, W. H. Baker, William Johnston, Jr., Dr. Jesse Burche, S. Ogden, Sardis Cole, P. Reed, John McKibben, W. Athey, C. Hunter, W. P. Davis, R. H. Burke, George Compton, C. M. Cole, Roger Tiffins, Edward Holt, W. B. Caswell, Peter Dils, W. F. Henry, A. C. McKinsey, Rufus Kinnard, John J. Jackson, Jr., C. J. Neal, J. G. Blackford, Henry Cole, W. E. Stevenson, Jesse Murdock, J. Burche, J. Morrison, A. H. Hatcher, A. Mather, Charles B. Smith, Arthur Drake, H. Rider, B. H. Bukey, John W. Moss, R. S. Smith, M. P. Amiss, T. Hunter, J. Barnett, T. S. Conley and J. J. Neal.

THE THIRD DAY,

WEDNESDAY, MAY 15, 1861.

FORENOON PROCEEDINGS.

The Convention assembled and was called to order at nine o'clock. The opening prayer was made by Rev. R. V. Dodge.

MR. FLESHER, of Jackson, rose to a question of privilege. He read from the Wheeling *Union* the proceedings of a public meeting in his county, and said that the article was a libel upon the character of the people he helped to represent.

The Secretary then read the journal of the preceding day.

MR. WILLEY having the floor.

MR. CARLILE asked leave to add to the resolution which he submitted yesterday evening the following:

That the said committee provide for submitting the said ordinance to a vote of the people in the said counties of this State at the election to be held on the 23d inst.

A member also asked and obtained leave to read a series of resolutions. The resolutions suggested the propriety of the adoption of the present constitution and laws of the State, and recommending the holding of an election to elect delegates to a convention to revise the Constitution and organize a separate State; that the convention at once organize a provisional government by electing three persons to constitute a committee of safety, whose duty it will be to exercise the constitutional power of Governor and Council of Virginia, until a complete organization could be effected; that the Convention is ardently attached to the Constitution of the United States, and the Federal Government is earnestly requested to establish a line of military posts along up the valley of the Shenandoah, from Harper's Ferry to the Tennessee line, and up the Great Kanawha.

The reading of the resolution occasioned a good deal of merriment. They were referred to the appropriate committee.

MR. WILLEY then resumed his argument, and proceeded to address the Convention at length. He opposed the organization of a provisional government, and said it would be treason against the State Government of the United States and against the Government of the C. S. A. He urged also that it would inevitably bring war and ruin upon this part of the State. He remonstrated against such action, and asked for the mode of redress proposed in the resolutions of the committee. He would never lend himself to an insurrectionary or unconstitutional means of accomplishing an object which he thought could be accomplished according to law.

MR. POLSLEY, of Mason, addressed the Convention at some length, in favor of a separation. He was not terrified by the cry of treason that had been raised here. If there were any treason in the matter they had already commited it. He referred to the precedent set by California in her organization. We had the right to establish a provisional government here for the entire State.

MR. CARLILE was willing to take the position the gentleman had indicated, if it should be the pleasure of the Convention to recommend the report.

JOHN J. JACKSON, JR., moved that the Convention go into secret session.

MR. PIERPONT hoped it would not be done.

MR. LAZIER wished to add to the motion, "that the clergymen

of the city be permitted to remain and the ladies be allowed to occupy the side boxes." (Laughter.)

MR. CARLILE was willing, if it were deemed advisable, to vote for the proposition.

JOHN R. HUBBARD, of Ohio county, opposed it, and said it would be but imitating the Star Chamber Convention at Richmond. He spoke of the motion as being that of Mr. Carlile, of Harrison.

MR. CARLILE disclaimed, and said he had merely expressed a willingness to acquiesce.

GENERAL JACKSON trusted the motion would be withdrawn.

MR. BURDETT trusted it would *not* be withdrawn. He believed it necessary to fight the devil with fire, and was in favor of going into secret session.

MR JACKSON withdrew the motion, and

MR. PIERPONT obtaining the floor, proceeded to address the Convention in favor of the adoption of the report of the Committee on State and Federal Relations, and in opposition to the plan of establishing a Provisional Government. In the course of his remarks he alluded to Mr. Carlile, and said that all other gentlemen were to be driven from the field.

MR. CARLILE protested that he had said nor done nothing, authorizing any such inference; and he said now to this Convention and to the people of Virginia, that he had filled the last office he ever would fill with his own consent. (Applause.)

MR. PIERPONT also incidentally remarked in the course of his speech, that there would soon be any amount of men and money here to protect Union men in Northwestern Virginia.

MR. CARLILE asked Mr. Pierpont to give his authority for the assertion; Mr. Pierpont was about to do so, but on the suggestion of several gentlemen, refrained.

MR. CARLILE said he did not ask it out of any doubt as to the entire truthfulness of the statement. He had understood him to speak of it as a mere supposition.

MR. CARLILE then stated that it had been charged on him, that he was at Washington a short time since, engaged in procuring arms, and that the two thousand now here had been obtained through him. It was not true. The arms were procured by a delegation of gentlemen from Brooke County, and he himself was two hundred miles away from Washington at that time, where he had not been at all.

MR. PIERPONT had alluded to several manifestations on the

part of the spectators as an outside pressure, and said that the spectators were endeavoring by such expressions to intimidate gentlemen in the Convention, when

MR. WHEAT arose and said, that he had lived here all his life, and knew well the temper of his fellow citizens of this city. He was sure Mr. Pierpont did them gross injustice. He reminded the spectators that it was improper for them to take any part in the proceeding, even by any expressions of approval or disapprobation.

On motion of Mr. Jackson, Jr., the Convention adjourned; Mr. Pierpont yielding the floor for that purpose.

THE AFTERNOON SESSION.

The Convention met at two o'clock.

MR. WILLEY obtained leave to read a letter addressed by Mr. J. Hughes of Martinsburg, Va., to J. B. Bowers, Esq., a member of the Convention. The letter gave an account of a Union meeting held in Berkeley county, and exhibited a very favorable view of the sentiment in that county.

On motion of John J. JACKSON, Jr., it was ordered to be recorded in to-day's proceedings as a part of the minutes of the Convention.

MR. CARLILE handed to the Secretary the proceedings of meetings held in Cabell and Wayne counties, appointing delegates to this Convention and instructing the delegates from Harrison to act as alternates, and asked that they be accredited as such.

MR. POLSLEY of Mason, offered an amendment to the resolution of instructions offered by Mr. Carlile yesterday.

MR. CARLILE said for the purpose of evincing his desire for unanimity, he would accept the resolution, as an amendment to his propositon so that all the different views may go before the committee. He offered as an additional amendment the following:

"And that the said committee also provide in the event of the ratification of the Ordinance of Secession for the re-assembling of this Convention on the first Monday in June next, to adopt a Constitution and form of Government for the said counties, if, in their opinion it is premature at this time to adopt said Constitution and form of Government."

He had drawn this up and offered in deference to the views of

others—not that he changed his own opinion heretofore expressed here in the least.

JOHN J. JACKSON, Jr., said the Convention was and had been acting entirely without any laws to govern its deliberations, and he moved the adoption of the rules of the House of Delegates of Virginia, so far as applicable to this body.

The motion was put, and the rules adopted.

MR. PIERPONT then resumed his speech. He expressed his regret that he should have exhibited any undue warmth in his remarks during the morning session; and apologized for the same. He was interrupted by a motion to refer all the pending propositions before the Convention back to the Committee on State and Federal Relations.

MR. CARLILE moved to adjourn till tomorrow, in order to give the committee time for deliberation, but withdrew his motion to allow Mr. Latham to read a series of resolutions which he offered as a kind of middle ground for the consideration of the committee. The resolutions were referred to the Committee on Federal Relations.

MR. LATHAM wished then to read a declaratory resolution, for the immediate action of the Convention, but was ruled out of order.

On motion of JOHN J. JACKSON, Jr., the Convention then adjourned till 5 o'clock P. M.

THE EVENING SESSION.

Convention met at 5 o'clock.

The CHAIR stated that the first business before the Convention was the report of the Committee on State and Federal Relations.

The Committee not being ready to report, a call was made for Mr. Latham, of Taylor county, who addressed the Convention. He was followed in a brief address by Mr. Holliday, of Marshall.

JOHN J. JACKSON, JR., stated that the Committee would be ready to report at seven o'clock. He stated that he had received a telegraphic despatch a few moments ago from his own town, informing him that a letter had been written to him giving the details, which he thought he would receive by eleven o'clock to-night; and after the receipt of that letter he thought the committee might see the propriety of waiting a day or two longer before taking action. He read the despatch, which said: "The dogs of war are about: look out for State troops. I will write by mail."

"I know," continued Mr. Jackson, "how utterly unable gentlemen who reside here on this little strip of territory, lying between these two great States of Pennsylvania and Ohio, are of appreciating the situation of the people of the interior counties. Ever since the assembling of this Convention, I have been endeavoring to impress upon this body the conviction on my mind, that within less than a brief time to elapse between now and the 23d of this month, more of the Northwest not now so occupied, would be visited by Southern troops. The *Baltimore Sun* intimated that Virginia intended sending out here 5,000 troops within the next three days, but had been advised by an officer of the Confederate Government not to do so." He had thought, perhaps, he was the only crazy man in this body, and all the rest were sane, but he thought that when the Convention would see as he believed it would, within 24 hours the necessity for immediate action, he had been endeavoring to impress upon the Convention, they would come to the conclusion not to adjourn tonight, and he moved to adjourn till tomorrow at the usual hour. Motion rejected.

JOHN J. JACKSON, Jr., said he wasn't afraid of Letcher's "dogs of war." Let them come and we will give them a warm reception. He moved to adjourn to 7 o'clock. The motion carried and the Convention adjourned.

THE NIGHT SESSION.

The Convention met at 7 o'clock.

On motion, the Journals of the day's proceedings were ordered to be read.

MR. BURDETT stated that he received a letter, saying that although the counties of Randolph and Jackson[6] were not represented here, they sympathized with the movement and these counties would endorse whatever the Convention may do.

MR. TARR then presented the report of the Committee on Federal Relations, which was read by the Secretary, as follows:

Report of the Committee on State and Federal Relations.

1. *Resolved*, That in our deliberate judgment the ordinance passed by the Convention of Virginia, on the 17th day of April, 1861, known as the ordinance of secession, by which said Convention, undertook in the name

6. This is an error. A delegation from Jackson county was there on the floor of the Convention. Jefferson county may have been mentioned instead.—V. A. L.

of the State of Virginia, to repeal the ratification of the Constitution of the United States by this State, and to resume all the rights and powers granted under said Constitution, is unconstitutional, null and void.

2. *Resolved*, That the schedule attached to the ordinance of secession suspending and prohibiting the election for members of Congress from this State, is a manifest usurpation of power to which we ought not to submit.

3. *Resolved*, That the agreement of the 24th of April, 1861, between the Commissioner of the Confederate States and this State, and the ordinance of the 25th of April, 1861, approving and ratifying said agreement by which the whole military force and military operations offensive and defensive, of this Commonwealth are placed under the chief control and direction of the President of the Confederate States, upon the same principles, basis and footing as if the Commonwealth were now a member of said Confederacy, and all the acts of the executive officers of our State in pursuance of said agreement and ordinance are plain and palpable violations of the Constitution of the United States, and are utterly subversive of the rights and liberties of the people of Virginia.

4. *Resolved*, That we earnestly urge and entreat the citizens of the State everywhere, but more especially in the Western section, to be prompt at the polls on the 23d inst.; and to impress upon every voter the duty of voting in condemnation of the Ordinance of Secession, in the hope that we may not be involved in the ruin to be occasioned by its adoption, and with the view to demonstrate the position of the West on the question of secession.

5. *Resolved*, That we earnestly recommend to the citizens of Western Virginia to vote for members of the Congress of the United States, in their several districts, in the exercise of the right secured to us by the Constitutions of the United States and the State of Virginia.

6. *Resolved*, That we also recommend to the citizens of the several counties to vote at said election for such persons as entertain the opinions expressed in the foregoing resolutions, for members of the Senate and the House of Delegates of our State.

7. *Resolved*, That in view of the Geographical, social, commercial and industrial interests of Northwestern Virginia, this Convention are constrained in giving expression to the opinion of their constituents to declare that the Virginia Convention in assuming to change the relation of the State of Virginia to the Federal Government, have not only acted unwisely and unconstitutionally, but have adopted a policy utterly ruinous to all the material interests of our section, severing all our social ties, and drying up all the channels of our trade and prosperity.

8. *Resolved*, That in the event of the Ordinance of Secession being ratified by a vote, we recommend to the people of the Counties here represented, and all others, disposed to co-operate with us, to appoint on the 4th day of June, 1861, delegates to a General Convention, to meet on the 11th of that month, at such place as may be designated by the Committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand,—each County to appoint a number of Representatives to said Convention equal to double the number to which it will be entitled in the next House of Delegates; and the Senators and Delegates to be elected on the 23rd inst., by the counties referred to, to the next General Assembly of Virginia, and who concur in the views of this Convention, to be entitled to seats in the said Convention as members thereof.

9. *Resolved*, That inasmuch as it is a conceded political axiom, that government is founded on the consent of the governed and is instituted for their good, and it cannot be denied that the course pursued by the ruling power in the State, is utterly subversive and destructive of our interests, we believe we may rightfully and successfully appeal to the proper authorities of Virginia, to permit us peacefully and lawfully to separate from the residue of the State, and form ourselves into a govern-

ment to give effect to the wishes, views and interests of our constituents.

10. *Resolved*, That the public authorities be assured that the people of the North West will exert their utmost power to preserve the peace, which they feel satisfied they can do, until an opportunity is afforded to see if our present difficulties cannot receive a peaceful solution; and we express the earnest hope that no troops of the Confederate States be introduced among us, as we believe it would be eminently calculated to produce civil war

11. *Resolved*, That in the language of Washington in his letter of the 17th of September, 1787, to the President of Congress; "In all our deliberations on this subject we have kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, and perhaps our national existence." And therefore we will maintain and defend the Constitution of the United States and the laws made in pursuance thereof, and all officers acting there-under in the lawful discharge of their respective duties.[7]

12. *Resolved*, That John S. Carlile, James S.Wheat, Chester D. Hubbard, Francis H. Pierpont, Campbell Tarr, George R. Latham, Andrew Wilson, S. H. Woodward and James W. Paxton be a Central Committee to attend to all the matters connected with the objects of this Convention; and that they have power to assemble this Convention at any time they may think necessary.

13. *Resolved*, That the Central Committees be instructed to prepare an address to the people of Virginia in conformity with the foregoing resolutions and cause the same to be published and circulated as extensively as possible.

MR. POLSLEY suggested that instead of acting to-night on the report of the committee, it be laid upon the table and printed, in order that every member might have an opportunity to inspect it.

GEN. JACKSON objected; he wanted to go home. It was corn planting time.

MR. CARLILE asked Mr. P. to withdraw his motion. He was satisfied that nothing more than was now incorporated in the report could be obtained from the Convention at that time, and he was happy to state that since the adjournment this evening a resolution had been adopted by the committee which he regarded worth all the rest, and which would in a short time realize all their hopes of a New Virginia. That resolution provides for the appointment of a committee possessing all the powers this Convention can exercise, so far as they can be exercised by the committee.

The question on the adoption of the report of the Committee was then put, and the report was adopted with an almost unanimous "aye," only two dissenting voices being heard.

The announcement that the motion had carried, was received with tremendous cheering.

7. The reader will here observe that much of the report of the Committee on Federal Relations, was embodied in the series of resolutions submitted by James S. Wheat the preceding day.—V. A. L.

A CENTRAL COMMITTEE APPOINTED.

The following gentlemen were named as a Central Committee; viz: Hon. John S. Carlile, James S. Wheat. Chester D. Hubbard, Francis H. Pierpont, Campbell Tarr, George R. Latham, Andrew Wilson, S. H. Woodward and James W. Paxton.

GENERAL JACKSON rose to make a few remarks, but was called to the stand for a speech. He responded in a warm enthusiastic appeal to the Convention to now stand by and maintain what they had here declared to-night.

MR. LAZIER offered a resolution that the thanks of this Convention be tendered to the citizens of Wheeling for the kind and hospitable manner in which they have entertained the members of this Convention, and for the use of this Hall.

A speech from Carlile was called for and he responded and was followed by Mr. Willey, Pierpont and others. (We shall probably publish some of these speeches at an early day.—Editor of *Daily Intelligencer,*)[8]

REMARKS OF MR. CARLILE.

Having been called to the stand for a speech Mr. Carlile said: "*Mr. President and Fellow-Citizens*:

"Unity of action and singleness of purpose, I have been taught to believe, will accomplish all that it is in the power of man to accomplish, when wisely directed. I therefore concur most heartily in the suggestion made by the gentleman from Wood that this convention should not separate without first invoking the blessing of Heaven upon the labors inaugurated by it, and which will grow day by day more arduous, in order that we may have that wisdom which is so necessary to direct us through the momentous struggle in which we are about to engage. But if we meet it as brave men should; if we meet it with a determination to accomplish our purpose or die in the effort, success will as certainly crown our efforts as that the sun rises in the east and sets in the west. While it has been well remarked we have yielded each to the other for the purpose of harmonizing, and have thus been enabled to come to the conclusion at which we have arrived, we must remember that the same object is still in view, and the same effort is required to accomplish the purpose, although it may be postponed a few days longer than some of us desire. And it may, gentlemen, require at

8. The speeches of Mr Carlile and Mr. Willey made at this hour, were printed in the *Daily Intelligencer* of Wheeling, May 20, 1861. We here insert these in the proper place in the proceedings of the night session on the third day—the time at which they were uttered.—V. A. L.

our hands more arduous efforts than it would if we had earlier entered upon it. Be that as it may, let us go home with a determination to succeed, and let us inspire the same determination into the breast of every citizen in each and every county here represented, and all other counties in which we may chance to be between this and the hour of trial.

I feel that upon us of Northwestern Virginia, and upon our efforts, depend to a very great extent, the restoration of harmony to the whole of our beloved land, and the preservation and perpetuity of those free institutions under which we have been born and reared. This is a government to love; and I cannot for a moment contemplate its destruction without feeling as I never deemed myself capable of feeling in contemplating any subject short of utter annihilation. When I left the Virginia Convention, on the evening on which the Ordinance of Secession passed, and walked solitary and alone to my lodgings, and felt that a home and country remained not to me, I felt as sad at heart as I could have felt had I just returned from the burial ground, having deposited in their last resting place my wife and children. Entertaining these sentiments, placing this estimate upon this government, I have resolved to do all that I can, in any and every position, to preserve it, and aid and co-operate with my fellow-citizens in its preservation. And I believe that preservation is to be secured by and through the agency of this portion of Virginia; by and through the erection of a new State; by and through, it may be, scenes of blood, accomplished by deeds of daring, but deeds that will result to effect its accomplishment. Let each and all determine for himself, and get his neighbors to determine with him. Be the means to be used what they may, come life or come death, it shall be accomplished. (Applause.) I have not voice to say more. I speak with much difficulty, I return to you my sincere thanks for the kindness received at the hands of each and every member of this Convention; and I assure you I justly appreciate the compliment shown me by calling me to the stand. The associations I have formed here, will always be remembered by me as among the most pleasing reminiscences of my life." (Applause.)

SPEECH OF HON. WAITMAN T. WILLEY.

Mr. Willey being loudly called for, came forward and said:

Mr. President and Fellow Citizens:

"Whilst I appreciate with sentiments of heartfelt gratitude the

compliment you pay me in calling me out at this period, in the deliberations of our Convention, I am sure you would be disposed to excuse me if you were aware of the pain and suffering under which I am constantly laboring. Ever since yesterday morning at seven o'clock, when I was attacked, I assure you most sincerely that I have been in the most excruciating torture. Last night I slept scarcely one moment; and nothing but the heartfelt and deep, and absorbing interest that I have felt in the deliberations of this body that has kept me on this floor until this time. But I tell you, fellow-citizens, I have felt during all this struggle, from the time it began in the Virginia Convention until now, something of the spirit of the noble Roman youth, who, *cap a pie,* mounted, armed and equipped for the sacrifice, voluntarily rushed into the opening chasm of the forum, a voluntary victim to appease the gods of strife that were bringing desolation on his country. And I assure you to-night, if by laying down my humble life on the altar of my country I could bring back peace and harmony, and re-organize and restore the glorious Union which our fathers formed for us, I would willingly as I ever sat down to partake of the dainties of life, render that sacrifice this day, and this hour. (Applause.)

"And, fellow-citizens, much as some of you have misapprehended my soundness on this question, in this good city of yours, feeble as I am in health, with a constitution broken by the anxiety of the struggle of the last two-and-a-half months for the perpetuity of that very Union, for a want of fidelity to which I am suspected at this time, I am ready when the hour comes—I am ready when the Constitution has been exhausted—I am ready when it has been ascertained that the great legitimate agency of republican liberty is not sufficient to bring about the revolution that is to secure to us our just rights at the ballot box—when the law fails—when the Constitution fails in securing these rights, I am ready to stand among the foremost of those who have been here to-day to suspect me. It is not because I do not love the Union that I have taken the conservative position on this occasion; it is not because I do not love my fellow citizens of Wheeling; not because I am faithful and true to the common principles to which you are engaged; it is not because I love Cæsar less, but because I love Rome more. (Applause.)

"I have very little of this world's goods; but I have heritage enough—about the 27,000,000th part of the prestige and glory of

him who can look upon the stripes and stars, and call it his country's flag, (cheers), and who, with that infinitesimal particle of glory, is richer by far than he who, with the richest heritage that ever fell to the lot of man, did not have the name and prestige of an American citizen. (Applause.) I do not intend to surrender it until I am compelled—until I am subdued, heart, soul, fortune, and body. (Cheers.)

"I do not despair of the Republic, either. If we could have two weeks longer until the election, I verily believe, the disheartening anticipation of my friend from Harrison to the contrary notwithstanding, to use a vulgar, but expressive phrase, which may be well applied to this ordinance of secession, we would "knock it into a cocked hat." (Laughter.) Why, sir, I am credibly informed that these soldiers, of whom we have heard so much, and from whom we anticipate so much danger, and who are said to be quartered and posted all over the State for the purpose of public intimidation, have pledged their lives that their own blood shall crimson the streets, but they will cast their votes on the 23rd of this month, against the ordinance of secession. (Applause.) I am informed of one company consisting of 90 men of whom 80 are pledged to vote against the ordinance. You heard a voice to-day from old Berkeley. God bless her! (Applause.) And He will bless her, and all who think like her. God has blessed this country. God has blessed all the men who have loved this Union. His hand has been manifested in all our history. He stood by Washington, its great Founder and Defender. He stood by our forefathers in the establishment of this Government, and by working out our glorious destiny thus far in the space of less than three quarters of a century. God has made the American people the greatest on the earth; and I firmly believe in the hidden councils of His mysterious providence, there is a glorious destiny awaiting an united American people still. (Applause.) I take confidence in the cause as I look at the stripes and stars, and I remember the circumstances that gave rise to the beautiful motto that is as applicable to us to-day as when in the moment of inspiration it was penned:

"Triumph we must, for our cause it is just,
And this be our motto, in God is our trust."

(Great applause.) I was just trying to catch from my memory a couplet from a poem which I read the other day in regard to the

banner of our country. I think I can recall it in the sentiment if not in the language:

"Forever float that standard sheet;
Where breathes the foe but falls before us,
With freedom's soil beneath our feet
And freedom's banner streaming o'er us."

Mr. W. pronounced these lines with great vehemence, and when he had ended there arose one universal, loud and thrilling cheer.

"Fellow-citizens, it almost cures one's back-ache to hear you applaud the sentiment. (Laughter and applause.) But then the time for speaking is done. Let me exhort you never to forget the counsels my much esteemed friend, General Jackson of Wood, delivered to us to-night. Never forget to act upon them. I think I see yet sparkling in the old hero's eye something of the ardor which he thought it not prudent to express, yet that even he was ready at his country's call to lead his sons and the sons of his countrymen whenever it may be necessary—whenever our liberties cannot be secured to us otherwise—to lead us into the battle field; —not to be carried to the polls to whisper his vote against this Ordinance of Secession, but to fall upon the field of battle, to wrap himself in his country's flag and pledge his gratitude to God that he was deemed worthy at last to end an honored life by falling in defense of his country. (Applause.) We have worthy sires, my young friends. Let us be sons worthy of those sires. Those sires were law-abiding, constitution-making, constitution-keeping men. They well knew that republican liberty, that free institutions could only be established upon the law, and preserved by keeping the law; and that is the secret of the conservative position we have taken in this convention. I believe God's blessing will rest upon our action, and if at last, in the language of the Declaration of Independence, 'we have remonstrated again and again, we have petitioned and adjured,' and our prayers are all scoffed at and scouted—why, I think I see around me here to-night the men who know their duty—

"'Who know their rights,
And knowing dare maintain.'

"Fellow-citizens, the first thing we have got to fight is the Ordinance of Secession. Let us kill it on the 23d of this month. (Applause.) Let us bury it deep beneath the hills of Northwestern Virginia. Let us pile up our glorious hills on it; bury it deep so that it will never make its appearance among us again. (Ap-

plause.) Let us go back home and vote, even if we are beaten upon the final result, for the benefit of the moral influence of that vote. If we give something like a decided preponderating vote of a majority in the Northwest, that alone secures our rights. (Applause.) That alone, at least, secures an independent State if we desire it.

"Fellow-citizens, I am trespassing upon your patience."(Go on! go on!) "I am going up to Marion county to assist my friend Hall, in canvassing that county.—Monongalia is a fixed fact—like the handle of a jug, all on one side. (Laughter.)—Not all on one side either; but on all sides, all over, and under, and in, and out, and through and everywhere. (Applause and laughter.) But I want to help Hall a little. Want to take Frank Pierpont along over there, too. They have threatened to hang him out there, and I am sure if he gets strung up first he will break the rope and I will escape. (Laughter.)

"We have to go to work now. We must appeal to the people; appeal to their patriotism; and let us defeat the ordinance of secession in Northwestern Virginia at least. My advices from the valley are, that where, some weeks since, a Union man dare not hold up his head, he has come out now, and is shaking his fist at his adversary. They are getting bold and numerous; and I should not be surprised if the upper and lower valley, even Jefferson county, right under the shadow of—or rather casting its shadow upon—Harper's Ferry, and under the influence and intimidation of the soldiery there, and old Loudon,with Janney at its head, should all give majorities against this ordinance. They say even in Alexandria the old Union spirit is reviving. Let us hope then—'hope on, hope ever.' Let us work in season and out of season.

"And now, fellow-citizens, good-bye till we meet again, with all our hopes realized, as I trust, under fairer auspices. May we meet each other with gratulation and congratulation, that our old and beloved Commonwealth, the mother of States and statesmen, whose fame is as wide as the earth—every inch of whose soil I love, her mountains and valleys, from the seaboard to the Ohio border—shall be restored to peace and prosperity; until all this land in all her waters, shall reflect back peacefully the stars on the floating banner of our country, re-established as the ensign of universal liberty." (Great applause.)

On motion, a unanimous vote of thanks was tendered to the

President and other officers for their official service during the session.

On motion, the delegations from the various counties were requested to appoint the five provided for in one of the resolutions, and that they report to the Secretary before the adjournment of the Convention.

Prayer was then offered and the Star Spangled Banner sung, and with about three times three hearty cheers for the Union, the Convention adjourned *sine die,* in a perfect blaze of enthusiasm.

APPENDIX.

TO THE PROCEEDINGS OF THE FIRST CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA.

By reference to the twelfth and thirteenth resolutions of the report of the Committee on Federal Relations as finally adopted, it will be seen that a Central Committee was appointed "to attend to all matters connected with the Convention." Its members were John S. Carlile, James S. Wheat, Chester D. Hubbard, Francis H. Pierpont, Campbell Tarr, George R. Latham, Andrew Wilson, S. H. Woodward, and James W. Paxton. This Committee was required to prepare an "Address to the People of Virginia," and cause the same to be published and circulated as extensively as possible, within six days after the adjournment of the Convention; this "Address" was prepared and given to the press for publication. It was as follows:

AN ADDRESS TO THE PEOPLE OF NORTHWESTERN VIRGINIA.

In obedience to the 13th resolution of the Convention, which met in this city, on the 13th inst., we earnestly conjure you to enter actively and immediately upon the great work of preparing your neighbors and friends, as well as yourselves, for the firm, stern and decided stand necessary to be taken and adhered to at all hazards, and maintained at any and every cost, if we would preserve to ourselves and transmit to our posterity, that unity of government which constitutes us one people, which we justly regard as the palladium of our liberties and the main pillar in the edifice of our independence. In this way, and this way alone, we can save ourselves from the innumerable evils consequent upon secession and all the horrors of civil war.

Why should the people of North Western Virginia allow themselves to be dragged into the rebellion inaugurated by ambitious

and heartless men, who have banded themselves together to destroy a government formed for you by your patriot fathers, and which has secured to you all the liberties consistent with the nature of man, and has, for near three-fourths of a century, sheltered you in sunshine and in storm, made you the admiration of the civilized world, and conferred upon you a title more honored, respected and revered, than that of King or Potentate—the title of an American citizen? Will you passively surrender it, and submit to be used by the conspirators engaged in this effort to enslave you, as their instruments by which your enslavement is to be effected?

Freemen who would remain free, must prove themselves worthy to be free and must themselves first strike the blow.

What is secession? A deed not to be accomplished in the broad glare of noon-day sun, but a deed of darkness, which had to be performed in secret conclave, by the reckless spirits who accomplished it, in contempt of the people, their masters under our form of government, but whom the leaders in this work of destruction determined to enslave.

What is secession? Bankruptcy, ruin, civil war, ending in a military despotism. Prior to the adoption of the Ordinance of Secession in Virginia, and to the passage by the Legislature of the bill calling a Convention, all was peace, and the great business interests of our State were uninterrupted. From the hour that it was proclaimed the Ordinance of Secession had been passed, business of every description has been paralyzed, State, corporation and individual credit is prostrate, and bankruptcy and ruin stare us in the face, and war, civil war, with all its attendant horrors, is upon us. Secession, all now see, is war. It is preceded by war, accompanied and sustained by war, ushered into being by war.

Who are to stand the brunt of this contest? Will it be those who have clamored loudest for secession, and who have done the most to bring on the present crisis? These are the first to flee from the very approach of danger. They hurry in every train and by every coach from the anticipated scenes of disturbance. Will the disunion majority of the Richmond Convention come into the ranks and shoulder the musket in the strife which they have inaugurated? They will keep at a respectful distance from danger. —They will fill the lucrative offices and secure the rich appointments which appertain to the new order of things. They will luxuriate on two or three or four hundred dollars per month, with horses, and servants, and rations to match, while the Union-loving

people will be called upon, for the honor of Virginia and two shillings per day, to do the fighting and undergo the hardships of war. We are all Virginians, say they, the State must be sustained, and right or wrong, we must all fight for Virginia, etc.

What is it to fight for Virginia. What is it to sustain the State? Is it to urge her upon a course which leads to visible and gaping destruction? Is this the way and the only way in which we can testify our devotion to the Commonwealth? If those feelings which actuated our Revolutionary Fathers be not all dead in us, we shall exhibit our love for Virginia, by repudiating this tyrannical rule which the Richmond Convention has endeavored to impose, and suffer not ourselves to be sold like sheep from the shambles. The people yet hold their destinies in their own hands —it is for them to accept or reject a tyranny, worse many times, than that from which the war of '76 delivered us—not the tyranny of one man, but of many.

But, people of North Western Virginia, why should we thus permit ourselves to be tyrannized over, and made slaves of, by the haughty arrogance and wicked machinations of would-be Eastern Despots? Are we submissionists, craven cowards, who will yield to daring ambition, the rich legacy of Freedom, which we have inherited from our fathers, or are we men who know our rights, and knowing, dare maintain them? If we are, we will resist the usurpers and drive from our midst the rebellion sought to be forced upon us. We will, in the strength of our cause, resolutely and determinedly stand by our rights and our liberties secured to us by the struggles of our Revolutionary Fathers, and the authors of the Constitution under which we have grown and prospered beyond all precedent in the world's history. We will maintain, protect and defend that Constitution and the Union with all our strength, and with all our powers, ever remembering that "Resistance to tyrants is obedience to God." We utterly repudiate the war sought to be enforced upon us without and against the consent and earnest protestations of the people who have not produced it, but who have, we regret to say, thus far offered no resistance, but have submitted to the filling up of armies and the quartering of troops in their midst; taking for the purpose, our young men who had, in a time of profound peace, and with no expectation of ever being called upon to aid in a rebellion, attached themselves to the volunteer corps of our State. The people, stunned by the magnitude of the crime, have, for a time, offered no resistance,

but as returning reason enables them to perceive distinctly the objects and purposes of the vile perpetrators of this deed, their hearts swell within them, and already the cry has gone up from our mountains and our valleys, "Resistance to tyrants is obedience to God."

Let us urge you then, that our resistance may be effectual, to act in the spirit of the Resolutions here appended, adopted by the Convention, whose Committee we are. Let all our ends be directed to the creation of an organized resistance to the despotism of the tyrants, who have been in session in Richmond, and who are soon to re-assemble, that we may maintain our position in the Union under the flag of our common country, which has for so many years waved gracefully and protectingly over us, and which, when we behold upon its ample folds the stripes and the stars of Freedom, causes our bosoms to glow with patriotic heat, and our hearts to swell with honest love of country. That this flag, the symbol of our might, challenges our admiration, and justly claims our every effort against those who have dared to desecrate and dishonor it, we all admit. Let us then see that we take the proper measures to make effectual those efforts. The Convention to assemble on the 11th proximo, is looked to to organize our action. Its importance, its necessity, will at once strike your minds; take immediate steps therefore to secure for your representatives in Convention, your most determined, resolute, temperate and wisest men. We have already detained you too long, the time for action, prompt, firm and decided, has come. In the hope that our section will be that of a united people, we take leave of you, confidently calculating that you will give your body, soul, strength, mind, and all the energies of your nature to the work of saving your country from becoming the theatre of a bloody war, brought upon you without your consent and against your will. Let us show Mr. Ex-Secretary Cobb, now President of the Montgomery Congress, that we are not willing to recognize the transfer of us made by the Richmond Convention, nor do we intend to allow our borders, as he says they will be, to be made the theatre of this war.

Fellow-citizens, we ask you to read and ponder well the passages from Mr. Cobb's Speech. We recite:

"The people of the Gulf States need have no apprehension; they might go on with their planting and their other business as usual, the war would not come to their section, its *theatre would be along the borders of the Ohio River and in Virginia.*"

The Convention between Virginia and the Confederate States, by which the control of all military operations is placed in the hands of President Davis, insures this result.

Fellow-Citizens—"These are the times when we must not stop to count sacrifices and costs, where honor, and character, and self-preservation are put in issue." The patriot and sage, Daniel Webster, in a speech delivered at Washington, in 1851, at the laying of the corner stone of the addition to the Capitol, spoke as follows:

"Ye men of the Blue Ridge, many thousands of whom are nearer to this capitol than the seat of Government of your own State, what do you think of breaking up this great association into fragments of States and of people? I know that some of you; and I believe that you all, would be almost as much shocked at the announcement of such a catastrohpe, as if you were informed that the Blue Ridge itself would soon totter from its base—*and ye men of Western Virginia, who occupy the slope from the Alleghenies to Ohio and Kentucky, what benefit do you propose to yourselves by disunion? If you secede, what do you 'secede' from, and what do you 'accede' to? Do you look for the current of the Ohio to change and to bring you and your commerce to the tide waters af Eastern rivers?—What man in his senses can suppose that you would remain part and parcel of Virginia a month after Virginia had ceased to be a part and parcel of the United States?*"

Fellow-Citizens of Northwestern Virginia, the issue is with you. Your destiny is in your own hands. If you are worthy descendants of worthy sires you will rally to this defence of your liberties, and the Constitution which has protected and blessed you will still extend over you its protecting ægis. If you hesitate or falter all is lost, and you and your children to the latest posterity are destined to perpetual slavery.

JOHN S. CARLILE,
JAMES S. WHEAT,
CHESTER D. HUBBARD,
FRANCES H. PIERPONT,
CAMPBELL TARR,
GEORGE R. LATHAM,
ANDREW WILSON,
S. H. WOODWARD,
JAMES W. PAXTON,
Committee.

THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA.

INTRODUCTORY NOTE.

The first Convention of the people of Northwestern Virginia —that of May—adjourned May 15, 1861, having provided for the meeting of a second Convention, in the event that the Ordinance of Secession should be ratified by the people on the 23d day of May ensuing. This was done by the provisions contained in the eighth resolution of the series reported by the Committee on Federal Relations and adopted by the Convention. It was as follows:

Resolved, That in the event of the Ordinance of Secession being ratified by a vote, we recommend to the people of the Counties here represented, and all others disposed to co-operate with us, to appoint on the 4th day of June, 1861, delegates to a General Convention, to meet on the 11th of that month, at such place as may be designated by the Committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand, each county to appoint a number of Representatives to said Convention equal to double the number to which it will be entitled in the next House of Delegates; and the Senators and Delegates to be elected on the 23d inst., by the counties referred to, to the next General Assembly of Virginia, and who concur in the views of this Convention, to be entitled to seats in the Convention as members thereof.

Herein it was recommended to the people of the counties there represented and that of all others who desired to co-operate in the movement inaugurated to appoint on the 4th day of the ensuing June, delegates equal to twice the number of members of the House of Delegates, to a General Convention to meet on the 11th of June. Further, the Senators and Delegates to the General Assembly elected at the election on the 23d of May, and who concurred in the views of the said first Convention, were entitled to seats in the second Convention. The Ordinance of Secession was ratified; the delegates elected on the 4th of June, and they together with the Senators and members of the House of Delegates, elected May 23d, in all counties selecting delegates to the Convention, June 4th, assembled at Wheeling, June 11th, ensuing.

JOURNAL

of the

SECOND CONVENTION OF THE PEOPLE OF NORTH-WESTERN VIRGINIA.

THE FIRST DAY.

TUESDAY, JUNE 11, 1861.

The Convention assembled yesterday at two P. M., in Washington Hall.

On nomination of Francis H. Pierpont, Dennis B. Dorsey, Esq., of Monongalia County, was selected as temporary Chairman. Gibson Lamb Cranmer, of Wheeling was, on nomination of Campbell Tarr, of Brooke, chosen temporary Secretary.

The President returned his thanks briefly for the distinction conferred. He said that taking the chair as temporary Chairman it would be superfluous in him to allude to the vital subjects that would come before the Convention. They had calmly and thoroughly considered them at home and had now come here to act on those reflections. He realized that this was to be the most important Convention that ever assembled in the State of Virginia. He would not impose a speech on the Convention, but would merely say that he would endeavor to discharge the duties imposed on him to the best of his ability.

On motion of Mr. Pierpont, Rev. Gordon Battelle, who was present, was requested to open the sitting of the Convention with prayer.

After the prayer, ARTHUR I. BOREMAN, of Wood, offered the following resolution which was adopted:

Resolved, That a committee of five be appointed by the Chair to ascertain and report all who are entitled to seats in this Convention as members thereof.

MR. CARLILE offered the following:

Resolved, That a committee of five members of this body be appointed to report rules for the Government of the Convention.

The resolution was adopted.

The following, by MR. PIERPONT, of Marion, was then adopted:

Resolved, That a committee of five be appointed to report on the permanent organization of the Convention.

CAMPBELL TARR submitted the annexed, which was accepted:

Resolved, That this Convention will meet while in session, at 10 A. M.

THE CHAIR then announced the committees, appointed under the resolutions offered; after which, on motion, the Convention adjourned.

The following are the Committees:

COMMITTE ON ORGANIZATION:—Francis H. Pierpont, W. H. Copeland, E. H. Caldwell, John S. Burdett, Chapman J. Stuart.

COMMITTEE OF RULES:—Jno. S. Carlile, Daniel Polsley, Harrison Hagans, Geo. McC. Porter, Andrew Flesher.

COMMITTEE ON CREDENTIALS:—Arthur I. Boreman, Daniel Lamb, Lewis Wetzel, John J. Brown, James Evans.

THE SECOND DAY,

WEDNESDAY, JUNE 12, 1861.

The Convention assembled pursuant to adjournment, and was opened with prayer by Rev. Wesley Smith, of this city.

The Secretary read the journals of the previous day, which were, on motion, adopted.

MR. BOREMAN, of Wood county, offered the report of the Committee on Credentials, and on his motion it was received and concurred in: The subjoined is a list of the delegates present:

REPORT OF THE COMMITTEE ON CREDENTIALS.

The committee report that the following gentlemen are entitled to seats in this body from the counties designated, in the capacities herein set forth, whether as members of the General Assembly elected on the 23d of May, 1861, or as delegates appointed to this Convention, June 4th only:

LIST OF DELEGATES BY COUNTIES.

Alexandria County—Henry S. Martin and James T. Close, delegates.

Barbour County—Nathan H Taft and D. M. Myers, members of the House of Delegates, and John H. Shuttleworth and Spencer Dayton, delegates.

Brooke County—Joseph Gist, Senator, H. W. Crothers, member House of Delegates, and John D. Nicholls and Campbell Tarr, delegates.

Cabell County—Albert Laidley,[1] member House of Delegates.

Doddridge and Tyler—Chapman J Stuart, Senator, William J. Boreman, member House of Delegates, and Daniel D. Johnson and James A. Foley, delegates.

Fairfax County—John Hawxhurst and Eben E. Mason, delegates.

Gilmer County—Henry W. Withers, delegate.

1. Albert Laidley did not remain at Wheeling. He went to Richmond, where he occupied a seat in the General Assembly, session beginning December 2, 1861, as the delegate from Cabell County. On the eighth day of the session his name was dropped from the roll of members of the Convention, he having declined to take the prescribed oath.—V. A. L.

Hampshire County—James R. Carskadon, Senator, and Owen D. Downey. George W. Broski, James H. Trout and James J. Barracks, delegates.
Hancock County—George McC. Porter, member House of Delegates, and John H. Atkinson and William L. Crawford, delegates.
Hardy County—John Michael, delegate.
Harrison County—John J. Davis and John C. Vance, members House of Delegates, and John S Carlile, Solomon Fleming, Lot Bowen,[1] Benjamin F. Shuttleworth, and Charles S. Lewis, delegates.
Jackson County—Daniel Frost, member House of Delegates, and James F. Scott and Andrew Flesher, delegates.
Jefferson County—George Koontz, delegate.
Kanawha County—Lewis Ruffner, member House of Delegates, and Greenbury Slack, delegate.
Lewis County—Blackwell Jackson, Senator, and Perry M. Hale and J. A. J. Lightburn, delegates.
Marion County—Richard Fast and Fountain Smith, members House of Delegates, and Francis H. Pierpont,[2] Ephraim B. Hall, John S. Barns, A. F. Ritchie, and James O. Watson, delegates.
Marshall County—Remembrance Swan, member House of Delegates, and E. H. Caldwell and Robert Morris, delegates.
Mason County—Lewis Wetzel, member House of Delegates, and Charles B. Waggener, James Smith, and Daniel Polsley, delegates.
Monongalia County—Leroy Kramer and Joseph Snyder, members House of Delegates, and Ralph L. Berkshire, William Price, James Evans and Dennis B. Dorsey, delegates.
Ohio County—Thomas H. Logan and Andrew Wilson, members of House of Delegates, and Daniel Lamb, James W. Paxton, George Harrison and Chester D. Hubbard, delegates.
Pleasants and Ritchie—James W. Williamson,[3] member House of Delegates, and C. W. Smith and William Douglas, delegates.
Preston County—Charles Hooton and William B. Zinn, members House of Delegates, and William B. Crane, John Howard, Harrison Hagans and John J. Brown, delegates.
Putnam County—George C. Bowyer, member House of Delegates, and Dudley S. Montague,[4] delegate.
Randolph and Tucker—Solomon Parsons, member House of Delegates, and Samuel Crane, delegate.
Roane County—T. A. Roberts, delegate.
Taylor Coupnty—Thomas Cather, Senator, Lemuel E. Davidson, member House of Delegates, and John S. Burdett and Samuel Todd, delegates.
Upshur County—Daniel D. T. Farnsworth, member House of Delegates, and John L. Smith and John Love, delegates.
Wayne County—William Ratcliff, member House of Delegates, and William W. Brumfield and William Copley, delegates.
Webster County—Henry C. Moore[5]
Wetzel County—James G. West, member House of Delegates, and Reuben Martin and James P. Ferrell, delegates.
Wirt County—James A. Williamson, member House of Delegates, and Henry Newman and E. T. Graham, delegates.
Wood County—John W. Moss, member House of Delegates, and Arthur I. Boreman and Peter G. Van Winkle, delegates.

1. Lot Bowen resigned August 13, 1861, because of a connection with the Army, and was succeeded the following day by Charles S. Lewis.
2. Francis H. Pierpont, having been elected Governor, resigned August 19, 1861, and was succeeded by Ephraim B. Hall.
3. The name of James W. Williamson was, on the eighth day of the session, dropped from the roll of members of the Convention, he not having made his appearance since the beginning of the session.
4. Another delegate from Putnam County qualified and took his seat, August 12, 1861, but his name has not been ascertained.—V. A. L.
5. June 20th—ninth day of the session—Daniel Lamb, Chairman of the Committee on Credentials, reported that the credentials of Henry C. Moore had been examined, and he was found to be the duly accredited Delegate from the Election district comprising Webster and parts of Nicholas and Braxton counties.—V. A. L.

NOTE ON MEMBERSHIP OF SECOND CONVENTION.

(See pages 79, 80.)

James T. Close, as a State Senator from the District composed of the counties of Fairfax and Alexandria; G. F. Watson, a Senator from the District composed of the counties of Accomac and Northampton on the Eastern shore; and John R. McCutchen, a Senator from the District composed of the counties of Nicholas, Fayette, Pocahontas, Raleigh, Braxton, Greenbrier and Clay, were entitled to seats in the Second Convention, but did not occupy them. James Burley, a resident of Marshall county, was a Senator from the District composed of the counties of Wetzel, Marshall, Marion and Tyler; was an active and influential member of the Convention. His name should have appeared in the list of members from Marshall county, in that body. In the list of members from Jackson county, the name of Andrew Flesher appears as a delegate, whereas it should be that of Senator, he representing the District composed of the counties of Mason, Jackson, Cabell, Wayne, and a part of Roane. The name of James Smith appears on page eighty, as a delegate to the Convention from Mason county. This is an error; he was a delegate from Jackson county, and should be so accredited.—V. A. L.

MR. PIERPONT, from the Committee on Permanent Organization, offered the report of that Committee, recommending the selection of Arthur I. Boreman, of Wood, for President of the Convention; for Secretary, Gibson L. Cranmer, of Wheeling, with power to appoint his Assistants; for Sergeant-at-Arms, Thomas Hornbrook, of Wheeling, with power to appoint a door-keeper or door-keepers and pages.

The Committee also recommend that before the President takes his seat he take the following oath:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the laws made in pursuance thereof, as the supreme law of the land, anything in the Ordinances of the Convention which assembled in Richmond, on the 13th of February last, to the contrary notwithstanding, so help me God."

And that the President, after he shall have taken the oath, and before any other business is transacted, shall administer the said oath to each member who shall be, or has been, reported to this Convention as members thereof by the Committee on Credentials, only varying the form of the oath to suit the case.

On motion of Mr. Pierpont the report was adopted.

On motion of Mr. Carlile a committee of two was appointed to inform Mr. Boreman of his election and conduct him to the chair, and Andrew Wilson, Esq., of Wheeling, a Justice of the Peace, was requested to administer to him the oath.

MR. CARLILE and MR. TARR were appointed the committee, who conducted Mr. Boreman to the chair.

The President then returned his acknowledgments to the Convention in a brief and pertinent speech. In the course of his remarks he said: "This Convention was assembled under circumstances which knew no parallel in the past history of the country since the adoption of our Constitution. Then we were but a few in the land—in these colonies of the mother country. Our fathers met with opposition, but, few as they were, they determined to throw off the shackles which bound them. They did so successfully, and after a struggle of seven years, succeeded in obtaining from the world a recognition of their independence. They adopted a form of government under which we have gone on from that day to this, prospering and growing in greatness beyond anything that ever occurred in the history of any other nation either ancient or modern. But now in the middle of the nineteenth century we are awakened by the astounding announcement in one section of our country that we have no gov-

ernment worthy of our support, and the announcement is at once accompanied by a rebellion to throw off this government under which we have been so long happy and prosperous, and the inauguration of a system such as would never have been countenanced by our fathers. We of Western Virginia are asked to concur in this action. We are placed in a peculiar position. The Convention of Virginia at Richmond, so far as they have the power, have by the passage of an Ordinance of Secession withdrawn us from the Union of our fathers. They submitted their action to a vote of the people as they proclaimed it, but in a way that made that vote a mockery. The vote in form has ratified the Ordinance of Secession—thus in the estimation of that Convention withdrawing us from the United States of America. Under these circumstances Western Virginia is placed in a peculiar position.—The States north of us and some of the Slave States have made no effort by an official body to withdraw from the Union. States south of us have gone according to their opinions out of the Union. Elsewhere there are no efforts being made in any of them by any regularly constituted bodies to retian their places in the Union, while here in Western Virginia we have determined that by the help of Him who rules on high we will resist the action of that Richmond Convention, which has practiced upon us a monstrous usurpation of power, violated the Constitution of the country and violated every rule of right. We have determined I say, to resist it, and under this determination we are found here to-day to take definite action. If you gentlemen, will go with me, we will take definite, determined and unqualified action as to the course we will pursue. We will take such action as will result in Western Virginia, if not the whole of Virginia, remaining in the Union of our fathers. I am satisfied that the members of this Convention concur with me almost unanimously.

"Then in this Convention we have no ordinary political gathering. We have no ordinary task before us. We come here to carry out and execute, and, it may be, to institute, a government for ourselves. We are determined to live under a State Government in the United States of America and under the Constitution of the United States. It requires stout hearts to execute this purpose; it requires men of courage—of unfaltering determination; and I believe, in the gentlemen who compose this Convention, we have the stout hearts and the men who are

determined in this purpose. The definite line of action to be pursued, it is not for me to indicate. Here are learned gentlemen, men of experience, who, no doubt, after deliberation will devise the course proper for us to pursue."

The oath was then administered to him, after which it was on motion,

"*Resolved*, That certain gentlemen, who presented themselves as delegates to this Convention, and who are not accepted as such by the report of the Committee on Credentials, shall be admitted to seats on this floor, not, however, to participate in the proceedings of this body."

The members then came forward by delegations to the stand, and took the oath of fidelity, which was administered to them by the President.

MR. CARLILE then submitted the report of the Committee on Rules, embracing the rules and regulations adopted by the Constitutional Convention held at Richmond in 1850.

On his motion it was adopted with an additional resolution, that two hundred copies be printed for the use of the Convention.

MR. DORSEY, of Monongalia, offered a series of resolutions for the purpose of eliciting, as he said, the opinions of the Convention in relation to the course to be pursued. He read them as follows:

"*Resolved*, That it shall be in part the business of this Convention, to make the requisite preparatory arrangements for the separation from Virginia and the formation into a new State, of such counties as are represented in this body, by delegates or otherwise, and are desirous of entering into the new State organization.

"2. That the said preliminary arrangements, when made by the Convention, shall, in compliance with the Constitution of the United States, be submitted for approval to the Legislature now convened in this city, as being the only loyal and legitimate Legislature of the State of Virginia; and afterwards, if approved by it, shall be submitted to the Congress of the United States.

"3. That this mode of meeting the present exigencies of Western Virginia, is preferable to that of reconstructing the Government of Virginia; inasmuch as it is equally legal and yet does not impose upon us the calamity of an overburdening State debt—no part of which we owe in equity—or the scarcely less disastrous calamity of repudiating that debt, and thus ruining the financial credit of the State."

MR. CARLILE asked Mr. Dorsey to withdraw his resolutions for the present. All knew his own sentiments, but many members were not yet prepared to entertain these propositions. They could, however, be entertained in a short time. He thought there were good reasons why the views entertained by them both should not at this time be pressed.

MR. DORSEY withdrew the resolutions.—All he had desired

was to elicit the opinions of the Convention that they might the better survey the field before them and prepare for action.

MR. CARLILE then submitted the following resolutions. He was sure the sentiments they expressed would receive the unanimous approbation of this body. He read them as follows:

RESOLUTIONS OFFERED BY MR. CARLILE.

"*Resolved*, that the thanks of the loyal people of Virginia are due, and are hereby tendered to the Federal authorities for the prompt manner in which they have responded to our call for protection.

"2. That we tender our thanks to Major General McClellan for rescuing from the destruction and spoilation inaugurated by the rebel forces in our midst, the people of North-western Virginia included within his military division.

"3. That the gallant and soldierly bearing of the troops from Ohio, and Indiana, who with our own gallant 1st regiment, commanded by Western Virginia's loyal son, Col. Kelley, have scattered the rebel forces in our midst, has won our admiration, and we gladly hail them as our deliverers from the ruin and slavery provided for us by the conspirators who have temporary possession of the power of the State.

"4. That we deeply sympathize with our fellow-citizen, Col. Kelley, in his sufferings from the wound received in our service, and earnestly pray that he may be speedily restored to perfect health, and again resume his command at the head of our own 1st regiment.

"5. That we utterly repudiate the heresy sought to be inculcated by secessionists, that it is an invasion of Virginia's soil for American troops to march to the defense and protection of Virginia's citizens, but on the contrary, we declare Virginia soil to be American soil, and free to the march of American soldiery and sojourn of American citizens, from all and every portion of American territory; and it is only by such recognition that the Federal authorities could discharge a plain Constitutional duty imposed upon them by the clause guaranteeing to each State in the Union a Republican form of government."

DR. LOGAN, of Wheeling, moved that the Secretary of the Convention be instructed to transmit copies of the foregoing resolutions to the President of the United States, to General McClellan, Brigadier-General Morris, and the Colonels commanding in the division of the United States Army in Northwestern Virginia.

It is moved to so amend that 500 copies be printed, to be transmitted as proposed, and the residue to be distributed among the soldiers.

DR. LOGAN objected to the amendment. He thought it would be an unnecessary expense. It became them as representatives of Western Virginia to practice rigid economy. He subsequently, however, accepted the amendment, and the motion as amended was adopted.

MR. CARLILE submitted a resolution as follows:

Resolved, That a Committee of thirteen members be appointed to pre- and report business for the Convention.

CHESTER D. HUBBARD, of Wheeling, moved to amend by adding all resolutions touching our State and Federal Relations, be referred to said Committee.

MR. CARLILE accepted the amendment and the motion, as amended, was then adopted.

The Convention then, on motion, took a recess until 2 o'clock,

AFTERNOON SESSION.

The Convention reassembled at the appointed hour.

The Chair announced the Committee on Business as follows:

COMMITTEE ON BUSINESS:—John S. Carlile, of Harrison, Daniel Lamb, of Ohio; Francis H. Pierpont, of Marion; Harrison Hagans, of Preston; P. G. Van Winkle, of Wood; Ralph L. Berkshire, of Monongalia; Daniel Polsley, of Mason; William J. Boreman, of Tyler; E. H. Caldwell, of Marshall; Daniel Frost, of Jackson; George McC. Porter, of Hancock; Daniel D. T. Farnsworth, of Upshur; William H. Copley, of Wayne.

THE CHAIR stated that the next business in order would be the reception of resolutions and other matters for the Committee on Business.

MR. DORSEY then called up the resolutions he had offered in the morning's session. They were read and referred to the Committee.

MR. PIERPONT submitted a resolution, which was adopted, as follows:

Resolved, That the President be requested to communicate with the clergymen of this city with a view to provide for opening the sessions of the Convention each day with prayer.

On motion of MR. CARLILE, it was ordered that when the Convention assemble next it be in the United States Court Room in the Custom House.

The Convention then on motion, adjourned to afford the Committee time to prepare business for its action.

THE THIRD DAY,

THURSDAY, JUNE 13, 1861.

The Convention met at the appointed hour, in the United States Court-room, at the Custom House.

The sitting was opened with prayer by the Rev. Wesley Smith of this city.

The minutes of the previous day were read, and, after some trifling amendments, were approved.

On motion of Mr. Burdett, of Taylor, an opportunity was offered those delegates who had arrived since yesterday to take the oath. Several came forward, and the oath was administered to them by the President.

On motion of Mr. Burdett, the Committee on business was increased from 13 to 17 members, by the addition of the following gentlemen: James T. Close, of Alexandria county; John Hawxhurst, of Fauquier; James R. Carskadon, of Hampshire, and Mr. Crane, of Randolph.

MR. CARLILE: "The committee whose duty it is to report business for this Convention, after several hours of labor, have instructed me to report a declaration I hold in my hand. We would gladly have had more time for subjects so important, but anxious to show a dispositon to discharge the duties imposed upon them, they have agreed upon this declaration, and will as rapidly as practicable, report further business for the action of the Convention, and hope all matter acted upon will be returned to them for engrossment."

MR. CARLILE read the fofllowing:

A DECLARATION OF THE PEOPLE OF VIRGINIA REPRESENTED IN CONVENTION AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to alter or abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people, and the existing constitution does not confer upon the General Assembly the power to call a Convention to alter its provisions, or to change the relations of the Commonwealth, without the previously expressed consent of such majority.—The act of the General Assembly, calling the Convention which assembled at Richmond in February last, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against the citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his

co-patriots in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes.

It has, in conjunction with the State Executive, instituted, wherever their usurped power extends, a reign of terror intended to suppress the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended Ordinances treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern, the deplorable condition to which this once happy Commonwealth must be reduced, unless some, regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare, that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

J. W. PAXTON, of Ohio, submitted the following which was referred:

Resolved, That the people of Northwestern Virginia have long and patiently borne the position of political inferiority forced upon them by unequal representation in the State Legislature, and by unjust, oppressive, and unequal taxation, but that the so-called ordinance of secession, passed by the Convention which met in Richmond on the 13th of February last, is the crowning act of infamy which has aroused them to a determination to resist all injustice and oppression, and to assert and forever maintain their rights and liberties in the Union and under the Constitution of the United States.

MR. PAXTON said: "In considering matters that come before us for action here it is very difficult but very important that we all realize the actual existence of war—civil war. We must not forget, sir, that we are now engaged in a struggle for the nation's very existence; that our differences are not now being settled as hertofore at the ballot box, peacefully and quietly, but by the bayonet and at the cannon's mouth. You, sir, and I, and every American citizen this day are parties to this

struggle on one side or on the other—either as loyalists or rebels. And he who sympatizes with, who directly or indirectly, aids or encourages either side, is just as much a party to this war as if on the tented field itself. I assert, and in doing so appeal to all past observation and experience for my justification, and there is not, and there can be, no real neutrality; that assumed neutrality either by a State or by an individual is practical secession. It is well to remember this in coming to the consideration of our duties in this great emrgency.

What is our duty? For what are we convened? What is expected of us by that patriotic and Union-loving constituency whom we represent, and who well know are resolved never to submit to the military despotism inaugurated at Richmond? Sir, they expect of us action. They not only expect but they demand prompt, decisive and organized resistance to traitors and to treason. Shall we disappoint them? Shall we disappoint not them alone but the just expectations of the whole country? No, sir. We are fully committed to the war of patriotism against treason; and I am very sure from the indications here that there will be neither faltering nor hesitancy now.

The time has come for action—for active resistance to the despotism that will overwhelm us surely if we remain tacit and inactive. Duty, patriotism, and even self-preservation demand that we shall now promptly recognize the responsibilities that have devolved upon us, and shall take action worthy of the occasion; such action as, in the language of the resolution I have offered here 'will assert and forever maintain our rights and liberties in the Union and under the Constitution of the United States.'

Mr. President, we are now called upon to perform our part—and it is no unimportant one—towards the preservation and the perpetuity of this great Government.—We must and will be sustained in the effort by the whole force and power of the Federal Government. And, sir, we shall succed in driving treason and rebellion beyond our borders. This, sir, is our mission.—Let us do the work."

MR. HAWXHURST, of Fairfax, offered the following:

1. *Resolved*, That we recognize the Union sentiment of the whole State as the proper basis of this body.

2. That when worthy Union men of the different counties of the State, who cannot have proper facilities for consultation and action, send delegates to this Convention, we will receive them and their as-

sistance in freeing the State from the rule of despotism that now oppresses a portion of them.

MR. CARLILE: "The Committee have instructed me to report a resolution, and I trust the gentleman will withdraw his, if this meet his approbation. It is as follows:"

Resolved, That the loyal people of the counties of this Commonwealth that have not yet appointed delegates to this Convention, or are not actually represented here, be, and they are hereby earnestly requested to appoint such delegates without avoidable delay.

MR. HAWXHURST withdrew his resolution.

MR. PIERFONT, of Marion, hoped every member would see the importance and propriety of adopting the resolutions of the Committee at once. He trusted after that was done, that effective measures would be taken to communicate the information contained in the resolutions, to those counties without delay.

The resolution was then adopted.

MR. FROST, of Jackson, offered a resolution more especially, he said, with reference to his section of the State. It is as follows:

Resolved, That for the better preservation of the peace of the citizens of Virginia, this Convention most earnestly requests all persons within her limits engaged in rebellious movements against the Federal Government, to desist from all such demonstrations and return to their allegiance; and that this Convention does peremptorily require all seditious assemblages to disperse, and all companies mustered into the service of the Southern Confederacy to be immediately disbanded.

The resolution was appropriately referred.

MR. CARLILE suggested that if there were no business before the Convention, it would greatly facilitate their objects to have the committees at work, and if agreeable, he would move to adjourn till to-morrow morning. He subsequently withdrew the motion to adjourn, and asked that a genral order be adopted that the committees have leave to sit during the sittings of the Convention, which leave was granted.

MR. BURDETT said a gentleman from Barbour was here with but partial credentials.—Barbour was a Union county, and the member of the Legislature from that county having run off with the secession army, he wished to enquire if it was not competent for this Convention to declare this gentleman the delegate elect to the House of Delegates from that county, and thereby make him a delegate to this Convention. He therefore moved

That this Convention declare Nathan H. Taft the delegate for Barbour county in the Legislature.

MR. FARNSWORTH, of Upshur, said the claims of the gentle-

man were now under consideration by the Committee on Credentials. Their report would be made shortly, and he asked respectfully that a little time be given them.

MR. BURDETT withdrew the resolution.

MR. LAMB, of Ohio, suggested to the gentleman from Taylor, that the proper course to pursue would be to pass Mr. Taft's credentials over to the Committee on Credentials. That would be the proper course in any instance of the kind.

MR. PARSONS, of Tucker, thought it altogether wrong to take the consideration of such matters out of the hands of the committee appointed for the express purpose of considering them.

MR. BURDETT said the gentleman from Tucker misapprehended his remarks. He believed it competent for this Convention to fill vacancies for the House of Delegates. There appears to be one in the county of Barbour. We have a right to indicate Mr. Taft as the Delegate, and receive him here as such; but I think it better for the committee to report on the matter first. I, therefore, move to refer the claims of Mr. Taft to a seat in this body, to the Committee on Credentials.

The resolution was adopted.

MR. FROST said that in glancing over the rules, he discovered that according to rule 21, select committees should be composed of not less than 5 nor more than 13. He called attention to the rule to prevent infringement. He thought, in view of the resolution offered by the gentleman from Taylor, and adopted by the Convention, increasing the Committee on Business from 13 to 17, it would be proper either to alter the rule, or reconsider the resolution by which the increase was made.

MR. VAN WINKLE moved to amend the rule by adding the words, "unless by authority of the Convention."

MR. LAMB suggested that it would be better to reconsider the motion.

MR. VAN WINKLE explained that the object of his motion was to legalize the action taken by the Convention this morning.

MR. BURDETT favored a reconstruction.

MR. VAN WINKLE withdrew his motion, and after some further discussion, a motion to reconsider the vote by which the Committee on Business was increased in violation of the rule, prevailed.

On motion of MR. LAMB, the 21st rule was then suspended.

On motion of MR. BURDETT, the committee was then increased by adding to it the four gentlemen appointed under his former resolution.

THE CHAIR stated in justification of himself that the committee had been formed hastily, and without particular thought as to whether the members were from the east or west of the Alleghanies. It never occurred to him that he was omitting gentlemen from any one section of the State. The additional appointments on the committee, however, would remedy the omission.

On motion the Convention took a recess till 2 o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at 2 o'clock. THE CHAIR stated that the first business in order, would be the reception of the reports of such committees as might be prepared to report.

There being no reports offered,

MR. FLESHER, of Jackson, said if there were nothing before the Convention, he would move to adjourn till to-morrow morning at ten o'clock

SAMUEL B. TODD, of Taylor, said he wished to ask leave of absence of the Convention for a few days. His private affairs rendered it necessary.

On motion, leave of absence was granted him.

MR. FLESHER, of Jackson, then renewed his motion, and the Convention adjourned.

THE FOURTH DAY,

FRIDAY, JUNE 14, 1861.

The Convention met yesterday at the usual hour and was opened with prayer by Rev. David Hervey.

The minutes of the preceding day were read and approved.

COL. KRAMER, of Monongalia, who was present for the first time, came forward and took the oath of office.

MR. CARLILE, from the Committee on Business, reported the

following Ordinance: On his motion it was ordered to lie on the table and be made the order of the day for to-morrow at eleven o'clock.

AN ORDINANCE FOR THE RE-ORGANIZATION OF THE STATE GOVERNMENT.

The people of the State of Virginia, by their delegates assembled in Convention at Wheeling, do ordain as follows:

1. A Governor and Lieutenant-Governor for the State of Virginia shall be appointed by this Convention to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the State, and to continue in office until their successors be elected and qualified.

2. A Council, to consist of five members, shall be appointed by this Convention to consult with and advise the Governor respecting such matters pertaining to his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the Governor.

3. The Delegates elected to the General Assembly on the twenty-third day of May last, and the Senators entitled, under existing laws to seats in the next General Assembly, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the Legislature of the State, to discharge the duties and exercise the powers pertaining to the General Assembly. They shall hold their offices for the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the ——— day of ——— and proceed to organize themselves, as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid shall constitute a guarantee to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the Constitution of the State.

4. The Governor, Lieutenant-Governor, members of the Legislature, and all officers now in the service of the State, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the Judges and Clerks of the several courts, Sheriffs, Commissioners of the Revenue, Justices of the Peace, officers of city and municipal corporations, and officers of militia and volunteers of the State not mustered into the service of the United States shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the Supreme law of the land, any thing in the Ordinances of the Convention which assembled at Richmond on the 13th day of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the Government ordained by the Convention which assembled at Wheeling on the 11th day of June, 1861, and the Legislature, Governor and all other officers thereof, in the discharge of their several duties as prescribed by the last mentioned Convention.

5. If any elective officer who is required by the preceding section to take said Oath or Affirmation, fail or refuse so to do, it shall be the duty of the Governor, upon satisfactory evidence of the fact to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy, at some convenient and early day to be designated in said writ of which due publication shall be made for the information of the persons entitled to vote at such election, and such writ may be directed, at the discretion of the Governor, to the Sheriff or Sheriffs of the proper County or Counties, or to a special Commissioner or Commis-

sioners to be ordered by the Governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed otherwise than by election, the writ shall be directed to the appointing power, requiring it to fill the vacancy."

He also from the same Committee reported back the resolution submitted by Mr. Frost, of Jackson, on Thursday, commanding the dispersion of seditious assemblages, &c., with the recommendation that it pass.

On motion, the question was put and the resolution adopted.

MR. LAMB, from the Committee on Credentials, reported that John Love, of Upshur county, had presented proper credentials entitling him to a seat in this Convention from that county, and he moved that his name be entered upon the roll as such.

The report as far as made was adopted. Mr. Love's name was entered upon the roll, and he came forward and was qualified.

MR. LAMB—"The Committee also instructed me to report that Nathan H. Taft is entitled to represent the people of Barbour county as one of the delegates in this Convention, in the place of Spencer Dayton, who has been heretofore admitted as a member." He moved that Mr. Taft be received in place of Mr. Dayton.

MR. STUART, of Doddridge, wished to know some of the facts in the case. He was aware that the Committee had the power to displace a member already qualified. He thought such action irregular.

MR. LAMB said the facts were briefly these:

"The appointments in that county had been made by subscription. Mr. Shuttleworth was upon all the subscription papers presented to the Committee. When we first acted upon the case and presented that roll of members to the Convention, Mr. Taft had not his papers to lay before us. We therefore presented the name of Mr. Dayton, because his was the only second name appearing upon the papers we had to act upon. Mr. Taft, upon due notice to Mr. Dayton, has since brought forward his papers, and it appears now by the whole of the papers which we now have before us, that Mr. Taft is appointed to represent that county, by a larger number of citizens than Mr. Dayton. Mr. Shuttleworth is unanimously appointed, and the county is entitled to but two members.

MR. STUART renewed his objection on the ground of irregu-

larity. Mr. Dayton had been qualified, and there should be some regularity in the mode by which he should be displaced.

MR LAMB referred to the proceedings of the day before. The claim of Mr. Taft had been regularly referred to the Committee. A consideration of it necessarily involved a contest with Mr. Dayton. Under order of the Convention, it was incumbent on the Committee to report on the respective claims, and they had done so.

MR. STUART said he had understood the resolution of yesterday (submitted by the gentleman from Taylor) to express that Mr. Taft should be entitled to take his seat as a representative in the Legislature, and not whether he or Mr. Dayton should take a seat here as delegate to this Convention only.

The Secretary read Mr. Burdett's resolution. It is as follows:

"That Nathan H. Taft be admitted to a seat in this Convention, as the delegate from Barbour county to the Legislature."

MR. BURDETT said that at the time he submitted that resolution, he was not aware that Mr. Taft had credentials showing him regularly elected. He had not offered it to give Mr. Taft a seat in preference to Mr. Dayton, but he thought the Committee on Credentials had full power to determine and decide who are delegates to this Convention, particularly with the concurrence of this body itself.

MR. FLESHER, of Jackson, inquired if they could both hold seats in the Convention.

THE CHAIR said that was a matter for the Convention to decide.

MR. MOSS, of Wood, moved as a substitute for the report of the Committee, that the office of delegate to the House of Delegates for Barbour county be declared vacant, and that Mr. Taft or Mr. Dayton be declared such delegate.

MR. CARLILE said there was no power in the Convention to appoint a delegate for the county of Barbour. Neither was there any power to increase the number of representatives to which she is entitled on this floor. He trusted the gentleman from Wood would withdraw his motion, and allow the report of the committee to be adopted.

MR. DAYTON, who was present, took occasion to express his willingness to acquiesce in the action of the committee. He had come here determined that Barbour should be represented, and

without being aware that any gentlemon except Mr. Shuttleworth would be here. There was no contest between himself and Mr. Taft. He would already have resigned in favor of that gentleman (having since his arrival here become acquainted with his superior claims) but that he should have been subjected on his return home to the imputation of having shrunk from taking part in the action of the Convention. He desired, therefore, that when he retired that it might be by the action of the Convention. With this explanation he would let the matter rest.

MR. MOSS withdrew his motion.

The question was taken on the report of the Committee, and it was adopted.

MR. PAXTON moved to reconsider the vote by which, a few minutes since, the report of the Committee on Business was made the special order for to-morrow at eleven o'clock. The printed report could not be in the hands of the members before that hour. He wished to substitute a later day.

MR. CARLILE remarked that the suggestion met the concurrence of the committee. He hoped a later day would be named.

The question was put and the vote reconsidered.

MR. PAXTON then moved that the ordinance reported by the Committee on Business be made the special order for Monday at 11 o'clock.

MR. CRANE, of Tucker, moved to amend by substituting Wednesday for Monday. He was obliged to absent himself till that time, and was very desirous of being present when the consideration of the ordinance came up.

MR. PAXTON accepted the amendment and the motion as amended was concurred in.

The order of the day was called.

MR. LAMB moved to suspend its consideration until the Committee on Credentials could conclude their report.

The order being susepnded,

MR. LAMB said that he had been instructed additionally to report that Wm. F. Mercer, of Loudon county, claims a seat in the Convention; that the Committee regard the credentials offered by Mr. Mercer as insufficient and so report to the Convention. He asked that Mr. Mercer himself be heard.

MR. MERCER spoke at some length in support of his claims.

MR. CARLILE read the credentials of Mr. Mercer, and made some remarks [in] refutation of his claims and urging that the duty of the Convention required them, however much their sympathies might be enlisted, to strictly require that none but such as were regularly appointed should be received as delegates.

MR. STUART suported Mr. Mercer's claims in a few remarks.

MR. BURDETT submitted a motion that the gentleman from Loudon should be declared a delegate of this Convention; which he afterwards withdrew.

The question on the adoption of the report of the committee was taken and the report was adopted.

MR. CARLILE read to the Convention an invitation for them to attend a strawberry festival given by the Union ladies of Wheeling in the evening, at Washington Hall. He hoped all would go.

He also announced that the Central Committee, appointed by the May Convention, had taken such steps as enabled them to announce that 2,000 stand of good arms had been procured, 500 of which arrived in the city to-day, and the other 1,500 to be here this evening or in the morning.

The order of the day was then again taken up.

On motion of Mr. Dorsey it was postponed until 2 o'clock P. M.

The Convention then took a recess until 2 o'clock.

AFTERNOON SESSION.

The Convention assembled at two o'clock.

MR. HAGANS asked and obtained leave to introduce the following resolution:

Resolved, That, in consideration of the peculiar circumstances that have surrounded our loyal brethren of Loudon county, as well as of their geographical position, this Convention now extends to them a cordial and special invitation to accredit and send their number of delegates as soon as possible, and that Wm. F. Mercer be made the medium of this invitation.

The resolution was adopted.

MR. TAFT, of Barbour, then went forward and took the oath of office.

THE CHAIR then anonunced the order of the day to be the Declaration reported by the Committee yesterday. The question is on its adoption.

MR. DORSEY, of Monongalia, said he had no special objection to this Declaration of itself. He thought there was an error or an inadvertence in the wording of one sentence:

"The act of the General Assembly, calling the Convention which assembled at Richmond in February last, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism."

This sentence gave peculiar force to the one which preceded it, which reads thus: "The Bill of Rights of Virginia, framed in 1776, re-affirmed in 1830, and again in 1851, expressly reserves this right to the majority of her people, and the existing constitution does not confer upon the General Assembly the power to call a Convention to alter its provisions, or to change the relations of the Commonwealth, without the previously expressed consent of such majority." Taken in connection with the one first read, this seems to mean with the previously expressed consent of such majority, the General Assembly has the power to change the relations of the Comonwealth, and if that means the *Federal* relations, this is a virtual concession of the doctrine of secession. The objection however, which he had to this document related to its connection with other documents reported to this Convention by the Committee on Business, as being a part of a systematic plan which had been prepared by the committee reporting the declaration—a plan which he objected to and to which he would report his objections.

MR. CARLILE: I thank my friend from Monongalia for allowing the committee an opportunity to explain, and show, if we can, that the language referred to is not justly subject to the criticism to which it seems to have been exposed. Before he enters upon substantial objections he has kindly consented that we shall be allowed to perfect the Declaration.

I think, Sir, upon a careful reading of the Declaration gentlemen will see that there is nothing in the world squinting towards the heresy of secession, in the slightest degree. The right spoken is the right of the people to alter or abolish their government. No man doubts that right; it is as old as liberty itself. It is a right that any and every people have, successfully if they can, to resist a government which they believe to be oppressive or unsuited to their wants. If they succeed in their efforts they are patriots, if they fail they are rebels. It is the right of revolution.

The people of Virginia in establishing themselves a government

deemed it best that it should be divided into two parts, if I may use the expression, and you will allow me to use language which I understand, and which all can understand. What is government? It is an agent. All governments are the agents of the people governed; and the people of Virginia in establishing government for themselves deemed it best to create two agents. The Federal Government is one, and the State Government is the other; and they have expressly declared that the acts within the limits of the attorney that the acts of the federal agent, within its powers, limited and defined by the instrument creating his agent, shall be supreme. Any act done or performed by the State agent in conflict with the powers conferred upon the Federal agent is to be null and void.—Thus it will be seen that within the powers conferred the federal agent is supreme, independent of, and above the State agent. Hence the doctrine of Mr. Clay when he said: "I owe a supreme allegiance to the Federal Government, a subordinate one to my own State."

The State agent, as to the exercise of its power, is wholly independent of the Federal agents. The Federal agent can exercise no power other than that conferred upon him by the instrument creating him. The State agent can exercise all power that the people themselves were they personally present could exercise, which is not forbidden to be exercised by it, in theConstitution creating it. There is the distinction between the two agents.

How was the Federal agent created? The State agent was created solely and alone by the people of Virginia themselves; it is responsible to no one else, derives its powers from no one else; is the creature of the people of Virginia alone.

The Federal agent is the creature of all the parties to the Federal compact. The people of Virginia agreed with the people of the other twelve colonies—there were but thirteen at the time—agreed with them that in connection with them they would create this common agent for common purpose, and the discharge of common duties. And how was that agent created in each one of the States? In their sovereign capacity, in convention assembled, ratifying and approving the instrument creating the agency known as the Constitution of the United States. That very instrument provides for its own alteration, amendment or change. On the application of two-thirds of the principals creating it, amendments can be proposed to it and changes effected, which will become a

part and parcel of the original act itself, when ratified by three-fourths of the principals through their legislatures or in their conventions assembled.

Now, Sir, what is this clause to which reference has been made? It merely asserts what all know to be true, that the Bill of Rights declares that this State agent which we have created, cannot change the agency itself, as defined, limited and prescribed by the instrument creating the agency, the Constitution of Virginia; that no agent, created either mediately or immediately, directly or indirectly, can affect, change, alter, or abolish the powers of the agent, either direct or indirect. That can only be done by the people creating the agents—therefore, we say that when this one of these agents—the Legislative Department of the State Government—assumed to itself the power to convene an assembly known constitutionally as embodying the sovereign power of the whole people of the State, they were guilty of an usurpation. And thus the legitimate inference to be drawn is that they have by this usurpation forfeited their agency and our power under the instrument; that this act which they assumed to do is in violation of authority conferred upon them by the instrument establishing them as the agent, and therefore void; and that such power can only be assumed by the principal himself, the sovereign people of Virginia.

MR. DORSEY: Will the gentleman from Harrison county permit me to ask a question? What "relations" are meant in the clause? Or how "change the relations of the Commonwealth?"

MR. CARLILE: I am coming to that. If the Constitution of the United States, providing as it does, for its own amendment and change, should be by the constitutional number of States so changed as to effect the present relations which Virginia has to it, and give it another and different relation, and the people of Virginia shall ratify that amendment in convention as they ratified the constitution itself, or through the Legislature in the manner prescribed by the Constitution, I would like to know if they have not the right to do it? Sir, I hope to see the relations of Virginia changed before many years. If peace shall once more be restored to this once happy land, I trust that among the first acts of the people of the States will be to convene a National Convention which shall, if it do nothing else, change our relations so far as treason is concerned. I want to see a little more stringent provision on that subject. I want that which goes to destroy the per-

petuity of our government, whether it be an overt act or not, to be punished as treason. That is all, Sir, this Declaration means. It may be meant to cover the great right never denied—the right which is dear to every freeman—the right of revolution—the right which our fathers exercised and asserted successfully upon the fields of Yorktown and Bunker Hill. But was never intended—and it canont be made to appear by a fair construction—that the convention assembled for the purpose of putting its foot upon this heresy of the constitutional right to withdraw from the Union and destroy a government, could or does express a recognition of that very right which it holds does not exist. It never can be supposed that a convention assembled for that purpose could or would by any inference in any line that it might adopt, recognize the right of secession.

Now, if the gentlemen will address themselves to the task of employing better language, less objectionable or open to the criticism than that which is employed in the Declaration, to express the ideas which we all desire to enforce, the Committee, I am authorized to say, will feel gratified to this Convention if they will do it. But, Sir, in the limited time that was given to us from the adjournment on Tuesday to the meeting on Wednesday, after a night's reflection, after careful revision, writing and re-writing by different hands—the language that is found in the declaration was employed; and I believe it is to be not only happy, but the best that can be employed in any reasonable time by this body.

The relations of this State to the Federal Government can be constitutionally changed—will be, I trust, constitutionally changed, and will result in saving two ages that are to come after us, I trust, from the destruction that now threatens our beautiful system of government.

MR. DORSEY. of Monongalia. The remarks explanatory of the clause in this Declaration, are to my mind sufficiently clear; and perhaps as they will go forth with this declaration, they may be sufficient explanation of it. I shall not therefore urge my objections. In fact it was a mere passing remark I made.

The remarks, however, Mr. President, that I presume to make are more in reference to the relation that this document sustains to the other documents which have already come before the Convention, and others which they indicate will come before it, than in reference to the language of the declaration itself. This is

part of a plan, a part of a systematic arrangement that is to be proposed for the action of this body; and in making reference to it, it may perhaps be well to put it in comparison with another plan that has been spoken of frequently, and by some members at least earnestly.

The plan proposed by the Committee is, if I understand it, first to declare that the offices in the State of Virginia are vacant, then to proceed to make arrangements for filling those offices; then to proceed step by step to the other arrangements necessary for the reconstruction of the Government of Virginia.

The other plan alluded to, and which was indicated, rather than drawn out in full in my resolutions submitted on Tuesday is to go as far in this other plan as is necessary; to call together the legislature of the State of Virginia, and then to submit to that legislature the proposition of separating Western Virginia from Eastern Virginia and establishing a new State Government.

Now, the principle, you will observe, Mr. President, in each of these cases is the same. The principle upon which this Convention will act in either case is the same. The principle upon which the committee proposes to act is this: All power is vested in the people. They are the sovereigns in this Government; they have delegated their power, however temporarily, to certain servants. Those servants have proven to be unprofitable servants, and now the people propose through the medium of their Convention to call other servants to attend to their interests. The Legislature that may be convened for that purpose of attending to those interests, may be convened during the sitting of this Convention—consists of those servants. The people propose now that the interests belonging to them shall be put into the hands of that Legislature. The same principle prevails in the other proposition. We begin as they begin and proceeded thus far as they proceeded; but we do not propose that this new State organization shall continue permanently in operation. I repeat the principle is the same in either case; and unless we assume that principle this Convention can do nothing at all—would have no authority to do anything at all. It is on that principle that it has been assembled; on that principle it has been acting, and upon that I propose to act in the future in all its deliberations.

Another matter is that the legality in either case is the same. I have heard much private conversation and much public discus-

sion in regard to what the general government will recognize and approve. Now, Sir, the general government can recognize the one plan as readily as the other. The Wheeling *Intelligencer* has admitted that. Gentlemen who are advocating this plan—gentlemen who have proposed this plan to the committee, and gentlemen on the committee who have been favoring it acknowledge that; and it is generally believed by those who understand anything about the views of the loyal people of the United States, and who can guess at the views of the Administration—it is generally believed, if not fully understood, that the general government will recognize anything that Virginia shall do to keep herself in the Union, and at the same time preserve peace and order within her borders. Wherever there is illegality in the one plan there is in the other. Wherever there is an over-riding of technicalities in the one there is the same in the other; and I wish just here to call attention of those who may defend the plan that is before the convention in part—I wish to call their attention to this point, to say, if they can, that the Administration will probably reject the one plan and receive the other. I admit indeed that there are abundant indications that the Administration would prefer the plan that is proposed by this committee. I see the indications in the newspapers, and hear them in private conversation. But are we to infer from that that the general government will not recognize our plan at all if adopted by us? The Administration has a certain plan before it as a plan of operation. This may, if adopted, be made a special plan to these operations—an agent, an instrument in the hands of the Administration to accomplish its purpose more readily perhaps than it could without such a plan. That is admitted by the advocates of a division of the State, but we insist that the general government will also adopt our plan if we do not see proper to adopt the other plan.

It is a revolutionary movement altogether. Both plans are revolutionary; and if the General Government can recognize one, it can the other. I may say that I know from private conversations with those who know something about the views of the Administration, that they expect us not to quibble about technicalities, not to be squeamish about little points of law, in our action in this convention; and if we are afraid of little points of law; if we are squeamish, really, about these little technacalities, it is time for us to begin to tremble already. We have already done acts which

viewed in the light of formal law, are treasonable. It requires boldness to enter into a revolutionary project of this kind, and if we have it in the one case, we ought to have it in the other. When we have already committed a revolutionary act, we ought to consider what lies before us, in view of our own local interests, as well as in view of the general interests of the country.

Now, I ask the question, What shall decide us between these two plans that have been proposed? The legality cannot decide us, because they are equally legal; and I think the gentleman who will advocate this plan before the Convention, will admit this—admit it as the *Intelligencer* has done. Legally, indeed? We propose to do something in due form of law, and yet we have already trembled about the forms of law, and not only that, but we propose to override all forms of law in carrying out the plan that is now proposed by this committee. It is the understanding, though not formally proposed in the report of that committee, that we shall overhaul the Constitution of Virginia, change its provisions, make such arrangements in the change of those provisions, as will enable us to carry out this project of reconstructing the State Government. In fact, the project itself is a change of the Constitution of Virginia as to some of its specific laws.

Well then, shall the simple consideration of the expectation of the United States, and the desire of the Administration indicated in a variety of ways, decide us as between these two plans that are proposed to the members of this Convention? I admit, Mr. President, that there is some force in the proposition that is made. I admit there is some propriety in the accomplishment of the object which the administration propose to accomplish by the action of this Convention, in accepting the plan proposed and suggested by the committee. I can see that the design is to introduce this same plan in all the border States. The design is, as rapidly as the troops advance to establish a similar government to this proposed in the report of the committee—establish a simple government and call on the local Union men of the Commonwealths in the various States, to rally around the government. I see it will have a mighty moral influence in the border States in which such government shall be established, and also on the States still further South. But then here I ask that the Administration shall not solicit us to do that, while we have local interests embarrassing us of such a character. If we had no complication of interests in this matter, it might be

kind, prudent and appropriate, for the Administration to request us indirectly, as it has, to take such action. But, Sir, if this action anticipated is the desired thing—if the effort of this new project upon the border States and the States South of them, is the desirable thing, I suggest that Western Virginia shall be separated from Eastern Virginia, and then that Eastern Virginia, as pressure is removed, shall enter into this enterprise, and establish a provisional government, and set the precedent the Administration desires this Convention to set. They have no local difficulties pressing upon them as we have. Let *them* attend to that matter. And especially is it proper they shall do it, because it will not only not embarrass them in their local interests, but will greatly advantage them.

I believe the interest of Western Virginia ought to decide as between these two plans, and I think so especially because this whole movement was professedly inaugurated for its benefit. I remember the gentleman from Harrison justly boasted that he was the author of this whole movement, and he defined his design to be in its inauguration to separate Western from Eastern Virginia. Now, Sir, at that time that Convention which assembled on the 13th of May, did not see proper to make arrangements for the separation. They could not at that time decide upon the proper policy for that purpose. They thought the proper policy was to call together a general Convention. For what purpose? To carry on the original design of the author of the resolutions that had brought them together. If so then, Sir, are we now to turn about and receive and adopt a plan here which will ignore the special interests of Western Virginia and will tend to the general interest of Virginia as a whole? I know, Sir, the anticipations of Western Virginians would be disappointed should we go home to them and they ask us "What plan have you adopted for dividing the State?" And we should throw down to them this plan of the Committee. I know that the constituents I have the honor in part to represent will be seriously disappointed.

Now, Sir, it seems to me that if we were in earnest, if we were sincere in the original movement we will take such action in the premises in the present Convetnion as will secure a separation of the State. I need not speak here, Sir, of the necessity of that project. I need not speak of the necessity, the dire necessity of separating Western from Eastern Virginia. Gentlemen here are all fully ac-

quainted with the history of the case. They all know and appreciate that necessity. But I want to know now, Sir, if after having initiated a movement for the purpose of meeting the necessity we are to turn about and inquire the necessity which all know we have been making preparations to meet. The present plan, it seems to me, Mr. President, will not meet the exigency. It will not secure the division of this State.

It is a well known fact, and I need only utter it merely to connect my remarks, that the General Government intends to whip in Eastern Virginia. And we all believe it will whip her in.

Well, now, meanwhile, we set this projection on foot and establish this seat of government of the State of Virginia; and when Eastern Virginia is whipped in she forms a part, and her citizens will take a hand in this government. The question then will turn upon who is the majority, who is in the minority. The interests of Eastern and Western Virginia are entirely antagonistic. There is an "unnatural connection" between them and us. They will of course keep us down, as they have already done, if it be possible to for the purpose of meeting their little bills. It is very convenient to have somebody for this purpose. They will burden us as they always have done. That they have the majority is evident when we remember that all the Southern portion of Western Virginia, considering the Blue Ridge as the line, sympathizes with Eastern Virginia.—Their interests are the same as hers. They lie along the line of Tennessee and Kentucky, connected with Eastern Virginia by railroads. That section of the country is filled up with persons who emigrated from the Eastern part of the State, and their sympathies are all there. Unless we in Western Virginia are a united people, it is impossible for us to carry out this project. I insist that we shall not enter into a plan to put ourselves at the mercy of Eastern Virginia and our neighbors who symaphtize with her, any more, and I propose therefore that this plan shall proceed just so far, with the understanding that immediately as soon as Congress has taken action on the case, or as soon as the Administration has recognized this government that is propoed to be set up, a separation shall be made. And I make these remarks, Mr. President, more for the purpose of committing this convention to the design, than for the purpose of objecting to this plan of itself considered. I do not object to the legality of it, or the prinicple upon which it proceeds, or any formal arrangement, except the verbal one I mentioned. They are all legal as we can get.

But I object that no provision has been made, specific and definite, for the separation of Virginia, Western from Eastern, just as soon as it is possible to do it, and come as near meeting the technicalities as the nature of the case will allow.

In a word, Sir, I deem that the separation of Western Virginia from Eastern is the paramount object in the minds of Western Virginians; and I hope, Sir, indeed I believe, that that is a paramount object in the minds of a majority of the members of this convention. What I want is, that they shall explicitly say so, inform, if they choose; or, if not then, in the formal documents that are being successively presented by this committee; or they should do it in a specific resolution; or, if not in that way, they should say so in debate.

Now, Sir, if this government be established as proposed in the report of the committee it will gain an impetus which will urge it forward, and keep urging it forward, and I want to know, Sir, the specific time at which this government may be arrested to the consideration of this proposition of a separation of Western from Eastern Virginia. I want a specific time, and I want to say to you, Sir, and to this convention today, that I shall not vote for a single proposition proposed by that committee—a single provision that shall come up before this Convention looking to the establishment of a provisional government, looking to the reconstruction of the government of Virginia, unless I can see clearly that there is a distinct intention in those arrangements to separate Western Virginia from Eastern Virginia; and I think I speak at least for a majority of the delegation of Monongalia in saying that they will not do so either, unless that ultimatum be secured by some definite action beforehand, or at least as I said before, committing the majority of this Convention in discussion. If such an indication as that may be made I shall, to use a familiar term, hold up both hands for their ordinance that has been proposed and all that shall hereafter be proposed, looking to the accomplishment of that design.

MR VAN WINKLE, of Wood, followed Mr. Dorsey. He took substantially the grounds occupied by Mr. Carlile, in favor of re-organizing a government for the whole State, and in opposition to Mr. Dorsey, who had favored the immediate division of the State. In the course of his remarks he said, however: "I have been long convinced, Sir, that every interest of N. W. Virginia demands a separation from the East, and under other circumstances I believe

such a separation ought to be effected in a friendly manner." But he urged they could not now know where the boundaries of a new State could be run, and he never could consent to go and leave behind the people of those loyal counties that were not yet represented here in the Convention.—"Whenever the time comes I am willing to do everything to effect a separation.—I admit that everything is in danger, still there is something like a moral obligation, a pledged faith, and I cannot consider it in any other light than that we are bound by this single county of Loudon, and by the other loyal counties now in possession of the secessionists."

MR. CARLILE said: "I think, Sir, that a moment's consideration will satisfy this Convention that upon this question there is at least no difference of opinion between the advocates of a separation of this State. If I may be allowed, I can claim some credit for my sincerity when I say that it has been an object for which I have labored at least since the year 1850. The Convention that met in Richmond in that year and adopted our present State Constitution clearly disclosed, to my mind, the utter incompatibility consistent with the interests of the people of Northwestern Virginia of remaining in a connection with the Eastern portion of the State. And, Sir, the first favorable opportunity that discovered itself to me for effecting that separation was in the Convention that met in this city in May last. And I appeal to members who are present and who were members of that Convention to say if I did not zealously press that measure. Why did I do it? For the reason which I then stated—for the reason that now prevents me doing it. I then stated that we were still citizens of the United States according to even the theory of the disunionists; that a separation could be effected then by the provision of the United States Constitution providing for it, but when the 23rd of May came and went the sun had set behind the hills in the evening of that day we would be transferred according to the theory of the secessionists to another and different confederacy, and would be deprived of the Constitution of the United States, and the mode and manner in which a separation could thereafter be effected under the authority of these Secessionists by virtue of that transfer could only be by treaty and recognition; that although all Virginia should agree to the separation, yet she would have to obtain the consent of the Southern Confederacy expressed in accordance with the Constitution which she had adopted for its government before we could be allowed to transfer

ourselves to what they would then call another, a different and hostile government. I saw difficulties innumerable and insurmountable if we did not act then. But the wisdom of that body thought otherwise and I gracefully, as I should, bowed to its decision.

Now, Sir, where are we? I call the attention of my friend from Monongalia, and I tell him if he beats me in this race of separation he will have to be swifter than I think he is. We have no legislature now. And mark you it is only by the assent of the legislature a separation can be effected. The people themselves through their representatives assembled cannot assent to a separation. It can only be done as is provided in the Constitution of the United States by the assent of the Legislature of the State. Now, Sir, have we a Legislature? Governor Letcher would say that we have; and its members will be sworn to support the Constitution of the Southern Confederacy. Then you see we can never effect a separation in the manner in which we should have accomplished it.

Now, Sir, let us pursue the policy laid down in the Declaration, and let us repudiate Letcher and his transfer; let us assemble a Legislature here, of our own, sworn to support, not the Southern Confederacy Constitution, but that which Washington and Madison formed, the constitution of our fathers, under which we have grown and prospered, as never people grew and prospered before. Let us maintain our position under that tree of liberty, watered by the blood and tears of the patriots of the revolution—planted by them, its roots having taken deep hold and firm hold in the hearts of a great people, and having from a little spot on earth spread from the Atlantic to the Pacific, embracing, I might say, a continent, and spreading its branches of protection over the whole unbounded land.

Let us organize a Legislature, swearing allegiance to that government, and let that Legislature be recognized by the United States Government, as *the* Legislature of Virginia.

Then we have still a direct recognition of the protecting care of our ancient government, and then we will effect this separation. But now, with no Legislature recognized as owing allegiance to the Constitution of the United States, we could not do it. But with the Legislature recognized as still the Legislature of the State; with Virginia in the Union; with a Legislature recognized by the Government of the United States and with its assent to our sep-

aration, our way is clear. If the Southern Confederacy dares to interpose, we have the strong arm of that same old government to be thrown around us, and to shelter us from harm.

Let us then go on as we propose. Let us be recognized as the true and lawful authorities, speaking for and on behalf of the loyal people of the whole State of Virginia. Give us that recognition, and then the separation will come. And I here say that one of the first acts I shall perform, if no one else does it—and I believe it a duty I owe to the people who have honored me with a seat in Congress, will be to obtain from that body a legislative declaration recognizing this Legislature you will assemble here, as the Legislature of the State; and then let my friends, the representatives, assent to it, and my word for it, we will be the State of New Virginia.

It is a mere question now, of whether we shall wait until we are solemnly recognized as the true, legal, constitutional representatives of the people of Virginia; or whether we shall now attempt an impossibility—for every man who will reflect a minute, will know that until rebellion is crushed, no assent will be obtained for our separation from the rebellious portion of this State.

But, Sir, there is another object which I have at heart. Two great objects influence and govern my actions. The first, I am free to say, the dearest, the highest, and the nearest to my heart, is the perpetuity of the Union.

Keeping forever undimmed the thirty-four stars that now deck the constellation of our national ensign, adding to them as we have done, star after star—when that is done—when safety and perpetuity are again secured to that flag—then we can consider our own State interests; then we can consider the interests of our own immediate section of this State; but until then, we owe it to our loyal brothers throughout the length and breadth of this great land to stand by them and aid them in resisting a crime, the greatest that has ever been attempted to be perpetrated on humanity. Let us do this, succeed in this, and we will succeed in all we desire in a very short time. Let us bring peace again to our Loudon, Alexandria and Hampshire friends. Let our brothers over the mountains through our aid and assistance, and that of this great and good government of ours, again see harmony throughout the land; again sit around their hearthstones with their families, and again instill the quiet hours of peace the lessons the Father of

his Country has bequeathed to us in his farewell address. Then we may say to them: "We love you still as brothers, but your interests and ways and our are diverse. Let this line be drawn between us. We will have two separate and distinct sovereign States, but, brethren, we will all be American citizens!"

MR. NICHOLLS, of Brooke, succeeded. He favored the plan of the Committee.—Among other things he said: "The people of Brooke feel in relation to a division of the State like my friend from Monongalia. They feel that they have no identity of interest with the eastern part of the State, and have long sought to effect the purpose indicated by that gentleman. But we feel at the same time that owing obligations to the Constitution of the United States as the supreme law of the land, there are steps that cannot be taken at this preliminary stage of the proceedings. We owe constitutional obligations to the Federal Government. Where would we of Western Virginia have been to-day but for the protection of the Federal Government. We must consider whether our acts will contravene the acts of the Federal Government. We cast off our allegiance to the Southern Confederacy; we do not care for their protection, but we do care for the protection of the Federal Government, and about sustaining it in its constitutional obligations, and we do know that it cannot extend its arm or afford any protection to us except it treads upon every plank in the Constitution, the great platform of our national liberties. The plan proposed by the committee is the only one which we can adopt at this stage of our proceedings, to insure recognition and continued favor with the General Government."

MR. DORSEY wished to explain that he had not favored (as they all seemed to have understood him) a violent and informal separation of the State without any intervention of any preliminaries whatever. He disclaimed any such purpose, in particulars and in general. I propose to go on with the plan so far as it is necessary to the reassembling of the Legislature, then to propose this matter of dividing the State to that legislature; then submit its action to Congress for ratification, in accordance with the spirit and very letter of the Constitution of the United States.

MR. STUART, of Doddridge, differed in many respects with the gentlemen who had addressed the Convention. He thought this talk about the division of the State was rather out of place. We have loyal men from extreme portions of the State who are here

claiming our protection. He was favorable to a division of the State if it could be done by the agreement and consent of the loyal people of the whole State; but he never would consent to cut loose from our loyal friends in the east who are helping us to aid the Government of the United States. He never wanted to separate from that part of the State that held the remains of Washington and Jefferson. They were here to frame a State Constitution, and when their brethren in the eastern portion of the State were freed from the rebellious reign of terror they were willing to come into the Government the Convention was assembled here to establish.

MR. CRANE, of Tucker, in a brief speech assured the Convention that although his people occupied the Southern extreme of Northwestern Virginia, and from their position the most exposed part of the border, yet he was authorized to say that his people were not only willing to a separation of Western from Eastern Virginia, but they want nothing short of a separation. He was ready, and his constituents were, to go in any direction, in arms or peacefully, for their deliverance from the bondsmen of Eastern Virginia. Nevertheless he pledged himself and his constituents to go along with the movement which was proposed here. It was, he believed, the best that could be inaugurated at this juncture.

On motion of MR. LAMB, the Declaration was made the order of the day for 11 o'clock to-morrow and thereafter each day until disposed of.

MR. STUART moved that when the Convention adjourn to-morrow it be to meet on Tuesday next. Many of the members had come unprepared to stay for a great length of time, and it was necessary for them to go home to make necessary arrangements for a prolonged absence.

MR. LAMB objected to the motion on the ground that if the convention adjourn till the time named the committees would have to suspend their labors meanwhile.

MR DORSEY suggested that the order of the day for next Wednesday was the ordinance reported this morning by the com committee, and if he understood the motion making it the order for Wednesday the object was to give the Convention time and opportunity to discuss the declaration now before the body, and he thought it would occupy all the time allotted to it. He thought it would be improper to adjourn over.

The question being taken on the motion to adjourn till Tuesday, it was rejected.

On motion, the Convention then adjourned.

THE FIFTH DAY,

SATURDAY, JUNE 15, 1861.

The Convention met at the appointed hour, and was opened with prayer by Rev. S. R. Brockunier.

The minutes of the preceding day, were read by the Secretary.

MR. VAN WINKLE, of Wood, wished to amend the minutes by correcting an expression in the Declaration before the Convention, as it stood recorded in the journal. The reading "they have attempted to bring the allegiance of the people of the United States, into direct conflict, &c."—should read "allegiance of the people *to* the United States, &c."

The correction was made.

MR. VAN WINKLE resuming, said objection had been made yesterday to the phraseology of the concluding portion of the second sentence of the first paragraph of the Declaration. On behalf of the committee, he was authorized to say that they had unanimously agreed to obviate the objection by striking out the objectionable words as follows; "and the existing Constitution does not confer upon the General Assembly, the power to call a convention to alter its provisions, or to change the relations of the Commonwealth, without the previously expressed consent of such majority." Also to add in the succeeding sentence, after the words "in February last," the words: "Without the previously expressed consent of such majority."

MR. CARLILE, as Chairman of the Committee that had re-reported the Declaration, asked, inasmuch as the report had not yet been acted on, that the corrections be made as alterations, and not as amendments, which was granted, and the journal was corrected accordingly.

The minutes, as corrected, were then approved.

MR. CARLILE asked and obtained leave to read a letter, addressed by a citizen of Kanawha county to a member of the convention.

The letter gave a very favorable account of the strength of the Union sentiment in that section.

MR. VAN WINKLE moved a reconsideration of the vote yesterday, by which the gentlemen from Loudon was refused a seat in the convention. He followed up the motion with some remarks renewing that gentleman's claims.

This proposition elicited a discussion in which several gentlemen took part, which was finally cut short by the moving of the previous question. The call for the previous question was sustained. The question on suspending the rules to allow the reconsideration of the vote, being then put, the motion to reconsider was rejected.

So the Convention still refused to admit the gentleman from Loudon to a seat.

MR. CALDWELL, of Marshall, asked and obtained leave of absence till Monday.

MR. LAMB, Chairman of the Committee on Credentials, then obtained permission to say that the Committee having examined the credentials of all the members present, announced the fact that no member had been admitted to a seat on this floor, who did not represent a large and substantial vote of his county. The Committee paid but little attention to mere forms, but they did act on the rule in regard to substantial constituencies.

The order of the day being the Declaration of the Committee, it was then taken up.

MR. VAN WINKLE moved that the Declaration as altered, be reprinted for the use of the members. Adopted.

On motion of MR. FROST, of Jackson, the order of the day was passed by, and made the special order for Monday at eleven o'clock, and each day thereafter until disposed of.

MR. FLESHER, of Jackson county, submitted the following resolution, which was appropriately referred.

Resolved, That all levies or orders made by any county or corporation court in this commonwealth for the purpose of raising money for arming, assisting or supporting the rebel army of this State or the so-called Southern Confederacy is a gross usurpation of power—sapping the very foundations of our liberties, requiring money to be levied from free citizens to support the enemies of our government in their acts of cruelty and butchery.

Be it, therefore, Ordained, That all such levies or orders shall be null and void and shall not be collected by any of the officers of the Commonwealth.

MR. FLESHER said he offered this resolution more especially from having understood that the Jackson County Court had ordered a levy of $3,000 for the support of the rebel soldiers who have enlisted from that county in the service of the Southern Confederacy.

On motion, the Convention then adjourned to Monday morning at ten o'clock.

THE SIXTH DAY,

MONDAY, JUNE 17, 1861.

The Convention assembled at the appointed hour.

The session was opened with prayer by Rev. R. V. Dodge, of Wheeling.

The minutes of Saturday were read and approved.

MR. HOOTON, of Preston, said he deemed it due to the Convention as well as to Dr. Parsons, of Tucker, (now absent) to state that the reason of his absence was that he was confined to his room by indisposition, but that he was now much better and would be in his seat in a few days.

The hour of eleven not having yet arrived and there being no business pressing, Mr. Carlile suggested that the order of the day be now taken up. There being no objection the Declaration of Rights, which had been made the order of the day for eleven, was taken up and the Convention proceeded to its consideration.

The Declaration was read by the Secretary, after which

MR PIERPONT, of Marion, said: (The speech of Mr. Pierpont here, has been because of its length, inserted in this work as APPENDIX A, following the Journal of the regular session of this Convention—V. A. L.)

MR. CARLILE followed in a few remarks, expressing the hope that a vote would be taken at once.

The question on the adoption of the Declaration was then demanded.

MR. DORSEY called for the yeas and nays, which call was sustained, with the understanding that members now absent have an opportunity of recording their votes on their return to the Convention. It was further suggested and concurred in, that the publication of the names be deferred until the full vote of the Convention was obtained.

MR. DORSEY subsequently withdrew the call, to make way for a motion to pass the Declaration to its engrossment, prior to its being put upon its final passage.

The motion prevailed, and it was ordered to be engrossed on parchment.

The Convention then took a recess until two o'clock.

AFTERNOON SESSION.

The Convention re-assembled at the appointed hour.

MR. CARLILE, from the Committee on Business, reported an ordinance for the appointment of State officers, which was read.

On motion of Chester D. Hubbard, it was ordered to lie on the table, and that the usual number of copies be printed.

MR. FROST, of Jackson, moved that the Declaration of Rights be now taken up and put upon its final passage.

The Declaration was read by the Secretary.

MR. DORSEY called for the yeas and nays, with the understanding that as the absentees came in they be allowed to record their votes.

The yeas and nays on the adoption of the Declaration were then taken, and resulted, yeas fifty-six, nays none.

On motion of MR. CARLILE, Thursday next, was fixed as the day for the signing of this Declaration.

MR. CARLILE remarked that this vote just taken exhibited a happy coincidence, and one that he hailed as an auspicious omen. 'We have," he said, "Fifty-six votes recorded in favor of our Declaration, and we may remember that there were just fifty-six signers to the Declaration of Independence." (Great applause and feeling throughout the Hall.)

The Convention then adjourned.

THE SEVENTH DAY,

TUESDAY, JUNE 18, 1861.

The Convention assembled at ten in the morning, and was opened with prayer by Rev. Wesley Smith.

The minutes of Monday were read and approved.

MR. PARSONS, of Tucker, took occasion to explain the cause of

his absence, and asked to record his vote in favor of the Declaration of Rights passed by the Convention yesterday. A number of gentlemen who had come in since yesterday's session also came forward, and without exception cast their votes in its favor, among others, James G. West, of Wetzel county, who first took the oath of office, he having heretofore been detained from attending.

MR. CARLILE, from the Committee on Business, reported the following amendment to the Ordinance for the re-organization of the State Government: In the 36th line to strike out all after the word "appointed," and insert: "by the Governor, he shall at once fill the vacancy without writ, but if such officer be appointed otherwise than by the Governor, or by election, the writ shall be issued and directed to the other appointing power requiring it to fill the vacancy."

The amendment was adopted.

MR. CARLILE, from the Committee on Business, reported the following resolution, with a recommendation that it pass:

Whereas, The great and lesser seals of the Commonwealth are in possession of the late Executive of the State, and whereas it is necessary for the dispatch of public business, that seals should be provided, therefore,

Resolved, That a committee of five persons be appointed to procure a great and lesser seal for the Commonwealth, that shall correspond with the great and lesser seals, respectively, now in possession of the late Executive of the State, with the addition on each seal on obverse and reverse sides, of these words, "Liberty and Union."

The resolution was adopted.

The following gentlemen were appointed the committee provided for in the resolution: John S. Carlile, of Harrison; D. D. T. Farnsworth, of Upshur; E. H. Caldwell, of Marshall; H. H. Withers, of Gilmer; Chas. B. Waggener, of Mason.

MR. CARLILE, from the same Committee, also reported the following:

ORDINANCE TO AUTHORIZE THE APPREHENDING OF SUSPICIOUS PERSONS IN TIME OF WAR.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain that the Sixth and Seventh Sections of the Seventeenth chapter of the Code of Virginia be amended and re-enacted to read as follows:

The Governor may cause to be apprehended and secured, or may compel to depart from this State, all suspicious subjects or citizens of any foreign State or power at war with the United States.

And whereas, The Convention at Richmond have declared the union between the State of Virginia and the other States, under the Constitution of the United States, to be dissolved; and have attempted to transfer the allegiance of the People of this State to an illegal confederacy of rebel-

lious States, called the Confederate States of America; claiming that the State of Virginia and the said Confederate States are rightfully and in fact foreign States or powers in reference to the United States: Now, therefore, all persons in this Commonwealth adhering to and supporting the said Convention at Richmond, or the said Confederate States; or professing to owe allegiance or obedience to the same, shall be deemed, (for the purposes of this Ordinance only,) subjects or citizens of a foreign State or power at war with the United States.

The Governor may send for the person and papers of any such person, within this State, in order to obtain information to enable him to act in such cases.

Any warrant or order of the Governor under this Ordinance may be directed to any Sheriff or other officer, civil or military, and shall be executed according to the terms thereof by such officer, who shall have all the powers necessary for the purpose, either in or out of his county or corporation.

2. If the Governor shall have just cause to believe that any persons in this State, claiming to be subjects or citizens of the said Confederate States, or adhering to and supporting the said Convention or the said Confederate States, or professing to owe allegiance or obedience to the same, are about to assemble together, or have assembled together, for the purpose of drilling or receiving military instruction, or to organize themselves as a military force, or to attempt any military operation, or do any act which may endanger the safety or welfare of the good people of this Commonwealth or any portion of the same; he may cause such assemblage to be prevented or dispersed, and the persons who may be about to assemble or have assembled as aforesaid, to be apprehended and secured, or may compel them to depart from this State; and for this purpose he may issue his warrant or order directed to any Sheriff or other officer civil or military, which warrant or order shall be executed as aforesaid, and any assemblage of two or more persons for any purpose inimical to the government of the United States, or of this State as organized by this Convention, shall be deemed an unlawful assemblage, and the persons so offending may be proceeded against and punished as provided in chapter 195 of the Code of Virginia.

3. If any Sheriff or other person shall transmit or pay any money, or any check, draft, bill, or order, note or certificate for the payment of money, to any officer or other person at Richmond or elsewhere, for the use of the said Confederate States, or of the illegal State Government at Richmond, now waging war against the United States; or shall furnish any money, arms, military equipments or ammunitions of war, or other aid or support, to the said Confederate States, or State Government, or to any military force under the control or direction of the same, or to any person or persons about to join any such military force; the Governor may cause to be apprehended and secured, or may cause to depart from this State, the Sheriff or other person guilty of such offence, and for this purpose may issue his warrant or order and cause the same to be executed as hereinbefore provided.

4. This Ordinance shall take effect from its passage, and may be altered or repealed by the General Assembly.

MR. FLESHER, of Jackson, moved that the ordinance be laid on the table, and the usual number printed, which motion was adopted.

MR. CARLILE, from the same Committee, reported another ordinance as follows:

AN ORDINANCE FIXING THE COMPENSATION OF CERTAIN OFFICERS THEREIN MENTIONED.

1. The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain that the compensation of the several officers herein mentioned shall be as follows:

Of the Governor, at the rate of three thousand dollars per annum;

Of the Secretary of the Commonwealth, at the rate of fifteen hundred dollars per annum;

Of the Auditor of Public Accounts, at the rate of two thousand dollars per annum;

Of the Treasurer, at the rate of fifteen hundred dollars per annum;

Of the President of the Senate, the Speaker of the House of Delegates, and the President of this Convention, eight dollars to each for every day's attendance;

Of the other members of the Senate, House of Delegates, and of this Convention, four dollars to each one for every day's attendance; but no person shall receive compensation for the same day both as a member of this Convention and of the Legislature;

Of the Secretary of this Convention, eight dollars for each day's attendance, out of which he is to pay his assistant;

Of the Sergeant-at-Arms attending this Convention, and the Sergeant-at-Arms for the Legislature, four dollars for each day's attendance; and one dollar and fifty cents per day for each door keeper and police officer employed, and fifty cents per day for each of the pages.

2. The Secretary of the Commonwealth, Auditor of Public Accounts and Treasurer, shall once at least in every quarter, submit to the Governor their several accounts for office expenses, including printing, stationery, blank books, fuel and other things necessary for the transaction of their official business; which accounts when approved by the Governor, and such approval certified in writing, shall be allowed and paid. All expenses incurred by the Governor in transaction of his official business shall be submitted to the Auditor of Public Accounts, in the same manner as other claims against the State.

3. The members of the Senate and House of Delegates shall be allowed mileage at the rate of ten cents for every mile of necessary travel, to be computed by the nearest and most direct route from their several residences to the city of Wheeling.

4. This Ordinance shall take effect from its passage, and may be altered or repealed by the General Assembly.

On motion of MR. NICHOLLS, of Brooke, the ordinance was ordered to be laid on the table and printed.

MR. FARNSWORTH, of Upshur, offered the following resolution:

Resolved, That one of the great objects of this Convention reorganizing the State Government, is that we may place the same in a position of legality to the United States, in order that we may soon be able by Constitutional legislation to separate ourselves from our oppressors in Eastern Virginia and be admitted a new and separate State in the glorious union of States.

MR. FARNSWORTH explained that his object in introducing this resolution was to show to the people by an authorized expression of the Convention that it intended to take such steps as would create a new State, and to show the object in taking the steps the Convention was now taking.

MR. CALDWELL thought the resolution a proper one and that it

was at once a courtesy and due to the Federal Government that something like this indicated in this resolution should be communicated to the President of the United States and his Cabinet, as an expression of the views and intentions of this Convention.

MR. FROST moved the reference of the resolution to the Committee on Business. He had no objection to the resolution or the spirit of it. It seemed to him that every step yet taken contemplated the separation of the State.

MR. DORSEY said it was well known that he had been advocating this new State movement as earnestly as he knew how, but after mature consideration of the subject, and after having had several resolutions like the one under consideration submitted to his consideration in private, he had come to the conclusion that it would be exceedingly inappropriate for this Convention at the present time in the present stage of its proceedings to pass such a resolution, since "by doing so we are anticipating," said he, "the future action of the Legislature of Virginia, as well as of this Convention This is not the proper time to make a proposition or a division of the State. We have all agreed upon that matter in private conversation, and the public discussion that have been had upon this subject. It does seem to me that if we desire a division of the State, the proper method to be pursued would be to proceed with the business now in hand, and when the State government is fully organized, then such propositions as this may be submitted. This announcement may seem to be incongruous with my former position. I think, however, the plan I proposed looked to just such an arrangement. After deliberating on the course I proposed myself, and that proposed by this resolution, I have thought it would be exceedingly imprudent to urge this matter at the present time. I hope my friend from Upshur will see proper to withdraw that resolution. He knows that I am an unyielding advocate for the division of the State, and I assure him, as I assure the Convention, that I shall not be satisfied as an individual, until that shall be accomplished."

MR. NICHOLLS, of Brooke, said that he understood the object of the resolution to be to give to our constituents at home, some evidence of the tone of the sentiment of this Convention, touching this question of a division of the State. He thought the remarks made in the discussion on that very subject, and which had gone forth in the public prints, ought to give abundant assurance to them of

what the sentiment here was upon that subject . He agreed with his friend from Monongalia, that the Convention should not at this time take any hasty steps, touching that matter. Still, if the gentleman from Upshur should persist, he would favor the reference of the resolution to the proper committee, that they might deliberately weigh it, and report before they take any action on the resolution.

MR CARLILE supposed his friend from Upshur was not present the other day when this matter was discussed on the proposition of the gentleman from Monongalia. "So far as I know, we all agree with him in desiring a division of the State, but how is it to be done? It can be done only by virtue of a provision of the Constitution of the U. S., and how can that be had now? That provision makes it necessary for us to obtain the assent of the Legislature of the State, and where is the Legislature, recognized as such, that can give its assent? It is no longer under the protection, or entitled to the provision, of the Constitution of the United States. It is now out of our power to effect a separation, if every man, woman and child in the State should give their consent. There is no Legislature yet that acknowledges its fealty to the Constitution of the United States. Therefore, what we desire is simply an impossibility at this time. If it be our purpose to divide the State at some future time—and it certainly is my purpose—we are taking the only course in which it can be accomplished. Once get the government which we propose to organize here acknowledged by the Federal Government as the government of Virginia, and then you have a Legislature that can constitutionally assent to this separation. Now you have it not. Even if the Legislature that acknowledges its allegiance to the Southern Confederacy were to give its assent it would not be worth a piece of blank paper. The soil and people of Virginia are to all intents and purposes, so far as her State authorities are concerned, transferred to the Confederate States, and that so-called Confederacy can only consent to the transferrence of any portion of the soil of that so-called Confederacy, to a power with whom they can treat. Now, Sir, the Federal Government and the loyal people of Virginia do not acknowledge that transfer. This rebellion must be crushed out, or it must be successful, and a treaty had between it and the United States, acknowledging its independence, before they can enter into any treaty.

But the method we are pursuing is the easiest, the only practicable mode by which the objects we have at heart can ever be ac-

complished, and such declarations as are contained in this resolution, do nothing in the world but throw obstacles and embarrassments in the way of accomplishing this separation.

The great question now foremost in the minds of all is the preservation of our Union and the perpetuity of the Federal Government. So long as our efforts are directed to this we have the sympathy of the twenty millions of loyal people who sympathize with us. Therefore it being impossible to accomplish our object now, a persistence must tend only to array against us an influence against our recognition of the Government.

And, Sir, where is the great bulk of the bonds of this $49,000.-000 of public debt? It is held in the great centre of capital, New York. If the holders were to suppose that a recognition of us, as a separate State, would diminish their securities, possibly their interests might come in conflict with their patriotism, and we would have the influence of this lobby at Washington against our recognition. Now, Sir, let us from this time forward say nothing more upon this subject. Let us wait until we are recognized as part and parcel of the United States, and as the lawful authorities of Virginia.

I regret that we have to postpone this subject of a separation for an hour, but high above all else, is the perpetuity of the Union. What would a separation be worth—what would an admission as a new State into the Union be worth, if that Union should hereafter be destroyed? Let us then direct all our energies solely at this hour, more especially to preserving and maintaining the government."

MR. VAN WINKLE said the public expectation in the Western counties had been turned to this Convention, as if its only business were to separate Eastern from Western Virginia. It had been the predominant expectation up to, and even since, the assembling of the Convention. "But, we come here, and we find that it is necessary for us to take an entire different course of action. That course we are progressing with. There can be no doubt as to the propriety of re-organizing a government for the whole State. I saw and spoke of the difficulties in the way of a division of the State, from our geographical position and other circumstances—as [you] gentlemen will remember. But is it not due to the constituents of many of the members, that there should be some authorized, expression by the Convention on this subject, exhibiting the reasons that

induced us to abandon a course which, it was supposed, we were about to adopt, and to explain to them that their representatives have yielded to a necessity in postponing their views? In my opinion, if it had been practicable, for other reasons, to have made the separation, there is nothing in all this constitutional provision to have hindered us for a moment."

MR. CARLILE said if their constituents at home should see by the discussions in this body, the reasons that have influenced their representatives to postpone their wishes, then they would be satisfied with the same reasons that satisfied their representatives. He was sure he had no constituents more anxious for the time to arrive for a separation than he was. When they should see the gentleman from Monongalia representing a county where the vote was taken on this subject, and which gave 801 votes in favor of a division of the State, and coming from a constituency representing such views—when they see him yielding to the necessity which all feel, will not they be satisfied without an official report from a committee of this body?

MR. BURDETT had no objection to the resolution. "The world knows we are looking ulteriorly to a division of this State.—Wall street will know it despite all your efforts to cover it up. The lobby interest will be in Washington just the same, and you will have to fight that anyhow." He did not think that any serious obstacle would then be thrown in the way. He did object, however, to the reporting of every little resolution reported here, to the President of the United States. He and his cabinet had enough more important business to engross them. A better plan would be, at the conclusion of the labors of this Convention, to send them a copy of its journals.

MR. CARLILE suggested that if this resolution was to be pressed, a special committee should be raised, and that it be referred to them.

MR. FROST said the object of the resolution was simply to get an official expression from the Convention. He knew the people expected some authoritative expression of the opinions and views of this Convention. The course of the Convention, however, a reconstruction of the State government, was the only practical movement that could be made in the premises. He would withdraw his motion, and move that a special committee of five be raised, to whom the resolution should be referred. He suggested that the

committee thus raised should prepare an address to the people of Virginia.

MR. CARLILE said, that as they were now assuming to act for the Union men of the whole State, those men in many parts of the State would be embarrassed by such action, as we are here proposing, looking to a separation from them. The argument would be employed against them, that they were acknowledging the authority of a State government which looked to the dismemberment of the State.

MR. FROST said he was not in favor of a separation of the State, unless it were necessary. He hoped they might never be driven to that result.

MR. DORSEY, of Monongalia, moved that the resolution lie upon the table. He withdrew the motion, however, to make way for his colleague, Mr. Snider, who obtained leave to read the following resolution:

Resolved, That the geographical position and business and social relations of Western Virginia, are such, that her vital interests demand a division of the State; that the proper time to make such demand will be when Virginia has a legally constituted Legislature; and that then we will use our utmost endeavors to consummate that division.

MR. SNIDER declared that he was uncompromisingly for a division of the State, and nineteen-twentieths of the constituency he represented were equally so.

MR. BARNS, of Marion, also read a resolution (it being out of order to submit it,) as follows:

Resolved, That it is inexpedient at this time to take into consideration the subject of a division of the State.

MR. HUBBARD said that the case before the people of the Northwest, was no longer one of choice, or even preference, but had become a matter of duty. "We are not here to create a State, but to save one; not here to create a government, but to help save a government. Let us go forward in the great work, and not higgle about what our taxes will be hereafter, or questions of that character. Let us save this government, let us save Virginia, and then save the Union; for the banner we are lifting up here, will be the banner for the salvation of the country. As the arms of the government go forward and rescue our State from revolution, we must save what they gain. I hope we shall say nothing more now about the division of the State; our first and highest object is to perpetuate the Union and the government, and the next to rescue and save Virginia. If we find in the future that we cannot remain in the

State, and that we can do better to separate, I shall be as willing as any other man. I believe this movement will not stop with Virginia, but will spread all over the seceded States, as they are delivered from the military despotism that now rules them. Let us not fall short of our duty in this hour or hesitate in the course which is before us, as true men. Let us go forward as Virginia in the Union."

MR. NICHOLLS followed in some remarks. He said when they had come to discuss grave constitutional questions which cover this whole subject of separation, they saw that at this time—there was no member of the Convention but what saw—that there is a constitutional barrier in the way of this Convetnion meeting the first wish of their people for a separation of the State. That question was settled in the minds of the members of this Convention. When the Government shall have been rescued from anarchy and destruction, perhaps the causes of which they complained in the East, might be removed, and the necessity for the separation have disappeared.

MR. FARNSWORTH said that in offering the resolutions he merely wanted the people to know by some expression of the Convention that we were in earnest, when we said to them before we left our homes that we would go for a division of the State at the proper time. "I know it is out of their power to understand the will of the Convention as we understand it without an expression of some kind. The resolution does not contemplate for a moment to create a new State at this time, but only to let the people know why it is that we are re-organizing the State government for the whole State —and Mr. President, if we are afraid to show our hands to the people we represent, our cause must be a poor one." Nevertheless he would withdraw the resolution as he found serious objection was made to it.

MR. VANCE, of Harrison, hoped he would not withdraw it. His people, he said, were in favor of an immediate division of the State. They had sent him there to assist in accomplishing that purpose. But they did not all understand how it was to be done. Some thought the Convention could do it; but it could not be done without the consent of the Legislature. When the Legislature should meet it was his desire, and that of his constituents, to divide the State, and he would then use every effort to accomplish what they desire. He hoped the motion to lie on the table would be voted down, and the resolution would take the direction indicated by the gentleman from Jackson.

MR. TARR regretted very much to see the course the debate had taken. The first inquiry should be, have we a State Government? "If not, let us first procure the endorsement of the Federal Government and then provide the ways and means for a division of the State. Many gentlemen who have seats here, represent counties lying along the borders of Maryland, which are very desirous of being connected with Western Virginia. Perhaps in the division of the State we will secure the counties bordering on Maryland. It may be that we should attach ourselves to the State of Maryland. We all know that our territory is small—that the taxes that may be collected from it will be barely sufficient to cover our ordinary expenses. If we should add to this the portion of the State debt which we would be bound in fairness to pay, it will make our taxes burdensome.—But, Sir, I have reason to know that the Federal Government is entirely opposed to any division of the State, and I think there is no gentleman on the floor of this Convention who can assure me from any authority whatever, that the Federal Government will recognize any division at all.—Are we so strong that we shall dictate our terms to the Federal Government? Or must we not rather act in obedience to their wishes. And I submit to my friends who are in favor of this precipitate action, that this motion now be laid on the table; but before that proposition is submitted to a vote, I move, for the purpose of having some opportunity to canvass this question, that the Convention take a recess till two o'clock."

MR. CARLILE—"Will my friend from Brooke withdraw the motion for a recess for a moment?"

MR. TARR—"Certainly."

MR. CARLILE then announced that the Convention had been invited to visit the soldiers and officers at Bellaire, and witness a dress parade, during the evening, and that Mr. Ford, the Agent of the B. & O. R. R., had kindly provided a special train for their accommodation, and that, as the train would start at half past three, he suggested that the Convention, when it adjourn, should adjourn till to-morrow.

MR. CARLILE continued: "In relation to this thing of dividing, I find that even I, who first started the little stone down the mountain, have now to apply the rubbers to other gentlemen who have outrun me in the race, to check their impetuosity. Those who know what I have done in behalf of this movement, and would do now, if practicable, know that it is from no lack of sympathy with their

desire, that I am now drawing the brakes. I believe I know the people of Harrison county, and of all the counties of Northwestern Virginia, for in some capacity I have served them nearly all, except these Panhandle counties—and they know just as well as we do, and have probably found it out a little in advance of us, that at this time a division of the State cannot be effected, for the reason which they see in the Constitution of the United States, that it is only through it, and by virtue of its provisions, that a division can be had. They know another thing, too, that a separation is worth nothing without the perpetuity of the Government to which we desire to attach ourselves, and that they must first address themselves to maintaining the Government."

MR. VANCE: "We are perfectly aware, and so are the people, that the first object is to maintain the government and secure its perpetuity; but the resolution does not contemplate that the State be divided unil that be accomplished. What we want is to show that this is the ulterior object."

MR. CARLILE: "I do not think it necessary to declare that I am of the same opinion that I was thirty, or sixty, or ninety days ago. When I change my views on this subject, then I shall take occasion to announce them in the proper way. But why, at this time, when we are surrounded by most embarrassing circumstances, add to our embarrassments? Why create obstacles? Why build up barriers that may not come in our way if we but take proper time for action? The truth should always be spoken when we speak at all. But the whole truth should not always be spoken. There are times when men should keep their mouths closed. What if we do contemplate a division of the State, would it forward that object to promulgate the declaration in a special and authorative manner?

In an hour like this when the question is: Shall we save the State; when we are particularly helpless to save it ourselves; when the very Government itself has by this rebellion been bankrupted; when it is engaged in this death struggle to maintain its own existence, and when we have come here to aid, if we can, this effort of the Government in this struggle,—why should we now be discussing that which is utterly impossible and which more belongs to days of peace than to the hours of war? That is the question to put to ourselves. If we could divide the State to-day, who would desire to do so under existing circumstances. In a short time the power of this Government may be established. Then we may be acknowl-

edged as the Government of Virginia; then we can provide for that which is essential to our interest. If peace is to be banished for long years from our borders, what does it matter whether we are separated from the East or not? Separation is to enable us to promote our interests in time of peace. Separation in time of war amounts to nothing.

There is no man within the limits of this State that is more thoroughly convinced than I am and have been for long years, of the necessity of this separation. There is no power on earth that can prevent it. But it cannot take place now, and we are but embarrassing our movements, which must first be addressed to the perpetuity of the government and the maintenance of our free institutions before we can act on what is and must be a secondary consideration. I do trust this discussion which has occupied so much of our time will be allowed to wait till the time comes for action.—'Sufficient unto the day is the evil thereof.'

And now, Sir, with a Southern army advancing upon us in two columns, we know not how soon we may have to close our doors and discussions here, and seek safety elsewhere; when we are striving now to resist this attempt at transferring us to a rebellious government, shall we be distracted with issues of secondary importance, as all must admit this question of a separation to be at this hour?"

The question "Shall the main question be put?" having been decided in the affirmative the main question "Shall the resolution lie on the table?" was then put.

MR. VANCE demanded the yeas and nays. The question being then taken by yeas and nays resulted as follows:

YEAS:—Jno. H. Atkinson, Jno. S. Barns, J. J. Brown, George W. Broski, H. W. Crothers, Wm. L. Crawford, Jno. S. Carlile, W. B. Crane, J. T. Close, James Carskadon, W. H. Copley, D. B. Dorsey, O. D. Downey, James P. Ferrell, A. Flesher, S. S. Fleming, E. T. Graham, P. M. Hale, George Harrison, C. D. Hubbard, H. Hagans, Charles Hooton, Jno. Howard, Jno. Hawxhurst, T. H. Logan, Daniel Lamb, J. A. J. Lightburn, John Love, Henry S. Martin, E. E. Mason, Thos. Morris, Jno. D. Nicholls, Henry Newman, Geo. McC. Porter, D. Polsley, J. W. Paxton, S. S. Parsons, A. F. Ritchie, T. A. Roberts, J. F. Scott, Remembrance Swan, B. F. Shuttleworth, Campbell Tarr, J. H. Trout, P. G. Van Winkle, James G. West, H. H. Withers, Jas. W. Williamson, W. B. Zinn, Mr. President, (A. I. Boreman)—51.

NAYS:—Wm. J. Boreman, Ralph L. Berkshire, Jno. S. Burdett, W. W. Brumfield, E. H. Caldwell, W. H. Douglass, James Evans, D. D. T. Farnsworth, Richard Fast, Daniel Frost, Leroy Kramer, Reuben Martin, Wm. Price, C. W. Smith, J. H. Shuttleworth, Jos. Snider, Jno. C. Vance—17.

ABSENT:—Lot Bowen, James I. Barrick, Samuel Crane, L. E. Davidson, John J. Davis, Jas. A. Foley, Jos. Gist, Albert Laidley, John W. Moss,

Jno. Michael, F. H. Pierpont, Wm. Ratcliffe, Fontain Smith, J. L. Smith, Chapman J. Stuart, Nath. F. Taft, S. B. Todd, Lewis Wetzel, And. Wilson, C. B. Waggener, Jas. O. Watson, Jas. A. Williamson—21.

So the resolution was laid on the table.

GEORGE HARRISON, of Ohio, offered the following resolutions which were unanimously adopted:

Whereas, It has pleased the God of Nations and of Battles, in His inscrutable wisdom, to remove from our midst in these our days of peril and trial, the distinguished Senator of Illinois, Stephen A. Douglas, whose patriotic devotion and principles have endeared his memory to our hearts, and whose loss we deplore and regard as a national calamity. Be it, therefore, by the people of Virginia, in solemn Convention assembled:

Resolved, That this Convention has heard with feelings of the deepest sorrow and regret of the recent demise of the patriotic and distinguished Senator of Illinois, Stephen A. Douglas—a man who, when our present unhappy troubles commenced, regardless of party predilections, stood among the first and foremost in defence of the laws and Constitution of this great Union, thereby still further gaining our love and admiration.

2. That we sincerely sympathize with the widow and children of the deceased Senator under their severe affliction, and as a testimonial of our regard and esteem, that these resolutions be entered on the minutes of the proceedings, and a copy, signed by the President and Secretary of this Convention, be forwarded to the family.

On motion, the Convention then adjourned.

THE EIGHTH DAY.

WEDNESDAY, JUNE 19, 1861.

The Convention assembled at the usual hour, and was opened with prayer by Rev. J. T. McLure of this city.

The minutes of the preceding day were read and adopted.

The reports of Committees were called for. There being none to offer,

MR. CALDWELL, of Marshall, suggested that as there were several members present this morning who had been absent at the time the vote was taken on the Declaration or Rights, an opportunity be afforded them to record their votes.

The several gentlemen referred to announced their votes without exception in favor of the adoption of the Declaration.

MR. VANCE, of Harrison, arose to a privileged question. He desired to call the attention of the Convention to the character of the report of yesterday's proceedings of this Convention in the *Intelligencer* of this morning. The report in some portions was meager

and unsatisfactory. If the reporter attempts to report anything here he should report it correctly or not at all. They would find in the report that the remarks made by gentlemen in favor of the motion offered by the gentleman from Upshur, but partially and incorrectly reported. On the other hand, the remarks of the gentlemen who spoke in opposition to the adoption of the motion are reported fully and correctly. This was calculated to leave a wrong impression on the minds of those who read the printed report, and were not present in the Convention. This was a species of partiality which should not be exhibited by any reporter; and, if this partiality was to be shown here and in this way the sooner the people know it the better. From the remarks of gentlemen as reported it would seem that the members advocating the resolution were attempting to embarrass the Convention, and the report does not relieve them from that imputation.

"I now say to the reporter, that he will either report me correctly or not at all. I do not particularly desire to be reported. I did not come here to make speeches, but for the good of my people; but I do hope hereafter that if he attempts to report anything at all he will report it correctly.

I would just say that the gentleman from Upshur gave many very good reasons in support of his resolution, and they were not noticed at all. Speeches of certain gentlemen were not noticed at all, while those of others were given almost word for word."[6]

MR. CARLILE asked that the order of the day be taken up.

The order of the day, being the Ordinance for the Reorganization of the State government, was taken up.

MR. CARLILE wished to amend the third section by striking out in

6. To this criticism of Mr. Vance, Mr. Archibald W. Campbell made editorial reply, as follows:

"Mr. Vance, of Harrison, yesterday called the attention of the Convention to the fact that the debates, as reported in the *Intelligencer* were not full; and, as he said, were partial. He made the point against us that those who were opposed to Mr. Farnsworth's resolution, or rather those who were in favor of laying it on the table were reported much more at length than those who were not.

Mr. Vance is probably under the impression that we are publishing an official report of the debates, under pay from the Convention. If so, we beg to undeceive him. We are under no obligations to publish a word of the debates. Our reports are our private enterprise, undertaken at our own suggestion, and at our own expense. We are at liberty just to publish or omit as we please, or condense or abbreviate just as our space compels us. We publish our reports as full as we can, and where we cannot, we make that which is valuable and interesting take precedence over that which is not. It is simply a physical impossibility for us to publish verbatim reports, though we usually take them verbatim. We, therefore, content ourselves with such a summary as will be most interesting to the public, and afford them the best information of what transpires.

On the point concerning Mr. Farnsworth's resolution, we have this to say: If we had consulted our own desires, we should just have reversed the fullness of our report, for we were very sorry to see that resolution go to the table, being well persuaded that it ought to have gone to a special committee, as was desired, by the mover.

With these remarks, we trust that we have satisfied the criticism of Mr. Vance."

the sentence beginning in the eleventh line, after the word "offices," the word "for" and insert, "from the passage of this ordinance until the end of."

The amendment was concurred in.

MR. CALDWELL moved that the ordinance be taken up and voted on section by section which was agreed to.

The Secretary read the first section.

MR. VAN WINKLE moved to amend the section, by inserting in the third line, after the word "office," the words "for six months or;" and by adding at the end of the section the words "and the General Assembly is hereby required to provide by law for the election of Governor and Lieutenant Governor, by the people, as soon as in their judgment such election can be properly held."

The amendments were concurred in, and the section passed.

The second section was read.

MR. HOOTON enquired if any provision for the compensation of the members of the Council created by this section, was made. He moved that the word "five" before the word "members;" be stricken out in the first line of the section, and the word "three" inserted instead.

MR. CARLILE hoped the gentleman would withdraw that motion. He thought five none too many, and hoped dollars and cents would not be allowed to deprive the governor of assistance so much needed. He continued at some length, to urge the necessity of retaining that number.

MR. HOOTON consented to withdraw his motion.

MR. BURDETT moved that the section be amended by providing "that such council *ex officio* shall constitute a board of public works." He subsequently withdrew the motion at the request of other members.

The second section was then passed, and the third section read.

MR. FROST moved to recur to the first section and amend it by inserting the words "Attorney-General," after the words Lieutenant Governor. The amendment was agreed to and the section was so amended, also the amendment in which the same words occur.

MR. VAN WINKLE inquired what would be the effect of adopting these amendments in this manner. Had they not better resolve themselves into a committee of the whole, in order that

after all the amendments were adopted, the whole ordinance as such could be adopted.

THE CHAIR stated if they proceeded to amend each section by general consent, as they were doing, without adopting them separately, the vote could then, when the amendments were completed, be taken on it as a whole.

The Secretary re-read the third section, and there being no amendments proposed it was passed and the fourth was read.

MR. CRAWFORD, of Hancock, moved to strike out in the 20th line the word "volunteers" and insert the words "officers and privates of volunteer companies."

The amendment was concurred in.

MR. WEST moved to amend by adding after the word "duties" in the 22d line the words, "provided, however, that any person having voted for the ordinance of secession shall be ineligible to hold any post of office or honor, public or private, civil or military, in this State during the existence of hostilities by the seceding States against the general government of the United States of America."

MR. LAMB objected to the amendment..

A lengthy discussion followed, Mr. West and his colleague, Mr. Martin, advocating the proposition, and Messrs. Carlile, Flesher, Pierpont, Berkshire, Johnson of Preston, Roberts and others opposing.

The previous question was finally called by Mr. Vance.

The main question, being on the adoption of the amendment of Mr. West, having been ordered to be put.

MR. WEST demanded the yeas and nays. The demand was sustained, and the yeas and nays being taken resulted as follows:

YEAS:—Messrs. Brumfield, Close, Douglas, Harrison, Hawxhurst, Reuben Martin, Mason, C. W. Smith, West, and Jas. W. Williamson—10.

NAYS:—Messrs. Atkinson, W. J. Boreman, Bowen, Barns, Berkshire, Brown, Burdett, Broski, Barrick, Crothers, Crawford, Carlile, W. B. Crane, S. Crane, Caldwell, Carskadon, Copley, Dorsey, Davidson, Downey, Evans, Ferrell, Farnsworth, Flesher, Fast, Frost, Fleming, Graham, Hale, Hubbard, Hagans, Hooton, Howard, Johnson, Kramer, Logan, Lamb, Lightburn, Love, H. S. Martin, Moss, Morris, Nicholls, Newman, Porter, Pierpont, Polsley, Price, Paxton, Parsons, Ritchie, Roberts, F. Smith, J. H. Shuttleworth, Scott, Snider, Swan, B. F. Shuttleworth, Tarr, Trout, Vance, Van Winkle, Withers, Wetzel, Wilson, Waggener, Zinn, Mr. President, (A. I Boreman)—66.

ABSENT:—Messrs. Davis, Foley, Gist, Laidley, Michael, Ratcliffe, J. L. Smith, Stuart, Taft, Todd, Watson, and Jas. A. Williamson—12.

So the amendment was rejected.

MR. CALDWELL made a proposition to amend the 20th line of the same section, but afterwards withdrew it.

The 5th section was read.

MR. BOREMAN, of Tyler, proposed to insert, in the 30th line, after the word "do," the words "or adhere to the Convention assembled at Richmond on the 13th of February, 1861, by the former Executive of this Commonwealth." He, however, after an extended discussion, in which a strong opposition was elicited, withdrew the amendment.

The question upon the adoption of the entire ordinance, as amended, was then ordered.

MR. LAMB called for the yeas and nays, but afterwards withdrew the call.

MR. CRANE, of Tucker, wished to inquire if it had been ascertained that the Federal Government would sustain the action the Convention was taking. He did not propose to shrink from his part, but merely wished to suggest the inquiry.

After a good deal of general discussion as to the propriety of taking the vote before an adjournment, and as to filling the blank in the ordinance naming the time at which the Legislature should be convened, the Chair having stated that the vote could be taken and the blank filled afterwards, the question on the adoption of the ordinance as a whole was taken by yeas and nays, and resulted as follows:

YEAS:—Messrs. Atkinson, Boreman, Bowen, Barns, Berkshire, Brown, Burdett, Brumfield, Broski, Barrick, Crothers, Crawford, Carlile, W. B. Crane, S. Crane, Close, Caldwell, Carskadon, Copley, Dorsey, Douglas, Davidson, Downey, Evans, Ferrell, Farnsworth, Fast, Flesher, Fleming, Frost, Graham, Hale, Harrison, Hagans, Hooton, Howard, Hawxhurst, Johnson, Kramer, Lamb, Lightburn, Love, Henry S. Martin, Reuben Martin, Logan, Moss, Mason, Morris, Nicholls, Newman, Porter, Pierpont, Polsley, Price, Paxton, Parsons, Ritchie, Roberts, Fontain Smith, C. W. Smith, J. H. Shuttleworth, Scott, Snider, Swan, B. F. Shuttleworth, Tarr, Trout, Van Winkle, West, Withers, Wetzel, Jas. W. Williamson, Wilson, Waggener, Zinn, Mr. President, (A. I. Boreman)—76.

NAYS:—None.

ABSENT:—Messrs. Davis, Foley, Gist, Hubbard, Laidley, Michael, Ratcliffe, J. L. Smith, Stuart, Taft, Todd, Vance, Watson and James A. Williamson—14.

THE CHAIR stated that those now absent could have an opportunity of recording their vote at any time when they might come in.

The Convention then took a recess until 3 o'clock, P. M.

AFTERNOON SESSION.

The Convention re-assembled at three.

MR. MOSS asked to have his name recorded in favor of the Ordinance adopted in the morning session.

MR. VANCE moved to proceed at once to the election of Governor, the Convention being now authorized to take that step.

MR. CARLILE suggested that the blank in the ordinance should first be filled. He proposed to fill it by inserting the "1st day of July next," which was agreed to.

MR. VANCE renewed his motion, and supported it with some remarks.

MR. CARLILE suggested to-morrow at eleven o'clock as affording a little time for considering so important a matter.

MR. EVANS reminded him that to-morrow at that hour was the time set apart for the signing of the Declaration of Rights. He moved to amend by substituting to-morrow at 2 o'eclock, which was finally agreed to.

MR. PORTER offered the following:

Resolved, That we recommend the immediate organization of volunteer companies in every county represented in this Convention, to support the State Government as organized by this Convention.

The resolution was, after some discussion, put upon its passage, and was adopted.

On motion of MR. CARLILE, the second ordinance, to authorize the apprehending of suspicious persons, &c., was taken up, and the first, second, third, fourth and fifth sections passed, after correcting a few typographical errors.

MR. HUBBARD, of Ohio, asked to have his vote recorded in favor of the adoption of the first ordinance, having been absent at the time the vote was taken.

The sixth section was read.

MR. HARRISON, of Ohio, moved to recur to the fifth section, and amend by inserting in the 18th line, after the word "same," the words, "or refusing to ackonwledge the acts of this Convention as legal."

The proposition provoked a good deal of discussion, and the question being taken on it, it was rejected.

MR. DORSEY then moved to amend the sixth section by adding the words "and if such person be an officer of this Commonwealth, his office shall be declared vacant, and shall be filled according to the law in that case made and provided."

The proposition was discussed at considerable length; the question was taken on its adoption, and it was rejected.

MR. VAN WINKLE offered the following amendment to the same section, and it was agreed to: To insert in the 34th line, after the word "secure," the words "for trial as for misdemeanor."

MR. JOHNSON, of Wetzel, moved that the same words be inserted in the first line of the first section after the word "secured," but afterwards withdrew the motion.

MR. CARLILE with the concurrence of the committee, proposed this additional section which was adopted:

SEC. 7. "That the powers vested in the Governor by this ordinance shall only be exercised upon satisfactory evidence and with the concurrence of a majority of his council."

The question having called on the adoption of the entire ordinance,

MR. VANCE denied the power of the Convetnion to pass such an ordinance. He did not want to make such a star chamber of this Convention as had been done at Richmond. It was a matter that belonged entirely to the Legislature, and should be left for its action. If this Convention was to do all the legislating for the State there was no need of a Legislature at all.

MR. LAMB said, in reply to the objections of the gentleman from Harrison, that by the action of the May Convention, the people had authorized this Convention "to devise such measures and take such action" as the safety and welfare of the people they represent might demand. That was their authority, and they all knew that the exigencies of the times did demand that they should take this action.

MR. BURDETT remarked that in revolutionary times like these, they could not and must not be bound down to the strict letter of laws and constitutions. For his part, he meant to take his part of the responsibility.

The yeas and nays having been demanded, the question on the adoption of the ordinance was then taken, and resulted as follows:

YEAS:—Messrs Atkinson W. J. Boreman, Bowen, Barns, Berkshire, Brown, Burdett, Broski, Barrick, Brumfield, Crawford, Carlile, W. B. Crane, S. Crane, Close, Caldwell, Carskadon, Copley, Dorsey, Davidson, Douglass, Downey, Evans, Ferrell, Farnsworth, Flesher, Fast, Fleming, Frost, Gist, Graham, Hale, Harrison, Hubbard, Hagans, Hooton, Howard, Hawxhurst, Johnson, Kramer, Logan, Lamb, Lightburn, Love, R. Martin, H. S Martin, Moss, Mason, Morris, Newman, Porter, Pierpont, Polsley,

Price, Paxton, Ritchie, Roberts, F. Smith, C. W. Smith, J. H. Shuttleworth, Scott, Snider, J. L. Smith, Swan, Stuart, B. F. Shuttleworth, Trout, Van Winkle, Withers, West, Wetzel, Wilson, Waggener, and Zinn—74.

NAYS:—Messrs. Vance, J. W. Williamson, Mr. President, (A. I. Boreman)—3.

ABSENT:—Messrs. Crothers, Davis, Foley, Michael, Nicholls, Parsons, Ratcliffe, Taft, Tarr, Todd and Watson—11.

MR. POLSLEY moved to reconsider the vote by which the first ordinance had been adopted, for the purpose of offering a substitute for the fourth section; which substitute he read as follows:

"All officers except members of the Legislature, elected on the 23d of May, 1861, now in the service of the State, or of any county, city, or town thereof, including the Judges and Clerks of the several courts, Sheriffs, Commissioners of the Revenue, Justices of the Peace, Constables, officers of city and municipal corporations, and the officers of the militia volunteer companies of the State, not mustered into the service of the United States, shall be vacated on or after the —— day of ——, or so soon thereafter as their successors shall be elected or appointed, and qualified; and the Governor, Lieut. Governor, Attorney-General and members of the Legislature, and all the aforesaid officers, and all other officers civil or military, hereafter to be elected or appointed, as well as privates of volunteer companies, shall each take the following oath or affirmation, before proceeding to the discharge of their several duties."

This motion was opposed strongly by Messrs. Carlile, Pierpont, Lightburn and others, and after a good deal of debate, Mr. Polsley withdrew it.

At the suggestion of MR. CARLILE, the names of Albert Laidley and James D. Williamson were stricken from the roll.—the former having declined to take the oath and returned home for instructions, and the latter not having made his appearance, and hence as Mr. Carlile explained, neither being at present members of the Convention properly on the list of names.

On motion, the Convention adjourned.

THE NINTH DAY.

THURSDAY, JUNE 20, 1861.

The Convention met at the usual hour and was opened with prayer by Rev. David Hervey.

The minutes of the preceding day were read and approved.

JAMES O. WATSON, of Marion, who was in the Convention for the first time, came forward and took the oath of office.

MR. LAMB offered the following resolution which was adopted:

Resolved, That the Secretary of this Convention be instructed to procure a suitable book for the recording of the Ordinances of this Convention, the record to be equivalent to the enrollment of said Ordinance.

MR. CARLILE offered the following as additional to the resolution submitted by Mr. Lamb, which was adopted:

Resolved, That all Ordinances passed by this Convention shall be recommitted to the Committee on Business, for revision and correction and when reported back to the Conventions as revised and corrected, they shall be recorded as provided in the foregoing resolution.

MR. DORSEY offered the following:

Resolved, That the Committee on Business, be and are hereby instructed to report to the Convention, an Ordinance declaring vacant the offices of all office holders in the Commonwealth, who voted for the Ordinance of Secession passed by the Richmond Convention, which assembled on the 13th of February last.

MR. CRANE, of Tucker, moved to amend the resolution by striking out the word "report," and inserting "enquire into the expediency of reporting."

MR. DORSEY accepted the amendment but subsequently withdrew the acceptance.

MR. CRANE insisted on the amendment.

MR. LAMB arose to a privileged question. He presented the credentials of Henry C. Moore and Duncan M'Laughlin, representatives from Webster county. On his motion the credentials were referred to the Committee on Credentials.

MR. CRANE then proceeded to support his amendment in some remarks. He thought the resolution would not touch many of the cases arrived at, if the resolution merely instructed the committee to vacate the offices of those who voted for the ordinance. There were many persons who did not vote for the ordinance of secession, who now held offices, and were yet secessionists of the worst stamp, and for these men the resolution did not provide. He thought it would be better to wait a short time, when peace might be restored, and the secession forces now terrorizing over the people, driven out of the country, than to take this kind of action now. He thought the resolution looked a little vindictive. In his county, and he doubted not elsewhere, many strong Union men were compelled to vote for the ordinance, who were now as heartily in favor of supporting this movement here and the United

States Government as any member on this floor, and as soon as they could be relieved from the presence of the secession soldiery they would make that support effective. This resolution would not be just he thought, to these men. He hoped the Convention would simply authorize the committee to enquire into the expediency of declaring the offices of such persons vacant.

MR. DORSEY said the resolution was intended to meet a case not met by any of the ordinances yet adopted. There might be many who voted for the ordinance of secessinon that would be willing to take the oath prescribed in one of the ordinances of this Convention, but for his part he would not be willing to take the oath of any of them. He denied that such were sound Union men. If they had been they would not have signed the ordinance. They were not as good Union men as he was; for he would not have voted for that ordinance at the point of the sword and bayonet. If they had been good Union men they would not have even looked *sideways* at that ordinance. As to the objection that the resolution did not provide for all the cases that needed correction, he thought that no reason why they should not provide for any of them. He believed that those who would be left in office, unless this resolution or its equivalent should be adopted, would give them a great deal of trouble. He wanted the offices to be in the hands of good Union men whom they could trust, so there would be no danger of having the authority exercised against the new State government in times of war.

MR. WEST said he felt proud that he had the honor to inaugurate this move in a resolution he had offered yesterday, although that resolution was then voted down and although the gentleman who now offered this resolution, was one of those who opposed its adoption, yet he was not prepared now to make any distinction between his proposition and the one now made. The only difference between the two propositions was, that this one was more stringent than his own—and stringency was the ground on which objection to it had been founded. His resolution only provided that such parties as were therein named, should be debarred from holding office during hostilities.—This one made that provision without limitation. He would vote for the gentleman's resolution in any shape, though it be ever so stringent. He was glad to see that since yesterday there were indications that the Convention was waking up to the importance of arresting

those parties who had given evidence of their disloyalty to the United States Government and the Government of Virginia now being re-organized here. For his part, he would shoulder the responsibility of such a course. He in part represented a people who it had been proclaimed in Richmond as a disunion people. He wanted to restore the reputation of that people, and relieve them from the false and odious charge. He would stand up for the people who had sent him here, if he should have to die for it, and he intended the world to know that Wetzel county was not represented in this Convention by Leonard S. Hall. (Applause—suppressed by the Chair.)

He came here under the threat that he would lose his scalp if he did so. He hadn't lost it yet, and did not feel very much terrified about the probability of doing so.—In his county, which gave a Union majority of 700 against the ordinance of secession, all the officers were secessionists.—They held all the machinery of the county government, and used their prerogative for the purpose of annoying and insulting loyal citizens. He insisted that such a condition of things ought to be corrected. He wanted the gentleman to urge the adoption of the resolution, and he would support him in doing so.

The hour of eleven having arrived,

MR. CARLILE demanded the order of the day be taken up.

MR. CRANE moved to suspend the rule in order to postpone the special order until half past eleven. The motion was lost, and the order of the day being the signing of the Declaration of Rights, it was taken up.

MR. VAN WINKLE then offered the following resolution:

Resolved, That the mode of signing the Declaration shall be as follows: It shall first be signed by the President in his place, and then by the members of the Convention in the order of their Counties as reported by the Committee on Credentials. The Secretary shall call the name first of the Senator, then of the Delegate or Delegates to the General Assembly and then of the Delegates to the Convention from each county. The person called shall then advance to the table sign his name and return to his seat—all the other members of the Convention remaining seated until their names are called.

The resolution was adopted.

The Declaration, engrossed on parchment was then brought forward and was signed by all the members present—eighty-three—in accordance with the resolution.

THE CHAIR stated that the members now absent could have an opportunity of signing it on their return. On motion of Mr.

Van Winkle, the Secretary was then instructed, after all the members shall have signed the declaration, to certify to the signing, and affix his own signature.

The Convention then took a recess until two o'clock.

AFTERNOON SESSION.

Convenction re-assembled at 2 o'clock P. M.

MR. FLESHER, of Jackson, obtained leave to read the following paragraph from the *Virginia Chronicle*, a paper published in his county, relating to the fact which he stated a day or two since when he submitted his resolution, that the Court of that county had voted $3,000 to be raised by a levy to support Secession soldiery.

THE STATE LEVY.

If there is anything in all the acts of the Secessionists of the county which is calculated more than another to arouse the indignation of the people it is the infamous act of last Monday, perpetrated by the Secession Magistrates of Jackson county. The Magistrates, certainly without due consideration, voted to tax the people of Jackson county $3000 for the support of Secession soldiers and their families.

Mr. Turner, Prosecuting Attorney, sanctioned the act, and said the Court was bound by every consideration of loyalty and duty to do it.

He had read the paragraph, he said, with a view of calling the attention of the Committee to the subject. Certainly, something ought to be done to prevent such levies.

MR. LAMB, from the Committee on Credentials, reported that the Committee had examined the credentials of Henry C. Moore, and find him the duly accredited delegate from the election district comprising Webster and part of Nicholas and Braxton counties. He moved that Mr. Moore's name be entered on the roll. It was done, and that gentleman came forward and took the oath of office.

THE CHAIR stated that the first business before the Convention, was the election of a Governor, Lieutenant-Governor, Attorney-General and Council, as provided in one of the ordinances adopted.[7]

7. On the evening of June 19th, the members of the Convention held a caucus, with closed doors, at their room in the Custom House, and unanimously nominated Francis H. Pierpont of Marion county, as their candidate for Governor; Daniel Polsley of Mason county, for Lieutenant-Governor; James S. Wheat of Ohio county, for Attorney-General; and for members of the Council of State, William Lazier of Monongalia county; Daniel Lamb and James W. Paxton of Ohio county; Peter G. Van Winkle, of Wood county; and William A. Harrison, of Harrison county. The election of these officers the next day—June 20th—was therefore, but a mere matter of form. See the *Daily Intelligencer* of Wheeling, June 20, 1861.

MR. LAMB—"I desire, Mr. President, to present to the Convention for the office of Governor, the name of Francis H. Pierpont, of Marion. Mr. Pierpont needs no eulogium at my hands. He is well known to all of us. He is known throughout this country as having been one of the ablest, the most decided and indefatigable advocates of our cause from the very start.—We all know that heart and soul he is with us.

Should it be the pleasure of the Convention to elect Mr. Pierpont, I trust we will all recollect that we, too, have a duty to perform in this matter. It will be necessary for us to secure, if it be possible, the hearty and united co-operation of the people in the support of our Governor. All may depend upon this; the execution of every measure which we here initiate, may depend upon the prompt, efficient and decided support which we may be able to secure from the people to the acts of that officer.

It is necessary that we should rise to the magnitude of the occasion. We are at war. There is war in the midst of us—war all around us; and the measures which were sufficient to secure our quiet and tranquillity in times of peace, will not answer in the great exigencies that are upon us. This movement here—this great movement for the support of the Union—may become, instead of a success, a by-word and a reproach, unless we are prepared not merely to elect a man to the office of Governor, but to give him a decided and efficient support when he occupies the office."

There being no more nominations offered, the roll was called, and after the result was ascertained the President announced that Mr. Pierpont received seventy-seven votes (all that were present,) and was therefore elected Governor of the State of Virginia. (Applause.)

MR. CARLILE said that as it was desirable that the officers to be elected should take the oath of office at once, the committee to whom was entrusted the revision of the ordinance containing that oath had thought proper to present it at this time that, as revised, it might be acted on by the Convention. He read it as follows:

OATH OF OFFICE.

I solemly swear (or affirm) that I will support the Constitution of the United States and the laws made in pursuance thereof, as the supreme law of the land anything in the Constitution and Laws of the State of Virginia or in the Ordinances of the Convention which assembled in Richmond on the 13th day of February last, to the contrary

notwithstanding, and that I will uphold and defend the Government of Virginia as vindicated and restored by the Convention which assembled in Wheeling on the 11th day of June, 1861.

The revision was accepted by the Convention.

THE CHAIR stated that the next business in order was the election of a Lieutenant-Governor.

MR. MOSS.—"I rise for the purpose of nominating before this Convention for the office of Lieutenant-Governor, the name of Daniel Polsley, of Mason.

MR. POLSLEY is so well known to most of the members of this Convention that it would be a work of supererogation if I were to pronounce before this body an extended eulogy on his private character and his qualifications for this important position. Those who are acquainted with Mr. Polsley know him to be a gentleman of courteous manner, of high intelligence, of sound sterling judgment, and of strong practical common sense. Such qualifications, Sir, as I advert to certainly should not be disregarded by this Convention.

In addition to that I would say that Mr. Polsley has never been in public life; that he has never been what we call a politician; and therefore, Sir, is not conversant with the tricks and wiles of that class of public men. In my judgment, Sir, this is an additional reason why his claims to this office should meet with the favorable consideration of this Convention.

Upon all the great questions of the day, Sir, Mr. Polsley is firm and uncompromising; and, Sir, I know his character will justify me in saying, come weal or come woe, he will ever be found in the front rank fighting for the Constitution and the Union."

The roll was called and the result having been ascertained, the President announced that Daniel Polsley had received seventy-six votes, and was therefore elected Lieutenant-Governor of the State of Virginia.

MR. DORSEY moved that the election of Attorney-General be postponed until Saturday next.

MR. CALDWELL objected. He said it was well understood that Col. Jas. S. Wheat of this city, was a candidate before the Convention. For his part he was prepared to give that gentleman a hearty support.

MR. DORSEY explained that it was at the request of the friends of that gentleman he had made the motion.

MR. LAMB said he felt assured he could convince the gentleman from Marshall that there were good and proper reasons for postponement.

The election for Attorney-General was postponed.

THE CHAIR: The next business is the election of a Council to the Governor.

MR. DORSEY: "I nominate for that position P. G. Van Winkle, of Wood; Wm. A. Harrison, of Harrison; Wm. Lazier, of Monongalia, and Daniel Lamb and James W. Paxton, of Ohio.

I need utter no eulogy on these gentlemen. They are all well known to this Convention as calm, clear-headed, judicious men; just such men as we want in this position."

The roll was called, and Mr. Van Winkle received 73 votes; Mr. Lamb, 73; Mr. Harrison, 72; Mr. Lazier, 73; Mr. Paxton, 70; E. H. Caldwell, of Marshall, 1; and Andrew Wilson, of Ohio, 82.

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8. BEGINNING OF THE RESTORED GOVERNMENT—MEETING OF THE GENERAL ASSEMBLY THEREUNDER.

With the election of the Governor, Lieutenant-Governor, and the members of the Council of State, the Executive branch of the new State Government, was fairly inaugurated. At five o'clock that evening, the new State officials, together with nearly all the members of the Convention, crossed over to "Camp Carlile" on Wheeling Island, where they were received by six hundred soldiers on dress parade, under the command of Captain George R. Latham. Two cannons were fired in quick succession, the echoes of which fairly shook the neighboring hills on both sides of the Ohio river. Governor Pierpont appointed Nathan Wilkinson, Auditor of Public Accounts; and Samuel P. Hildreth, Treasurer of the Commonwealth. Six days previously—June 22d—he had issued a proclamation convening the General Assembly in extra session at Wheeling on the 1st day of July, 1861. In accordance with this, that body convened on that date, and was in session until the 26th of that month. Eleven Senators were present, and forty-nine members of the House of Delegates representing forty-eight counties were in attendance. Daniel Polsley, Lieutenant-Governor, and *ex-officio* President of the Senate, presided over the deliberations of that body, in which William W. Lewis was clerk; Jesse S. Wheat, Sergeant-at-Arms; D. V. Thorp, Door-keeper, and Alexander Campbell, page. In the House of Delegates, Daniel Frost of Jackson County was elected Speaker. Gibson Lamb Cranmer was elected Clerk; Evans D. Fogle, Sergeant-at-Arms. James O. Hawley, First Door-keeper; and James Musgrave, Second Door-keeper.

At 7:00 P M on the evening of the first day, both branches received the message of Governor Pierpont and five thousand copies were ordered printed. In this the Governor said:

"I regret that I cannot congratulate you on the peace and prosperity of the country, in the manner which has been customary with Executives, both State and Federal. For the present, those happy days which as a nation, we have so long enjoyed, and that prosperity which has smiled upon us, as upon no other nation, are departed. We are passing through a period of gloom and darkness in our Country's history, but we must not despair. There is a just God who 'rides upon the whirlwind and directs the storm.' Let us look to Him with abiding confidence. You have met, gentlemen, in the midst of Civil War, but I trust you may yet be assembled under happier auspices, when the strife shall be over and peace and prosperity be restored to this once happy country."

Accompanying this message were his correspondence with President Lincoln, together with letters received by him from Simon Cameron, Secretary of War, and Caleb B. Smith, Secretary of the Interior, all showing recognition of the movement to restore Civil Government to Western Virginia.

On July 9th, the Election of State Officers was the joint order of the day. For Secretary of the Commonwealth, William B. Zinn nominated Lucian A. Hagans of Preston County; John W. Moss nominated George Loomis of Wood County; L. E. Davidson nominated Ellery R. Hall, of Taylor County. Hagans was elected on the first ballot.

For Auditor of Public Accounts, Samuel Crane and Nathan Wilkinson were placed in nomination. Crane was elected on the first ballot.

THE CHAIR announced the election of Messrs. Van Winkle, Lamb, Harrison, Lazier and Paxton as members of the Council to the Governor of Virginia.

THE CHAIR announced the next business in order as being the resolution of the gentleman from Monongalia, and the question on its adoption.

MR. CARLILE wished to postpone for the present the consideration of the resolution. He moved that the Governor-elect be informed of his election at once; and if convenient the oath be now administered to him. It was important that he should be installed in office. A proclamation ought to go forth in the morning's paper if practicable, providing for a special election for the Senatorial Districts, and House of Delegates in those counties where vacancies exist, and a special messenger be sent to those counties.

The suggestion was adopted, and Messrs. Carlile and Lamb, were appointed a Committee to notify Mr. Pierpont of his election.

The Committee retired, and after a time, returned, accompanied by the Governor, whose appearance was greeted with a round of applause, which was joined in by the outsiders.

He ascended the Speaker's stand, and, after being introduced by the President, spoke as follows:

For Treasurer of the Commonwealth, Fontain Smith nominated Campbell Tarr of Brooke County; James H. Trout nominated Samuel P. Hildreth, of Ohio County. Tarr was elected on the first ballot.

Another joint order for the same day was the Election of United States Senators. At 2:00 P. M. the Assembly proceeded by joint ballot to elect a successor to R. M. T. Hunter, U. S. Senator from Virginia, who resigned his seat in that body, and John S. Carlile of Harrison County, was elected without opposition. Then followed the election of a successor to fill the unexpired term of James M. Mason, who like Hunter, had resigned his seat after Virginia adopted the Ordinance of Secession. H. W. Crothers nominated Daniel Lamb, of Ohio County; Lewis Ruffner nominated Peter G. Van Winkle, of Wood County; and Leroy Kramer nominated Waitman T. Willey, of Monongalia County. Willey was elected on the first ballot.

On July 24th the Committee to examine the bonds of public officers, reported that Samuel Crane, Auditor of Public Accounts, had executed a bond July 9, 1861, for $20,000.00, conditioned according to law, with Chapman J. Stuart, of Doddridge County, James Burley, of Marshall County, and Wm. Ratcliffe, of Wayne County, as securities therein, which had been approved by the Governor. That Campbell Tarr, Treasurer of the Commonwealth, had executed a bond July 10, 1861, in the penalty of $50,000.00 conditioned according to law, with Wm. T. Hammond, Nathaniel Wells and Joseph Applegate, as securities therein, which had not as yet been approved by the Governor. That Lucian A. Hagans, Secretary of the Commonwealth, had executed a bond, dated July 12, for $5,000.00, conditioned according to law, with Harrison Hagans, Wm. Hagans and Wm. Frey, as securities therein and approved by the Governor.

Thus was completed the organization of the Restored Government of Virginia, its origin and its operation form the most remarkable chapter in the history of the governments of the individual American States. With the General Assembly adjourned, it remained for the Second Convention of the People of Northwestern Virginia to re-assemble in Adjourned Session, and prepare the way for the division of the State and the formation of West Virginia.—V. A. L.

SPEECH OF THE GOVERNOR-ELECT.

"Gentlemen of the Convention:

I return to you my sincere thanks for this mark of your confidence in placing me in the most critical and trying position in which any man could be placed at the present time.

This day and this event mark a period in the history of constitutional liberty. They mark a period in American history. For more than three-quarters of a century our government has proceeded, in all the States and in all the territories, upon which our fathers erected it—namely: upon the intelligence of the people; and that in the people resides all power, and that from them all power must emanate.

A new doctrine has been introduced by those who are at the head of the revolution in our Southern States—that the people are *not* the source of all power. Those promulgating this doctrine have tried to divide the people into two classes; one they call the laboring class, the other the capital class. They have for several years been industriously propagating the idea that the capital of the country ought to represent the legislation of the country, and guide it and direct it: maintaining that it is dangerous for the labor of the country to enter into the legislation of the country. This, gentlemen, is the principle that has characterized the revolution that has been inaugurated in the South; they maintain that those who are to have the privilege of voting ought to be of the educated class, and that the legislation ought not to be represented by the laboring classes.

We in Western Virginia, and, as I suppose in the whole of Virginia, adopted the great doctrine of the fathers of the Republic that in the people resides all power; and that embraced *all* people. This revolution has been inaugurated with a view of making a distinction upon the principles that I have indicated. We of Western Virginia have not been consulted upon that subject. The large body of your citizens in the eastern part of the State have not been consulted upon that subject.

American institutions lie near to the heart of the masses of the people, all over this country, from one end of it to the other, though not as nearly perhaps in Louisiana, Georgia and Texas, as in some of the Western and Northern States.

This idea has been covertly advanced only in portions of Vir-

ginia. She has stood firm by the doctrines of the fathers of the Revolution up to within a very short period. Its propagators have attempted to force it upon us by terror and at the point of the bayonet. We have been driven into the position we occupy to-day, by the usurpers at the South, who have inaugurated this war upon the soil of Virginia, and have made it the great Crimea of this contest. We, representing the loyal citizens of Virginia, have been bound to assume the position we have assumed to-day, for the protection of ourselves, our wives, our children, and our property. We, I repeat, have been *driven* to assume this position; and now we are but recurring to the great fundamental principle of our fathers, that to the loyal people of a State, belongs the law-making power of that State. The loyal people are entitled to the government and governmental authority of the State. And, fellow-citizens, it is the assumption of that authority upon which we are now about to enter.

It will be for us by firmness, and by prudence, by wisdom, by discretion, in all our acts, to inaugurate every step we take for the purpose of restoring law and order to this ancient Commonwealth; to mark well our steps, and to implore the divine wisdom and direction of Him that ruleth above, who has every hair of our heads numbered, and who suffereth not a sparrow to fall unnoticed to the ground, and His guidance and direction in enabling us to carry out the great work we have undertaken here, in humility, but with decision and determination.

With these remarks I thank you again for the honor you have conferred upon me, and promise you that I will do the best I can in administering your wishes, and in trying to carry out the great object we have been working for here, and for which we expect to work for some time to come. I thank you gentlemen." (Great Applause.)

The oath was then administered by Andrew Wilson, Esq., a Justice of the Peace, and Mr. Pierpont became *de facto* the Governor of Virginia.

THE CHAIR: "The next business in order is the resolution of the gentleman from Monongalia, and the amendment of the gentleman from Tucker."

MR. DORSEY: "Will the gentleman from Tucker for a moment withdraw his amendment? I purpose to withdraw my own reso-

lution to give way for another, which, it is thought, will harmonize the opposing elements on this question."

He withdrew the resolution.

MR. FROST: "I move that a committee of three be appointed to wait on the Governor and inform him that this Convention is now ready to receive any communication from him that he may see proper to send in."

The resolution was adopted, and Messrs. Frost, of Jackson; Crane of Tucker; and ——— of Wetzel[9], were appointed the committee.

MR. CARLILE then, by general consent, proceeded to submit some remarks for the consideration, as he said, of those inclined to favor such propositions as that of the gentleman from Monongalia. The points he made in his remarks were that such a resolution violated the spirit of the Constitution of the United States, as it was equivalent to an *ex post facto law*. He contended that at the time the men, whom it was proposed to turn out of office for voting for the ordinance of secession, gave that vote there was no penalty attached to the act, and thus depriving them of a prerogative on that account was equivalent to establishing a penalty—or was in fact a penalty—for an act done when no such penalty was in force.—That penalty was the loss of the office conferred by virtue of the implied contract between the party and the appointing power.

He said also that it would be punishing their own citizens for the exercise of an undoubted constitutional right. To inflict a penalty for having exercised a guaranteed right would be to abridge that right. It would never do for us to inaugurate any such practice as this in a body assembled for the purpose of protecting the rights and liberties of a free people.

MR. DORSEY followed, contending that it was not the design of the resolution to inflict punishment, but to protect the people against official acts of those who had committed themselves to a doctrine and a series of projects inimical to the rights of the people.

MR. STUART said it was the first time he had ever heard that a man holding an office under the Constituion of the United States, had the right to vote for the ordinance of secession.

9. The name of the member of this Committee from Wetzel county is omitted in the report from which we print.—V. A. L.

Such an act was a violation of the oath taken by all officers to support that Constitution, and was therefore a crime and a perjury.

MR. CARLILE replied, that if it was perjury, then the prosecuting attorneys in the different counties ought to punish all those who had been guilty of this crime, and this would, if enforced, be all the punishment needed, as perjury would forever disqualify them from holding any office thereafter.

THE PRESIDENT cut the discussion short by announcing that he had just received an invitation for the Convention to attend a firing of salutes on the Island, between four and five o'clock, in honor of the election of Governor.

On motion the Convention at once adjourned.

THE TENTH DAY.

FRIDAY, JUNE 21, 1861.

The Convention met at ten o'clock, A. M., and was opened with prayer by Rev. Gordon Battelle.

The minutes of the preceding day were read and adopted.

Ordered, That until the Seals of the Commonwealth ordered by this Convention are procured, the Governor shall affix his private seal to such writs and other documents as it shall be necessary for him to issue.

Ordered, That until the appointment of a Secretary of the Commonwealth, the Governor be authorized to employ some suitable person to fill said office temporarily.

MR. DORSEY offered the following:

Resolved, That a committee on offices to consist of nine members be appointed.

He said the design of that resolution was to raise a committee to which the various resolutions that had been offered by gentlemen in relation to vacating the offices of the State might be submitted so as to arrive at some harmonious action on that subject.

MR. CRANE, of Tucker, did not know what end the gentleman proposed to reach with the resolution. The committee so raised could of its own volition report nothing. Some matter for them to inquire into would have to be offered after all. If this was another mode of reaching the end sought to be obtained by the resolution offered by the gentleman yesterday morning it would not effect the purpose unless another committee were raised to consider that matter.

MR. DORSEY replied that the design attributed was not the design of the resolution at all, but it was to present these resolutions one after another, and refer them to the committee. The expectation was that the committee would report back some of them, or a different resolution on the general subject, or else present some explanation which might go out to the people, giving them to understand why the Convention had refused to take action on these resolutions.

MR. CARLILE said that if this resolution was to elicit discussion, he would move to let it lie over for the present. He submitted a motion, that when the convention adjourn, it adjourn over till Monday at 2 o'clock.

After some discussion, the motion was adopted.

On motion, then, the ordinance relating to the receipts and disbursements of the public revenue, and providing for the appointment of an Auditor, Treasurer and Secretary of the Commonwealth, was taken up, and after having been considered, section by section, and various amendations made, was passed unanimously.

The ordinance as passed, is as follows:

AN ORDINANCE RELATING TO THE RECEIPTS AND DISBURSEMENTS OF THE PUBLIC REVENUE, AND PROVIDING FOR THE APPOINTMENT OF AN AUDITOR, TREASURER, AND SECRETARY OF THE COMMONWEALTH:

The people of Virginia, by their delegates assembled in Convention, in Wheeling, do ordain as follows:

1. The General Assembly, as soon as it shall be organized at Wheeling, pursuant to the Ordinances of this Convention, shall elect by joint vote of the two houses, an Auditor of Public Accounts, a Treasurer, and a Secretary of the Commonwealth; whose terms of office shall respectively commence as soon as they shall be duly qualified, and shall continue for the unexpired portion of the current term of said offices, and until their successors be respectively elected and qualified.

2. The officers so to be elected shall discharge the duties and exercise the power pertaining to their several offices by existing laws, so far as such law may be consistent with the ordinances of this Convention.

3. Each of said officers shall give bond, with security, to the satisfaction of the Governor, which bond shall be payable to the Commonwealth of Virginia, and be conditioned for the faithful performance of the duties of the office. The penalties of the bonds shall be respectively as follows: that of the Auditor of Public Accounts, Twenty Thousand Dollars; that of the Treasurer, Fifty Thousand Dollars; and that of the Secretary of the Commonwealth, Five Thousand Dollars. Each of these bonds shall be submitted to the Governor for approval; and if he be of opinion that it is in proper form, and duly executed, and that the security is sufficient, he shall endorse his approval thereon, and cause the same to be deposited in some secure place for safe keeping.

4. The Auditor of Public Accounts, and the Treasurer, shall each keep an office in the City of Wheeling, for the transaction of their official business; and the hours for transacting business at said offices shall be from eight in the morning, until three in the afternoon, between the

first day of April and the first day of November, and from nine in the morning, until three in the afternoon, during the remainder of the year.

5. It shall be the duty of the several Sheriffs, and all other persons who have in their hands, or are liable for, any monies which by existing laws are payable to the Treasury of the State of Virginia forthwith to adjust their several accounts with the Auditor to be elected as aforesaid and pay over to the Treasurer herein provided for, the amounts which shall respectively be found due to the State.

6. If any Sheriff or other person, having in his hands, or being liable for, any monies which by existing laws are payable to the Treasury, fail or refuse to adjust his account, or pay over such monies as herein required, the Auditor of Public Accounts shall immediately publish a notice of such default in some Newspaper in the City of Wheeling and if such Sheriff or other person shall not, within thirty days after such publication, have duly adjusted his account and paid over such monies, he shall forfeit and pay to the Commonwealth, the sum of Five Hundred Dollars, to be levied by distress under warrant of the Governor, which warrant it shall be the duty of the Governor to issue, on satisfactory evidence that such default has occurred, directing the same at his discretion to the Sheriff of any county, or to a special Commissioner or Commissioners for the purpose, and the Sheriff or other person making default as aforesaid, and his or their securities, shall further be liable to judgment, in the name of the Commonwealth of Virginia, for the amount appearing to be due, with interest thereon from the time of such default till payment, and fifteen per centum upon the principal, as damages to be recovered by motion on ten days' notice in any Court of Record in the State.

7. The several Commissioners of the Revenue and Sheriffs, having first taken the oath or affirmation required by the Ordinances of this Convention, and being otherwise duly qualified, shall proceed, with all convenient despatch, to the discharge of their several duties in relation to the assessment and collection of the public revenue, under the existing laws, so far as the same may not be inconsistent with the Ordinances of this Convention.

8. All monies to be paid into the public Treasury, shall be paid into the Merchants' and Mechanics' Bank of Wheeling, at the City of Wheeling, or one of its Branches, at Point Pleasant, Clarksburg and Morgantown; or into the North-Western Bank of Virginia, at Wheeling, or one of its Branches at Parkersburg and Wellsburg, but if collected East of the Blue Ridge of Mountains, into the Bank of the Old Dominion in Alexandria, to the credit of The Treasury of Virginia; and the person so paying the same shall take from the proper officer of such Bank or Branch, a certificate of the fact. The Treasurer, on the delivery of such certificate, shall retain and file the same, charging the amount therein specified to the proper Bank or Branch, and delivering to the person who made the payment at Bank, duplicate receipts for the amount so paid, specifying on what account the money was paid. The person making the payment shall forthwith hand over one of the said receipts to the Auditor of Public Accounts, to be retained and filed by him, and charged to the Treasurer's account; upon the other receipt, which is to be retained by the person making the payment, the Auditor shall endorse as follows:—"A duplicate hereof has been filed in the Auditor's office," and affix his signature and the proper date to such endorsement.

9. No receipt of the Treasurer shall be an acquittance or discharge to any person for any sum of money due to the Commonwealth, unless such receipt be endorsed by the Auditor of Public Accounts as aforesaid. And any person bound to pay money into the Public Treasury, who shall pay the same otherwise than according to this Ordinance, shall remain liable for such money, and be subject to every fine, penalty or

forfeiture to which he would have been subject if he had not paid the same.

10. If the Governor, at any time when this Convention, and the General Assembly, re-organized under the ordinances thereof, shall not be in session, shall be of opinion that the safety of the public funds requires that no more public monies should be paid into any one or more of the depositories, specified in the preceding section, or that the monies which may be in the same, to the credit of the Treasury, should be withdrawn, he may announce the fact by proclamation to be published in some newspaper in the City of Wheeling, and in the City of Alexandria, in the proclamation he may, if it be necessary, designate another depository or depositories, at which monies due to the Commonwealth may thereafter be paid. And after such proclamation is published it shall not be lawful to pay any sum of money on State account into any depository or depositories to which such payment shall be thereby forbidden; and the Auditor of Public Accounts and Treasurer, if required by the Governor, shall cause the monies held by such depository or depositories, to be transferred to some other lawful depository or depositories of the Public Funds. But all such Proclamations and orders of the Governor shall, as soon as possible, be submitted to the Convention or to the General Assembly, for their revision.

11. Any person claiming to receive money from the Public Treasury, shall apply to the Auditor of Public Accounts for a warrant for the same. And the Auditor if he find such money to be due by the State, and that the payment thereof has been authorized by any Ordinance of this Convention, or Act of the General Assembly as re-organized under the ordinances of this Convention, shall issue his warrant therefor upon the Treasurer, specifying on what account the money is to be paid, and to what appropriation the same is chargeable. And the Treasurer, on the presentation of said warrant to him, shall, if satisfied that such warrant has been duly authorized as aforesaid, endorse upon said warrant, his Check, directed to some one of the depositories in which there shall be money to the credit of the Treasury, which check shall be payable to the order of the person entitled to receive the amount therein specified. The Treasurer shall, however, at no time, draw a check on any Bank, Branch, or other depository, unless there be money enough therein, to the credit of the Treasury, to pay such check. And no Bank, Branch or other depository, holding money to the credit of the Treasury, shall pay any check drawn by the Treasurer, unless the same be endorsed upon a warrant, authorizing the same issued by the Auditor of Public Accounts.

12. This ordinance shall take effect from its passage. It may be altered or repealed by the General Assembly.

The Convention then took a recess until two o'clock.

AFTERNOON SESSION.

MR. LAMB offered a verbal amendment to the ordinance organizing the State Government, which was adopted.

MR. CARLILE offered the following resolution:

Resolved, That the Secretary be requested immediately to notify the members of the Governor's Council, not now in the city, of their election as such. Adopted.

MR. MOORE offered the following:

Resolved, That this Convention, in view of the extraordinary condition in which our portion of the United States is now placed, we earnestly recommend to the Federal authorities, the construction of a mili-

tary road from Webster, a point on the B. & O. R. R., southward through the State of Virginia, or to some such point as would be suitable for the concentration of forces in the struggle in which our General Government is now engaged.

The resolution was referred to the Committee on Business.

On motion of Mr. Carlile, the ordinance fixing the salaries of certain officers, &c. was then taken up.

MR. STUART moved to amend the line fixing the salary of the Governor at $3,000 per annum by striking out that sum and substituting $2,000.

The amendment was rejected.

MR. LAMB moved to insert between the first and second lines the words "Of the Attorney-General at the rate of $1,000 per annum."

The amendment was adopted.

MR. HUBBARD moved to amend the line fixing the salary of the Secretary of the Commonwealth at $1,500 per annum by striking out that sum and substituting $1,200.

The amendment was rejected.

MR. LIGHTBURN moved that the line fixing the pay of the doorkeepers be so amended as to allow them $2 per day, instead of $1.50.

The amendment was adopted.

On motion of MR. WEST, the line fixing the pay of the pages was so amended as to allow them $1 a day, instead of fifty cents.

On motion of MR. LAMB, the second section, requiring that the expenses incurred by the Governor, shall be submitted to the Auditor, the same as any other claims against the State, was so amended as to require the same in regard to the expenses of his council.

The Ordinance, as a whole, was then adopted unanimously.

MR. CLOSE offered the following resolution, which was adopted:

Resolved. That a copy of the Declaration adopted by this Convention, and the signatures thereto appended, be sent by special messengers, to be designated by the President of this body, to the President of the United States.

On motion of MR. WEST, the rule was suspended for the purpose of reconsidering the vote by which the election of Attorney-General was postponed until Saturday, and on his motion, the Convention proceeded to the election.

MR. HUBBARD nominated Jas. S. Wheat, Esq., of the city of Wheeling.

No other nominations being made, the roll was called, and Mr.

Wheat received 70 votes; Mr. Farnsworth, of Upshur, 1; Wm. A. Harrison, of Harrison, 1.

THE CHAIR announced that Jas. S. Wheat was elected Attorney-General for the State of Virginia.

MR. FLESHER offered the following resolution, which was referred to the Committee on Business:

Resolved, That for the better security and safety of the loyal citizens of this Commonwealth, and the perpetuity of their liberty, it is highly and exceedingly necessary that there should be placed, at least in each of the counties of Western Virginia, by the Federal Government, a recruiting officer, whose duty it shall be to enlist all such young men as may be desirous of engaging in their country's service, and when enlisted, to send them to "Camp Carlile," or elsewhere, for discipline and drill, so as to muster them into the service, of the United States, at as early a day as possible; and that to this end, we invite and solicit the proper officer of the general government, to send us such officers without delay.

MR. BURDETT suggested an inquiry into the whereabouts and disposition of the 2,000 stand of arms now in the city.

MR. CARLILE stated that he had been instructed to say that the Committee of which he was Chairman, had had that matter under consideration, and had unanimously come to the conclusion that the guns referred to, should be handed over to the State authorities here, for arming the volunteer militia of the State, which will be organized in a few days.

MR. DORSEY moved to suspend the rule for the purpose of reconsidering the vote by which the Convention had resolved to adjourn over till Monday. Lost.

MR. MOORE moved that a committee of five be appointed to prepare an address for circulation.

THE CHAIR stated that the Committee on Business already had that mater under consideration.

MR. MOORE withdrew the motion.

The Convention then adjourned till Monday next at two o'clock.

THE TWELFTH DAY,[9]

TUESDAY, JUNE 25, 1861.

Convention met at 10 A. M.

Prayer by Rev. J. L. Clark.

MR. LAMB, from the Committee on Credentials, reported Wm.

9. It will be observed that on the tenth day of the session—Friday, June 21st—the Convention adjourned to meet the following Monday, the 24th, at 2:00 P. M. In all the files of the Wheeling *Daily Intelligencer for* 1861, known to the writer to be extant, the issue for Tuesday June 25, 1861, which contained the Proceedings and Journal of the Convention on Monday, the 24th—eleventh day of the session—is missing. It is hoped that the record of the proceedings of this day may yet be found.—V. A. L.

Radcliffe, of Wayne county, member elected to the House of Delegates, from that county, entitled to a seat as such in the Convention.

MR. LAMB, on behalf of the Committee to whom was referred the ordinances passed by the Convention for revision, reported them back with an order that they be duly enrolled. He moved that they be signed by the President and Secretary of the Convention as such.

The report and motion were adopted.

MR. RADCLIFFE came forward and took the oath.

MR. MARTIN, of Wetzel, moved to amend the fourth section of the ordinance for the reorganization of the State government by inserting in the 22d line after the word "duties," the following:

"Provided, nevertheless, that any person having taken the oath of the officers of the government of the United States, and afterwards voted for the ordinance of secession, and since that time have advocated secession principles, shall be disqualified for exercising the functions of any office in this Commonwealth until the cessation of hostilities between the United States, and the seceded States."

MR. MARTIN moved that his resolution be referred and proceeded to make some remarks in support of it.

On the question of referring this resolution, Mr. Martin called for the yeas and nays. The call was not sustained and the question being taken the Convention refused to refer.

So the resolution was tabled.

MR. CARLILE, from the Committee of Seventeen, reported an ordinance, which was adopted, entitled "An ordinance recognizing the Constitutional duty of the Commonwealth of Virginia, to call forth the militia of the State in obedience to the lawful requisition of the Government of the United States, to execute the laws of the Union, suppress insurrection and repel invasions."

MR. CALDWELL, from the same, reported the following which was also adopted:

AN ORDINANCE RELATING TO THE COLLECTION OF THE REVENUE.

The people of Virginia by their Delegates in Convention, at Wheeling assembled, do ordain as follows:

1. That on all taxes hereafter collected, there shall be allowed to the person from whom they are collected, by the officer collecting the same, ten per centum on the amount thereof, if such payment be made on or before the 15th day of September next; if made after the 15th of September and prior to the 15th day of October next, six per centum on the amount paid; and if made after the said 15th day of October and prior to the tenth day of November next, three per centum shall be allowed on the amount paid.

2. It shall be the duty of the Auditor of Public Accounts to credit the amounts of the several Sheriffs with the percentage allowed to be deducted from said taxes under the terms of the preceding section, provided said Sheriffs shall account for and pay over the said taxes collected within ten days after each respective period stated in said section.

3. This Ordinance shall take effect from and after the day of its passage and may be repealed or amended by the General Assembly.

MR. LAMB, from the same, presented an ordinance, which was adopted, entitled an ordinance providing that the copies of the ordinance printed under the authority of the Convention shall be received as evidence.

On motion of MR. LAMB, the following order was adopted:

Ordered, That the Attorney-General be invited to occupy a seat in this Convention with liberty to participate in the discussions, but not to vote.

MR. CARLILE, from the Committee of Seventeen, reported the following ordinance which was adopted:

An Ordinance requiring the evidence of the taking certain Oaths to be filed in the office of the Secretary of the Commonwealth.

The people of Virginia, by their delegates assembled in Convention at Wheeling, do ordain as follows:

1. When a person heretofore elected or appointed, or who shall be hereafter elected or appointed to any office in this State, shall take the oaths required of him in a Court of record he shall procure a transcript from the record of the Court stating the fact of his having taken such oaths, and when he takes such oaths before a Judge, Notary or Justice, he shall procure a certificate of the person administering the same stating the fact.

2. When the oath prescribed in the ordinance for the reorganization of the State government shall be taken as aforesaid, the person taking the same shall cause the said transcript or certificate to be delivered to the Secretary of the Commonwealth, who shall file and preserve the same in his office. And if such transcript or certificate be delivered as aforesaid to the Secretary of the Commonwealth, it shall not be required of the person taking the oath to deliver the transcript or certificate as prescribed by the 6th section of the 13th chapter, or by the 19th section of the 24th chapter of the second edition of the Code of Virginia.

3. This ordinance shall take effect from its passage and may be altered or repealed by the Geenral Assembly.

MR. FARNSWORTH offered the subjoined resolution:

Resolved, That if in the opinion of the Legislature, there shall be no necessity for the meeting of this Convention on the first Tuesday in August next, they have the power so to decide; but that the Governor shall have the power to call this Convention together at a later period than the time now fixed on, unless the Legislature shall otherwise direct.

MR. FARNSWORTH moved the suspension of the rule, for the purpose of reconsidering the vote to which the Convention resolved to adjourn to the first Tuesday in August.

The question being taken on the suspension of the rule, it was decided in the negative.

So the Convention refused to reconsider.

On motion, the Convention then took a recess until 4 o'clock, P. M.

AFTERNOON SESSION.

MR. VAN WINKLE, from the Committee on Business, reported the Ordinances adopted during the morning session, as revised and corrected, and they were adopted and ordered to be enrolled.

On motion of MR. TARR, a vote of thanks was returned to the President, for the very able and impartial manner in [which] he had discharged the duties of his position.

MR. PORTER also moved that the thanks of the Convention be tendered to the Secretary, Sergeant-at-Arms, and other officers, for the manner in which they have discharged their respective duties.

THE PRESIDENT: "Most cordially do I thank you, gentlemen of the Convention, for the complimentary manner in which you have seen fit to speak of my conduct as an officer called to preside over the deliberations of this body.

I part from you, one and all, with the kindest feelings, with emotions of heart that I have not language to express. We have been engaged in a duty of the highest importance not only to ourselves but to the State of Virginia, and it may be to the United States. I may be sanguine but I am convinced the action of the body will redound to the good of this whole country. We came here, some of us, through difficulties, some at the peril of their lives, some yet trembling, fearing not the consequences of their action, but fearing lest the call for this convention should not be responded to by the neighboring counties. But how agreeably have we been disappointed. We have representatives here from Hancock to Wayne from the Ohio to the mountains, Randolph, Tucker, Gilmer on the one hand, while Kanawha in its strength is with us on the other. We have thirty-four counties; almost one-third of the white population of the State of Virginia is represented by the territory within the counties from which delegates here hail. The people, our constituents, if they once are relieved from military rule, and have permission to express their sentiments, will hail our action here with joy and gladness, and will respond to it with hearts of grati-

tude, and with actions that will tell on the future destiny of this country.

We all love Virginia. We have always been devoted to our institutions, I am sure. It is not our interest to do any injury to the mother of us all. It is our duty to advance her interests, her prosperity and the happiness of the people. I am sure our action here will result in that happiness and prosperity.

Yet our work is not done with the action of this Convention. We have here done our work, and, in my estimation have done it well. We have re-organized a government for the State of Virginia, in lieu of the one which has been usurped. We have appointed officers in those positions to execute those duties where men have acted heretofore faithlessly, and permit me to say, you have been happy in the selection to fill the various offices filled by the ordinances and acts of this Convention. You have chosen men who are capable, who are honest, and who will be faithful to the Constitution and laws of their country. I have every confidence in them, that they will discharge their duties as men, honest men, men who will not go to the right nor to the left, but straight along in the line of their duty.

Then it is for us, gentlemen, after having inaugurated this government, to go home, not to idle away our time—not to fold our arms in inaction, but to go home with the determinatin to execute the government which we have re-organized; to put in motion in every county and in every neighborhood within our power. And if gentlemen who are opposed to us in politics on this great question of secession see fit to attempt again to oppose the free execution of the laws, it will be necessary for us, by the strong arm of the law, to put our purpose into execution. It is too late to be modest in this matter. It is too late for gentlemen now to doubt. The time for action has now arrived; and he who now falters, at a time when his country most needs his services, falters at a time when that faltering is not only a sin but a crime of the deepest dye.

Let us then go home and enter upon the execution of the government which we have re-organized. The people I am satisfied by an overwhelming majority are with us, and if we only manifest the disposition and the determination to execute our purpose all will be well.

Gentlemen, I return you my thanks for the compliment you have pleased to bestow on me in adopting this resolution. I have spent

a few days with you here very pleasantly, and have enjoyed myself as well as I ever did in my life. With these remarks and my thanks I close and take leave of you.

The Convention then adjourned to meet again on the first Tuesday in August next at two o'clock P. M., unless otherwise ordered by the Governor with the advice of his Council.

APPENDIX A.

SPEECH OF HON. FRANCIS H. PIERPONT DELIVERED BEFORE THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA AT WHEELING ON THE 17TH DAY OF JUNE, 1861—SIXTH DAY OF SESSION—IN FAVOR OF THE ADOPTION OF THE DECLARATION OF RIGHTS OF THE PEOPLE OF VIRGINIA.

MR. PIERPONT said:—"I propose to submit a few remarks upon this Declaration before the question is taken; and, Sir, if I should extend my remarks to several topics not particularly embraced in the Declaration, I hope I shall not be considered out of order. We have arrived, Sir, at an important and momentous crisis in the history of our country—one that is to be deplored by every lover of constitutional liberty, and who has any desire in his heart for the Government of the United States performing the great destiny for which it was intended.—And, Sir, it may not be inappropriate for me to refer briefly to a state of facts which has brought about the condition of our country at the present time. I think it must be obvious—perhaps patent to every observer of the history of this country—that the crisis now upon us is not the result of any momentary revulsion that has come upon the country, or of any sudden outburst of feeling in any one section of the country; but that it is the result, Sir, of mature deliberation, concocted in treason, for the express purpose of breaking up constitutional liberty in this country.—And, Sir, I think I am borne out by the facts in the statement that this treason dates as far back as 1833: a dissatisfaction on the part of one single State of this Union with the Government of the United States, and a determination to break it up. The history of the events of those times is fresh in the memory of most of us now. The declaration on the part of the committee that reported the bill calling the convention in the State of South Carolina to pass the ordinance of Secession immediately after the last Presidential election, shows not only the determination of the people of South Carolina at

that time, but that it had been a determination in the minds of that people for twenty-eight years; that they had been educating the minds of the people of South Carolina for the express purpose of breaking off their allegiance to the Government of the United States, and that if they were not taught now, they never would be. That, Sir, South Carolinians admit. That is the boast of their chivalry; they are too high-minded to deny the truth. It was their determination to keep nothing concealed. Ever since the transactions of 1833 the statesmen of South Carolina have never suffered themselves to be called by any of the party names that distinguish the people of the United States in other sections of the country; but have called themselves the great Southern State Rights party. Thus showing all the time that their object was something beyond that of conducting this Government to the high destiny to which all the other States of this Union so proudly looked forward, and for which they had so diligently labored.

When we look, Sir, at the transactions, or theory rather, and the statements of the leading politicians of the South, during the canvass of the last Presidential election, we find that they went on the theory of separate State action, opposing entirely any border conference of Southern States, any action of a general character that would bind together and have for its object the healing up of the seeming dissensions between the North and the South. That separate State action was taken in defiance of the remonstrances of the State of Virginia, and regardless of the wishes of other States reluctantly drawn into it. There was a powerful Union party in Alabama, Georgia, Mississippi, Louisiana and Texas. But these men at the head of affairs in South Carolina, determining to carry out their favorite theory and purpose, precipitated the country into this fearful rebellion.—South Carolina seceded, and was followed by the other States. But we see as early as the ninth of December last, the programme laid down by statesmen in Washington for the formation of a Provisional Government at Montgomery, by the assembling of a Congress on the 4th of February.

Virginia's representatives in the Legislature had been chosen a year before. They were called together by the Governor of the State, who was opposed to Secession. That Legislature, however, was deeply imbued with the spirit of Secession. They immediate-

ly on assembling called a Convention of the State, contrary to the usages of the State. We know, Sir, that so far as Virginia was concerned at the time of the calling of that Convention, there was a large majority of her people opposed even to a Convention being called, while there was an overwhelming majority in the State, opposed to Secession, and in favor of the Union, under the Stars and Stripes and the Constitution of the United States, knowing as they did, and as we all do, that it was to this Union that we are indebted for all our greatness and prosperity.

Now, Sir, it has been said that the protection of negro slavery was the great object of this revolution. I deny, Sir, the whole proposition from beginning to end. And I assert that slavery was only the occasion, the pretext for the rebellion, and for the steps taken to bring it on.—South Carolina, the most honest and bold in her declarations, denied that such was the case. They were dissatisfied with the Union—"the accursed government." They wanted a different government—one more suited to their tastes and habits of life. They tried to make the issue in the Presidential campaign last fall. It was made throughout several of the Southern States, and was made upon the issue of protection to slavery. They tried to make that issue in Virginia. But, Sir, until the day of the Presidential election, there were not three prominent men in this State, politicians or otherwise, that took the ground of secession or breaking up the Union. And we find a pertinent fact connected with this case. In the Eastern part of the State, where the most slaves are owned, the Union ticket, based on the "Union, the Constitution and the Enforcement of the Laws," received a majority of the votes, even of slave holders themselves—showing very clearly that they did not regard secession necessary to protect their interests in slave property, because they felt that under the Constitution of the United States, and the laws passed by Congress, that institution was entirely safe.

Then, sir, it behooves us to look closely, and see how this state of affairs under which we find the country laboring, was brought about, and whether the people of Virginia should be in this distracted condition in which we now find them, by any previous action of their own. We find a peculiar state of things in the South. After the revolutionists had seized the arsenals, the forts, the treasury, or mints, the post offices, and all other government property they could get hold of, we find the Convention of Vir-

ginia still remaining firm for the Union. But there was a deep plot going on all the time. Those who were leading the secession movement, everywhere were acting in concert, and their plans were matured beforehand. All the leading men were initiated—were indoctrinated fully into the views and determination of the leaders. They all acted in concert, and sprung this thing on the people of the country without the people having any concert among themselves. Hence, Sir, we see that immediately upon the step taken by South Carolina, all over the South, and as far as secession influence could reach in the North, the declaration was made that there must be no "coercion." Not a paper in favor of secession but what came out with the doctrine of no coercion. Sensible men, legal men, in every part of the country looked at one another aghast and in wonderment; and the question was proposed from one to another, and it flew from one end of the Union to the other, "Have we any government at all?" Is this magnificent government built by our forefathers a mere rope of sand or is it a reality?" But still the dogma was promulgated. "There must be no coercion;" and in order to produce a revulsion of feeling in the public mind against those in favor of the enforcement of the laws, they were called "coercionists," or those whose object and desire were to exterminate their brothers in the South.

In this way things progressed. The last Administration went out, and the present one came in. The policy to be pursued was anxiously asked for and looked to.—Every step the present administration took was tortured into coercion, while odious epithets were showered upon it to make it distasteful to the people of the South.—When the Virginia Convention assembled at Richmond it was ascertained that three-fourths of it were opposed to disunion.—But the plot began to converge to a point. Major Anderson was in Fort Sumter, and it was well known that his provisions were nearly run out. It was known the very day they would run out, and that he must be reinforced, either in provisions, or in provisions and men both. The Virginia secessionists then called their mob Convention to meet in Richmond on the 16th of April. A messenger was sent from Richmond to Charleston *the day before Fort Sumter was fired on.* He made his speech there; saying there was one thing that must be done, and Virginia would secede. They knew in Charleston what that thing was; and Gov. Pickens ordered Fort Sumter to be attacked. The attack was made, and

a despatch came to the Governor of Virginia from the Governor of South Carolina, saying: "Fort Sumter is fired upon; what will Virginia do now?" It is said that the Convention would not even then have dissolved their connection with the United States. But the Secessionists, without the authority of the Governor, dispatched troops to seize Harper's Ferry and the Gosport Navy Yard, with all their munitions of war. The declarations had already gone forth from Charleston, throughout the South, that they intended to seize the Capitol immediately; that Lincoln and his cabinet were trembling in their seats; and were consulting whether to remove to Philadelphia or New York. Thus they *forced* the President to issue his Proclamation, calling for 75,000 troops. They *knew* he would be bound to issue the Proclamation *or retire in disgrace!*—That Virginia must be called on for her quota of troops, or Secession be acknowledged. The proclamation came—Virginia was called on, and then the Proclamation was styled by the conspirators the crowning act of infamy of the Administration, on account of which they must secede. Thus the plot was laid and consummated. The plot was one that was conceived in perjury at Washington, and carried out by falsehood throughout the country, attended by coercion, intimidation, insult and a reign of terror, which was equally concerted throughout Virginia, as well as in the other Southern States.

For several days before the Convention passed the Ordinance of Secession, it was absolutely besieged; members were threatened with being hung to the lamp posts; their lives were jeopardized; the mob was marching up and down the streets, and surrounding the Capitol, and everything was terror and dismay. Immediately upon the passage of the Ordinance of Secession, in every county, as far as I can learn, a systematic reign of terror was inaugurated.

Leading politicians in each county, wherever they dared, propounded to all the Union men questions of the following import—"Are you in favor of the Union, or the State of Virginia?" notifying the party at the same time, that if they were in favor of the Union, that they had better prepare their necks for the halter, or leave the State—some adopting one badge of menace, and some another; such as pistols worn in some prominent place, others, Minnie rifle balls, with holes perforated in them and tied in the button holes of their coats. In other sections of the State where they had the power, irresponsible persons assembled, under the

name of "committees of safety," who proceeded to notify all the obnoxious men in their section, that they must leave the State. This meant Union men. Prosecuting attorneys attended militia training and read the laws on treason. All Union men were admonished that they would be prosecuted for treason.

Before the day of election arrived we see the troops from South Carolina, Georgia and other Southern States, placed all over the eastern and southern parts of the State running up into the valley, and in some parts of Western Virginia. In those parts of the State freedom of election was completely suppressed, and men who dared to vote against secession did it at the hazard of their lives. Thus, Sir, you see the concert by which secession has been inaugurated and carried out in Virginia; and we see that same spirit that reigned in it from the beginning. What is that spirit? Is it the spirit that animates high-minded, noble, honorable men, when they desire to carry out the destiny of a great nation? Na, Sir, it is a spirit of TREASON, that has been propagated by falsehood from one end of the country to the other. And to carry this out; threatening, menace, plundering, oppression, everything which develops the lower, meaner qualities of man, and leads him to despise all governments, all law, all authority, and everything that stands in his way to power—all have been resorted to.

At the inception of secession, we thought we read its spirit in the South, but supposed that spirit would not be carried into Virginia. But in this we were mistaken. The leading politicians of Virginia, both in the East and the West, embarked in the scheme of secession. What had we to do here? We saw that the negro interest in the East did not demand secession. And we knew that the free laborers of the West, by it, would have all their interests cut off and destroyed. We saw that Kentucky was loyal to the laws, and we saw that Maryland was bound to stand fast.—Here then we would be with a white population of 300,000, with our revenues of trade cut off; it could not go to the East, nor to the South, without encountering a custom-house at our doors, with our men liable to be seized and placed in a foreign army to fight against a government they had always loved and honored and to which their prosperity was indebted, and on which the perpetuity of their happiness depended. What was Western Virginia to do? They saw their leading politicians engaged in this nefarious attempt to break up the Government; they saw

free expresssion of opinion in the case suppressed; they saw treason rankling all over the State, with the Governor, Lieut.-GFovernor and all the State officials, and four out of five of the Judges of the Court of Appeals, all the Judges of the Circuit Court except one, and, as far as I am advised, nearly all the prosecuting attorneys and Sheriffs engaged in this treasonable work; with one of the Judges of the Court of Appeals acting as counsel to the Governor. But in Western Virginia, in spite of all this terrorism and powerful influence against them, we found a remarkable unanimity among the people, exhibited at the late election, in favor of the Union, and against the ordinance of secession.

What, again I ask, are we to do? I answer—precisely what we are doing. Form a government for the State of Virginia.—The exigencies of the times demand it. It is the only alternative left us. Two-thirds of the people of the State have been forced into rebellion against the government of the United States. They are also in rebellion against the State of Virginia; because the laws of Virginia recognize the Constitution of the United States, as the supreme law of the land. Are we then to lie still, and let our citizens, who are loyal to the government of the United States, be pressed into the Confederate army to fight against their own government, and their property seized and carried off, to support the Confederate troops, who are being used by the usurpers to break up the government? The oppression which exists in other parts of the State, would have reached the city of Wheeling, had it not been resisted by our action. It would have reached other points on the Ohio river, and our men, instead of now being at home, attending to their business, would have been marshalled to-day upon the plains of Manassas Junction, under the piratical flag of the Southern Confederacy, to fight against the loyal army of the United States.

Two plans have been prepared for the purpose of meeting the present emergency. One is, by a division of the State; the other is, by forming a government for the whole State. If the first were practicable, under the Constitution of the United States, I do not think it would meet the present exigency. Our great, or first object is to put down rebellion and restore peace to the country; and wherever the Southern boundary of the new State might be established, when peace was restored to that line, our authority would stop. But by pursuing the latter course, forming a government

for the whole State, as fast as rebellion shall be put down in any section of the State, county elections can be held, men loyal to the Government can be placed in power, who will, by the exercise of their office, restore law and order to the community; and thus, when the rebels are driven out, the whole State will be restored to its former loyalty to the Union. The proper course, I maintain, for us to pursue is, to institute a government for the whole State of Virginia. We are the loyal people of Virginia, entitled by law to the control of its military and civic power, as soon as we can get it. We can get it in a large portion of the State at once. And, then, my firm opinion is, that the Federal Government must succeed in putting down the rebellion in the eastern part of the State, and just as fast as the rebels are driven from that part of the State, law there will be inaugurated under this Government, the offices will be declared vacant, new elections, as I have said, will take place: for as soon as the rebels are driven out the Union element in that section of the State will rise right up and fill the offices. We will have Judges, Sheriffs and Prosecuting Attorneys to enforce the laws. That is the way this thing must work, or not at all. As to dividing the State—which, I have no doubt, will ultimately be done, and which I will favor at the proper time—I would remark that the putting down of rebellion, the lending of a helping hand to aid the Government, the maintenance of constitutional liberty in this land of ours from the St. Larence to the Rio Grande, is of vastly more importance to us, and to the world, than the formation of a new State out of Western Virginia, at this time. Permit me to say, Sir, that I look upon this movement as the brightest scheme and most feasible for putting down the rebellion and restoring peace to the country that has yet been proposed. If we can inaugurate this movement successfully, I am confident the same step will be taken in East Tennessee, West Arkansas, North Alabama, and North Mississippi. It has already been commenced in South Florida. It will finally be carried out in all the seceded States. Then I can see no retreat for secession short of the Gulf of Mexico.

The objection has been urged that it is contrary to our institutions to hold any State in the Union against its own will. We have held New Mexico and California by conquest, and they soon became willing subjects; and my word for it, as soon as rebellion is put down in Eastern Virginia, and other seceding States, and

the Union element permitted to rise up, they will freely give their allegiance to the United States.

It has been suggested by intelligent men that we should pass this declaration and adjourn, and wait till we see whether the Federal Government is able to sustain itself, and put down or drive out rebellion in Eastern Virginia: that if the government should fail there Kentucky and Maryland may secede, and we might then have to cast our lots with the Confederate States. This would be the worst policy we could possibly adopt. It would be simply throwing cold water on the Union men of Kentucky and Maryland, and on the efforts of the General Government to put down rebellion.

It simply means that we should stand and look on, preserve our inactivity, and *encourage rebellion to succeed, if it can;* and after it succeeds, take our fortunes with it! Were I President of the United States to-day, and the representatives of Western Virginia should pursue that course, I would say to them—"I know the Southern army will never come to the Ohio river to do *us* any harm, but will only wreak its vengeance on *you*, who have not the nerve to act, who are merely standing looking on with an indifferent eye, to see which party succeeds, and are then willing to fall in with the stronger party, at the conclusion of the fight." But, Sir, there can be no neutrality in this contest; and there need be no doubts on the subject, as to which party will triumph. I tell, you, Sir, the Government must succeed, and will succeed, in putting down rebellion. If we should take this course, the President would be justifiable in withdrawing every soldier from Western Virginia.

But, Sir, we lose by every moment we delay; even now, as is reported, Ex-Gov. Wise is about taking command of forces to invade Western Virginia. He will probably not have a very great force to command; but large or small, we will not wait for him to come here, but will meet him at the top of the Alleghenies, and at the tap of the drum, and at the point of the bayonet will welcome him to a grave that he has merited for his treason heretofore!—There is a spirit abroad in Western Virginia that will support the Government of the United States, that will support the rights and interests of Western Virginia, and that will support the action that this Convention is expected to take here and now. It is necessary, absolutely necessary, that we act as quickly as possible, to provide for our security of life and property, and inaugurate law and order. Let me give you an example of the conditon of Western Virginia as showing reason why we should act and at once. Take the coun-

ties of Marion, Taylor, Barbour and Randolph. The Judge, Prosecuting Attorneys and Sheriffs of all those counties have joined the secession army, and left the people without the protection due from them in the exercise of their offices. Such, I presume, is the case with many other counties.

Let us go forward then with our proposed work. Common sense suggests it, the emergency demands it, and the time and the circumstances with which we are surrounded warrant us in carrying it out, may demand that we should do so.

It has been said by some that this is rebellion; that it is setting up a separate government in the State of Virginia. But, Sir, I contend that this is neither revolution nor rebellion. It is merely doing what we are bound to do in this exigency, for the protection of our lives and property. Rebellion implies a guilty knowledge and intent against the law and authority of the land. Murder implies a guilty intent on the part of the party who commits it. The murderer deliberately lies in wait with malice aforethought to take the life of his fellow-man; but the man who is caught in an exigency and meets his fellow-man who attempts to take his life, if he defends himself and kills his assailant, is not a murderer. He merely acts in self-defense. There is none of the attendants of murder attached to the transaction. He is simply doing that which is necessary to protect his life.

So it is with our action here. The Constitution of the United States guarantees to every State (and, I take it, only to the loyal people of that State,) the right of a republican form of government. Our Declaration of Rights of the State of Virginia, declares that the people have the right to peaceably assemble and to alter or amend their form of government, when it may become necessary. Now, Sir, this exigency is upon us. The Government of the State is in rebellion against the United States—against the laws and the loyal people of Virginia. We, representing the loyal people of Virginia, are bound to take immediate action to protect their lives and their property. We. then, assemble peaceably, in this exigency. We assemble lawfully, being sent here by the loyal people of Virginia, according to the mode prescribed by the Convention which met in this city in May last, to do whatever is necessary to be done for the safety and protection of the loyal people of Virginia. And, Sir, I would not be afraid to-day to place my position and that of this Convention, for legality, and to stake my life upon it, before the best jurists and statesmen in the civil-

ized world, who understand anything about constitutional liberty, and the facts with which we are surrounded, and risk their decision. It would and must be in our favor. Reason, common sense, precedent, everything, justifies us in carrying out this proposition. I find, Sir, a high precedent in looking into the acts of our fathers in the time of the Revolution—When Lord Dunmore left the seat of Government of Virginia and went on board the man-of-war, with his Council.

Speaking of the power of the President of the United States to decide which is the true government, where there are two governments in a State, and one or both of which claim the protection of the President under the Constitution of the United States, Chief Justice Taney says:

"It is said that this power in the President is dangerous to liberty and may be abused. All power may be abused if placed in unworthy hands.—But it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the same time more effectual. When citizens of the same State are in arms against each other and the constituted authorities unable to execute the laws, the interposition of the United States must be prompt or it is of little value. The ordinary course of proceedings in Courts of Justice would be utterly unfit for the crisis. And the elevated office of the President, chosen as he is by the people of the United States and the high responsibility he could not fail to feel when acting in a case of so much moment appear to furnish as strong safeguards against wilful abuse of power as human foresight could well provide. At all events it is conferred upon him by the Constitution and Laws of the United States, and must therefore be respected in its judicial tribunals." See Howard's Reports, vol. 7, page 44.

But our action will be submitted to the President and Congress, for their recognition. In loking into this subject, I find it has been distinctly decided by the Supreme Court of the United States, that where a state of facts like this exists—that is, two governments in one State, they may both, or one of them, submit their claims to the government of the United States, in which case the President decides which is the true government of the State, from which there can be no appeal.

Congress has only to see that the government so recognized is republican in form. I am sure and satisfied that the President and Congress must and will recognize us as the rightful government of the State; and will not only recognize us, but will applaud us for the course we have taken, and see that we are sustained in carrying it out. How could the President or Congress doubt on this subject? To do so would be to say by the forms of laws that we were bound to lie till our hands and feet were tied; until our property was taken from us, and ourselves swung upon the gallows! God's

law, Nature's law, man's law never did impose any such obligations as these upon any man or any people, where they were acting with a true and loyal heart and upright intention, and a determination to assert legally their rights. Sir, there can be nothing in law, nothing in reason, nothing in principle or in practice, that can be brought against us. Everything is in our favor, and everything must aid and sustain us in our efforts.

APPENDIX B.

A DECLARATION OF RIGHTS

OF THE

PEOPLE OF VIRGINIA,

REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.*

(As Changed, Amended and Adopted.)

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, re-affirmed in 1830, and again in 1851, expressly reserves this right to a maojrity of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitabley subject them to a military despotism.

*This "DECLARATION OF RIGHTS" is one of the most important State papers of West Virginia. As has been seen, it was reported to the Convention at the forenoon session, Thursday, June 13, 1861, by John S. Carlile, chairman of the Committee on Business, otherwise known as the Committee of Seventeen. For three days it was discussed at much length, and changes and amendments were made. Thereafter it was engrossed on parchment, and late in the evening of June 17th, it was adopted by a vote of fifty-six yeas, nays none. Other members recorded their votes as they came in, and three days later—June 20th—it was formally signed by eighty-three members. The copy here printed is an exact reproduction of that used prefatory to the "Ordinances and Acts of the Restored Government of Virginia, Prior to the Formation of West Virginia, with the Constitution and Laws of the State of West Virginia to March 2, 1866." Reprinted by order of the Legislature that year.—V. A. L.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to suppress the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the restitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of

said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

APPENDIX C.

AN ADDRESS OF THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA—IN SESSION AT WHEELING.

ISSUED ON THE 25TH DAY OF JUNE, 1861.

The Delegates now assembled in Convention at Wheeling, deem it proper to address their fellow-citizens throughout the Commonwealth, in explanation and vindication of the course they have unanimously felt it incumbent on them to pursue.

It is only necessary to allude briefly to the circumstances which called this Convention into existence, to justify, in the fullest manner, any resumption of authority by the people in whose name they act. The General Assembly, which met in extra session at Richmond, in January last, without the excuse of impending danger or other grave necessity, and without constitutional authority, convened a Convention, "to adopt such measures as they may deem expedient for the welfare of the Commonwealth;" thus tamely relinquishing the very power reposed in themselves by the Constitution, and, as the sequel proved, with a corrupt purpose. Elections were held for delegates to the proposed Convention, and it being then clearly understood that an active and influential party favored the secession of the Commonwealth from the United States, the issue presented everywhere was clearly "Secession" or "No Secession". We need not remind you that by a very large majority of the voters of the Commonwealth, secession was rejected and repudiated, by the election of delegates professedly opposed to that iniquity, nor that a still larger majority required that any act of that Convention, altering the fundamental law or affecting the relations of the State, should be submitted to the people, and without the approbation of a majority, expressed at the polls, should have no force or effect.

The proceedings of that Convention up to the seventeenth of

April last, were evidently intended by those in the secret to persuade the members favorable to the perpetuity of the Union and the people at large, that it was intended to propose terms on which it could be maintained.—On the day named the mask was thrown aside and the Secession Ordinance was passed. This was done in secret session, and no immediate promulgation of the facts was made to the people; nor until since this Convention assembled, was the injunction of secrecy so far removed that the vote on the passage of the ordinance was made public. It now appears that more than one-third of the whole Convention voted against it, and that nine members were absent. Up to this day the debates which preceded the vote are concealed from the people, who are thus denied a knowledge of the causes which, in the opinion of the majority, rendered secession necessary and justified so gross a disregard of their lately expressed will.

Under the legislative act calling the Convention, from which alone that body derived its authority, and under the vote of the people provided for by that act, the secession ordinance had no legal effect until ratified at the polls by a majority of the voters of the Commonwealth. The leaders of the secession movement, whose conduct proved them to be conspirators against the State of Virginia and the peace and welfare of her people, did not wait until the time fixed for this ratification to begin their overt acts of treason against the Government and people of the United States, as well as the State and people for whom they professed to act. Indeed, two days before the adoption of the ordinance, with the connivance, or, as is alleged, in defiance of a feeble Executive, they levied war against both by sending their emissaries to capture the Harper's Ferry Armory, and to obstruct the entrance of the harbor on which is situated the Gosport Navy Yard. This bold assumption of authority was followed by numerous acts of hostility against the United States; by the levy of troops to aid in the capture of the National Capital and the subversion of the National authority, and, to crown the infamy of the conspirators, with whom the Executive had now coalesced, by an attempt, without even the pretence of authority or acquiescence of the people, to transfer their allegiance from the United States to a league of rebellious States, in arms against the former.

In this state of things, the day arrived when the people were to vote for or against the Secession Ordinance. Threats of personal

injury and other intimidations, such as had been uttered upon the floor of the usurping Convention against the remaining friends of the Union there, were used by the adherents of the conspirators in every county of the State. Judges charged the Grand Juries that opposition to disunion would be punished as treasson against the Commonwealth; and the armed partizans of the conspirators in various places, arrested, plundered and exiled peaceable citizens, for no other crime than their adherence to the Union their fathers had constructed and under which they had been born and lived in prosperity and peace. We are not apprised by any official announcement of the result of the vote taken under such circumstances; but, whatever the result may be, we denounce it as unfair and unjust, and as affording no evidence of the will of the people on the subject actually presented for their suffrages, and much less of their consent to the self-constituted oligarchy of the South.

In the point of view in which this result, and the transactions which inevitably led to it, should be examined by the people of Virginia, it is unimportant whether secession was of itself desirable or not desirable; because the end cannot justify the means, if the latter are illegal and unholy. In the present case the great principle which underlies all free government: the principle that the will of the people is the supreme law, or as expressed in the Declaration of Independence, that "Governments derive their just powers from the consent of the governed," and in our own Bill of Rights, that "all power is vested in and consequently derived from the people." has not only been violated and set at naught, but has been trampled under foot. In the call of the Convention, in the acts of that body, in the circumstances preceding and accompanying the late election, a continued effort has been made, with what success you know, not merely to desregard the will of the people, but to set at defiance, and to establish the counter principle that the few should govern the many. The men justly termed conspirators and usurpers, because they cannot show your warrant for their acts, were, when this Convention met, practically in full possession of every branch of the State government, and still claim the right to exercise their usurped power; and if you submit to their acts of secession and affiliation with usurpers like themselves, you yield to them the right to govern you in perpetuity. Will your Bill of Rights and Constitution afford you any protection against those who have already violated both? Will your connection with a

pretended Confederacy, in every State of which the leaders have openly and directly refused to submit their similar acts to the approval or rejection of their people, aid you in the recovery of the fundamental right of which you have been so wantonly robbed?

But is secession right, or is it desirable if it is right? We will not amplify the argument on the first branch of this enquiry. The ratification of the Constitution of the United States by our own Commonwealth, in express terms, reserves the right to abrogate it to those by whom it was made, the People of the United States; thus repudiating in advance the modern doctrine of separate State secession This is in strict accordance with the views of our elder statesmen, whose patriotism and ability are held in reverence, not only by us and by our fellow citizens of the Union, but by good men throughout the world. It is the logic of every honest heart, that a contract, a compact, or call it what you will, can only be set aside by the joint act of those by whom it was made.

But why should secession be desirable? Why should Virginia desire to withdraw from that Union of which she has been for so long an honored member—that Union, the accomplishment of which illumines with the brightest rays her own history and the lives of her most distinguished sons? Shall it be said that what she toiled to achieve in 1787, was destroyed by her own act in 1861? Is there on the page of history the story of a nation that has risen more rapidly to prosperity and power, or more steadily advanced in intellectual and moral culture? There is no such nation, nor is there among the thirty-four States, one which has profited more by the association, or one which would suffer more from its dissolution, as is sufficiently indicated by our geographical position.

Impressed with these views, the Northwestern counties of the State, knowing that a large majority of their people remained and would remain faithful to the Union under all circumstances, met in Convention at Wheeling on the 13th day of May last, to consult upon their condition and to take such steps as it might indicate. It was literally a mass Convention, and from the irregular manner of the appointment of its delegates, was not calculated for the despatch of business. As the result of its deliberations, the Convention which now addresses you was called, the representation in which is proportioned to that of the General Assembly. The number of counties actually represented is thirty-four, and we have reliable assurance that several which are now with us

in spirit, will ere long be present by their regularly appointed delegates. Considering that in so many counties every expression of opinion unfavorable to the conspirators is suppressed, the number already represented is larger than could have been anticipated. Several of the delegates present escaped from their counties at the risk of their lives, while others are still detained at home by force or menace against them or their families and property. Such is doubtless the case in other counties from which we have no information.

Two courses of action were presented to those who now address you upon their organization; both of which had been debated in the previous Convention at this place. The first was the immediate separation of the Western or Northwestern counties from the residue of the State. This was the result rather of a previous and growing belief, now amounting to conviction in the minds of all throughout this section of the State, that diversity, almost opposition of interests; different directions of the channels of trade, and the want of legislation adapted to their conditions, and indispensable to their moral and material prosperity, rendered the separation desirable under any and all circumstances. But aside from the constitutional requirements which made its accomplishment almost impossible while hostilities continued, the consideration that to separate now, would be to separate from many who, under circumstances even more adverse than those by which they had been themselves surrounded, had maintained their loyalty to the Federal Government, caused the abandonment of this course at this time. On the other hand, a sense of duty to those who like themselves, were constrained to repudiate the action of the Richmond Convention and the State authorities, demanded that such a course should be taken as would enable all the loyal citizens of the Commonwealth to participate in its advantages, and to enjoy the security it might offer.

Besides submission to palpable usurpation, there was then but one alternative, namely, under the authority of numerous precedents in the history of nations, to assume the conduct of the government, on the ground that those previously intrusted with its administration, by their numerous illegal and unconstitutional acts in plain derogation of the rights of the people, had, in the language of the Declaration of Independence, "abdicated government by declaring us out of their protection, and waging war

against us;" whereby, in the words of the same instrument, "the legislative powers, incapable of annihilation, have returned to the people for their exercise." This Convention, therefore, in humble, but, as they firmly believe, proper imitation of the sages of '76, have, "in the name and on behalf of the good people of Virginia," issued their Declaration, "that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth."

In pursuance of the Declaration, we have passed such ordinances as are immediately necessary to re-organize the government, and put it in operation. We have appointed a Governor, Lieutenant Governor, Attorney General and Executive Council, leaving to the General Assembly, which we have directed to be convened at a very early day, to fill, or to provide for filling, all other offices as soon as in their judgment, it can be properly done. The terms of the officers we have appointed, are limited to six months or until the election and qualification of their successors, for which the General Assembly is authority to provide at the earliest possible period. In all this, our fellow citizens will clearly perceive that there has been no disposition to assume any power or authority not demanded by the exigencies of their present unhappy condition, or to retain it longer than a regard for their highest interests may require.

In reply to remarks which have been made abroad, we deem it proper to say that we have seen no occasion to take any steps in reference to the debt of the State. The idea of the repudiation of any part of it which was legally contracted has not been expressed or entertained by any member of the Convention. The only notice the subject has received, has been in connection with the proposed separation of the Western counties, and whenever it has been thus named, those desirous of separation, have invariably expressed their willingness to assume their equitable portion of the burden. Any promises of payment or projects of arrangement at this time, when the very existence of the Commonwealth is threatened, would be worse than idle.

Under all these circumstances, with the firm conviction that the course adopted is the only one by which the State can be retained in the Union, and the liberties and rights of the people secured and perpetuated, we most earnestly call upon our loyal

fellow-citizens in every county of the Commonwealth, who are not already represented in the General Assembly and in this Convention, to elect members of the Legislature, and appoint Delegates to this body, at the earliest possible moment,—Writs of election will be issued by the Executive whenever it appears that they can be executed, and Representatives from every county will be most cordially received. No suspension or essential change of any part of the Constitution of Laws of the Commonwealth, unless positively demanded by the exigencies of the times, will be made, until the will of the whole people or of their authorized representatives, can be freely expressed and such changes as have been or may hereafter be so demanded, will be submitted for ratification at an early day.

We call upon the loyal citizens of the Commonwealth, to organize and arm for its defense against the conspirators and usurpers at Richmond, and their aiders and abettors. Plans will immediately be devised to give to such organizations, the greatest efficiency. The General Government will aid and protect us to the utmost of their power, and will most unquestionably recognize the re-organized government, as the true and legitimate government of the State. They cannot and will not do otherwise.

The re-organized Government appeals to the great body of the people, for countenance and support in this hour of great anxiety and trial. They do so confidently, because, while there have been many defections from the great and holy cause of "Liberty and Union," among those to whom you have been accustomed to look for political information and direction, there have been comparatively few among yourselves. In this matter, which appeals to your dearest rights and interests, you have responded spontaneously to the promptings of your honest hearts. Your own experience has taught you the great benefits of the Union, and you recognize the great principle, that a government so beneficial in its operations, so mild in its requirements, so powerful to protect, and constituted as to diffuse throughout an immense territory the blessings of prosperity and happiness, "should not be changed for light and transient causes." In every country where the free expression of your views has been permitted, your majorities in favor of the maintenance and perpetuity of the Union, have far exceeded the calculations of the most sanguine among your friends. Persevere then, in your most holy war against

the corrupt and perjured oligarchy, who have usurped your government, and would have sold you to the ambitious despots of an unholy affiliation. In such a cause, we may look for the blessings of that Holy One, who has made it a part of His Divine Providence, that those, who in purity of heart and purpose, strive for the preservation of their dearest rights, their homes and their country, although the struggle may be protracted for long and weary years, shall never strive in vain.

By order of the Convention.

ARTHUR I. BOREMAN, President.

GIBSON L. CRANMER, Secretary.

JOURNAL

OF THE SECOND OR ADJOURNED SESSION, OF THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA, RE-ASSEMBLED AT WHEELING, AUGUST 6, 1861, AND ADJOURNED *SINE DIE* AUGUST 20TH, ENSUING.

ADJOURNED SESSION—FIRST DAY.

TUESDAY, AUGUST 6, 1861.

The State Convention which adjourned on the 25th of June last re-assembled yesterday, pursuant to adjournment, at two P. M., in the United States Court Room in the Custom House of this city.

THE PRESIDENT, Arthur I. Boreman, of Wood county, resumed the Chair and called the Convention to order.

The sitting was opened with prayer by Rev. Gorden Battelle, of the M. E. Church.

MR. WEST, of Wetzel, offered the following preamble and resolution, which were adopted:

WHEREAS, The members of this Convention are satisfied that a large majority of the good and loyal citizens of Western Virginia are in favor of a division of the State, yet there seems to exist a difference of opinion as to the proper time, as well as the proper means to be used to effect the object; therefore

Resolved, by the Convention, That in order to produce harmony and facilitate action, the President of the Convention appoint a committee consisting of one member from each county represented in this Convention, whose duty it shall be to take the whole subject of a division of this State into consideration, as a basis upon which the Convention may act, and report to this body at the earliest day possible.

MR. FROST, of Jackson, moved, as several members of the Committee on Credentials were absent, that three additional members be appointed.

The motion was agreed to, and Messrs. Nicholls of Brooke, Caldwell, of Marshall, and Jackson of Lewis, were appointed.

On motion of MR. VAN WINKLE of Wood, it was ordered that the Committee on Credentials have leave to sit during sessions of the Convention.

MR. FROST presented the Credentials of James Smith of Jackson, as claimant to a seat in the Convention.

The papers were referred to the appropriate Committee.

MR. FOLEY, of Doddridge, offered the following:

Resolved, That the Committee on Business inquire into the expediency of repealing the Stay Law enacted at the late session of the Legislature.

On the question of adopting the resolution, Mr. Foley demanded the yeas and nays.

The demand was not sustained, and the question being taken by yeas and nays, the resolution was lost.

MR. VAN WINKLE offered the following series of resolutions of inquiry:

1. *Resolved*, That the Committee on Business inquire into the expediency of abolishing the Board of Public Works and conferring the powers and duties thereof on the Governor and Council.

(MR. VAN WINKLE said it would be remembered that a bill abolishing this board, passed the Legislature, but as the Constitution requires a three-fifths vote to abolish the Board of Public Works, and the vote by which it was passed, it was thought by some did not meet the requirements, that act might be null. This resolution merely proposed to make good that enactment.)

2. That the Committee on Business inquire into the propriety of devolving on the Auditor elected under ordinance of this Convention, the duties of both the first and second auditor, as prescribed by the Constitution and laws.

3. That the Committee on Business inquire into the propriety of defining by ordinance what acts of persons lately holding office under the Commonwealth, shall be deemed (and taken to be such) as adhering to the Richmond Convention, and late Executive so as to vacate their offices under the last clause of the Declaration adopted by this Convention on the 17th day of June last.

4. That the Committee on Business, be directed to inquire into the exepdiency of providing for the arrest and punishment of such persons as shall exercise or attempt to exercise the powers and authorities, or perform the duties of an office, which shall have been declared vacant under the ordinance of this Convention.

5. That the Committee on Business, report an ordinance, declaring that the ordinances and other acts of the Convention which assembled at Richmond on the 13th of February last, are null and void and of no force.

6. That the Committee on Business report an ordinance providing for the publication of the ordinances of this Convention, and the public laws passed or hereafter to be passed by the General Assembly, in one newspaper printed in each county of the Commonwealth if any there be, to be paid for at the same rates as are allowed for the newspaper publication of the laws of the United States.

The resolutions were adopted and sent to the Committee on Business.

MR. VAN WINKLE remarked that as the Chairman of that Committee (Mr. Carlile) was at Washington, as the second had not arrived, and the third had been Mr. Pierpont, now Governor, the fourth on the Committee, Mr. Hagans, of Preston, became the Chairman.

MR. HAGANS said he would waive the order in favor of the gentleman from Wood, (Mr. Van Winkle).

MR. VAN WINKLE hoped the gentlemen would not do so, at least not till after calling the committee together. The committee could then make any arrangements they pleased.

MR. HAGANS consented, and named eight [o'clock] next morning for a meeting of the Committee of Seventeen.

MR. FROST moved that when the Convention adjourn, it adjourn till 3 P. M. to-morrow.

The motion was agreed to, and the Convention then adjourned.

ADJOURNED SESSION—SECOND DAY.

WEDNESDAY, AUGUST 7, 1861.

The Convention met at three P. M.

Minutes of yesterday were read and approved.

MR. BROWN, of Preston, from the Committee on Credentials, presented the report of that Committee, stating that George Koontz, of Jefferson, Blackwell Jackson, of Lewis, Thomas Cather of Taylor, Andrew Flesher[1] and James Scott of Jackson, are entitled to seats in the Convention as members of the same.

THE CHAIR stated that such of the gentlemen as were members of the Convention by virtue of their membership in the Legislature, would not need to take the oath, as they had already taken it in qualifying as members of the Legislature.

Messrs, Koontz and Smith then came forward and the oath of office was administered to them by the President.

MR. FLEMING, of Harrison, offered the following resolution:

Resolved, That the Committee on Business inquire into the expediency of reporting an Ordinance confiscating the real estate of all persons in this Commonwealth who have left their homes and taken up arms in rebellion against the government of the United States.

MR. CRANE, of Randolph, said he did not see why they should subject the real estate to confiscation, and not the personal, of the

1. In the report of the proceedings of this day, printed in the *Intelligencer* of Wheeling, it is stated that Andrew Flesher was from Mason county. This is an error. He was certainly from Jackson county.—V. A. L.

parties named. He moved to amend the resolution so as to make it read "real and personal."

MR. FLEMING accepted the amendment.

The resolution was then adopted.

MR. CRANE, of Randolph, offered the following:

Resolved, That the Committee on Business inquire into the expediency of allowing the Sheriffs and other collectors of the public revenue, an additional compensation to that now allowed by law for a limited time.

Adopted.

MR. FARNSWORTH, of Upshur, offered the following:

WHEREAS, The late Legislature refused to give its consent for a division of the State or the formation of a new State; and, whereas, we deem it necessary in compliance with the Constitution of the United States to have such consent before the creation of a new State, therefore

Resolved, That we deem it unwise at this time for this Convention to take action for a division of the State, and that when it adjourns on Friday next, it will adjourn *sine die*.

MR. WEST moved to lay the resolution on the table. It was calculated to embarrass the prosecution of business, and he did not want to get into another snarl.

MR. VAN WINKLE moved to amend by referring the resolution to the committee on the subject raised yesterday. He subsequently withdrew the motion.

MR. HAGANS said he was instructed by Dr. Parsons, who was unwell, to have him sent for by the Sergeant-at-Arms, if any test vote should be taken.

MR. WEST thought the Convention should at once put down everything calculated to impede its business, and of course such a resolution as this would do it.

MR. FARNSWORTH demanded the yeas and nays.

MR. CRANE, of Randolph, said it was his impression that according to the rules adopted for the government of the Convention, the resolution having been objected to, must lie over.

THE PRESIDENT said there was no such rule as far as he was aware.

MR. VAN WINKLE thought the resolution should take the same direction as the resolutions yesterday. He had made his motion to amend with that view. If the yeas and nays were to be called he would have to call for a division of the question, for the resolution provides for two distinct objects, an expression of sentiment, as well as an adjournment.

MR. CRANE, of Randolph, thought the preamble might go to a committee, but the latter part could not.

MR. MARTIN, of Wetzel, wished to say a word or two about the disposition of the resolution.

THE PRESIDENT said the question before the Convention was not debatable, and that the first question was on the motion to divide the question.

MR. WEST had not understood the gentleman from Wood to call for a division of the question. His motion was to refer. If he did so, it was after the yeas and nays were demanded. After a motion to lay upon the table, there was no parliamentary rule that justified the division of the question. The motion to lay on the table carries the whole subject with it.

MR. FROST had understood the gentleman from Wood to call for a division of the question.

THE PRESIDENT—He did.

MR. FROST—He certainly did so before the call was made for the yeas and nays.

THE PRESIDENT said it was for the Convention to decide whether they would divide, and whether they would lay the resolution on the table, or part of it.

The question, shall the question be divided? was put and decided in the negative.

The question recurred on laying the resolution on the table.

On this question the yeas and nays, having been demanded and the demand sustained, were taken and resulted as follows:

YEAS:—Messrs. Berkshire, Burley, Brown, Burdett, Broski, Barrick, Crawford, Crane of Preston, Crane of Randolph, Cather, Caldwell, Carskadon, Davidson, Douglas, Foley, Fleming, Hale, Hagans, Hooton, Howard, Jackson, Kramar, Koontz, Lightburn, Love, Martin of Wetzel, Mason, Michael, Myers, Nicholls, Smith, (C. W.) Slack, Snider, Swan, Taft, West, Withers, Williamson of Pleasants and Zinn.—39.

NAYS:—Messrs. Atkinson, Boreman of Tyler, Barns, Brumfield, Downey, Farnsworth, Flesher, Fast, Frost, Graham, Harrison, Hubbard, Johnson, Logan, Porter, Ritchie, Smith (Fontain), Scott, Stuart, Trout, Todd, Van Winkle, Wilson, Watson, and Boreman of Wood (President.)—25.

Remainder of members absent.

So the motion prevailed, and the resolution went to the table.

THE PRESIDENT said: "The gentleman from Doddridge (Mr. Foley) yesterday offered a resolution of inquiry in regard to a repeal of the Stay Law, and asked for the yeas and nays upon it. The Chair decided at the time that there was not a sufficient number up to sustain the demand: In [this] that he had been mistaken, not having read the rule since he left the Chair at the close of the other session. The rule requires seven besides the mover. He had confounded it with the rule requiring twenty to second a call for

the previous question. The gentleman was entitled to the yeas and nays on his resolution."

The resolution was read by the Clerk as follows:

Resolved, That the Committee on Business inquire into the expediency of repealing the Stay Law passed during the late session of the Legislature.

MR. STUART said it was a mere resolution of inquiry, and he hoped the house would grant the gentleman the favor.

THE PRESIDENT said the gentleman from Doddridge had a right to demand the yeas and nays, and he would now again put the question, is the demand for the yeas and nays sustained?

A sufficient number rose, and the question on the adoption of the resolution was put. The roll was called and resulted yeas, 24; nays, 41.

So the resolution was rejected.

THE PRESIDENT then announced the following gentlemen as the Committee appointed under the resolution of the gentleman from Wetzel, (Mr. West.)

COMMITTEE ON A DIVISION OF THE STATE.

Messrs. West of Wetzel, Crawford of Hancock, Nicholls of Brooke, Wilson of Ohio, Burley of Marshall, Johnson of Tyler, Stuart of Doddridge, Williamson of Pleasants, Douglas of Ritchie, Van Winkle of Wood, Flesher of Jackson, Wetzel of Mason, Brumfield of Wayne, Kramer of Monongalia, Barns of Marion, Cather of Taylor, Zinn of Preston, Parsons of Tucker, Crane of Randolph, Myers of Barbour, Smith of Upshur, Lightburn of Lewis, Withers of Gilmer, Davis of Harrison, Graham of Wirt, Slack of Kanawha, Trout of Hampshire, Hawxhurst of Fairfax, and Miner of Alexandria.

MR. FLESHER offered the following resolutions:

1. *Resolved*, That the Committee on a Division of the State be requested to inquire into the expediency of taking the sense of the people in all the counties lying west of a line from the northeast corner of Tennessee and running to the top of the Allegheny mountains to the State of Maryland, on the question of a division of the State.

2. That the sense so required shall be taken by a vote in the usual forms at the several places of holding elections in the said counties, on a day fixed by this Convention in the month of October next.

3. That if a majority of the voters shall cast their votes on that day in favor of a division of the State, the Legislature shall be requested and empowered to pass a law calling a Convention to assemble at the Capital at Wheeling, at as early a day as may be, for the purpose of forming a constitution, and doing all other things necessary to be done for the proper organizing of Western Virginia into a State to be called the State of New Virginia.

The resolutions were referred to the Committee on a Division of the State.

MR. TODD, of Taylor, offered the following:

WHEREAS, The Legislature of this Commonwealth, which met in Wheeling during the month of July, 1861, did refuse to give her consent for a division of the State, therefore

Resolved, That this Convention deem it inexpedient at this time to further legislate on the subject.

Referred to Committee on a Division of the State.

MR. VAN WINKLE reported from that Committee, ordinances with the following titles:

An Ordinance declaring null and void the proceedings of the Richmond Convention of 1861.

An Ordinance providing for the discharge of the duties of the office of Second Auditor.

An Ordinance providing for the publication in newspapers of the Ordinances of this Convention and the laws passed by the General Assembly.

An Ordinance providing for the discharge of the duties of the Board of Public Works.

The ordinances thus reported were laid on the table, and ordered to be printed.

MR. STUART moved to suspend the rule for the purpose of reconsidering the vote referring the resolution offered by the gentleman from Taylor (Mr. Todd.)

Lost.

MR. VAN WINKLE moved that the convention, when it adjourn, adjourn to meet at 11 o'clock next morning. The Committees need more time than the Convention, and this would give them some time to prepare business.

The motion was agreed to.

The Convention then adjourned.

ADJOURNED SESSION—THIRD DAY.

THURSDAY, AUGUST 8, 1861.

The convention met at 11 A. M.

Prayer by Rev. J. T. McClure, of the United Presbyterian Church.

Minutes of yesterday were read and approved.

MR. CARLILE said he had drawn up some resolutions which he

desired to submit to the Convention as a sort of test of their sentiment on a question which he believed had occupied their time since their meeting—a division of the State. He wished to offer some remarks in support of them though he was advised that his health would not permit him to enforce his views as he would like to. He would submit the resolutions merely as suggestive, and the Convention could dispose of them as they saw fit. He then desired to give the reasons that forced themselves upon his mind, and brought him to the conclusion that action in the direction pointed out in the resolution should be at once taken. He read the resolutions as follows:

Resolved, That the Committee on Business be instructed to report an ordinance providing for the formation of a separate State out of, and to be composed of the following counties, to-wit: Jefferson, Berkeley, Morgan, Hampshire, Hardy, Barbour, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Marion, Marshall, Mason, Monongalia, Ohio, Pleasants, Ritchie, Putnam, Randolph, Preston, Roane, Taylor, Tucker, Tyler, Upshur, Wood, Wayne, Webster, Wirt, Wetzel.—38.

2. That the Committee on Business be instructed to report an ordinance providing that any county lying contiguous to the boundary proposed for the new State, a majority of whose people shall express a desire to be admitted into the proposed new State, shall form a part thereof.

3. That the same Committee be instructed to report a constitution and form of government for the said proposed State, to be submitted to the people thereof for ratification or rejection, at the polls, on the 4th day of October next, and at the same time the sense of said voters to be taken on the question of the formation of said new State.

MR. CARLILE followed at length in support of his resolutions, and was replied to briefly by Mr. Stuart, who moved to lay the resolutions on the table.

[The remarks of these gentlemen will appear as early as practicable.—Editor].

MR. SNIDER demanded the yeas and nays, and the demand was sustained.

MR. CRANE, of Randolph, did not think the resolutions ought to be laid on the table. They had already wasted an hour in the discussion—

MR. STUART inquired if the motion to table was debatable at this time.

THE PRESIDENT said the merits of the question could not be argued.

1. The speeches of John S. Carlile and Chapman J. Stuart, here referred to by the editor, were printed in the *Daily Intelligencer* of Wheeling, August 10, 1861, and are reproduced therefrom in full in Appendix B at the end of the Journal of this session of the convention.—V. A. L.

MR. CRANE had desired to say something on the merits of the question, but supposed under the rule he would be precluded. He had always, in his short experience, opposed laying resolutions on the table as a waste of time. An indefinite postponement effected something, as it was generally equivalent to a defeat, but laying on the table only gave time for a renewal of the fight, exhausting our energies, and consuming time without accomplishing anything.—

THE PRESIDENT read the rule, that "when a motion to lay on the table is made, there shall be no debate on that or on any incidental question arising out of it."

MR. CRANE gave way.

MR. CALDWELL, of Marshall, moved that the gentleman from Randolph be permitted to discuss not only the motion to lay upon the table but the merits of the question.

MR. LIGHTBURN said he intended to vote for the resolutions, but as the hour of 12 had passed, he moved a recess till 2 o'clock.

MR. HOOTON called the previous question of laying on the table.

MR. DORSEY rose to a point of order, and inquired if a motion to adjourn could be entertained when a question was about to be put?

THE PRESIDENT thought not after having proceeded to take the vote; but sometimes a question was discussed for days, and if they could not take a recess they would have to sit a good while without anything to eat.

MR. STUART inquired if the question would not have to be put before the motion to adjourn could be entertained?

THE PRESIDENT thought not.

MR. DORSEY desired to know whether any business could intervene between the calling for the yeas and nays, and the putting of the question itself.

MR. CARLILE said his little experience taught him that a motion to adjourn can be put at any time after the yeas and nays have been ordered, before a response to the call. A motion to adjourn was always in order under their rules, and under general parliamentary law.

MR. LIGHTBURN had made his motion because, under the motion of the gentleman from Marshall, time would be consumed in a discussion that could not now be so disposed of. If he would withdraw the motion to allow the discussion to proceed, he (Lightburn) would withdraw his, otherwise, he must insist on it.

MR. CALDWELL declined to do so.

The question was then put, and the Convention took a recess till 2 P. M.

AFTERNOON SESSION.

Convention met at two o'clock.

THE PRESIDENT said the pending question was, "Shall the member from Randolph be permitted to address the House on the merits of the question of laying the resolutions offered by the gentleman from Harrison upon the table."

A running discussion of some length ensued.

MR. CRANE did not wish the matter to be pressed.

MR. NICHOLLS asked his friend from Doddridge to withdraw his motion to lay on the table, in order that he might make a motion to refer to the Committee on a Division of the State.

THE PRESIDENT said it could not be done.

After some further parley, the yeas and nays, having been ordered on the question to lay the resolutions on the table, were taken and resulted as follows:

YEAS:—Messrs. Atkinson, Boreman of Tyler, Barns, Burley, Broskl, Barrick, Crawford, Caldwell, Carskadon, Downey, Flesher, Fast, Gist, Graham, Harrison, Hubbard, Hawxhurst, Johnson, Koontz, Lamb, Mason, Nicholls, Porter, Polsley, Ritchie, Smith (Jas. H.), Smith (Fontain), Stuart, Tarr, Trout, Todd, Van Winkle, West, Watson, Farnsworth, Slack, and Boreman of Wood (President.)—37.

NAYS:—Messrs. Brown, Burdett, Cather, Carlile, Crane of Preston, Crane of Randolph, Dorsey, Douglass, Ferrell, Fleming, Hale, Hagans, Hooton, Howard, Jackson, Kramer, Lightburn, Love, Martin, of Wetzel, Myers, Michael, Price, Smith of Pleasants, Scott, Snider, Swan, Withers, Williamson of Pleasants, Wilson, Zinn, Frost and Davidson—35.

So the motion to table the resolution prevailed.

MR. BROWN from the Committee on Credentials, reported adversely on the claims to a seat in the Convention of Jonathan Roberts, of Alexandria. He said it was desired that the case should come before the Convention for its action.

MR. HAWXHURST moved that the credentials be read. They were so read, and after some discussion, MR. LIGHTBURN moved their recommitment, which was agreed to.

MR. ZINN presented a petition of citizens of Preston county, praying for a division of the State, which on his motion, was referred to the Committee on Division of State.

MR. WEST offered the following resolution:

Resolved, That the appropriate Committee be instructed to report an ordinance to so amend the Constitution of the State as to provide for

the creation of new counties of a less area than is required at present by the Constitution.

MR. VAN WINKLE moved a reference to the Committee on Business; which was agreed to.

MR. HOOTON presented three other petitions from citizens of Preston, similar to that offered by his colleague.

They were referred to the same committee as the others.

MR. FARNSWORTH offered the following resolution:

Resolved, That all persons claiming the right to vote at any election, shall be required before doing so, to take the oath of allegiance as adopted and prescribed by the Convention which met in Wheeling on the 11th day of June last: *Provided, however*, that all persons having once taken the oath, shall not be required to take it a second time; nor shall any person refusing to take such oath be eligible or serve on grand or petit juries.

An extended discussion upon this resolution took place.

MESSRS. CARLILE, CRANE of Randolph, and VAN WINKLE opposed its adoption.

FONTAIN SMITH advocated it.

MR. CARLILE moved to indefinitely postpone.

MR. WEST opposed the indefinite postponement.

MR. DORSEY said if the gentleman from Harrison would withdraw his motion, he would move that the resolution be referred to the Committee on Business.

MR. CARLILE withdrew it.

MR. DORSEY moved the reference indicated.

MR. FARNSWORTH rose for the purpose of withdrawing the resolution. He had been really somewhat opposed to the sentiment of the resolution and had offered it more in compliance with the wishes of his constituents than his own. But since there had been so much said about the merits of it he did not think it after all so very objectionable. He withdrew it.

THE PRESIDENT decided that it could not be withdrawn. A motion had been made by the gentleman from Monongalia to refer.

The question on referring to the Committee on Business was taken and decided in the affirmative.

MR. LIGHTBURN offered the following which was referred to the same committee:

Resolved, That the Constitution be so amended as to render all persons ineligible to hold any office of profit or trust in the Commonweaith who voted for the ordinance, and yet adhere to the doctrine of secession.

MR. MARTIN of Wetzel offered the following, which was similarly referred:

Resolved, That all persons having taken the oath required of the officers of the government who since have voted for the Ordinance of Secession, and all other persons having before and after voted for said Ordinance advanced secession principles, shall be disqualified for exercising the functions of any office in the Commonwealth during hostilities between the United States and the seceded States.

MR. VAN WINKLE offered the following, which was adopted:

Resolved, That all resolutions or motions requiring the enactment of ordinances or laws, shall not be acted upon by the Convention until the same shall have been reported upon by a committee.

He also moved that the consideration of the ordinances reported by the Committee on Business be made the order of the day for to-morrow at eleven o'clock.

The motion was agreed to.

MR. DAVIDSON observed that Mr. Smith of Upshur, who had been appointed on the Committee on a Division of State, was not present in the Convention, and moved that Mr. Farnsworth be appointed in lieu of him.

The motion was agreed to and Mr. Farnsworth appointed.

The Convention then adjourned until eleven o'clock to-morrow.

ADJOURNED SESSION—FOURTH DAY,

FRIDAY, AUGUST 9, 1861.

The Convention met at 11 A. M.

Prayer by Rev. S. R. Brockunier, of the M. E. Church.

Minutes read and approved, with a slight amendment.

The ordinances reported by the Committee on Business, which came up as the order of the day, were taken up, and the following passed:

An Ordinance, providing for the discharge of the duties of the Board of Public Works.

The people of Virginia by their Delegates assembled in Convention at Wheeling do ordain as follows:

1. Until the General Assembly shall direct an election of members of the Board of Public Works, and the same shall be duly elected and qualified, the Governor and Auditor and Treasurer shall constitute the said Board, and shall exercise the authority and discharge the duties thereof. The Secretary of the Commonwealth shall discharge the duties of the Clerk of said Board.

2. This Ordinance shall take effect from its passage.

An Ordinance, providing for the discharge of the duties of the office of Second Auditor.

The people of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. The duties of the office of Second Auditor, as prescribed by the laws

now in force, shall, until the vacancy now existing in said office is filled by the General Assembly, be discharged by the Auditor of Public Accounts, without additional compensation.

2. This Ordinance shall take effect from its passage; and may be altered or repealed by the General Assembly.

An Ordinance declaring null and void the proceedings of Richmond Convention of 1861.

The people of Virginia, by their delegates assembled in Convention at Wheeling, do ordain as follows:

All Ordinances, Acts, Orders, Resolutions and other proceedings of the Convention which assembled at Richmond on the thirteenth day of February last, being without the authority of the people of Virginia constitutionally given, and in derogation of their rights, are hereby declared illegal, inoperative, null, void and without force or effect.

The following was also considered and rejected by 32 yeas to 38 nays, Mr. Carlile having called for the yeas and nays.

An Ordinance providing for the publication in newspapers of the Ordinances of the Convention, and the Public Laws passed by the General Assembly.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. The Ordinances of this Convention, heretofore and hereafter passed, and the Acts of the General Assembly passed at its recent session, and all public Acts hereafter passed by that body, shall be published, once only, in two newspapers printed at the seat of Government, one of which shall be in the German language, and in one newspaper printed in each County of the State, if any there be. The said newspapers shall be designated by the Governor, and shall be paid for such publication at the rates allowed for the newspaper publication of the Laws of the United States.

2. It shall be the duty of the Secretary of this Convention and the Clerk of the House of Delegates, to furnish to the publishers of the newspapers designated by the Governor, as soon as practicable, accurate written or printed copies of the Ordinances of the Convention and Acts of the General Assembly heretofore passed, and immediately upon their passage, similar copies of such Ordinances and Acts as may be hereafter passed by those bodies respectively.

3. Proclamation and other instruments of a general nature, or relating to the Commonwealth at large, emanating from the Executive Department and Offices, and required to be published, shall be inserted in the same newspapers as many times as may be directed by the Governor, and be paid for at the usual advertising rates. The Secretary of the Commonwealth shall furnish to said newspapers accurate written or printed copies of such Proclamations and other instruments.

4. This Ordinance shall take effect from its passage and be in force until amended or repealed by the Legislature.

The consideration of these ordinances occupied nearly the whole of the session. MR. VAN WINKLE, who reported them from the Committee on Business, explained and advocated all of them.

The principal discussion occurred upon the rejected ordinance, providing for the publication of the public laws and ordinances.

It was advocated by Messrs. Van Winkle, Frost and Boreman of Tyler, and opposed by Messsrs. Nicholls; Crane of Randolph, and Carlile, each of whom spoke upon it.

MR. KRAMER offered the following as a substitute:

The people of Virginia, by their delegates assembled in Convention at Wheeling do ordain as follows:

That 20,000 copies of the Ordinances of this Convention, and Public Laws passed by the General Assembly, be published and distributed among the members of the Convention for publication.

MR. CRANE moved to substitute 10,000 copies.

Lost.

The substitute was rejected.

So the Convention refused to take action looking to the publication of the public laws.

MR. BROWN, from the Committee on Credentials again reported adversely on the claims of Jonathan Roberts, of Alexandria, to a seat in the Convention.

The credentials were laid upon the table.

MR. DORSEY moved an adjournment, but withdrew the motion to allow

MR. BURLEY to offer the following resolution:

Resolved. That when the Convention adjourn tomorrow it will adjourn *sine die.*

MR. BURLEY remarked that he offered the resolution in good faith. He did not think it necessary for the Convention to remain here any longer. He had discovered that they were not getting along as well as they might, and he thought this would afford plenty of time, if they would be more industrious to do all the work there was to do. "I have been in the committee this morning. I find there is nothing before it except this Division question. There is a sub-committee to draft a bill and I think they should be able to prepare that at a very early hour in the morning, and the Convention has nothing before them but to act upon it."

MR. WEST—"I rise for a two-fold purpose, and whether I can accomplish both or either one, I do not know. My object is to give the resolution of my respected friend from Marshall—Old Jimmy —I am old Jimmy, too,"—(laughter).

THE PRESIDENT—Gentlemen will forbear calling one another by name.

MR. WEST—"We know each other; we do that by way of compliment to each other. (Laughter.) However, I have had a good deal of this sort of experience, and I find that a motion of this kind has

never failed to clog the wheels of the progress of legislation. As certain as the sun rose this morning and will rise tomorrow morning if that resolution is not disposed of today, it has to be disposed of at some other time; and whenever it is, it must embarrass our action; and I know the gentleman from Marshall does not intend to clog and impede the progress of this House. But I do know one more thing, that there will be an effort to adjourn this Convention before this question of Division is decided upon; and I do know, Sir, as well as I know that, that if such is the fact, and we so adjourn, we go home to an insulted constituency. We go home to a constituency that has just cause to be insulted. Did they send us here to play and trifle with them? Did they send us here, Sir, to act as a mockery upon their expressed desires?"

MR. VAN WINKLE—"Will the gentleman give way for a moment?"

MR. WEST—"Yes, Sir."

MR. VAN WINKLE—"Mr. President, I move to adjourn."

MR. WEST—"Not for an adjournment,—(Laughter). I cannot give way for an adjournment."

THE PRESIDENT said the motion was not in order, the gentleman was making a speech.

MR. VAN WINKLE—"He gave way, Sir."

THE PRESIDENT—"He was interrupted."

MR. WEST—"I know my good friend from Wood does not intend to deprive me of the privilege of speaking, because I believe, if I am not mistaken, he is a new State man himself. The gentleman from Wood knows that there is something more in that than just black and white. I think that every thinking man who is a new State man, knows that there is something more in that than merely a piece of paper writing—"

MR. BURLEY—"I do not wish the gentleman to labor under a mistake too long at a time without correcting it. I assure you, Sir, if there is any honor in man, I had no such object in view in offering the resolution as he attributed to me. I do so, believing that we have plenty of time to consider and act on the question the gentleman desires, and do it right if gentlemen will only go to work and improve the time. I insisted on a meeting of the committee yesterday, but it was very warm, and gentlemen thought it would be too much labor, and there we were all the afternoon lounging about doing nothing. I do not know for my part when this Convention is going to adjourn if we are allowed to go on in this

kind of style. I do not wish to choke off any gentleman, or choke off any measure here. I want everything done fairly and honestly. If this question is entitled to more consideration let it be granted; but I am one of the last that wants to remain here doing nothing and taxing the community with it."

MR. WEST—"I move a recess until three o'clock."

MR. VAN WINKLE—"I move as an amendment, to adjourn."

The motion was put and the Convention adjourned.

ADJOURNED SESSION—FIFTH DAY,

SATURDAY, AUGUST 10, 1861.

The Convention assembled at the regular hour.

Prayer by Rev. John M. Phelps, of the M. E. Church.

MR. VAN WINKLE inquired if the resolution of the gentleman from Marshall, pending when the Convention adjourned yesterday, was the business in order.

THE PRESIDENT stated that the resolution had been withdrawn.

MR. VAN WINKLE then desired to report some ordinances from the Committee on Business.

MR. WEST said the Committee on a Division of the State was prepared to report. He wished the report to be received and read, so that if there should be any substitutes offered they could be offered at once, and all be printed and come up for consideration at the same time.

THE PRESIDENT said there was a question of privilege for the Convention to decide upon. A gentleman was here claiming a seat, and it was proper that the case should be decided upon before any important vote came up. The Committee on Credentials had reported adversely on his claims and the report laid on the table. This matter took precedence.

THE SECRETARY read the report of the Committee on Credentials reporting adversely upon the claims of Jonathan Roberts, of Fairfax county, to a seat in the Convention.

MR. HAWXHURST moved that the report of the Committee be disagreed to.

MR. HOOTON, on that question, demanded the yeas and nays and the demand was sustained.

Quite a lengthy discussion ensued upon the claims of Mr. Roberts to a seat, and the whole subject was thoroughly ventilated.

At length MR. STUART demanded the previous question, which was taken by yeas and nays, and resulted—yeas 33, nays 39.

So the motion to disagree with the adverse report of the Committee was not agreed to.

MR. FROST moved to lay the report upon the table.

The motion was lost.

The question on concurring in the report recurring, it was put and decided in the affirmative.

So the Convention refused to admit Mr. Roberts to a seat.

MR. LAMB offered the following resolution:

Resolved, That the Secretary procure, if practicable, a file of the papers and proceedings of this Convention, the papers and proceedings of the Convention which assembled in the city of Wheeling on the 13th of May last, together with the papers and proceedings of the Central and other Committees thereby appointed.

MR. CATHER offered the following:

WHEREAS, a portion of the people of the Southern States, in violation of their constitutional obligations, have attempted a dissolution of this Union and have thus precipitated the country into civil war; therefore,

Resolved, That the action of Congress, in voting men and money to suppress the rebellion and preserve the Union, receives the hearty approval of this Convention.

MR. JOHNSON offered the following:

Resolved, That the Committee on Business inquire into the expediency of reporting an ordinance providing for the repair of State arms.

MR. FROST offered the following:

Resolved, That the Committee on Business inquire whether any additional legislation is required to give efficiency to an act passed at the late session of the General Assembly, entitled "An Act to prevent offences against the Commonwealth, and provide for the organization of patrols during the war," and that they report by ordinance or otherwise.

MR. POLSLEY offered the following:

Resolved, That the Committee on Business be instructed to prepare and report an ordinance for the immediate and thorough re-organization of the militia, and for the more frequent and regular training of the same.

MR. FARNSWORTH offered the following:

Resolved, That the Committee on Business be instructed to inquire into the expediency of appointing collectors on the Clarksburg, Buckhannon and French Creek Turnpike, and the Staunton and Parkersburg Turnpike, and the receiving of the tolls already collected; and making some provision for the repairing of the said roads, which are becoming in bad repair by the increased use of the roads by the U. S. troops.

All of which were adopted.

MR. FAST offered the following:

Resolved, That the Committee on Business inquire into the expediency of changing the name of the county of Wise to that of Douglas, or some other name more honorable than that of Wise. (Laughter.)

FONTAIN SMITH moved to lay it upon the table.

The motion was rejected, and the resolution adopted.

MR. RITCHIE offered the following:

1. *Resolved*, That we are unalterably opposed to any compromise with the rebels, short of laying down their arms and returning to their allegiance to the United States Government; and that we will hold all who aid and abet any such compromise, as enemies not only to the government of our fathers, but as enemies to human liberty throughout the world.

2. *Resolved*, That we will aid the Administration at Washington in suppressing the rebellion with all our powers, both morally and physically, and studiously guard against all acts and doing that would militate in the least degree against the Union cause or embarrass the Administration in putting down the rebellion.

Laid upon the table and ordered to be printed.

MR. CRANE moved the reading of the report of the Committee on a Division of the State.

The report, being an ordinance providing for a division of the State and the erection of a new State, was read.

After a good deal of parley, the rule was suspended to allow a number of substitutes for the ordinance to be offered.

The following gentlemen offered substitutes: Messrs. Dorsey, Kramer, Burley, Farnsworth, Zinn, Brown, Martin of Wetzel, and Flesher.

The ordinance and all the substitutes, together with a minority report offered by Mr. Johnson, were ordered to be printed, and upon motion of Mr. Paxton, were made the special order for Tuesday at 10 o'clock, and to continue the order each day until disposed of.

MR. VAN WINKLE, from the Committee on Business, reported ordinances with the following titles, which were laid on the table and ordered to be printed:

An Ordinance in regard to the collection of the public revenue.

An Ordinance ascertaining and declaring in what cases offices are vacated under the Declaration of June, 1861.

An Ordinance providing for the punishment of certain offences.

The Convention then adjourned to Monday.

ADJOURNED SESSION—SIXTH DAY.

MONDAY, AUGUST 12, 1861.

The Convention met at the regular hour, and was opened with prayer by Rev. Gideon Martin, of the M. E. Church.

Minutes read and approved.

MR. LAMB, from the Committee on Credentials, reported that George C. Bowyer, a member of the House of Delegates from Putnam county, was entitled as such to a seat in the Convention.

MR. POLSLEY called attention to the fact that the delegates from that county were also present, and moved that they be qualified and take their seats.

The three gentlemen then came forward and the oath was administered to them by the President.

MR. VAN WINKLE, from the Committee on Business, reported on the following resolutions of inquiry, referred to that Committee, that they deemed it inexpedient to legislate upon them at this time:

The resolution offered by Mr. Farnsworth, relative to appointing collectors of toll on the Clarksburg, Buckhannon and French Creek Turnpike and the Staunton and Parkersburg Turnpike and the repairing of the same.

The resolution offered by Mr. Johnson, relative to repairing State arms.

That offered by Mr. West relative to so changing the constitution as to allow counties to be organized with a less area than now allowed.

That offered by Mr. Fleming relative to the confiscation of the real and personal estate of parties engaged in the rebellion.

THE CHAIRMAN said it was not deemed expedient at this time to act upon this resolution because the act of the United States was not before the Committee, not but that something might hereafter be necessary to be done on this subject.

That offered as to allow counties to be organized with a less area than now allowed.

That offered by Mr. Fast relative to changing the name of Wise County.

The reports on Mr. Farnsworth's, Mr. Johnson's, Mr. Fleming's, and Mr. Fast's resolutions were concurred in.

That on Mr. West's was laid upon the table.

The ordinances reported from the Committee on Business coming up for consideration, the ordinance in relation to the collection of public revenue was, after considerable discussion, passed as follows:

An Ordinance in relation to the Collection of the Public Revenue.

The People of Virginia, by their Delegates assembled in Convention, at Wheeling, do ordain as foflows:

1. There shall be allowed to every Sheriff and Collector, for collecting the revenue levied in the year 1861, in addition to that now allowed by law, a commission of two and one-half per centum on the amount of taxes with which he is chargeable, and if the Sheriff or Collector of any county

or Corporation, where the amount of taxes with which he is chargeable does not exceed the sum of ten thousand dollars, shall pay the same, or any part thereof, into the Treasury within the time now required by law, he shall be allowed a further additional commission of two and one-half per centum on the amount so paid.

2. This Ordinance shall be in force from its passage and may be altered or repealed by the General Assembly.

The second ordinance under consideration being "An ordinance ascertaining and declaring in what cases offices are vacated under the act of June 17, 1861," was taken up and subjected to a very lengthy and critical discussion.

It was finally recommitted to the Committee on Business, and the Convention took a recess till three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at three P. M.

The following ordinance was taken up and after considerable discussion, was passed:

An Ordinance to Provide for the Punishment of Certain Offences, and for Other Purposes.

The people of Virginia, by their delegates assembled in Convention, at Wheeling, do ordain as follows:

1. Every former-incumbent of an office which has been, or shall be declared vacant by any Declaration or Ordinance of this Convention, or any Act of the General Assembly, who shall exercise, or attempt to exercise, the functions of such office, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, and imprisonment in the County Jail not exceeding one year.

2. The office of any person who has heretofore taken and subscribed, or shall hereafter take and subscribe, the oath or affirmation, prescribed by the Ordinance of this Convention; entitled "An Ordinance for the Re-organization of the State Government," and who after taking and subscribing such oath or affirmation, shall by any overt act, or by publicly writing or speaking, support and uphold, or attempt to support and uphold the usurped government at Richmond, or the pretended government of the so-called Confederate States, is hereby declared vacant, and the Governor, if satisfactory evidence be produced thereof, upon due notice of the charge to the party to be effected thereby, shall proceed to fill such vacancy, or cause the same to be filled in the mode prescribed by the fifth section of the above cited Ordinance. But nothing herein contained shall prevent the indictment and punishment of such persons for the crime of perjury.

3. This Ordinance shall be in force from its passage, and may be altered or repealed by the General Assembly.

MR. CRANE offered the following resolution which was adopted:

Resolved, That the Committee on Business inquire into the expediency of providing, by ordinance, for the punishment of all citizens of this Commonwealth who are known to be in, or who shall hereafter enter the Confederate army either as citizens or soldiers and all persons who shall hereafter give money, property or counsel to the Confederate army.

MR. VAN WINKLE offered the following, which was adopted:

Resolved, That all the Ordinances reported by the Committee on Business at the present session, or which have been or may hereafter be passed by the Convention, shall be recommitted to the said committee for revision before being reported.

The Convention then adjourned.

ADJOURNED SESSION—SEVENTH DAY.

TUESDAY, AUGUST 13, 1861.

The Convention met at 10 A. M.

Prayer by Rev Wesley Smith.

Minutes read and approved.

THE PRESIDENT presented a communication from Lot Bowen of Harrison, resigning his seat in the Convention, in consequence of his relations with the United States Army preventing his attendance.

MR. VAN WINKLE moved to lay the communication on the table.

Agreed to.

The order of the day, it being the ordinance reported by the Committee on the Division of State, and the substitute for the same, was taken up.

MR. FROST moved to pass by the order of the day for the present, to enable some unfinished business to be considered.

MR. WEST hoped the gentleman would not insist on the motion. He thought all other considerations subordinate to the question now before them.

MR. FARNSWORTH asked the member from Jackson to withdraw his motion for the present, to allow him to withdraw his proposition now before the Convention, and offer another as a compromisory substitute for the whole matter before the Convention.

MR. FROST withdrew the motion.

MR. FARNSWORTH asked leave to withdraw his proposition, which was granted.

He then offered the substitute, which was read by the Clerk, and ordered to be printed, not as a substitute for the whole, but simply in place of the one withdrawn, as a substitute for the report of the Committee.

The order of the day again recurring,

MR. FROST renewed his motion to pass by for the present. He said there were some gentlemen who had not expected the discussion

to come up till to-morrow, now absent, and he desired to afford them an opportunity to be present when it came up.

MR. CRANE opposed passing by. The Convention were here on expense, and the gentlemen could get here before a vote would be taken.

The subject was one of great importance, and one upon which patriots and statesmen ought not to be divided. If now was not the time to consider it, would some gentleman tell him when would be the time? He believed the only questions that would divide them were the questions of boundary and of time, and he thought they might as well consider them to-day as any other time.

MR. STUART opposed passing by this morning. He wanted to act on the propositions at once, as they had already elicited one argument and soon would elicit others, to relieve gentlemen of their arguments as fast as possible, as he understood there were a great many who desired to be relieved. If the discussion was to take place the sooner the better.

MR. WEST would prefer to proceed at once. He did not intend now to enter into the subject. He was sure if he did, the gentleman from Doddridge would take advantage of the opportunity offered him to make another speech. He would only say that it was a very important and interesting matter—the only subject, indeed, before the Convention that particularly interested the people. He was not particular whether it was passed by for one day or not, as there was other business that could very well occupy one day, and that would come up tomorrow. His own preference was, however, to proceed.

MR. SNIDER demanded the yeas and nays on the question of passing by the consideration of the order of the day, and being taken they resulted, yeas 8, nays 62.

So the Convention refused to pass by.

The question then recurred on adopting the report of the Committee on a Division of the State.

MR. WEST presented as that report the following ordinance, which was read by the Clerk:

An Ordinance for the Division of the State.

WHEREAS, It is represented to the delegates assembled in Convention at Wheeling, on the 6th day of August, 1861, that the people of a portion of Virginia are desirous of claiming a new State out of that portion of Virginia lying North and West of the Allegheny Mountains, and whereas, in the opinion of this Convention, the social, commercial and political condition of said people would be greatly benefited and their happiness promoted by such a division.

Be it therefore ordained by this Convention, That the people of Virginia living North and West of a line beginning on the top of Clinch Mountain, on the line dividing Tennessee and Virginia; and running thence with the top of said mountain, so as to include all that part of the county of Scott lying North and West of said mountain; thence with the top of said mountain, including Russell county; thence with the top of said mountain to the county line of Giles county; thence with the county line of Giles and Tazewell to the county line of Mercer county; thence with the top of Wolf Creek Mountain to the top of Salt Pond Mountain; thence to the top of Potter's Middle Mountain; thence with the top of Rich Mountain to Alum Rock; thence to the top of Mill Mountain; thence with the top of said mountain to Augusta county line; thence with the dividing line between Augusta and Bath counties to the top of Shenandoah Mountain, and with the top of said mountain to the Hardy county line; thence with the county line between Hardy and Rockingham counties to the Shenadoah county line; thence with the county line between Hardy and Shenandoah to Hampshire county; thence with the county line dividing Frederick and Shenandoah to Warren county; thence with the county line dividing Warren and Clark counties to Fauquier county; thence with the county line dividing Fauquier and Clark counties to Loudon county; thence with the county line dividing Loudon and Fauquier counties to Fairfax county; thence with the county line dividing Fairfax and Prince William counties to the Potomac River; be authorized and directed, on the fourth Monday in November next, to open a poll at each election precinct embraced in such boundary, to ascertain the will and wish of the people upon the question of such division. The County Courts of each county, embraced in said boundary, shall appoint Commisssioners and Conductors of Elections, and the duties of such Commissioners and Conductors, shall be the same as now prescribed by law in other Elections. On the said fourth Monday in November, there shall be a poll opened by the Commissioners and Conductors so appointed, at every precinct in each County embraced within the said boundaries. On each poll book there shall be two columns; one headed "Division," and the other "No Division." Those voting in favor of a division, shall be recorded in the column under the head of "Division," those voting against a division, shall be recorded in the column under the head of "No Division." It shall be the duty of said Commissioners, to have all who are legally authorized under the constitution and laws of Virginia, within said boundary, and who may offer to vote, properly recorded on said poll book, and it shall be the duty of said Commissioners of each county within five days after said election, to certify to the correctness of said poll books, and file one copy of said books, in the Clerk's Office of the County Court of each county, and one copy certified as aforesaid, shall, by said Commissioners, be forwarded to the Governor of Virginia, at Wheeling, whose duty it shall be to count the vote upon said question, and make an immediate proclamation of the result of said vote.

2. *Be it further ordained*, That, in case it is found that a majority of the votes cast in said boundary, be in favor of the division as proposed, that then, the present Constitution of Virginia, as modified and changed by the ordinances of this Convention, shall be adopted as the Constitution of the proposed State, which shall be called the State of New Virginia.

3. *Be it further ordained*, That the State Legislature of Virginia, be requested to give their consent to the formation of such new State as prescribed and laid down in said boundaries, and submit the same to the Congress of the United States for their ratification.

Messrs. Brown, Kramer, Flesher and Zinn asked and obtained leave to withdraw their substitute for the report of the Committee.

MR. EVANS, on behalf of Mr. Dorsey, also withdrew the substitute offered by that gentleman.

MR. WEST, as chairman of the Committee on a Division of the State, proceeded to address the Convention in advocacy of the report of that Committee.

He did not propose to make a lengthy speech at this time; perhaps he should have occasion to participate somewhat in the discussion that might ensue upon this question hereafter. It had been said, and very properly, that there were but two questions of real difficulty in the consideration of this subject, and they were the questions of time and boundary, for which he believed there were none or at least very few on the floor opposed to a division at all. If such were, he accorded to them honesty of motive, but he did not know what could be the ground of their objection to the formation of a new State.

First, then, in relation to time: He believed that now was the time. He would set out on that ground. He had occupied that ground and he expected to continue to do so. He had never yet had a good reason from any one why they should not proceed at once. This was the accepted time if they ever expected to complete what they had begun. He observed that all the opponents of action had different reasons for their opposition, and although they might be honest, yet they had no common justifiable reason for not proceeding at once. For himself, from the very beginning of this controversy in the Legislature and the former Convention, he had not swerved from his purpose of obtaining preliminary action for a division of the State. Every step he had proposed was a progressive step, as gentlemen here could testify. He had offered a proposition in the Legislature which he still believed was the best that could have been adopted, but when it was defeated, he voted willingly for the next best. He had believed, and did yet, that it was important, though not essential, to have had some expression at least from the Legislature. They had no such expression, however, and a majority of the Convention had decided, he believed, that they could proceed without it, and such being the case, he was with them, and would be the last man to back from the position he had taken.

And what objection could be offered to doing so? He asked gentlemen to say, why they should not take action just now on this most important matter. It was true there might be some of the counties in the proposed boundary that might vote against imme-

diate action or against any action at all, but if they would postpone till doomsday, and then propose to act, some one would object. There was one plan of action that was always safe, and that was, never to put off what can be done now.

But it was argued that it would leave Eastern Virginia without a government; even if it did they would only be in the same situation they left us in, and they could do as we did—go to work and make one. But they say they have a government and we have no government; they boast of their government, and if you would go to Richmond and say they have no government your neck would pay the penalty. Let them take care of themselves as we have done. We could not sympathize with those who wanted to cut his throat if they had an opportunity, and they did not ask any of this sympathy which some gentlemen were disposed to bestow upon them. They despised us and our government.

He used to be opposed to a division of the State, and always had, up to the time this great emergency had been forced upon our people. But now the time had come to look out for our own interests, and disregard the interests of those who wage a war against us.

But it was objected that we were thrusting ourselves upon the General Government. He would be the last to do this after all the government had done for us in Western Virginia, but they were not forcing themselves upon the government, and it was not so regarded anywhere except by the gentlemen who raised the objection. If it could be proved he would abandon the project, but not until it was done. But he had the best authority for saying that this was not the case—but that Congress would admit the new State, was ready, willing and waitng to do so whenever application was made. He had talked with the Hon. William G. Brown, on his return from Washington a few days ago, and Mr. Brown had told him the quicker the better; that the proposition for admission would not have lasted two days while he was there; that a recognition would have been given at once. They all knew what Mr. Carlile says, that he corroborates the testimony of Mr. Brown. They were the best authority, and so much for this objection. There was nothing in the way in that direction. He had never been willing to admit for a moment that there was any danger of a reverse as had been intimated upon this floor; but he would have them act, now that they had the power, lest by some possibility they shauld lose

it. It might be a little selfish, but he was willing to be that selfish —their welfare and the welfare of the people demanded it.

As for boundary, he was not a stickler for any particular scheme. He preferred that reported by the Committee, because it includes a neck of country lying down next to the Tennessee line, which was left out by other propositions, and which naturally belonged to us and should be included, notwithstanding the people might not now be quite so loyal as they should be. The ordinance also proposed after running the main line on the top of the mountain, which the Almighty had reared as a natural boundary, to take in the counties contiguous to the Capital of the Country—and especially he liked it because it would take in the grave of Washington. He spoke of the advantages that would be apparent in running the line so as to make the loyal State take in the territory opposite and adjoining Washington, and said that proposition would cause our admission to be looked upon there with more favor than it would otherwise be.

He would like to know now why it was that gentlemen here disregard the plain wishes of their constituents. If they had instructions from them to oppose action he would like to see them. He had seen nothing of the kind, but he had seen letter after letter to members urging them to take some action.

But suppose they should make their application now to Congress, and Congress should lay it aside for a time, how much worse off would they be than before. There would be the same proposition upon which they would act whenever, in their opinion, the proper time should arrive, and they would have the matter always before them until disposed of.

The people were now anxiously awaiting the action of this body, and if the word were to go out that they had refused to take any preliminary steps towards a separation, they would hang their harps upon the willows, and their lips would be mute and voiceless on the question in which they had taken so much interest.

After Mr. West concluded,

On motion, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

Convention re-assembled at two P. M.

MR. BARNS, of Marion, obtained the floor, and proceeded to speak of the impropriety at this time to the division of the State.

There had been no uprising of the people in favor of it in many portions of the State proposed to be included in the bounds of the new State. They had not met in mass meetings and demanded that this Convention should take precipitate action. It was true it was the desire of the people of his own county to have a separation; for himself personally he was anxious for it. But there were difficulties in the way. In the first Convention which met here in May, many were in favor of immediate action. Prudent counsels prevailed, however, and the obstacles in the way rendered it necessary to call another Convention. This met in June, and some of the members were in favor of at once proceeding to a division. But it was thought best to pursue the course they deemed in accordance with the Constitution. Besides the Convention thought it best not to endanger the existence of our very nationality itself by action that would be calculated to produce discord as this would have done.

He said there were difficulties now. According to the spirit of the Constitution not only the people in that portion of the State out of which the new State is to be formed, should give their assent, but also the other portion, which it might be supposed would oppose it—that the consent of the whole State should be given so far as a representation of the people of the whole State can be obtained. This they knew could not be obtained now. Action here could only be preparatory at best. After the Convention had adopted measures, the assent of the Legislature must first be had, and afterwards that of Congress. Would Congress admit a state formed on a mere technicality? Would not they require that the people of the whole State should be consulted? He thought unless they could have the consent of all the loyal people of the State it would prejudice our admission by Congress. It would be regarded on a principle similar to that on which the secessionists have acted, and that we had not exhausted all the peaceful and legal means of obtaining a separation. It was better not to make the trial now and fail and be distracted by the failure, but to wait until the fruit should be ripe and ready to fall into our hands. There were loyal people in Southern and Eastern Virginia looking to them and praying to be released from their present thralldom. In the midst of the great struggle that was now going on for the maintenance of the Constitution amongst us we are asked to raise an exciting and grave question, such as that of dividing the State. The time had not come for the agitation of that question. He had no objection

to an expression on the subject by the Convention, but he was not willing that the matter should be thrown upon the people to agitate and distract them at this time.

MR. MARTIN, of Wetzel, said the gentleman had said that now was not the time for a separation. Before the ordinance of secession was voted upon there was a call for the people of Northwestern Virginia. The first call was from Harrison county. Other counties responded, and a convention met in Wheeling in May last. In that Convention it was fairly understood that the object was a division of the State. They concluded it could not then be done constitutionally, but when we could have a legislature recognized as such we would then be prepared to go into a division. Such was the understanding all over Western Virginia. The Government of the United States has acknowledged this Convention as a law-making power because this Convention called the Legislature, which has been recognized in the person of the Senators it elected. While the Government recognizes this as the whole Government of the State, it will also acknowledge us when it comes to a division of the State. But there were representatives here from Eastern Virginia. If a division could not now be had constitutionally, when could it be had?

MR. BARNS said, when the secessionists are driven out of the State.

MR. MARTIN said the secessionists were in rebellion against the United States, hence they had declared themselves aliens, and not citizens of Virginia or the United States. Secession was unconstitutional, and every citizen that upheld secession had thrown off his allegiance, and we had nothing to do with them, as it regards our rights and interests in Western Virginia.

We were at one time without a government. We met here to establish one through this Convention sent here by the people of Northwestern Virginia, and we are here at their will and bidding, and we have a right to carry out the views we advocated before them. He declared before ever that Convention was held at Richmond for a division of the State, and he was elected here with the knowledge of his people that he was so in favor of a division. Therefore, he would go for a division, not only because of more recent wrongs, but because he had long been convinced that our interests required it. Our money had been used to make improvements east of the Alleghenies. We have no connection with Eastern Virginia; the God of nature had made a line between us, and

their interest and our's were antagonistic, and this was one reason for wanting a separation; and while they were setting up a government in opposition to the United States, he claimed the right to set up an independent government separate from them. The people expected nothing less of this Convention than a division of the State, and if a foundation was not here laid for an immediate separation the people would be disappointed, and never would call another Convention for a division. The people of Wetzel had instructed her members to go for an immediate separation. But what he meant was that this Convention should go on with its work, and when the Legislature meets next December, to ask for its assent, and when this shall be granted, then to apply to Congress for its assent. This would be the constitutional way.

It was said this movement would embarrass the government and our friends in Eastern Virginia. Nothing short of the power of the United States could ever crush out secession in Eastern Virginia. How, then, could it embarrass the government? or how disenable us to aid the government in this work? The argument had no weight in it.

After we get the assent of the Legislature, if we deem it impolitic to apply to Congress at once for an admission, we can do it at any time it might be deemed best.

MR. POLSLEY proposed to amend the ordinance by inserting in the first line of the second section, after the second "that," the words "a free and fair election has been held in three-fourths of the election precincts of the boundary."

A parley arose as to the regularity of the proceeding and the amendment was lost sight of.

MR. CRANE moved to go into Committee of the Whole on a Division of the State, but subsequently withdrew the motion and moved an adjournment, which motion was lost.

MR. BOREMAN, of Tyler, offered a proposition which was ordered to be printed for the information of the Convention.

MR. MARTIN, of Wetzel, withdrew his amendment to the report of the committee.

The withdrawal of this left only the substitute of Mr. Burley and the minority report of Mr. Johnson.

The question was announced on the adoption of Mr. Burley's substitute for the original ordinance.

MR. VAN WINKLE moved to strike out in the substitute the name,

"New Virginia," proposed for the new State, and substitute "Allegheny."

The motion was agreed to.

MR. FARNSWORTH then presented the proposition offered by himself in the morning session and ordered to be printed, as a substitute for the substitute of Mr. Burley, and with the consideration of this pending, the Convention adjourned.

ADJOURNED SESSION—EIGHTH DAY.

WEDNESDAY, AUGUST 14, 1861.

The Convention met at the regular hour, and was opened with prayer by Rev. J. L. Clark, of the M. E. Chruch.

The minutes were read and adopted.

MR. VAN WINKLE moved that the resignation of Lot Bowen, of Harrison, which was yesterday laid upon the table, be now taken up and accepted.

The motion was agreed to.

MR. BROWN, from the Committee on Credentials, then reported upon the credentials of Charles S. Lewis, of Harrison, elected to fill the vacancy occasioned by Mr. Bowen's resignation, that Mr. Lewis was entitled to a seat in the Convention.

The report was adopted.

MR. LEWIS went forward and the oath of office was administered to him.

MR. VAN WINKLE reported, from the Committee on Business, an ordinance in relation to Juries, which was laid upon the table and ordered to be printed.

He also, from the same committee, reported back the ordinance recommitted to them, declaring in what cases offices are vacated, with an adverse recommendation on the amendment offered by the gentleman from Ohio.

He also reported adversely on the resolution offered by a member from Marion, inquiring into the expediency of amending or repealing the ordinance of the Convention creating the Governor's Council.

The report was adopted.

The order of the day coming up,

MR. BURLEY asked and obtained leave to withdraw his substitute for the report of the Committee.

The question was announced to be on the following substitute offered by Mr. Farnsworth:

SUBSTITUTE OF MR. FARNSWORTH FOR THE REPORT OF THE COMMITTEE ON A DIVISION OF THE STATE.

WHEREAS, In the opinion of the good people of Western Virginia, the long-continued inequality of taxation and representation, as well as the diversity of interests between Eastern and Western Virginia render a separation or division of the State necessary; and

WHEREAS, The people of the Eastern part of the State have endeavored to throw off their allegiance to the Federal Government and place the State in an attitude of rebellion against it, contrary to the wishes and without the consent of the people of Northwestern Virginia, and

WHEREAS, All the material interests of this section of the State are closely identified with the Union and its preservation, and can only be secured and protected by severing the unnatural ties that bind us to our Eastern brethren, now in rebellion; therefore,

Be it ordained by the people of Virginia, Through their delegates in Convention assembled, that a new State, to be called the State of ————, be organized and erected out of the counties comprised in the boundaries following, viz: Beginning on the Tug Fork of Big Sandy River, on the Kentucky line, where the counties of Buchanan and Logan join the same, and from thence running with the dividing line of said counties, and the dividing line of the counties of Wyoming and McDowell to the great Flat Top Mountains, and with the dividing lines of the counties of Raleigh and Mercer, Fayette, Nicholas and Greenbrier, Webster and Pocahontas, Randolph, Pocahontas, Pendleton and Highland, to the Shenandoah Mountains, and with said Mountains, following the dividing lines between the counties of Pendleton and Rockingham, Hardy and Shenandoah, Hampshire and Frederick, Morgan and Frederick, Berkeley and Frederick, Jefferson and Clark, and Jefferson and Loudon to the Maryland line, and such other counties as lie contiguous to and adjoin the counties embraced in the boundaries aforesaid, as shall by a vote of the qualified voters residing within the same declare a desire to be attached to and form a part of said State, and the Legislature may so change the boundary lines, as herein set forth, as to include said counties, provided the vote be taken on the same day as hereinafter fixed for taking the sense of the voters within the counties embraced in the boundaries first herein mentioned.

2. That the present Constitution of Virginia, with such alterations as the exigencies of the times demand, be submitted to the people for their ratification or rejection at the polls on the first Thursday in November next.

3. The voters within the boundaries aforesaid, and within the counties that lie contiguous thereto, shall assemble at their respective places of holding elections on the said first Thursday of November next, and cast their votes for or against the formation of a new State, as well as for or against the adoption of the Constitution framed and proposed to them by this Convention. It shall be the duty of the commissioners who superintended, and the officers who conducted the election at the general election in May last, to attend their respective places of holding elections and superintend and conduct the election herein provided for. And if said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending said election, and to appoint officers to conduct said election. It shall be the duty of such persons superintending and conducting said election to

employ clerks to record the votes and furnish poll-books for the purpose, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election there shall be in any of the said counties any military force of any hostile assemblage of persons, so as to interfere with the free and full expression of the will of the voters, they may assemble at any other place within their precinct and hold an election as herein provided for.

There shall be two poll-books. One of said poll-books shall contain two columns—one column shall be headed "for a new State," the other "against a new State," and the other poll book shall in like manner contain two columns—one headed "for the Constitution," the other "against the Constitution." And the names of all persons now entitled to vote in any of the said counties, and who shall offer to vote, shall be recorded in the one or the other of the columns aforesaid, according as such persons may vote. And it shall be the duty of such commissioners superintending and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his respective office to take, in addition to the oath now required by the general election law, the oath prescribed by the Convention which assembled in the city of Wheeling on the 11th of June, 1861. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll-books and ascertain the number of votes recorded in each, and make a return thereof to the Secretary of the Commonwealth in the city of Wheeling, which return shall be in the following form or to the following effect:

We, , Commissioners, and conducting officers, do certify that we caused an election to be held at in the county of at which we permitted all persons to vote that were entitled under existing laws to vote, and that offered to vote, and that we have carefully added up each column of our poll-books and find the following result: "For a new State" votes; "Against a new State" votes. "For the Constitution" votes: "Against the Constitution" votes. All of which we certify to the Secretary of the Commonwealth. Given under our hands and seals this day of , 1861.

(SEAL)
(SEAL)
(SEAL)

Under which certificate there shall be added the following affidavit:

County, to-wit:

I, , a Justice of the Peace, (or any officer now authorized by law to administer oaths,) in and for said County, do certify that the above named commissioners and conducting officers severally made oath before me that the certificate by them above signed is true.

Given under my hand this day of , 1861.

J. P.

The original poll-books shall be carefully kept by the conducting officers for ninety days after the day of election, and upon demand of the Executive shall be delivered to such person as he may authorize to demand and receive them.

It shall be the duty of the Executive to lay before the General Assembly, at its next meeting, the result of said vote, and if it shall be found that a majority of the votes cast shall be in favor of a new State and also in favor of the Constitution framed and proposed to said voters for their adoption, it shall be the duty of the General Assembly to give its

consent to the formation of a new State out of the territory aforesaid, with the following conditions:

1. That the people of the proposed new State shall take upon them a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, and receive an equitable distribution of the assets.

2. That all private rights and interests in lands within the proposed new State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed new State, and shall be determined by the laws now existing in the State of Virginia.

3. That the lands within the proposed State of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein.

4. That no grants of lands nor land warrants issued by the proposed new State shall interfere with any warrant heretofore issued from the land office of Virginia, which shall be located on lands within the said proposed new State, now liable thereto.

5. That in case any complaint or dispute at any time arise between the Commonwealth of Virginia and the proposed new State, after it shall become an independent State, concerning the meaning or execution of the foregoing conditions, the same shall be determined by six commissioners, of whom two shall be chosen by each of the parties, and the remainder by the commissioners so first appointed.

And when the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that such new State may be admitted into the Union of States.

MR. BOREMAN, of Tyler, offered the following as a substitute for the substitute:

THE SUBSTITUTE OF MR. WILLIAM J. BOREMAN, OF TYLER COUNTY.

WHEREAS, It has been represented to this Convention that a large number of the citizens of this Commonwealth, residing in the Western and Northern part of the State, desire a division of the State, and that the Western and Northern part be formed into a separate State; and the unsettled condition of the country renders it impossible at this time to ascertain the wish of the people within any boundaries likely to be erected into a new State, and we deem it inexpedient, unfair and anti-Republican to undertake to change the State relations of any portion of our people without first having given them a fair opportunity to be heard upon the subject; and

WHEREAS, We cannot now tell with any degree of certainty when the people will be relieved from the troublous state into which they have been thrown, and left free to act upon this grave and important subject, and this Convention was hurriedly, and from the most urgent necessities called together by the people to stay the mighty tide of rebellion which was then sweeping over our land, and to do all in our power to save our beloved country from the vortex of impending ruin; and,

WHEREAS, This body is a Convention of the State of Virginia, and not a Convention of Delegates sent by the people from that part of the State intended to be formed into a new State; therefore, be it

Resolved, 1st. That it is premature, and would be taking unwarrantable advantage of our position and great injustice to those of our fellow-citizens, within the boundaries of the proposed new State, who are not and cannot at this time be represented in this body, for this Convention to undertake the formation of a Constitution for such new State.

2d. That we are not only willing but anxious that a vote of the people should be taken within the territory proposed to be formed into a new State, upon the question of a division of the State, so soon as the affairs of the country are in such condition that the people can meet at the polls and give a free and fair expression of their sentiments upon the subject, therefore we recommend [to] the General Assembly, provided the people within the proposed boundaries shall be freed from their present embarrassments and the state of affairs in the country will then admit of a full and free expression of the popular sentiment, to provide for taking a vote within the proposed boundaries on the question of a division of the State, on the first Thursday of January next.

3d. That it is the sentiment of this Convention that the best interests of both sections of the State demand a division and we further call upon and recommend [to] the General Assembly that they shall, so soon as the people within the boundaries proposed for a new State, enact all laws in conformity with the Consstitution of the United States, which may be necessary to carry out the wishes of the people so expressed.

The question recurring upon the substitute for the substitute, Mr. Van Winkle proceeded to address the Convention at length and elaborately upon the subject of a division of the State, b[illegible]ning at the call of the Richmond Convention, giving a full history of movements in Virginia, up to the present time, and arguing against any present attempt to divide the State.—The speech occupied two hours, and is in itself an admirable production. We shall take occasion at as early a day as possible to publish a full report of it.

After Mr. Van Winkle had concluded,

The Convention took a recess till two o'clock.

AFTERNOON SESSION.

The Convention met at 2 o'clock.

MR. CRANE, of Randolph, having the floor proceeded to reply to Mr. Van Winkle, reviewing that gentleman's position at considerable length. We shall have to defer a report of this until the publication of the speech to which it was a reply.

After Mr. Crane had concluded,

The President announced the question to be on the adoption of the substitute of the gentleman from Tyler.

On that question Mr. Snider demanded the yeas and nays.

FONTAIN SMITH said he desired to speak to the question, but he was at present physically unable to do so. He would like to have the vote postponed till morning, that he could have an opportunity to speak.—for that purpose he moved an adjournment.

MR. WEST hoped they would not adjourn without taking this vote, it could easily be done. It was a test vote, and by allowing

it to be taken they could now tell whether the Convention intended passing anything looking to a separation or not. They had yet three hours, and much could be done in that time.

MR. SNIDER merely wished to say, that if they did not intend to take any action in this matter, they had better go home, and not remain here at an expense of some $3000.00 a week. If they intend to vote down this division let them vote it down and be done with it. They had had a speech yesterday that cost their constituents $400.00, and two to-day costing them $200.00 each. He thought prudence would dictate that if they intended to do anything, they had better do it and be done with it.

MR. BURDETT hoped the friends of division would vote down the motion so as to get a test vote.

MR. PAXTON trusted [that] the usual courtesy would be extended to the gentleman from Marion.

MR. SNIDER demanded the yeas and nays on the motion to adjourn, which being taken resulted—yeas 45, nays 31.

So the Convention adjourned.

ADJOURNED SESSION—NINTH DAY.

THURSDAY, AUGUST 15, 1861.

The Convention met at ten A. M.

Prayer by Rev. D. W. Fisher, (of New Orleans) of the Presbyterian Church.

Minutes read and approved.

MR. BURDETT moved to suspend the rule for the purpose of offering a resolution to limit and close debate on the subject of a division of the State.

The resolution was read as follows:

Resolved, That no member be allowed to speak to-day more than one hour, and from and after to-day no member be allowed to speak more than ten minutes on any subject, and that the debate on the subject of a division of the State close to-morrow at three o'clock P. M.

The rule was suspended.

MR. POLSLEY moved to strike out the latter clause, so as not to limit to ten minutes or to name any time for closing the debate. He was in favor of a full and free discussion.

MR. ZINN moved to amend the amendment by striking out "at 3 o'clock".

The amendment was accepted.

MR. SMITH, of Marion, said that restricting a member to one hour was simply to exclude members from the privilege of doing themselves justice before their constituents. What he desired to say he could not say in an hour. He asked as a courtesy that he be allowed more time. He was willing to sit and listen to other members till midnight, if need be.

MR. WEST thought it would be no more than justice to give the gentleman the time he desired. He had spoken and was not limited, and in order that other gentlemen might have the same privilege, he moved to lay the resolution on the table.

The question was put and the resolution tabled.

The order of the day was then taken up, it being the question upon the substitute of Mr. Boreman, for the substitute of Mr. Farnsworth for the report of the Committee on a Division of the State.

The substitute was read by the clerk.

MR. RITCHIE, of Marion, said that with the consent of his colleague he would like to make a few remarks. He was but a plain, unpretending old farmer, but had his views nevertheless on this momentous question, and he felt that he would not be doing his duty if he withheld their expression here.

He began by alluding to the indignation with which the passage of the ordinance of secession was received in Northwestern Virginia, and reviewed the circumstances of the calling of the first convention, its deeling totake action in dividing the State, and the calling of the second convention.

He thought many members of this Convention were over zealous in this matter. He held that a division of the State now would be in violation of the spirit, if not the letter of the [Federal] Constitution and cited the clause in reference to the formation of new States; that the consent of the whole State must be had, and not of one-third or one-fourth; that it would embarrass the action of the General Government in its effort to put down rebellion; that the slavery question must come up in the formation or adoption of a Constitution, and this would not only create controversy in Congress, but bring about a divided sentiment among our own people, which must result very disastrously. The present reorganized State Government would have to be abrogated, and the people of a portion of the State left without any government whatever. Such a movement must at this time tend to weaken the strength of the General Government and retard the restoration of the Union.

He desired a division of the State at the right time; none more than he did; but believing the results could be nothing but unfortunate, he desired to enter his solemn protest against any measure looking to a division of the State at this time.

He presented the following letter from a gentleman in high position in the government at Washington, which he desired the clerk to read:

ATTORNEY GENERAL'S OFFICE,
August 12, 1861.

Hon. A. F. Ritchie,
Virginia Convention.
Wheeling.

SIR:—Your letter of the 9th instant was received within this hour, and as you ask an immediate answer, you, of course, will not expect me to go elaborately into the subject.

I have thought a great deal upon the question of dividing the State of Virginia into two States; and since I came here, as a member of the government, I have conversed with a good many, and corresponded with some of the good men of Western Virginia in regard to that matter. In all this intercourse, my constant and earnest effort has been to impress upon the minds of those gentlemen the vast importance—not to say necessity—in this terrible crisis of our national affairs, to abstain from the introduction of any new elements of revolution, to avoid, as far as possible, all new and original theories of government; but, on the contrary, in all the insurgent Commonwealths to adhere, as closely as circumstances will allow, to the old constitutional standard of principle, and to the traditional habits and thoughts of the people. And I still think that course is dictated by the plainest teachings of prudence.

The formation of a new State out of Western Virginia is an original, independent act of Revolution. I do not deny the power of Revolution (I do not call it right—for it is never prescribed, it exists in force only, and has and can have no law but the wil of the revolutionists.) Any attempt to carry it out involves a plain breach of both the constitution—of Virginia and the Nation. And hence it is plain that you cannot take that course without weakening, if not destroying, your claims upon the sympathy and support of the General Government; and without disconcerting the plan already adopted both by Virginia and the General Government, for the reorganization of the revolted States, and the restoration of the integrity of the Union. That plan, I understand to be this: When a State, by its perverted functionaries, has declared itself out of the Union, we avail ourselves of all the sound and loyal elements of the State—all who owe allegiance to, and claim protection of the Constitution, to form a State Government, as nearly as may be, upon the former model, and claiming to be the very State which has been, in part, overthrown by the successful rebellion. In this way we establish a constitutional nucleus around which all the scattered elements of the Commonwealth may meet and combine and thus restore the old State in its original integrity.

This, I verily thought, was the plan adopted at Wheeling, and recognized and acted upon by the General Government here. Your Convention annulled the revolutionary proceedings at Richmond, both in the Convention and the General Assembly, and your new Governor formally demanded of the President the fulfillment of the constitutional guarantee in favor of Virginia—Virginia, as known to our fathers and to us. The President admitted the obligation and promised his best efforts to fulfill it; and the Senate admitted your Senators not as representing a

new and nameless State, now for the first time heard of in our history, but as representing "the good old Commonwealth."

Must this all be undone, and a new and hazardous experiment be ventured upon, at the moment when danger and difficulties are thickening around us? I hope not—for the sake of the nation and the State, I hope not. I had rejoiced in the movement in Western Virginia, as a legal, constitutional and safe refuge from revolution and anarchy—as at once an example and fit instrument for the restoration of all the revolted States.

I have not time now to discuss the subject in its various bearings: What I have written, is written with a running pen, and will need your charitable criticism.

If I had time I think I could give persuasive reasons for declining the attempt to create a new State at this perilous time. At another time, I might be willing to go fully into the question, but now I can say no more.

Most respectfully,
Your ob't serv't,

EDW. BATES.

MR. SMITH, of Marion, then addressed the Convention in opposition to an immediate division of the State. The first part of his argument was devoted to showing the natural antagonism between Eastern and Western Virginia; an antagonism of commercial interest, of climate and production, of social habits and thought, of educational modes and even religions, and showed that all these demanded separate governments for the two peoples. But he contended there were at this time difficulties in the way which he deemed insuperable.

One was that a division could not now be obtained in accordance with the intention of the Constitution of the United States.

He referred to the action taken by the then territory of Vermont in 1781, in its erection as a State out of the territory of New York and New Hampshire, and how its application had been rejected by Congress until the full consent of both the States had been obtained. Also to the action taken by a convention during the year 1784, in what was then the territory of Franklin, (now the State of Tennessee,) subject to and part of North Carolina. This territory, through a convention, made application to Congress for admission into the Union and was rejected on the ground that the consent of the Legislature of North Carolina had not been obtained. The result of the attempt was a deplorable State of civil war which ended only when that people returned to their allegiance to the State of North Carolina.

He next alluded to the case presented by the formation of Kentucky, out of Virginia, in which instance the Legislature of Vir-

ginia passed an act and the consent of Congress was granted upon application, for the admission.

From these instances he deduced the principle that new States to be formed of two other States, or carved out of any one State, must have the full consent of such States to their erection.

The speaker proceeded to argue that such consent of the people of Virginia could not now be obtained. That the larger part of the States was in duress, and could give no expression either through representatives or otherwise; and that it would be both wrong and unconstitutional to proceed to take advantage of what he styled a "legal fiction," in order to now obtain a division of the State in opposition to the Eastern part of the State, which was as much interested in the matter as ourselves, and had the same right to be heard.

Having now assumed to be the State of Virginia, they were of course responsible for the entire State debt. If they divided the State and abdicated all the government of Virginia, then, of course, it would be running counter to the interests of those who held $50,000,000 of bonds against the State, and all their opposition would have to be encountered. This was one difficulty in the way.

His own position was taken boldly, and was, that a division of the State could only be obtained by the consent of all of Virginia, Eastern and Middle, as well as Western, and he argued that when the rebellion should have been driven out of the rest of the State, the power of government would be in the hands of a different class of men in that part of the State from what it is now, poor men, whose interests would be identical with our own, who would be friendly to us and who, should we still desire it, give in their consent to a separation.

In regard to the possible failure of the United States to sustain itself, a division would in that event make us no bettter off, for then the Government would not be able to dictate terms. and Jefferson Davis determine not to surrender one foot of Southern soil, would sweep away all our imaginary lines as if by a magician's wand. But he had never doubted, and did not now, that the Government would entirely succeed, and in that event we were safe anyhow.

As to the question of slavery, he looked upon it as a matter of climate and soil. When men learned their interests they would always be governed by them. Had men taken this view of slavery it would have saved much bloodshed to the country. Slavery was

constitutionally right, but it might not be always practicably so. He was willing to leave the settlement of that matter to a majority, and would submit to whatever might be the decision, but if this question was agitated now whilst the present party was in power, just so sure would an application for admission be rejected. His plan was to adopt the present State constitution with such modifications as might be necessary and hold an election, say October next, to get an expression of the people.

After Mr. Smith had concluded his speech, of which we are able to give but a very brief synopsis, the Convention took a recess.

AFTERNOON SESSION.

The Convention re-assembled at half past two.

MR. PAXTON obtained the floor and proceeded to say that he had no intention of afflicting the Convention with a set speech, but simply to give expression to a few remarks upon the question before them.

They had before them the most important question that could come up for consideration, and there should be a full and complete expression upon it. He was free to admit that nothing should be done here to embarrass the government. It could not be denied that the greater part of the loyal people of Western Virginia was represented here. These people, he went on to show, had long been oppressed by the remainder of the State, and even their warning, when the ordinance passed, that the people would not submit was treated with a sneering contempt. We had submitted, they said, and would again.

That our best interests demanded a separate State government from those from whom we are naturally separated does not demand an argument; and now, if this was so, and our people were clamorous for it, and if the constitutional difficulty to a separation had disappeared, why may they not now when they had the opportunity and power, initiate steps for a division of the State.

The answer is that this would embarrass the General Government. The whole answer, we believe, could be summed up in this, notwithstanding the said questions urged here.

With all deference to the opinion of these gentlemen, he could not see how action in this manner could embarrass the Government. They were now entirely dependent upon the Government and even

if now everything were done necessary to make a division, it would avail nothing unlsss assented to by Congress. This could not, therefore, embarrass the Government.

If this State was ever to be divided, it must be begun some time by somebody. It would not divide itself. If it be so desirable was it not their duty here to undertake it, and if Congress refused they would have discharged their duty, and he thought Congr ss nor no one would blame them for looking to their own interests. This argument of embarrassing the Government reminded him of somebody who said during the oil excitement that it was sinful to bore for oil, "because," and then said he "it is evident that Providence placed this highly inflammable substance in the bowels of the earth to assist in the general conflagration of the world, and if you keep on you will get it all out directly and then you will defeat the designs of Providence." (Laughter.) He believed Congress would in good time sanction any proper division that might be made, and he thought the Convention should not adjourn without taking some step to meet the expectations of the people.

MR. LEWIS obtained the floor and said that early in this contest, forced upon the loyal people of this country, it was his fortune to have been regarded as loyal, and in several canvasses to assist in staying the hand of rebellion.

The meeting was held in Clarksburg to call the Convention here in Wheeling. He had been appointed to the Convention, but declined because he had understood it was called to organize a provisional government for Northwestern Virginia alone.

When the Convention was first assembled here it was for the purpose of dividing the State, and if they now failed to do this they would defeat the purpose, and the only one, the people had in calling together this Convention. He had listened with pleasure to the ingenious and able speeches that had been made here by his friends from Wood and Marion. He had been pleased with that portion of their speeches depicting the condition and wrongs of Western Virginia, and that part showing that we had practical, constitutional government here, fully recognized as such. The gentleman from Marion told them he was ready to divide the State whenever it could be done constitutionally, and according to the gentleman from Wood, it had all the power that any government of the State could have. If so, where is the difficulty upon Constitutional ground?

They had warned their eastern brethren that they had not the power to protect us here; and after the ordinance of secession passed civil government was powerless here, and they were forced to form a government here for their own protection.

He referred to the language of Letcher prohibiting the exportation of provisions, and said we had not had Republican government until this was formed, and it was right to establish one, and the duty of General Government to protect us in this Government.

Well, how long did gentlemen expect this provisional government here to last? He believed it was intended to last six months. Did they propose to follow the example of the Confederate States and keep the people under a provisional government in which they had no voice?

Did his friends who had spoken propose that this provisional government, in which the people had not had as much voice as they desired, should last until this revolution should come to a close? He admitted the necessity of the establishment of this provisional government, but the moment that necessity had passed away, let the government expire. Who could tell when this great question should be settled. and shall our people be deprived till then of their rights in a representative government?

MR. VAN WINKLE said it was not called a provisional government. It was to terminate in six months. It was temporary only in its executive.

MR. LEWIS inquired what was then to be done when the six months were out; when was it to come back to the representative character? If it was now in their power to bring it back to that, in the name of the people of this country, and of representative government, he demanded it should be done.

He admitted there were difficulties. But what great achievements did not encounter difficulties? But were the people to be thwarted from their wishes because there were difficulties? What disposition was to be made of the public debt? The secessionists, by their own former action, are committed to the adjustment of such matter by commissioners. of the Southern Confederacy, made a proposition to adjust by commissioners, the accounts between them and the Government.

He went on to show how much the West had contributed to the improvements of the East, and declared that they did not owe the East a dollar. He proposed to charge the counties with all they

had received and credit them with all they had furnished. Then let every fair demand be met that might be made upon the government.

As for the question of slavery; he did not think it worth while to blink it.—Gentlemen were in the habit of apologizing for speaking of this question. It had been mooted here, it was a question of magnitude, but one, he thought, that ought to create no difficulty at this time. Were they willing to make sacrifices for the greatest good to the greatest number?—Time with the particular operations of interest would dispose of that question in Northwestern Virginia. Let the situation of the State be as it was now without the dotting of an "i" or the crossing of a "t". He had resisted rebellion because he believed it would strike a death blow at the institution of slavery. But this institution would go wherever it is profitable, and cease wherever it is not. Let them not hear the ravings of the abolitionists in their midst; but let the question be left to the silent laws of political economy. But if that question was to be met here let it be met now. Word had gone forth that they were afraid to organize a State government here, less the emancipationist should raise his head in our midst; that there was danger of this being a free State or breaking up in confusion and he wanted to meet the question now and see whether this was the case or not.

The question was no novel one. At the time of the formation of the Constitution, the smaller States demanded that Virginia should cede this Northwestern territory to help pay a war debt and because Virginia and New York, with all this territory, would become too powerful for the safety of the other States. Virginia then resisted the cession of that territory; and she never would, it was evident, consent to a division in time of peace. It was long ago anticipated that this very people would one day revolutionize to cut the cords that bind us to the East. Virginia, fearing that some day the West would get the ascendancy, a statute was enacted making it treason to attempt a division of the State. He read the statute making it treason to attempt to erect any "usurped government" within the State, and said he believed in time of peace it would be treason to propose the re-erection of any such government as this within the State, and would even be treason to petition the Legislature on the subject. And was it supposed that a people who had always violated thus the natural and

guaranteed rights of freemen, would ever consent to a division which they had always so sedulously guarded against. But Eastern Virginia had a reason for this, and that was the salvation of her own material interests, and not so much the oppression of Western Virginia; and because our prosperity must of necessity detract from hers. Did they think that in times of peace, the East would allow the formation of a new State, through which a great thoroughfare leading from the lower Ohio by a shorter route towards New York, the great centre of Commerce, could be made, which would come in conflict with her channels of trade?

As for the question of boundary, he knew it would be a difficult one, but it had to be met, and might as well be met now. He believed they should not take in any unwilling county, or any which, by geographical position and material interest was not with us. He would like to have Jefferson for this great line of railroad to run through and he would like to have the counties along the line of the Baltimore and Ohio Railroad, but it was not absolutely essential, for the road had a right-of-way of which it could not be deprived. He confessed, however, that where a county was situated in our midst which might not now be loyal, we had a right to take it in, if a majority of those around it should say their interest required it. But he did not desire to bring in such counties which lay upon the borders if they were unwilling; however, a provision might be made to provide for an expression from all such, and let the matter be determined by that.

This now was the only recognized government in the State. If action were taken now they could go before Congress having fulfilled all the requirements of the United States. The Constitution did not require the assent of the people of Eastern Virginia, but of the Legislature of Virginia. They did not belong to the East but to themselves, and why should they go on bended knees to those from whom they had received much wrong and nothing of good. The West had grown to be a power not by their aid, but in spite of them. We should take advantage of the position the East, by their own act, had placed us in, and not be withheld by any mock modesty. Would Congress refuse this request made by loyal citizens wishing to take their destinies in their own hands? He believed not. He believed the General Government would recognize us. He could not see how it would prejudice the cause of our common country

It might, however, address itself to the fears of the Southern States situated as Virginia is, with a loyal section within their boundaries, lest they should do as we are doing. That was their lookout, not ours. He repeated that this Convention had been convened for the express purpose of a division of the State, and read letters from citizens of the interior urging some measure looking to that purpose. He had presented these letters here that the voice of their people might be heard here. It was their duty as representatives to represent that voice or resign. One of the letters was from Hon. William G. Brown, and Mr. Brown told them now was the time.

After Mr. Lewis had concluded.

MR. POLSLEY gave notice that he desired to speak tomorrow.

MR. CARLILE offered a proposition with a view that it should be printed.

The paper was received and ordered to be printed.

MR. SMITH, of Marion, said that as numerous letters had been read, he proposed that a letter from Mr. Bates to a member of this Convention, should be read.

Several members said it had been read.

MR. CARLILE said in reference to this letter which had been read, that there was another letter from Mr. Bates now in the possession of the Secretary, in which that gentleman took very different grounds from those taken in this one; and if Mr. Bates was to be dragged in here for the purpose of influencing gentlemen to run counter to the wishes of their constituents, he would insist that he should be brought in in both phases in which he had placed himself. (Laughter.)

For himself, he knew not Mr. Bates in this transaction, nor any other high functionary; he knew alone the interests of the people to whom he was indebted for a place on this floor; and their interests and wishes should be the guide of his action, uninfluenced by any letters from those in authority. If the opinions of members of the Administration were to be used to influence them in perhaps the greatest question that ever interested a people, he could, if it would not be doing injustice to other members of the Administration, relieve them from the suspicion of participating in this second edition of Bates.

MR. SMITH retorted that Mr. Bates was as good authority as other letters read here this evening.

MR. CARLILE replied that Mr. Bates might be very good authority, but he was not their constituents. (Laughter).

MR. POLSLEY moved to adjourn.

MR. BURLEY asked the gentleman to withdraw his motion to allow the rule to be suspended to enable him to offer a resolution; and he would just take occasion to say that he thought it very unjust to attack Mr. Bates as interfering here when the letter was written only in answer to one addressed to him on the subject.

The rule was suspended, and Mr. Burley offered his resolution, which was adopted, as follows:

Resolved, That during the remainder of the session this Convention will meet at 9 o'clock A. M., sit till half-past 12 P. M., and meet again at 2 P. M.

The Convention then adjourned.

ADJOURNED SESSION—TENTH DAY.

FRIDAY, AUGUST 16, 1861.

The Convention met at half-past 9 A. M.

Minutes read and approved.

The order of the day was taken up.

The question was announced upon the adoption of the substitute of Mr. Boreman, of Tyler, and upon this

MR. POLSLEY, of Mason, proceeded to address the Convention.

He said there was a great principle at the base of our action here. Let us try to discover it and adhere to it, for after all if the principle of our action was not correct we must certainly fail. Before proceeding to review their action here, he proceeded to pay his respects to the gentleman from Harrison, who had been the first mover of their movement here.

The Convention of May had been correctly denominated a mass meeting, and the primary object of that Convention was a division of the State. The county of Mason was at that time almost a unit for a division, but the representatives of that county came to that mass meeting prepared to adopt any course that might seem best. They listened to the discussion at that time, and the result of that debate was to satisfy them that they were not then ready to act for a division of the State; that it was then premature. He went on to speak of the somewhat acrimonious debate that ensued between

Mr. Carlile and Messrs. Jackson, Willey and Pierpont, and the offering and adoption of the proposition which resulted in harmonizing their action. That proposition did not in so many words call for a re-organization of the State government, but he was satisfied at the time that it must result in that. He spoke of the appointment of a Central Committee and the calling of another Convention and said that he would take it upon himself to say that this Convention was not called for the purpose of dividing the State, but they were called together for the sole purpose of reorganizing the State government. The appointment of that Committee was substantially the appointment of a provisional government, with the gentleman from Harrison at its head, and it was so understood everywhere, by the people and by the Federal authorities; and at the request of that Committee aid was furnished to Western Virginia by the Federal Government. It was substantially a provisional government, and so recognized by the public authorities.

Now in relation to what were the objects of the calling of this Convention, he read the eighth resolution of the May Convention, appointing the election for delegates to this Convention here on the 11th of June, "to devise such measures and take such action as the safety and welfare of the people may demand."

The Committee proceeded to take such measures as they deemed best, issuing addresses, etc., from one of which he read to show that the object shadowed forth in both that Address and the resolution of the May Convention, was to maintain their position in the Union; to organize resistance to secession. There was another Address issued by the committee, in which the object of this Convention was set forth as proposing to proceed to reorganize the government of Virginia, and nothing more nor less. Was he wrong in saying this?

MR. CARLILE said in reply, that he did not remember whether the gentleman had stated it right or not; the Address had not been written by himself, but by another member of the committee.

MR. POLSLEY said such was his recollection, that it distinctly set forth that object. He knew that speeches of gentlemen in the first Convention contemplated a division, but this Convention was not to be governed by such expressions, but by the authorized expressions and conclusions of that body, and the documents he referred to showed that this Convention was called for the specific purpose of a reorganization of the State government.

Not only so, but such was the understanding, and such substantially our own declaration in the first session of this Convention; and must they now go back and reverse their own decisions deliberately made? Then they had acted upon this very point and acted specifically, and this body unanimously declared that during the present revolutionary crisis and the continuance of hostilities, it was imprudent and inexpedient to undertake a division of the State. He read from the Address prepared by the Committee on Business and adopted by the Convention at the close of the first session, to sustain this proposition.

Now they were asked, clamorously demanded, to act upon the division question. Was there not danger of committing the error committed by the Convention at Richmond of exercising powers not intended to be conferred upon them by the people? He thought there was. He had therefore deemed it necessary to recur to the powers conferred upon them by the people. They should limit themselves to their legitimate powers. A certain amount of action was necessary, but it had been determined by this Convention itself not to take any action not absolutely necesssary for the immediate safety of the people; and this action taken here now had received the sanction of loyal people everywhere, and of the authorities of the United States. Did they suppose if they had inaugurated a mere paper re-organization of the government they would have received this sanction and recognition? No, Sir.

He appealed to them as statesmen to maintain their consisteney, and not to stultify themselves by repudiating all their former action. If they proceeded now to direct a division of the State before a free expression of the people could be had, they would do a more despotic act than any ever done by the Richmond Convention itself. That Convention had offered the people of the State at least the form of a vote, and the Northwest at least had had a full and free expression; and now they proposed to cut off Eastern Virginia without even the form of a vote. They now proposed a division when it was impossible for one-fourth of even the counties included in the boundaries proposed to give even an expression upon the proposition. Were they to act for the West alone, and when but a small portion of it even could speak? But gentlemen told them the enemy would soon be expelled, and then they could have a vote.

MR. LEWIS inquired whether the gentleman would vote for the

original bill or the substitute of the gentleman from Upshur, or for that of Mr. Carlile, if the time of holding an election for an expression of the people should be put off till the first of January.

MR. POLSLEY said if he would so modify his proposition as to let the Legislature order an election so soon as it might appear that a satisfactory and free expression might be obtained. But he was opposed to fixing a particular day. He believed that a proposition to divide the State should originate in the Convention. He did desire most earnestly that this Commonwealth might be divided as early as possible, but he feared a false step now would effectually defeat the grand object which they all had at heart.

As for the danger in case of a compromise with a rebellion, he had never for one moment felt a doubt of the ultimate success of the arms of the Union, but if that danger did exist then he maintained their present position was much stronger than if changed in any particular. Was it presumable that in such an event the State of Delaware or Maryland could be transferred without their assent? If not true of them neither was it true of the State of Virginia. On the hypothesis that we were the legitimate government of Virginia, could any compromise be made to transfer Virginia without the consent of our government here?

They had been told that the people are clamorous for immediate action. He had endeavored to find out if this was an imaginary or a real clamor. When people are oppressed, or desire a grand object through their representatives, it has been customary to present their petitions for that purpose. Had a solitary petition been offered here?

A MEMBER said some three or four had been offered here, signed by some seven hundred names.

Several members volunteered to give the gentlemen information as to the willingness of their constituents to sign such petitions.

MR. POLSLEY resumed: "Well, then, here were seven hundred out of some 640,000, who had petitioned them on this subject."

The Speaker followed at some length in a criticism upon the course of the Hon. William G. Brown, of Preston, for attempting, as he said, to influence members of the Legislature to go for an immediate division.

He had been told that Senator Johnson, of Missouri, had expressed an opinion in favor of a division of this State, and that opinion was used as an argument here. Who was Senator Johnson? He

was a nephew of Ex-Governor Joseph Johnson, of this State. Senator Johnson was found alongside of John C. Breckenridge, and others like him and was a secessionist, and gave that advice because, if acted upon, it would destroy public confidence in this body and our government here.

MR. CARLILE wished to say a word in justice to Senator Johnson, but

MR. POLSLEY declined to give way. He insisted that by the Union men of the country Senator Johnson was regarded as a secessionist; and his proposition was the very identical advice he would expect to hear from every secessionist in the land. Let him inquire if there was a solitary Senator in Congress, or member of the House of Representatives, who was in favor of immediate action towards a division of this State who could be relied on as sound and loyal. No, Sir; all such had advised them to adhere to the position they had now assumed. They had now the support of public opinion, and let them maintain it. Mr. Polsley concluded without being able, on account of ill health, to finish his remarks.

MR. HUBBARD, of Ohio [county] followed, apologizing for succeeding Mr. Polsley upon the same side of the question. He went back and reviewed the early steps taken in the movement here inaugurated and argued from the language of the call of the first Convention, and that of the Addresses of the Central Committee, and the resolution of the first Convention, that it was not inaugurated for a division of the State, but a re-organization of the government for the whole State, and the support of the General Government in putting down rebellion.

He alluded to the resolutions of Mr. Farnsworth, declaring that the object of re-organizing the government was to obtain the division of the State, which were laid upon the table by a vote of some fifty odd to seventeen. He criticised the course of Mr. Lewis, of Harrison, in relation to his former position upon this question, and referred to a card that gentleman had published denouncing the action of the first Convention.

MR. LEWIS said that the card referred to would show that he was opposed to a disintegration of the State at that time, which he understood the Convention to favor, because he believed it would then have been unconstitutional; but when the re-organization of the whole State was suggested he saw that an object which he had long desired might be accomplished constitutionally, and

he had more than once expressed regret that he had at first misunderstood the object of the movement.

MR. HUBBARD, resuming, said his objection to action now in the direction of a division was that it would embarrass the General Government in putting down rebellion, and if he did not believe this he would make no objection whatever. He wanted to know of gentlemen if the regular State government now in operation here was destroyed how could the remainder of the State ever be restored to the Union. The President of the United States had said that this movement here was worth more to the Government than an army with banners. He regretted to have heard the suggestion that upon the erection of a new State, and the fixing of the boundaries at the Allegheny, our young men would rally to that barrier to defend us. Why, Sir, what would you have thought if the people of Ohio had rallied to the Ohio river and said: "Here we will defend the Union." He wanted them not to stand still but to go on until the loyal people of all the State, and of all the South, should be liberated from their present oppression. When this had been done he was willing to go for a division, but not till then. He felt that he was pledged to every Union man in Virginia to press forward their deliverance to a final consummation. It was not a question of self interest, but of duty to the whole country. He wanted them to realize that they were not a third party, but they were part of the government, and their highest duty was to the Constitution of the United States. He regretted that it had been doubted that the government would not be successful in the contest. He himself had no doubt. He knew of no way to restore the Union except for the loyal people of the seceded States to reorganize their State governments; and now that they had inaugurated this general movement, he hoped they would rise to the importance of this great movement and not turn aside for any object of minor importance.

The speaker spent some time in replying to the arguments offered a few days ago by the gentleman from Randolph (Mr. Crane).

Gentlemen wanted to know how long he was willing to remain connected with the East; just so long he replied, as it should be necessary to sustain the loyal people of the East, and aid the Government in putting down rebellion.

One more thought was that action now would injure this gov-

ernment here; that as soon as this other government should be projected they would lose their regard for this one. And in reply to the gentleman from Lewis in reference to wanting a representative government, he would say that a Governor could be elected as easily and speedily as the State could be divided.

There were many other points to be noticed in this connection, but he would leave them to other gentlemen.

After Mr. Hubbard concluded,

MR. ZINN made an explanation in regard to the letter written by Mr. Brown, which, it had been charged here, was written with a view of influencing the action of the Legislature.

MR. FARNSWORTH obtained the floor, but gave way to Mr. Carlile, who addressed the Convention at length.

MR. CARLILE having obtained the floor, said:

MR. PRESIDENT—I have already said so much on this subject that I feel that it would be inflicting unusual punishment upon the Convention for me to enter into anything like an extended line of remarks now. I do not design to do so; but will be brief as I can be and pointed as I may.

We should not, Sir, in the heat of discussion, in our zeal, or in the confidence we have in the correctness of our judgments, allow that zeal to run away with those judgments in the discussion of the question now under consideration. I have been astounded at listening to speeches from very patriotic and able gentlemen who seemed to argue this question as if our loyalty to the Union was bounded by State lines. My friend who has just taken his seat (Mr. Hubbard) imagines in one moment that our loyalty to the Union ceases the instant the people of this country should run a line separating them from the residue of the State, and in the same breath, almost, he shows conclusively that that cannot be, for he pays a well-merited compliment to our loyal friends across the river,

MR. HUBBARD—I was simply commenting upon the remark of a member that we should fortify along the boundary of the new State when run, and merely referred to our Ohio friends in showing how unpatriotic was such a suggestion.

MR. CARLILE—Well, if I had supposed that loyalty was bounded by state lines, I would be the last to claim the State of Virginia as she stands today upon the question of loyalty, as my own. If gentleman will convince me that the running of a line on the top of the Allegheny mountains, or anywhere else separating the North-

western portion of the State from the residue of the State, and erecting it into a separate and independent State, would relinquish the patriotism of its people, I would be the last man to do so. Or if you can satisfy me that the action we propose here will embarass the Federal Government in the slightest degree in the effort that it is now making to maintain the Union and the supremacy of the laws, I will join hands with you gentlemen and vote the proposition down. That is the only argument I have heard in which all those who have spoken on the other side of the question concur in the opposition of this movement—that it will embarass the Administration. How, Sir? How? Does the Ohio river that divides us from the State on the other side embarrass the Administration in the efforts it is making to put down rebellion? Is Ohio disloyal? Does she send fewer troops here? Does she respond less eagerly to the call for men and money to aid the government than she would if there were included within her State limits the soil upon which we stand? Away with the idea that imaginary lines, defining the boundaries of States, crush the power out of the government to maintain and protect itself. And, Sir, I was surprised to hear that here in the city of Wheeling, the constitutents of my friends on this floor will feel themselves constrained, in the event that the people of Northwestern Virginia shall be consulted as to the division of the State, to propose that they should be allowed to cut off what they call the "Panhandle" and attach themselves as an appendage to the small end of Pittsburgh! Wheeling, the city of the West, that in the event of a new State being erected here would be the great manufacturing and commercial city of the State—Wheeling, which has had to struggle with the State of Pennsylvania to be allowed the privilege of erecting the beautiful and magnificent structure that now spans the beautiful Ohio—Wheeling seeking to be an appendage to the small end of Pittsburgh! Let the question be put. We will vote today if desired; and I know the good sense and interest of the people of these four counties will prompt them to vote it down. I have no fears that Wheeling will ever commit such suicide as that would be to her.

Now, Sir, tell me how the government is to be embarrassed by what we wish to do towards dividing the State? We cannot divide the State. What, then, do we propose to do? We propose that the people within a certain boundary may be allowed to declare their wishes on this subject. That is all; and the bare fact of consulting

the people upon a question that has long been agitated by them is denounced upon this floor in unmeasured terms. But the act, it is said, will embarrass the government in its military operations. Now, will any gentleman be kind enough to point out how? Show us in what manner this embarrassment is to be effected. I listened attentively and with pleasure, as I always do, to the very sensible and able argument of my friend from Mason (Mr. Polsley), and with all his ability and good sense, he contented himself upon this branch of the argument by merely announcing the fact. Now, Sir, I pledge myself to him, and to any other gentleman opposed to this movement, that, if they will assign one solitary reason—one reason true in itself—if they will point out and show to me how the passage of the proposition now under consideration will embarrass the Federal Government in the effort it is making, I will vote with him.

MR. HUBBARD—How is Eastern Virginia to be restored to the Union, if the State is divided?

MR. CARLILE—I will tell my friend how. Who is to restore Eastern Virginia to the Union? Who restored Northwestern Virginia to the Union? Why, Sir, the loyal people of Eastern Virginia will have to restore it. That is the way Eastern Virginia is to be restored. That is the way every seceded State in the Union is to be restored—by the action of the loyal people residing within its limits. But, Sir, this does not prevent us from aiding the restoration of the rest of the State. The passage of this proposition will not defeat that object; it will not render us less powerful than we now are. When do gentlemen suppose we will have assembled here representatives from all of Virginia?—Will they fix any time? I suppose, Sir, that if that sight is ever to be presented to our view, it will be presented before the meeting of the next sesssion of the General Assembly.

I suppose, Sir, that this object which gentlemen desire if not effected by that time, will be postponed an indefinite period of time; and I should be willing to accept as true the remarks made by Governor Sprague, of Rhode Island—than whom a more gallant and loyal heart has not exhibited himself during this controversy, marching at the head of his own regiments, regiments composed of men worth their hundreds of thousands of dollars—when he told his Legislature upon his return the other day that this was to be a long, protracted war. It is to be a long and protracted war; and if we are to take care of our material interests until that war shall have ended, as is intimated by the gentleman from Mason—if this

is to be so, let us know it, and let our people understand it. He says he is for no action until we see represented here every portion of the Commonwealth of Virginia.—Then, Sir, what is that declaration? What does that declaration amount to? I put it to his candor —I ask him to answer me sincerely, and say if he believes that if we postpone action until we have here a full representation from every county in the State, a separation ever will be obtained? Sir, if he does, he has more faith than I have. I have none. This State never will be divided if you consult every individual county through representation in the General Assembly. Gentlemen seem to think, Sir, that it is ungenerous, unkind, to our eastern "brethren" to take this advantage of them now. Unkind! Who among them dares to make that charge? How much, Sir, were our interests or advantages consulted when they took upon themselves to throw off their allegiance to that Constitution which Washington formed, when they inauguarated a revolution in our midst and made this the seat of War?

MR. SMITH, of Marion—"Does the gentleman have reference to the remarks I made?"

MR. CARLILE—"Not unless you said so."

MR. SMITH—"No reference was made by me to the rebellious sentiment in Eastern Virginia, no sympathy expressed for them; but a sympathy was expressed for the Union men there who are now, Mr. President, trampled down by this worse than despotism. That is their situation there; and we believe that if they could be relieved by any effort of ours, a Union sentiment would be developed there which, in gratitude to us, would magnanimously grant to us our rights, and if we would change our present Constitution so as to rest our representation upon the white basis, that we will then have a majority, and we can control the East in these matters. Not that we should hesitate a single moment because of the rebellious sentiment in the East, but because of the loyal sentiment there."

MR. CARLILE—"The gentleman talks of controlling Eastern Virginia by a legislative majority. Sir, we never had, and I venture to say, never will have, a majority in the Legislature of Virginia.

Now, Sir, when gentlemen speak of the West, they speak of it as defined by a natural line. Sir, in a political sense, there is no West, and never has been, save the Northwest. That is the fact as the records and the journals of the Legislature for the last half

century will testify. The only West, in its political sense, is the Northwest. Where was the fight made and the battle fought—as my friend from Wood (Mr. Van Winkle) well knows—but in the Northwest?"

MR. VAN WINKLE—"In the Valley."

MR. CARLILE—"In how much of the Valley?"

MR. VAN WINKLE—"Nearly all."

MR. SMITH, of Marion—"Yes, and in the East."

MR. CARLILE—"Yes, in the East! Wise fought for it. You had Wise over there then; but where is he now?

But, Sir, look at the lines of improvement in Western Virginia outside of the Northwest. Where do they lead? Where is the railroad that penetrates Monroe and Greenbrier and the whole Southwest? It is the road that runs from Richmond. And the canal that has its commencement there and extends on into Covington? They all lead into and connect with the East. It is idle for gentlemen to talk of any other west save the Northwest. All the rest and residue of the State is bound by iron bands and commercial ties to the Eastern part of the State, and can never have any commercial interests or intercourse with us.

Sir, in looking to this, for the first time in my life, last fall I traveled through the entire Southwest. I saw these things for myself, and if gentlemen have never been there they cannot appreciate the utter impossibility of ever forming anything like business connections between that portion of the State and this. The wealth of Croesus would not construct a single line of improvement, running anywhere from the Northwest into the Southwest, and even if it were possible to build commercial lines it would be an unnatural direction for trade.

Now, Sir, tell me if you can, how the loyal people of Eastern Virginia are to be retarded in any effort they may hereafter make in extending over them the protection, as has been said, of that flag, (pointing to the Stars and Stripes suspended over the President's desk.) Do we propose to take up our Government and people and walk over into Rockingham and Shenandoah and take a position there? Or is it,—and it is but fair to suppose that gentlemen believe that there are within all these counties patriotic and loyal hearts panting for an opportunity to show their allegiance to the government formed for them by their fathers, and their hatred to these who have involved them in this rebellion? Is not that the

idea? Does any man suppose that ever Eastern Virginia is to be restored to the Union as she was before the inauguration of this rebellion, unless it be by the act of her own people residing within her own limits, and living there, precisely as Northwestern Virginia has done? Then, Sir, tell me how this is to be accomplished. As the armies of the United States march through that portion of the State and drive before them and out of the country, those who are engaged in rebellion, and leave the "loyal hearts" free, can they not act for themselves? What, then, is to prevent them? Have they not the same General Government we have? Have they not the same Constitution that we have? Have they not the same "loyal hearts" and the same wise heads that we have? If they have not, God help them. (Laughter). I fear that even with our efforts they could not be saved. (Renewed laughter). Sir, this great movement that is "worth more than an army with banners," which as was well said by the gentleman from this city, is the movement which is to restore the Union—this movement has to be made, and effected, and inaugurated, and persisted in by the people inhabiting and residing within the limits of the respective counties that have suffered from secessionism and rebellion. Have they not within their midst loyal men, wise men, men capable of being Governors and members of the Legislature? If they have not they could not send them here. They must have members of the Legislature, and those members must of necessity be selected from among their midst and how do you prevent their patriotic action, by either bringing them to sit in a legislative body at Wheeling, or allowing them to sit in one east of the mountains? Would they be less wise or less patriotic sitting in a legislative body there, than they would be sitting in one here? I grant you they would not have the benefit of our counsel, but in days gone by they have been unwilling to take our counsel. We have endeavored to force it upon them, but we have always been told in effect, to stand aside, and we have been spoken of as the "disgraced Northwest." And it is to these, "our brethren," who have brought upon us calamities under which our whole country is reeling and tottering—who have involved us all in one common ruin—it is tender consideration for these gentlemen that is to stay us in an effort made to relieve us from a dominant and arrogant governmental majority, and place us where, and make us what nature and nature's God designed us to be, a free, separate, independent, political community, occupying a place upon that flag,

a star as large as either of them, side by side with the thirty-four now there. This is to be sacrificed; our material interests are not to be considered; the wealth contained within the surface of our soil is to remain as it has always been, undeveloped; and we are to seek in other States and in other communities, that sympathy that we should share and which we would share in our own State, if we were not separated from the rest of it by natural insurmountable barriers.

But, Sir, a resolution offered by my friend from Upshur, (Mr. Farnsworth,) at the last session of the Convention, is referred to as having been defeated, and it is sought, by constructions placed upon this and upon the action of the former Convention, to deny this Convention the power to do anything that will affect, in the slightest degree the status of our people, or any portion of them. They deny that the object of calling this Convention was to provide a way by which the people could declare their wishes on this subject; and then quote resolutions, all of which go to show that the object of this Convention was "to take such steps and adopt such measures as will best promote the welfare and secure the safety" of our constituents. Now, Sir, there are some of us here foolish enough to believe that our interests and welfare will be best promoted by a separation from the rest of the State. I would like to know if we so believe, if we have not the right, under and by the authority of those resolutions referred to, to endeavor if possible to induce the Convention to allow the people to speak their views on this subject. No definite action under prescribed rule was laid down for our government by the plan of any of these Conventions; but when that very resolution of my friend from Upshur was tabled—and I take it for granted I voted to table it—when it was under discussion here for two days, as mentioned by the gentleman from the city of Wheeling (Mr. Hubbard), I know one member of this Convention that did say that he opposed such propositions then because we had no legislature that could give the consent required by the constitution to our separation, but who did, in the very same speech in which he opposed the resolution, say that at the very instant, as soon as could be, after we have such a Legislature, he would be foremost among those who sought a division of the State. He who now addresses you said that on the 13th of June.

We knew how that resolution was tabled. That vote was no ex-

pression of sentiment, and it was so said by men who voted for tabling the resolution. I recollect my friend from Monongalia (Mr. Dorsey,) who came here from a county, at a town of which eight hundred and twenty-one votes were cast on the twenty-third of last May for a division of the State, and but eight hundred against the ordinance of secession. He took the very same ground whenever he saw that there was a constitutional difficulty in the way, that no good whatever could be accomplished by agitating the subject then, and he, with others, voted against this proposition, and they pledged themselves to use every effort in their power to bring about a division whenever it could be accomplished. That is the ground we all took, and the published debates show it to be so."

MR. HAWXURST, of Fairfax—"Why then did you invite the Union people of the East to meet you in Convention?"

MR. CARLILE—"Why, Sir, we want you here, we are glad to have you with us; you came, however, without our invitation in the first place, allow me to say. That call as read this morning by the gentleman from Ohio (Mr. Hubbard), was a call for the Northwest, and it alone. But when you come here to participate with us we like you to do so, so long as we have a government claiming to be the government of Virginia—not only have you here that are here, but have an addition to your number."

MR. LAMB—"According to my recollection of the call, the language of the call was very different."

MR. CARLILE—"I drew that resolution with my own pen."

MR. LAMB—"I do not allude to the call for the first Convention."

MR. STUART—"Mr. President, the hour of half-past twelve has arrived, and I believe that is the hour fixed for adjournment."

MR. CARLILE—"I would be glad if I could have a few minutes to finish; it would take but a few minutes."

Several members, "Go on!" "Go on!"

General consent was given and Mr. Carlile proceeded.

"MR. PRESIDENT, my recollection of that call is as it was read; it was a call to the Northwest, drawn up by myself and adopted by one of the largest and most respectable assemblages that ever met in Harrison county, and, Sir, we took occasion to send messengers with the proceedings of that Convention into every county of the Northwest."

MR. LAMB—"I referred to the call for the June Convention. It will be found that the purpose of that call was very different."

MR. CARLILE—"I take it that that was an invitation to all loyal citizens to participate here. Reference to that call has been made and it is used as an additional argument why we should "wait!" "wait!"—"wait until it is too late for the accomplishment of our purpose. Our friends from the Eastern part of the State ask us to "wait." We have been waiting upon them ever since the 13th of last May. We called upon you then; we called upon you in June, and we call upon you now in August; and because you are not disposed to put your necks into the halter here, as some gentlemen have talked about doing—I have never talked about it—it may be for that or for some other reason, you have not heeded our call. Are we to "wait," and "wait," and "wait," until we are bound hand and foot by that same old governmental dominance, and the power has passed from our hands, and that which our people have hoped for, prayed for, worked for, be forever denied?"

Without concluding, Mr. Carlile gave way for a recess.

AFTERNOON SESSION.

The Convention re-assembled, and Mr. Carlile took the floor, and proceeded to finish his remarks begun in the morning session, as follows:

"Sir, nations and political communities are governed, so says every writer upon the laws of nations and every writer upon the morals that govern political communities, by interest. Interest is at the base of all political action; and if we believe it to be to our interest to sever the bonds that connect us to old Virginia we are justified in the eyes of the world. We have the highest authority for our availing ourselves of the opportunity now (I think) providentially presented to us, of obtaining that which we believe to be essential to our interests. Sir, I am enlisted in this war for the maintenance of the Union as much as any man; I will do no act, take no step that will in the slightest degree, if I know it, prejudice the Union cause in any way, shape or form; and I will say here now what I have always said that the first object, with me, is the preservation of the Union, (a member "that's it.") Satisfy me that that first object is to be enfeebled and endangered by any act now looking to a division of the State and I am with you. I make a division of the State subordinate to the maintenance of the Union. But I cannot believe that it is to come in conflict with any

effort that it is to be made by us or by any one else for the preservation of the Union; and until I have a reason assigned me, showing how it is to conflict, will I not yield the position I have taken upon this subject.

Why, Sir, I was surprised to hear gentlemen enumerate difficulty after difficulty, all of which as was well said on yesterday by my friend from this city, (Mr. Paxton) has existed and will continue to exist throughout all time, with the solitary exception of the embarrassment of the Administration in this struggle. These reasons are assigned by gentlemen who tell us that they are in favor of a division "at the proper time;" and that "proper time" is when all Virginia is represented in the Legislature, and then the time is when you never can get the consent of the Legislature: Now, Sir, I have my own views about the position of gentlemen when they tell me they are in favor of a division of the State, and say they intend to postpone it until that time; for they must know if they postpone it until then they never can get the consent of the Legislature. Then, Sir, there is an argument which I alluded to the other day and will repeat, that is a full answer to all that has been said on this question of embarrassing the government. If it is believed by the Congress of the United States that a separation of this State will embarrass the efforts making to suppress the rebellion, will they admit us as a State? Each one can put that to himself and answer. It is not worth while for us to say what Congress will do or will not do. That is all speculation. I do not think that any gentleman is authorized to speak for any deliberative body, because they very often, in a very short period of time reverse their own opinions. Now, Sir, if we act as is proposed, and provide that the sense of the people within the boundary shall be taken upon this question of a new State, and they declare for it, and the Legislature consents to it, and Congress gives its assent, why it will be [the] very best evidence in the world that gentlemen are mistaken in supposing that it will embarrass the Administration; but if Congress should withhold its consent—should it be the opinion that the Administration or the Government is to be embarrassed in the slightest degree, my word for it they will postpone action on your application. Congress will not admit you; they may not reject your application; they may let it lie over and say to you: "When the proper time arrives we will admit you," but they will not admit you now. Tell me how the

initiatory steps, the proceedings taken here, are to affect in the slightest degree the power of the government to determine this question of embarrassment for itself. That is the question I put. Answer that. Depend upon it Congress, according to its members, is just as loyal as we are. Congress will guard the interests of this Union with as much care as we can; and if our application should be made to that body for admission into the Union as a State, and they believe it will embarrass the government in the slightest degree, they will either refuse our application at once or postpone action upon it. They will take care that the public interests suffer no detriment whatever by any action we have had out here in the country, and that action is the assembling on a given day of voters in their prescribed districts to declare their wishes upon a separation of the State, and their adoption or rejection of a Constitution proposed to them to govern them if they do vote for a new State, and the action of the Legislature upon it; all of which is nothing, affects nothing, binds nobody; changes the relation of no one, affects no political organization whatever until it has obtained the assent of Congress. Such consent will not be given, we may rest assured, if gentlemen shall be found right in their predictions, and if it is found that the government is to be embarrassed in the struggle.

A word or two more, and I have done. I thrust my opinions unwarranted upon no one. I have heretofore shown that I am willing to yield the cherished principles that I have advocated with warmth and zeal. I yielded to the gentleman from Mason, and others who thought with him in the Convention of May. I yielded, as my friend knows, after doing all I could in that Convention for a separation. I am willing now, if any compromise that looks to any reasonable accomplishment of the object we, nearly all of us, profess to have at heart, can be agreed upon, to go with you. I would dislike exceedingly, I assure you, that any action of this body should go out to our people by a meagre vote. I should dislike exceedingly, that those of us who believe our people almost unanimously demand at our hands that we should provide a means by which they might be allowed to their opinions on this subject that they should be denied that expression by a bare majority of one or two. I should dislike exceedingly to have a minority go away dissatisfied, determined to make an opposition. Whatever may be our conclusions here, let us all resolve that we will support

them unanimously; and if we have the good luck to beat you by two or three votes, which I think we will, just come in as we do, you know, when we want to elect our party candidates, and make it unanimous."

MR. SMITH, of Marion—"And you won't go away and break up the government?"

MR. CARLILE—"No, Sir."

MR. VAN WINKLE—"You will do it if you agitate this subject."

MR. CARLILE—"Why, Sir, how can that be? This question is agitated all the time; it has been agitated for a long while."

MR. BURDETT—"Yes, for thirty years."

MR. CARLILE—"Yes, Sir, and you may say "down!" "down!" But, gentlemen, it will not go down. It will be agitated. It is a question, Sir, as was stated by one of my colleagues (Mr. Lewis) yesterday, that has been looked to and expected from the foundation of our government. It was predicted, as we were told by one of the brightest lights in the Convention which formed our first Constitution, that this part of the State would not submit to a continuance of its connection with the rest of the State. Why, take the map of Virginia and look at it, and you will see at once, that this is an unnatural connection, and works injuriously to the interests of the people thus connected; and upon that great rule, that all political communities will do that which best promotes their interests, they say this separation will have had. You cannot affect the government at Wheeling. It is by that government that we expect to get the separation, Sir; we cannot turn our backs upon it."

MR. VAN WINKLE—"You will bring it into contempt."

MR. CARLILE—"Sir, you cannot bring a government into contempt while my friend from Wood is a member of it. (Laughter.) No man ever brought himself into contempt, except by his own misconduct; and no government can but by the same. But, Sir, I will tell you what will bring it and every one into contempt — weakness in its knees. Scarcity of funds, Sir, will bring it into a position where contempt might reach it. How are you going to get funds? Thus far we have been fortunate. The great Democratic party has conferred upon us a boon by refusing in our State to take the share of the public proceeds of public lands, which belong to us under the act of 1841. (Laughter,) We eagerly jumped at it, Sir, and it has been the means of supplying our empty treasury; but in consequence of the many drafts which are

made upon it, it is fast dwindling away; and if we stay here much longer, the forty-one thousand dollars will be entirely gone." (Laughter.)

MR. HAWXHURST, of Fairfax—"If we of the East are to be cut off, will the gentleman tell me how we are to get our share of it?"

MR. CARLILE—"Why, take it out in $4 a day mileage, as the member from Fairfax is doing now. (Laughter.) As long as you remain in Virginia you throw into market your Virginia bonds at a nominal value of about forty or fifty cents; but divide the State, and your bonds will go into market at par, and you will have the funds necessary not only to pay us in legislative assemblies, but to improve our country and to start the iron horse snorting through all these hills. (Applause and laughter.) Sir, that is a question I have looked at from the beginning. No government ever was respectable, no government ever will be respectable without money, and very few men, I think. (Laughter.) That has been the cause of my want of respectability all my life. (Laughter). And, Sir, I appreciate it, I have felt it, I know it, and therefore, while I may, as an individual, lack the respectability that funds would give me, yet, as a member of a State, with plenty of money, I may feel at least that I have political respectability. Now, Sir, how are you to get the money—where is it to come from, that is to grace this Wheeling government? Echo answers, where, But, Sir, take these steps, if your people really do, as we believe they do, desire a division and will vote for it, and the Congress of the United States admits you, you start upon a new career, unembarrassed by debt. For, Sir, when ever there is a settlement made between this portion of the State and the residue, and a correct balance struck, it is in our favor.

MR. VAN WINKLE—"Does the gentleman mean to say that by separating we get rid of the debt?"

MR. CARLILE—"I say whenever we divide this State, and settle this question of debt and there is a correct balance struck, we will bring the other side in debt, that is what I say."

MR. SMITH, of Marion—"How is it to be settled?"

MR. CARLILE—"That, Sir, is to be left for yourself and other eminent gentlemen who will be in the future legislative assemblies of Virginia to determine. (Laughter.) "Sufficient unto the day is the evil thereof." It will be time enough to consider this matter when the time for considering it arrives. The subject of this

settlement is to be a subject for gentlemen who are to fill the legislative halls of a new State.

But, Sir, instead of embarrassing the Government by this movement, I maintain it would relieve it to a very great degree, and how? If we had a defined line to defend, all we would have to do would be to put our military there. But, Sir, where have we any definite boundary to protect? Tell me the definite boundary we have to protect. With 20,000 or 30,000 Government troops today in our midst, they are scattered from county to county, with no force capable of resisting anything like an armed force brought against us. Give us a line; and the line we propose for the new State that we will have to defend is only the line that divides us from the rest of the State, and if there are "loyal hearts" they will soon be able, with the advancing march of the Federal Army to save us all trouble of protecting it. Then we shall have a definite boundary which alone we could call upon the Federal Government to aid us in protecting, for we will rely upon the brave hearts and strong arms of our loyal citizens to protect us against secessionists in our midst. For, Sir, once get that line established those of them who are disposed to give us trouble will "leave their country for their country's good" but so long as they are here, encouraged and assured by the presence of the Confederate Army within our limits, so long will they prove a thorn in our side, and so long will they resist successfully the operation of our Wheeling government. There is an advantage which it seems to me we would derive from this separation, that nothing can give us. With a defined line beyond which secession forces dare not approach without violating the "sacred soil" and sovereignty of a free and independent State, we could defend it with fewer Federal troops and less of the Government's money than it will take to suppress an indiscriminate rebellion, and protect indiscriminately a population scattered all over this section of the State. There is another argument, Sir; it will relieve the Confederate forces from all obligation they feel to protect their own soil. Once let them see that this portion of Virginia is beyond their grasp; once let them see that this is a separate and independent political community, a State to themselves, recognized as such, they may in the language of Wise, be willing to let the "disgraced Northwest" go, and take their armies where they may be wanted more for home protection of secession than they are in this region. There will be no longer

what I may call an honorable obligation resting upon the State to protect its soil, because that soil will be no longer hers, and we may in this way relieve our people from these secession armies in their midst. And we can confidently tell them "beyond this line you cannot and dare not come.

These may be all insufficient reasons, but they are some of the reasons that induced me to advocate the proposition now under consideration. I shall, as I remarked, however, bow to the decision of a majority of this body, and I will go as far as he who goes furthest to suppress anything like a revolutionary movement. We hope by fair argument, we hope by holding up before you the honest wishes of the people, we hope by appealing to all that we think should influence and govern men in a representative capacity, to obtain the sanction of this body to the proposition now under consideration, which is not a proposition to divide the State, which I repeat works nothing, effects nothing, changes no relation on earth until it has the assent of the Congress of the United States who will judge the propriety of giving or withholding their consent.

Now, Sir, I desire to notice a remark made in relation to what I said the other day, that a new State would deprive me—"

MR. STUART (interrupting)—"Mr. President, I must insist on an adjournment; it is now within a few minutes of one o'clock, which is dinner time for most of us, and we have to be back here at half-past two."

MR. CARLILE—"I will forbear willingly, and thank the Convention for having indulged me so long already."

The Convention took a recess, and on its re-assembling at half-past two, Mr. Carlile took the floor and concluded his remarks as follows:

"MR. PRESIDENT, the great argument, the main argument, and the one that seems to be relied upon by all who have opposed this measure publicly, is the embarrassment to the Administration in consequence of our government here not extending itself over other portions of the State. Now, with all kindness and with all respect for our friends who like myself are filling offices under this government, I would say according to my view, it would be a little more modest, to say the least of it, in us allowing the loyal citizens of Eastern Virginia whenever the armies of the United States allow them to do so, to select for themselves their own governmental

officers, and not for us by virtue of our power to spread over them our own. It is a fact well known, Sir, that only those who have been represented in the Convention here, and in the Legislature had a voice in the selection of any of these officers. Therefore, I repeat again I cannot see how our action is to embarrass the Federal Government in restoring the former government to the loyal people of Eastern Virginia unless it is to be done without the consent of the people who are to be governed and without allowing them to determine who shall be their officers under the government, or unless it is presumed that we will have the military power to govern them by mere force, which I presume no one desires or would advocate.

Then, Sir, without delaying the Convention longer, I think I have successfully met the main argument of the opposition to this measure. I meet it first by showing there can be nothing in it, for nothing we can do affects or changes our relations in the slightest degree to the people of the Union or the people of the State. All that we do is initiatory, and is void, and can be of no effect, unless consented to by Congress. If consented to by Congress, it is the best evidence in the world that the government will not be embarrassed by our action.—They have full and entire control over the whole subject, and we all know that if Congress should suppose for an instant that the legalizing, acknowledging and recognizing of our action would embarrass the Administration, they would refuse to do so.

Then I show, I think, conclusively, and beyond doubt, that there can be no government restored to the people of Eastern Virginia only by and through the action of the loyal people of that portion of the State. They must act, and then the government that is restored to them is a government of the people—a government deriving all its vitality, its existence, its being, from the action of the people. The government that we would thrust upon them without their expression and their action, would be as perfect a tyranny as could be established over any people. Therefore, I take it, it is not contemplated by the opponents of this measure that even if we remain as we are, one State, with no government but ours that we have restored and organized here, it shall not be extended over them without the action of the loyal citizens of Eastern Virginia, and they can just as well restore their former Government for themselves without having our Governor and Council,

as they can with them. Therefore, I cannot for the life of me—it may be because I am unable to understand—I cannot see the force of the arguments that have been used.

But, Sir, I desire again to call attention to the important point, and I want the question answered, if we continue as we are, if the loyal citizens of the eastern portion of the State cannot be relieved by December next, where is the money to come from that is to supply the treasury? Does my friend from Fairfax, who wants his "share" of the public money—does his county contribute anything towards the expense of this government? How much has it paid into our treasury? How much does he suppose it will, until the armies of the country have relieved his people? How much has been contributed by those living east of the mountains toward the expenditures that have already been incurred, and how much do we expect will be contributed towards those to be hereafter met? I say not this by way of reproach, but of sorrow. It is because of the inability of those who we say are devoted to the Union, to do so; they have been prevented from doing it; and we have not the power of ourselves to relieve them. If relieved at all, they must be relieved by the Federal power, and by our taking action here which will relieve to a small degree the Federal army and will enable it to retain in our midst a less force than will be otherwise required. We to that extent early contribute to the realization of the hopes of our loyal friends east of the mountains.

But we are met with the question how is this debt to be apportioned and settled? It is a sufficient answer at any and all times to say that it is to be met whenever a division takes place, and if there is any argument in the question at all, if anything is to be inferred by its use, it is an argument against a division for all time and under all circumstances; for whenever it takes place it must be met. But, Sir, I will say that if there could be no other way of meeting it we could meet it by buying up every dollar of it ourselves. If we had a separate State existence we could issue our bonds in the market and command fifteen millions of money tomorrow; and if our bonds can now be bought up at thirty cents on the dollar, as a gentleman of this city informs me, less than fifteen millions would pay the forty-six millions which Virginia owed prior to the first of January last. But there is no necessity for this. The question of an equitable assumption can be met just

as well today as it can be a hundred years hence, if those who come after us are found as we are, struggling for this separation.

Give us, then, the position designed for us. Let us avail ourselves of this opportunity. There is no reason in morals, and there is no reason in law, why we should not avail ourselves of it. There has never been a time before, in my humble judgment, when it could be accomplished, and I think it extremely doubtful if there ever will be again, when it can be accomplished peacefully, constitutionally and legally. Now is the day and now is the hour. "There is a tide in the affairs of" peoples as well as the affairs of "men," which taken at the flood leads on to fortune." That tide is flowing for us. Let us avail ourselves of it. Let not the golden moments pass by, for they may never return. Let us all sacrifice all of personal pride and personal feeling and private opinion we may have entertained. Let it all go as the veriest dust; let it be thrown to the winds of heaven, and let us bring to the altar of our common country all the patriotism and all the wisdom that is within us. I repeat, Sir, there is no difference of sentiment among the members of this body, or among our constituents, as to the support we should give the cause of the Union. Its flag we will maintain and uphold, and we can better do this with a separate existence than we can now, embarrassed as we are at every step we take by the innumerable burdens that are weighing upon us so long as we remain in this State."

MR. CARLILE then proceeded to reply to charges of sympathy with secession made by Mr. Polsley against Senator Johnson, of Missouri, after which he concluded his remarks, as follows:

"MR. PRESIDENT, with the evidences which we have of the desire on the part of the people to be heard upon this question, whether it be a majority or a minority, I think it is as little as we can do as representatives professing obedience to the will of that people, to give them an opportunity to be heard at the ballot-box upon this subject. This is all we propose; all we ask; all we will be pledged to by any action of our own; and, Sir, that we may not be here an indeterminable length of time, and that this thing may close one way or the other, I would suggest to the friends of this measure, that we sit here and patiently vote down all the motions to adjourn until a vote is had on this question. I have spent many a night in similar bodies, and I think it is the only way in which an end can sometimes be reached. I am perfectly willing to sit here un-

til the sun rises tomorrow, and for one, I shall vote against all adjournment until a vote is taken upon this subject."

MR. STUART followed, and in the course of his remarks said he wanted it distinctly understood that he was in favor of a division of the State, and he had believed and urged that it should take place at the time of the Constitutional Convention of 1850. But we as a people are here reorganizing our Government interests. We have an honor to maintain. Everything else sinks into significance compared to the great object of maintaining the Union and the Government of the United States. What was Northwestern Virginia without the Union? If their action here was likely to injure the cause of the Union, could not they hesitate before they took any such action? He said the friends of division urged the measure, lest the debt of the State contracted by the usurpers at Richmond should be fixed upon them. Was it to be supposed that they would have anything to do with the debt contracted by a rebellious people which the Government was now putting down? He knew there were true men in the eastern part of the State. He had seen them shed tears in the Richmond Convention when the ordinance was passed and he did not desire to cut loose from such men as these. He protested against such selfish action.

But he professed to be a constitutional man, and he prayed them not to be the first to trample the constitution under foot, and appealed to them, what was the spirit of the provision of the consitution in relation to the formation of new States, which he quoted? Did they believe that this contemplated that two-thirds of a State should cut loose from the remaining State by an arbitrary majority and leave that third to maintain their government as best they might? It was contrary to all ideas of justice in governments. And if two-thirds could not do so how could one-fourth of a State force a division without the consent of the remainder of a State? The gentleman had asked for a reason for not taking immediate action. That reason was that we cannot comply with the requirements of the constitution of the United States. Certain influences had been brought to bear here that he had not anticipated. That influence was his friend from Harrison. In the May Convention he was in favor of a division. On the 13th of June he found him opposing a division of the State at that time, and urging that the primary object of this movement was to restore Virginia to the Union. Now we find him turning around and urging a division.

Why was it that gentlemen were so changeable? His argument was that in the first of this session there was no Legislature. Was there any in May, when he wanted a division? But it was necessary to obtain the consent of the Legislature; he would say that it was not yet obtained. The gentleman from Harrison (Mr. Lewis) wanted the State divided so as to get back to the old representative form of government. Well, Sir, this was a representative government. He had been sent here by constituents, who so regarded it. But they didn't send him here to divide the State; it was to aid in putting down rebellion. In canvassing before his constituents he had made this and the support of the government the great question, and had ignored the question of a division because he believed it would result in dividing our people among themselves. He did not stand here to dissent from his constituents, and if any man would convince him that his people wanted him to take hasty action he would go with the advocates of division. But he wanted first, before he did such a thing, to go back to his constituents for instruction.

He alluded to the assertion of Mr. Lewis, that an equitable settlement would show that the West did not owe the East one dollar.

He animadverted severely upon the suggestion made by Mr. Carlile, that with the bonds of the New State, Virginia bonds could be bought at from 30 to 40 cents. Should they thus swindle the people who had come here to protect and defend our people from the hordes of secession? No, Sir. He hoped the gentleman would never mention the suggestion again. He alluded to a remark of Mr. Lewis in relation to treason against the State, that he believed it would even be treason to petition for a division of the State. The Constitution of the United States was above any statute of any State, and the right of petition on any subject was one that was and must be inviolate. He had always contended, and always should, that the people of Northwestern Virginia had the right of petitioning for a division of the State, or for any other object. With regard to taking advantage of the circumstances which gentlemen styled "providential," that was another argument which he placed in the same category with the proposition of buying up our own State debts.

Why was it that all the secessionists in his section of the country were now clamoring for State division?

MR. LEWIS replied that he believed it was because they regarded

that the vote given upon that question was a manifestation of the views of the people upon a division of the State, and they were willing to acquiesce in the majority.

MR. STUART said that acquiescing and advocating was a very different thing.

MR. CATHER said in his part of the country they had understood from that vote, that a majority here were in favor of the Constitution of the United States, and by dividing the State, and the formation of the new State, they would have a good excuse for submitting to this majority.

MR. STUART believed notwithstanding the explanations that the secessionists were doing this because they believed it was a measure that would involve us in difficulties and dangers.

He again attacked the position of the gentleman from Harrison (Mr. Lewis) and read that gentleman's card published last May in regard to the movement just then inaugurated. And he paused before he could consent to be led by a gentleman who held as Mr. Lewis then did that he owed an allegiance to the United States subordinate to that due to the State. He argued against any such doctrine and said it was the doctrine of secession. Now, Sir, these gentlemen were advocating the doctrine of secession—the right of one-fourth to secede from the remaining portion of the State and break up their State government without the consent of the rest of the State. This argument that two peoples who were not quite homogeneous in interest with each other, should strike by force, if need be, for a separation was but another form of the "irrepressible conflict," thrust upon them by the villains at the North—the Abolitionists: though by that term he did not mean the Republican party. He reviewed a position taken by Mr. Carlile in a speech delivered some days ago that it was impossible ever to have commercial intercourse with the East, and wanted to know why he wanted to exclude the counties in the Kanawha Valley, which were to all intents and purposes identical in interests with ourselves. He believed if the State was ever to be divided, and he should vote for it at the proper time, the mountains should be the boundary.

MR. CARLILE explained that the proposition was substantially Mr. Farnsworth's; he had only changed it in one or two respects, and not at all in respect of boundary, except to cut out one county.

MR. STUART proceeded to criticise other provisions of the proposition of Mr. Carlile, particularly that in relation to the adjustment of the State debt. The West had no right to cast up an adjusment of the debt, and then tell the bondholders they may look to the remainder of the State. They had assumed a position that entitled them to the sympathy of the whole United States, and of the world, but if they did this, as here proposed, it would be both wrong and disgraceful. The gentleman from Harrison seemed to think that an imaginary line would be all the defence we would want, and that the people of the East could go on and erect a government, as we have done. How would the General Government ever provide for law and order there, if they should be left without any government at all. He depicted the situation of Union men in that part of the Sate, and said this would cut them off and give them over to the rebellion authorities, and they would have nothing at all around which to rally.

MR. FARNSWORTH succeeded, and as he had had the honor of presenting a substitute upon this question, he claimed the right of saying a few words.

He had never heard such a tirade of abuse as had here been launched at the advocates of a division. He had never been so much puzzled in his life, as to tell what was the argument of the gentleman from Doddridge, and his reason for wishing to delay action.

He proceeded to review Mr. Stuart's argument, and said that that gentleman had confessed that he did not know the sentiments of the Union men of his section but he did seem to know all about the secessionists there.

He charged upon a portion of the gentlemen opposing immediate action that they were opposed to the formation of a new State altogether. Two of the members had told him they were, and they were found acting with the gentleman who professed to be in favor of a new State, and were now opposing what they were pleased to call "precipitate action."

It had been claimed on this floor that one of the great objects had been to get into a condition to legally and constitutionally take these steps. That was the argument of the gentleman from Wood. If they were not now in such a situation they never would be. He recapitulated the different steps that had been taken to make this a legitimate government. And they were not to be prejudiced by

the rebellion in Eastern Virginia. They were not to suffer because the rebels there had done wrong.

He took the bold ground that the Government could not refuse them admission into a new State if the application were properly made. It was a right they had under their State Constitution, with the assent of their Legislature to demand admission. The argument that because they were formed into a new State they could not be loyal, was the weakest he had ever heard; and if the success of the General Government depended on denying the rights of the people of Western Virginia, then its success hung on a brittle thread, and that was already snapping. But the government was high above such position as this. She was contending for constitutional liberty, and we contending with her for the same. He replied to several arguments advanced by Mr. Van Winkle, of Wood, and to the objection that they should wait; he told them that if they let this opportunity pass they never would get a division. It was taking no advantage of the East. They had refused to join us, and should we suffer because of their refusal? Suppose they did wait, and Virginia should give us their consent, and we should tell them they would be without any form of government, they would laugh us to scorn—for they would still have all the rights they ever had and the same constitution they have now.

Besides there was a settlement with them that must be made, and separating from them will not aggravate the case in the least. He was for making all that settlement at once.

As to boundary, he would like to have the boundary run with the mountains, but at this time perhaps, that boundary could not be had. Only give them a State composed of such counties as those named in his proposition, and it would vie with any other State in the Union. He was opposed to taking in any counties at this time that would have to be coerced into measures. They could at any time adopt an ordinance making provision for their admission.

MR. LAMB moved that to-morrow afternoon at three o'clock the floor be given to Chairman of the Committee on Division of the State, and that the debate be closed at five o'clock, and that the Convention then proceed to vote in order upon the various propositions with such amendments as may be offered before the Convention.

MR. CALDWELL moved to amend the resolution so as to close the debate at half after 11 A. M.

MR. CARLILE did not, as he had had opportunity of discussion, desire to deprive others of the same opportunity.

MR. LAMB withdrew the resolution, and offered another extending the time to Monday, which was, upon the motion of Mr. Caldwell, laid upon the table for the present.

The Convention then took a recess till half-past 7 o'clock.

THE NIGHT SESSION.

The Convention met at half-past seven.

MR. LAMB obtained the floor and delivered a strong logical, forcible argument against action towards a division of the State. He spoke as follows:

"Mr. President:—

"I had not intended to address this house on the subject of a division of the State. So much has already been said upon that subject that I thought it might only serve further to weary the members of this body. But, Sir, it is a matter of too deep importance to us all for me to omit giving utterance to some considerations, which I think ought to influence the members of this Convention in their discussion of so momentous a question.

"Mr. President, let me say in the outset *that I am for a separation of this State when it can be done at the proper time and in the proper manner.* In that division, however, I should insist upon, at least, obtaining the line of the Alleghenies or the line of the Blue Ridge—the latter if it was to be had—if not, the Alleghenies extending down, at least, as far as Kanawha. With the amount of population which we possess, with the amount of revenue which can be commanded in this district of country, it is essential, I think, that we should have our position capable of easy military defense, in order that we may occupy a respectable position in the family of States. It will be necessary for the purpose of the argument which I propose to make, to glance for a moment, and very briefly, at the reasons which I think would render a separation from Eastern Virginia desirable to us all.

We have long suffered, Mr. President, from the misrule of the Eastern section of the State. They have repeatedly denied us our proper share of representation in our legislature—they have subjected us to an unequal and unjust system of taxation for the protection, as far as possible, from the burden of State service, of

their own property. In the distribution of the expenditure of that taxation they have endeavored to encourage the prosperity of their own section of the State, and have left the West without any participation in the benefit of that expenditure. We are in fact, Mr. President, a different people. Our social habits are different. Our commercial relations are not with Eastern Virginia. The productions of our soil and our workshops do not go in that direction; nor do we purchase the articles which we want from the cities of Eastern Virginia. Every consideration which can be addressed to the wisdom of a statesman, would demand a separation at the proper time and in the proper manner. I am as deeply sensible of this, as firmly convinced of this, as resolutely determined on effecting that separation, as any gentleman who will vote upon the other side of this question.

But, Sirs, that separation should be effected at the proper time and in the proper manner. It is when we could command such a boundary as our new State ought to have. It should take place only when a full and free and fair expression of the opinion of the people could be had throughout all the limits of the new State. When these conditions can be complied with, I am ready to go into the measure; and they cannot be complied with in the midst of confusion and civil war. They cannot be complied with at present, and I see in the agitation of this question, in the heat with which members are disposed to hurry forward this measure at present, nothing but that which precedes misfortune to Northwestern Virginia.

Mr. President, it is not sixty days since our present form of government was inaugurated. Our Governor was elected on the 20th of June; it is now the 16th of August, and we are already seeking to overthrow all that was then established. Already we would change all that was then fixed and determined upon. Already we would uproot the government which we had established from its foundation, and start off in pursuit of a new scheme—a new experiment, for experiment it is in such times as these.

This disposition, Mr. President, to be continually changing great fundamental institutions, is one which can lead to nothing but misfortune. We are proceeding more rapidly in this course than the zealots of the French Revolution, for their constitutions and their fundamental systems of government at least lasted sixty days. How long will it be, if this spirit is to be encouraged, before some

new scheme will be started upon which men may excite the passions and prejudices of the people, for the purpose of riding into power or office? I would impute no such motives to any man here. With their motives I have no concern. But this disposition shown here, to have something new—some great change—before we have even tried the system which we have adopted, is to my mind, one of the worst signs of the times. Why is it, Mr. President? Why this disposition to precipitate? Why this hot haste in reference to this measure? Are we subject now to the control of Eastern Virginia? Are her tax gatherers amongst us now? Are our people to be transferred into Eastern Virginia? Is she now contracting debts which we are to pay? No, Sir! As a matter of fact, whatever the theory may be of the separation which gentlemen demand—the separation which they are so anxious for at this present moment,—practically we are perfectly independent now of Eastern Virginia. She has no control over us. The misrule which she has exercised over us so long, she exercises over us no longer. We have no present evil here that it is necessary for us to rouse ourselves in order to shake off. It is not for the purpose, then, of getting rid of an evil under which we are now at this present moment suffering; but it is because gentlemen apprehend there can be no other reason—that in some mode or other we are to be subjugated again to this rule. If there is danger, Mr. President, that, at some future day, we may be again subject to the misrule and misgovernment of Eastern Virginia, when that danger is imminent I will be ready to meet it. But I would not destroy our efficiency in the great work of maintaining the Union until that danger was upon us—until it became necessary to act, to act resolutely and to act decidedly in order to avert it.

There are two modes in which we may again be subjected to the government of Eastern Virginia. Let us consider them for a moment. The United States government, which I do not for a moment believe can ever be the case, may be unable to maintain itself and defend us, and we may be again subjected, by force of arms, to the Confederate States. If this is the danger that gentlemen apprehend—if this is the way we are again to be subjected to the oppression of our brethren of Eastern Virginia, let me ask them will their paper constitution, or the red lines they draw across the map to define the boundaries of the new State, protect them from the arms of General Beauregard or General Lee? Is there any protec-

tion to the measure which is now proposed to us against such an apprehension? Certainly gentlemen will not suppose for a moment that there is. If this is their apprehension, they derive no protection from having marked out the lines of a new State upon the map. But the United States may succeed, as I believe they will. The arms of the United States, I have no doubt, will be successful in this contest. Twenty-one millions of freemen against five or six millions, and a proportional property in favor of the former, infinitely greater than that against it, must succeed in the end, if they are determined and resolute in the contest. Then as they succeed, as the secession pressure is taken off from county after county of the other portions of Virginia, they may unite with this government; and gentlemen suppose that when they do so unite they will join in refusing us a separation of the State. I do not believe it for a moment. As was said by the gentleman from Harrison, (Mr. Carlile) who addressed us today, it is an unnatural connection. "Any one," to use his own strong expression, "with the ideas of a goose" could see that this connection could not be maintained. Can he suppose that the people of Eastern Virginia—the Union men of Eastern Virginia—the men who will be our brethren in this contest, and who, if the United States government succeeds, will outlive the State government—can he suppose for a moment they will deny to their brethren, the Union men in the West, the right to dissever a connection, which, it must be as apparent to them as to us, is entirely unnatural. But if they were disposed to do so, we will have plenty of opportunities to bring up this question, before all of Eastern Virginia is represented in our legislature. The progress of the arms of the United States will be gradual. We will be able to foresee and know the time when all Eastern Virginia can come in, and we can then act, if there is, which I believe there is not, the slightest danger of their over-riding us, in regard to a question of this kind.

Let us suppose, Mr. President, however, that you have established your new State government. The first clause of this ordinance proposed by the gentleman from Harrison (Mr. Carlile,) and which I suppose is to be the doctrine, reads as follows:

"Be it ordained by the people of Virginia, in Convention assembled, That the new State be formed and erected out of the territory included within the following bounds."

Let us suppose that new State formed. As a matter of course,

the present government of the State of Virginia is superseded—that government of the State of Virginia, which has been acknowledged by the Executive of the United States, which has been acknowledged by the Congress of the United States, is superseded. The very passage of that ordinance practically will supersede it, because from the time that this Convention announces that another government is to be formed, who will regard or obey the present government? Its prestige throughout the counties over which it has heretofore exercised its authority will be gone.

Then, Mr. President, to carry out the plan of the administration, if the arms of the United States are to succeed in Eastern Virginia, a new State government is to be formed there. As secessionism is put down in district after district of the State, the counties of Eastern Virginia are to be furnished again with a "constitutional nucleus," around which they can rally the support of the Union. Your government—the government of the State of Virginia—the government acknowledged by all the authorities of the United States is out of the way. What sort of a government will be formed in the East? Necessarily a government to represent the State of Virginia. Your new State will yet be unrecognized. Congress will not have acted in reference to it. And the Executive will not have acted in reference to it. And they cannot act in reference to it; for carrying out the great plan in bringing back the State of Virginia into the Union, they must, as expressed in a letter from the Attorney General, read to this Convention, have "a constitutional nucleus, around which the shattered elements of the Union throughout the States can rally." You have here, then, and I take it, it is the necessary result of the action which this Convention is urged to take upon itself—another State government for the State of Virginia organized in the East. As the arms of the United States government may succeed in restoring the Union sentiment, throughout that section of country, this government will extend itself gradually over the whole of the East. It will be the government which the United States will recognize. It will be the government which Congress and the Executive will recognize, and it will be again what we now have—the legal government of the State of Virginia. If that is to be the result—if there is any apprehension that such a state of things will exist—will these men in the East then regard our ordinances? You have superseded your old government, which the United

States has recognized, which has become the legal government of the State, and your new government has no such claims. It is nothing in fact—it is nothing in truth—it is nothing in law—until it is recognized by the government of the United States. If they establish their government in the East as they must do, and bring back Eastern Virginia into the Union with that Eastern Government, when it is spread over the East—when it has brought in all those counties lying east of the Blue Ridge, and all the counties of the Valley, what respect will it pay to your ordinances and to such lines as you have marked out for the new State? What respect will they be bound to pay in regard to it? As the State of Virginia, they will have again that very control over you of which, justly, you have so much complained. And when they send their tax gatherers here to gather up your taxes and substance again, if they are resisted by domestic violence, recollect that the Constitution of the United States requires—makes it imperative on the general Government, to protect that government which they have recognized, as the State government of Virginia, against domestic violence. I see, gentlemen, even in the success of the measure—which you here propose to us—quite as much cause for apprehnsion that Eastern Virginia may again extend her influence, her control, her domination over us. That domination which, as ever, I do heartily detest—that she may again extend them over us—quite as much danger as there is in waiting until you can have a full and fair expression of opinion throughout the boundaries which you intend to designate for your new State.

If there were no other considerations, however, supposing that all I have addressed to this Convention were entitled to no weight, certainly it is entitled to some weight that we should not go to work to effect these great changes amid the confusion and danger that surround us. It is a fact, Mr. President, which no one on the opposite side has denied, as asserted by the gentleman from Mason (Mr. Poisley,) who addressed this Convention, that you cannot now, within the boundaries of the State proposed by the substitute of the gentleman from Harrison (Mr. Carlile) have a full and fair expression of one-half of the people. It is a fact that within the boundaries proposed by the report of the majority of the Committee, you cannot now have a fair and full expression of one-fourth of the people upon any subject. Is this not, Mr. President, some reason why we should not hurry inconsiderately,

hastily, recklessly, into this subject? Is there not an obvious propriety—if it be possible to secure our object—in waiting, at least, until the matter can be thoroughly submitted and fairly acted upon, by the people in whose name we profess to act? By the people whom we profess to bind by our action here? And, gentlemen, we are not only to include them within the boundaries of our new State, but we are to go to work and fix up a constitution for them. We are to fix up a constitution for the people of Jefferson and Morgan and Berkeley and Hampshire and Hardy, and for the people of Boone and Logan and Nicholas, and I know not how many other counties. Will my friend from Upshur, who has proposed this substitute for our adoption, undertake to carry that Constitution into these counties, before the first Thursday of November next, or the fourth Thursday of October next, and explain its provisions to them, and explain why we took this action or that action—why we adopted this provision or that provision?

The report of the Chairman of the majority Committee proposes to extend the boundaries of the New State to Bull Run. Will the chairman of that Committee undertake to explain to the inhabitants along that Run this constitution which he proposes to adopt for them—to discuss the matter in public meetings there, and secure us a full and fair expression of the people in the county of Fairfax?

MR. WEST—"I think it will be recollected, Sir, that there has already been a vote taken upon the Constitution. I proposed that Constitution myself, that we might have some ground or place of beginning, and I propose that we take a vote upon the adoption of the old Constitution. And the Constitution as it now stands, with some slight amendments, will be the Constitution of the new State. As to the other questions in relation to boundaries, etc., I will explain them perhaps at another time."

MR. LAMB—"When the gentleman proposes to make that explanation, he should also explain another position of his opening argument, which struck me as singularly inappropriate. He stated in his opening argument that they had included the county of Fairfax and the city of Alexandria, within the limits of the new State which the majority of the Committee proposed to form, with a view of thus furnishing protection to the capital of the Union, against the hosts that are now assembled at Bull Run."

MR. WEST—"Does the gentleman ask me to explain that now?"

MR. LAMB—"Mr. President, there has been a good deal of argument of this same kind before this Convention. We have been told—the argument, of course, has been inconsiderately urged—that this thing of establishing a new State was to be a perfect protection to us here against the dangers that surround us. That it would protect us against the arms of the enemy—that it would be equal to an army in the field. Another gentleman who has addressed the Convention would seem to have considered the action of this Convention if they passed his project to be equivalent to the glorious efforts of William Tell for the defense of his country. Why, Sir, did William Tell defend Switzerland by proclaiming that the boundary was here, and giving notice to the Duke of Austria that he must not go across those lines?—No, Sir: Your lives and your property are not to be defended by measures of this kind. Nothing but stout hearts and strong arms will defend them. They are to be defended by the rifle and the bayonet, and the cannon. Your paper Constitution and your paper State will not be worth a single musket in defense.

Mr. President, the new State as proposed in the substitute last offered will have a population of less than three hundred and twenty thousand. It will have a revenue of about $550,000.00. This will be the utmost extent for many years to come, a much larger extent in fact than you will be able to extend your taxation to. Yet the gentleman from Harrison (Mr. Carlile,) who addressed the Convention today, told you, form your new State and you could at once get a loan of $15,000,000.00 without any difficulty. Is it possible that this Convention is to be amused here with assertions of this kind? Why, Sir, your whole revenue will hardly pay the interest on one-half the amount. Deduct the necessary expense of your government, and it would not pay the interest on one-fourth that amount. The whole revenue of your new State will enable you to support in the field an army of about 7,000 men—not a soldier more for the defense of so wide an extended frontier as it will present. Yet, gentlemen, this is the measure into which we are to be precipitated and hurried on without consideration. With the gentleman from Mason, I must say, "reflect; reflect;" before you plunge into such a system; reflect before you abandon the lofty position which you now occupy, in pursuit of this *ignus fatuus* of which so large promises have been made but of which so

little is to be expected. Why, gentlemen, measure the boundaries of your new State as laid down in this document? You propose a frontier of over a thousand miles. Pennsylvania, with a population of 2,800,000, has a frontier of less than a thousand; Ohio with a population of 2,300,000 has a frontier of less than a thousand; yet with a population of under 320,000 and an ability to support in the field an army of only 7,000 men, you have a frontier to defend of a thousand miles. Four hundred miles of that frontier borders upon secession Virginia. How will you defend it? If any defense should be necessary, if this Union is not to be restored how will you defend that frontier? Why, gentlemen, an army of 100,000 men and a revenue of eighty millions will be required to defend the frontier. And yet, you abandon the passes of the mountains. You are not willing to wait until you can secure Pocahontas and Greenbrier. You give up the main passes of the Alleghenies, leaving your frontier, according to the military expression entirely in the air. If the arms of the United States do not succeed in this contest, and if the Confederate States are to be able to maintain themselves, you present to them a frontier, unsupported by natural defenses, of four hundred miles. You will have a State, if you accomplish your object, weak, continually relying on its neighbors for support, for existence itself. You will have a people who must always call upon their neighbors—heretofore nobly have they responded to such calls—for the defense of our fireside, our homes, and our property.

I wish to correct here a mistake into which the gentleman from Harrison (Mr. Lewis,) who addressed the Convention yesterday, fell in regard to the character of the government which has been instituted here. He called it "a provisional government," he seemed to think it was to expire, according to the system which we have adopted, within six months. This, Mr. President, is not the system which we have adopted. It is true, Sir, when this Convention met in June, it was impossible to have throughout the counties of Northwestern Virginia an election for Governor. The Convention, from the dictates of an imperative necessity, were obliged to assume the responsibility of electing a Governor themselves. That far we interfered with the rights of popular sovereignty, but we trusted to our constituents to excuse us for that interference on account of the necessities, the difficulties, the vast embarrassments, with which we were surrounded. They unanimously approved of our course.—

Throughout the whole length and breadth of this land our action in June has been approved of; approved of by the government of the United States; approved of by the loyal men of the loyal States everywhere. We were fully justified, therefore, in doing it. But, Sir, having elected a Governor in this irregular—and except so far as it was justified by the circumstances with which we are surrounded—unjustifiable mode, we prescribed six months for his term of office. Yet, Sir, we went on here to enact as follows:

"The General Assembly to provide by law for the election of Governor and Lieutenant-Governor by the people, as soon as in their judgment such election can be properly held."

The office of Governor under the reorganized government, is not to terminate at the end of six [months], at least according to the ordinance for the reorganization of that government. An express provision is made for its continuance, and for its continuance in a regular manner by election by the people whenever in the opinion of the Legislature such election can be properly held. And I would ask attention for one moment to the expression in this clause. The Convention did not *recommend* this to the Legislature; they did not *request* the Legislature to do it; but they are, in the language which is used here, *required* to do it. Then, Mr. President, look at the provision in regard to members of the Legislature. "They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected." The members of the House of Delegates under this system, hold their offices until 1863, and a portion of the Senators until 1865. When the terms of those officers expire, if this system is to be continued, their successors will be elected in the regular way. In no proper sense of the term, therefore, is this merely a provisional government, for a provisional government, I take it, is a government which fixes in the very charter of its creation a period beyond which it is not to continue. I would wish, also, in connection with this same matter, to correct a singular mistake into which the other gentleman from Harrison (Mr. Carlile,) appeared to have fallen, in the argument which he addressed to the Convention today. He seemed to think that there are members here from a certain portion of the State on their own motion—that they had come here independent of our invitation. He seemed to think that the call for this Convention was addressed to Northwestern Virginia exclusively. I notice these things because it is necessary, it seems to me, in order that the Convention may understand the precise purpose

and object of the movement we have instituted. This is all a mistake. The call under which this Convention was elected, was addressed in the following terms:

"*Resolved*, That in the event of the ordinance being ratified by a vote, on the 23d of this month, (May,) we recommend to the people of the counties here represented, *and all others disposed to co-operate with us*, to appoint on the fourth day of June next, delegates to a general convention to meet on the 11th of that month, etc."

The call is addressed to all the Union men of the State of Virginia, for that is the meaning, and the only meaning, and that was intended to be the meaning, to my certain knowledge, by the expression, "all others who are disposed to co-operate with us." The gentlemen who have come here from Fairfax and Alexandria, have come here upon our call.

MR. CARLILE—"I was speaking of the first call, not the second."

MR. LAMB—"We have other evidence upon this subject, which will show the intended expression of the measure which we have adopted. In this Convention on the 14th of June, 1861, Mr. Hagans, of Preston, offered the following resolution, which was unanimously adopted:

"That in consideration of the peculiar circumstances that have surrounded our loyal brethren of Loudon county, as well as their geographical position, this Convention now extend to them a cordial and special invitation to accredit and send to this Convention their regular number of delegates as soon as may be."

At a former date of the Convention, I find that "John S. Carlile, of Harrison, submitted the following resolution, which was adopted:

"That the loyal people of the counties of this Commonwealth that have not yet appointed delegates to this Convention or are not already represented here, be and they are hereby cordially requested to appoint such delegations without avoidable delay."

Such, then, gentlemen, was the system which we had adopted. We adopted a government here, not provisional; we extended our invitation to all the counties of the Commonwealth, to be represented in this government. We did not intend the movement as a movement of Northwestern Virginia alone, but of all the State, according to the objects expressly set forth in the call."

MR. CARLILE—(Interrupting)—"I do not desire to interrupt the gentleman, but I alluded to the call emanating from the county of Harrison."

MR. LAMB—"The gentleman will excuse me, but I do not see how that is possible."

MR. CARLILE—"It is possible in this way. What I had said in reply to the gentleman from Fairfax, (Mr. Hawxhurst,) was brought to the attention of the Convention by the gentleman from Mason (Mr. Polsley,) and in my reply I alluded to the fact that I had drawn up the call myself, referring, as I had done in the first instance, in reply to the question of the gentleman from Fairfax to the original call for the first Convention. Then it was that the gentleman himself called my attention to the fact that this Convention was called by the Convention which met in May, and was not assembled under the call of the original Harrison county Convention."

MR. LAMB—"Did not the gentleman from Harrison tell the member from Fairfax that he was not here upon our call?"

MR. CARLILE—"I so stated, that he was not here upon the original call. The fact is, it is a Convention to-day of Northwestern Virginia."

MR. LAMB—"It is perfectly immaterial, Mr. President. I had no other object in mentioning these things—certainly no intention of saying anything that might be in the slightest degree displeasing to my friend from Harrison."

MR. CARLILE—"It did not displease me at all; not at all."

MR. LAMB—"I had no other object than for the purpose of explaining in such a method that it could not be contradicted, what had been the purpose and object of our movement here—that it was just that very thing that was mentioned in the letter from the Attorney General of the United States—that from the beginning of this movement, at least, from the beginning of this Convention, down to the present time, it has been the object of a majority of the members of this Convention to furnish to the Union men throughout the State of Virginia, that "constitutional nucleus, around which the shattered elements" of Unionism throughout this State could rally. Such was unquestionably our object. The gentleman will recollect that motion after motion was made in the June session of this Convention looking to a division of this State; it was objected to and voted down, because it might interfere with this great object. Yet all this is now to be swept away. The Union men in our portions of Virginia outside of the limits of the proposed State, after the fourth Thursday of October next, are not to be at liberty to unite with us; they will have no longer a nucleus around which they can rally. They will have no State government

within this State unless the United States—as I think the United States will be pledged to do—shall encourage the formation of another government for the State of Virginia, after we shall have swept off the present one.

There is one other subject which before I take my seat I wish to touch upon, but very tenderly. It is the subject of slavery in connection with this plan. Your new State, Mr. President, as developed in the substitute last submitted, extending over so large a district of territory will have within its borders according to the census of 1860, 14,800 slaves, only. The slave population of Virginia, is I believe, not quite 500,000. You select precisely that portion of the territory that contains the smallest amount of slaves for the purpose of forming your new State.—And, gentlemen, I have no intention to impute a design of the kind to any member of this Convention, for I do not honestly believe that such a design is ascertained, but I have heard it said, and it will be said with such facts staring us in the face, that this is an abolition movement. According to the census of 1860, the slave population of this new State was 14,800, and what is it now? It is considerably less already. You appear in Congress, then, presenting this plan before them, asking their acknowledgment of the new State—asking their consent to the formation of such a State. You present it to Congress in the midst of troubles and distractions which rest upon this country—for you will not wait for a moment—you inevitably raised the slave question there.—With the facts I have stated, gentlemen, there can be no other result. They will say to you: The slave population within your State is insignificant; come to us as a free State and you shall be admitted. You know that when you present this State before them such facts will raise that question; and do you want to raise such a question as that? Do you want to push such a question upon the councils of the nation, a question of that nature in the midst of the difficulties and troubles which now surround us? I hope you do not.

Mr. President, I have as little personal interest in this matter perhaps as most of you, but I feel the importance of the subject most deeply. I fear if you press this measure upon us as you seem determined to do, that its only result will be woe to you and me and mine. But if the measure carries I certainly shall join heartily, fairly and honestly, in carrying out your determination, my fate will be yours, and I can only hope, that whether weal or woe

come of it, I may still be able, in any event, to protect those that are dependent upon me."

MR. FAST followed in an argument of some length in favor of division, and after he had concluded,

MR. FROST moved an adjournment but gave way for Mr. West, who by general consent offered the following resolution:

WHEREAS, In consequence of existing hostilities and the disorganized condition of our once happy and prosperous Commonwealth, it becomes necessary for the Legislature that met in July last, in extra session, to meet again in December next; and

WHEREAS, it is believed by this Convention that rebellion will soon be swept from every part of Virginia; be it therefore

Resolved, That if the Governor of this Commonwealth in his wisdom may think it safe and prudent, and the interest of the State requires it, he shall cause the next annual session of the Legislature to be ordered to meet in the city of Richmond on the first Monday of December next, unless he, in his opinion, shall think the good of the Commonwealth demand the assembling of it at an earlier day.

MR. WEST gave as a reason for offering this resolution, that he wanted to test the sincerity of gentlemen who insisted that they were legislating and should continue to legislate for the whole State.

A motion to adjourn prevailed, and the Convention adjourned without a vote upon the resolution.

ADJOURNED SESSION—ELEVENTH DAY.

SATURDAY, AUGUST 17, 1861.

The Convention met at ten, and was opened with prayer by Rev. D. B. DORSEY, member of the Convention from Monongalia.

Minutes read and adopted.

The resolution of the gentleman from Wetzel came up as unfinished business.

MR. WEST said the yeas and nays had been called upon the adoption of that resolution, he believed.

MR. VAN WINKLE had hoped a night's reflection would have induced the gentleman to withdraw the resolution. The gentleman from Harrison had spoken of the poverty of this government yesterday, and such allusions were calculated to bring the government into contempt. This resolution too, he thought must have the same effect. Such playful resolutions in ordinary times could do no harm, but they should not be introduced here at such a time as this.

MR. CATHER hoped the gentleman would withdraw the resolution.

MR. WEST said he never intended to withdraw that resolution.

The order of the day came up.

MR. CARLILE said that the friends of division were willing to offer to the opponents a proposition for something like this:

Adopt the first section of the proposition of the gentleman from Upshur, which simply fixes the boundary lines, and then add an additional section making it the duty of the General Assembly at its next session, if the state of affairs would permit, to provide at an early day, for taking the sense of the people within the boundary.

MR. FROST expressed a willingness to meet the friends of division half way in any fair proposition of compromise. He had desired to speak upon this question, but as the Convention had already been worn down with speeches, he would forego any remarks, if the business could proceed and a vote be taken.

MR. BOREMAN did not know that he understood the proposition. He would like to have a little more time on it, and if it was what he thought it was, it would suit him. He should not say a word to the Convention, but from the fact that no gentleman had yet taken up the substitute offered by himself, and defended it in its various positions. They seemed to have left this for him to do, and he asked indulgence to be allowed to make a few remarks in advocacy of that proposition.

Were they to be selfish in the view they took of this great question? No; he argued that all they did should be done in a spirit of magnanimity, of forbearance, of enlarged and comprehensive patriotism, and not allow that patriotism to be bounded by State lines. Let them recollect that they had a government, around which clustered the most glorious recollections and all their best hopes. They were here to do all they could to transmit this government to their posterity, and should not as good loyal men, look well to this very act, lest they should weaken the cause of their country and strengthen that of their enemies. He would say as Mr. Carlile had, that next to success of the whole country, was the division of Virginia, because it was the interests of his people, the interest of the whole State, and his own personal interest. With respect to the State debt, he did not look upon that question as many gentlemen did. Congress had nothing to do with our State debt. If they

presented the question to them there, and Congress saw that the two peoples could not live together in harmony, in justice to both they were bound to sanction the separation, and let the two States settle that question among themselves after the division was made. Congress had nothing to do with it. As for the time of division, he believed no man desired an immediate vote, because they were honestly convinced of the fact that they were not prepared for a vote at this time. The people could not vote. The number of rebel forces within the borders of the proposed State, prevented any meeting and discussion among the people, and must at this time effectually prevent any expression at the polls. And if a vote could not be taken now, when could they take a vote? If they could tell him this, then he would answer the question put to them so often, how long would they propose to wait. He was satisfied they should not fix permanently upon a day at all. Because, as gentlemen have admitted by their own propositions we are now unprepared to take a vote. And then did they know they would be ready on a particular day? He had shown they did not. Then would it be right to fix a day when they had no assurance that the people could vote upon that day. The gentleman from Harrison (Carlile) wanted an expression of the people; and yet would he ask the people to vote upon a day when he knew they could not vote or when it was uncertain at best. Why not provide for this disability and prepare for taking an expression at such time as it might appear hereafter the people could have an opportunity of doing so? The enemy should be driven out first; to offer them an opportunity to vote when they knew they could not would be little better than insult. The same reasons that were valid for postponing a vote were equally valid for postponing the formation of the constitution. Some gentlemen propose to take the old constitution with some slight modifications; why, Sir, nothing could be more obnoxious to the people of Western Virginia than every line of that old constitution. But, Sir, for a Convention of the whole State of Virginia to turn around and claim to be a Convention chosen by a portion of the State, to form a constitution for that proposed new State would be a monstrous proposition. The proposition offered by some of the substitutes, proposing to adopt an ordinance allowing certain counties not now to be included in the boundaries to vote upon the question hereafter, was a recognition of the fact that the people of these counties could not, vote upon

the subject. Well now this was just his proposition with reference to nearly all the counties, and if the principle would apply to these counties, would it not apply equally to those? He wanted no expression at all until it could be a full and fair one.

. He proceeded again to denounce the old constitution, and was interrupted in reply by Mr. West. He declared, in resuming, that to get rid of this constitution was one reason for his having long favored a division of the State. But, Sir, if they went into the formation of a constitution for the new State, it was the formaion of a government for it. A constitution was difficult to be changed. People would submit to them even if oppressive, rather than resort to revolution to free themselves from them. They had long done that thing in this State; but they had lived in hope that some day the fetters would be broken and they would be released from a most grinding oppression.

He took up the substitute offered by himself, and after reading it, proceeded to a discussion of its provisions. He had not offered it to kill off any proposition to divide the State or to destroy any measure proposing to take an expression of the people upon the question. It simply proposed to say that it would be premature and would be taking advantage of a portion of their fellow-citizens for the Convention to attempt the formation of a constitution now, and expressed a desire that the General Assembly, provided in their opinion the people could at that time vote, appoint an election on the first Thursday in January, to obtain an expression as to whether the new State could be formed or not.

As to boundaries, if the people would vote for it in those portions of the State, he would like to take all the territory proposed by the ordinance reported by the Committee; but he did not want to take in counties that might aid in voting down a new State altogether. He should not strenuously object to the fixing of boundaries now, but he believed it would be better to let that matter rest until the meeting of the Legislature, when they might be able to obtain more territory than it would be thought now advisable to take in.

In reply to the question, how does precipitate action embarrass the General Government, it would for one thing introduce the slavery question into Congress. If introduced there, and the Constitution should be rejected, it would be said they refused it because it was a Republican Congress, and it was a slavery Constitution; and

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it would foment such an excitement in Western Virginia as was never before witnessed.

MR. LEWIS inquired whether that same difficulty would not have to be met, even if the application were not made till peace was restored.

MR. BOREMAN said it would not then be so embarrassing because the government would not have so many and such great difficulties upon its shoulders, and it would then be a very different question. Just at this time it was a very unpropitious moment. If we now undertake to strike a line here as proposed would it not go forth that we were trying to aid the South, that this Wheeling government had abandoned its position and were preparing for a dissolution of this Union. Besides this movement then loses all its prestige in the other States. This is an auxiliary movement to aid the Government of the United States, and what must be the effect in Tennessee and Alabama, and all over the country? They would say we had acted hypocritically, covering up the selfish design of building up a State for ourselves. It would be used by the secessionists everywhere to embarrass the Government and strengthen their own position, and would destroy the moral force and prestige of all we have done here. This proposition left all this responsibility of action upon the Legislature.

Suppose they did divide the State, which was the old State and which the new State? Reorganize a new government here and what becomes of the old one? It revolutionizes this part, it drives out the old government. He would leave the question for gentlemen to answer it for themselves. This might be the grand reason why all secessionists were in favor of a division; because it would prevent the loyal people of the other seceded States from following our example in reorganizing the whole State government. It would demoralize the whole movement.

The gentleman from Upshur had said some members were opposed to the whole movement for a division. He had not heard any members so express themselves; but he had heard them all say just the contrary. For himself, he was acting in good faith, and whenever the conditions would allow a vote to be taken he would go for a proposition for a separation of the State; and he intended to go home and support whatever decision this Convention might arrive at, let that be what it might.

MR. CATHER followed, and in reply to what had been said about

precipitate action said that none of them were for the taking of the vote at once. His own proposition was for the fourth Thursday of November. But he would vote for any measure looking to a division of the State. He would favor some measure that would compromise their differences.

MR. JOHNSON believed that this question ought not [to] have been introduced here. This was not the proper body to take this question of a division into consideration. He took substantially the same grounds occupied by Mr. Boreman. He alluded to what had been said about the possibility of the success of the Southern Confederacy, and said that the establishment of a boundary at this time between the loyal and rebellious portions of the State would be the drawing of the first line between the Northern and Southern Confederacies. He made the point that inasmuch as the Constitution of the United States guarantees to every State a Republican form of government, Congress could not admit a State which in its creation destroyed the only republican form of government there was in the State. He charged that the thing of taken advantage of the East, which many gentlemen proposed, would be dishonorable. Besides it was a revolutionary measure because it could not be carried out according to the spirit of the Constitution.

MR. DORSEY moved the previous question.

MR. LEWIS suggested after the question was put that a recess be taken.

MR. HARRISON called for the yeas and nays on the main question.

MR. WEST hoped the House would vote down the motion.

The vote was taken and the main question ordered to be put.

The main question was upon the substitute of the gentleman from Tyler, Mr. Boreman.

MR. FROST moved to reconsider the vote by which the main question was ordered, which he afterwards withdrew.

MR. STUART moved a reconsideration and the President decided it out of order.

MR. STUART appealed from the decision of the Chair—and on that Mr. Van Winkle called for the yeas and nays.

MR. WEST moved to lay the appeal upon the table, and upon that Mr. Frost called the yeas and nays.

The time fixed for adjournment having arrived, the Convention adjourned without a vote.

AFTERNOON SESSION.

The Convention re-assembled at half-past two [o'clock.]

The President said the question when they took a recess was on laying the appeal on the table, but as the occasion for it had passed it had been withdrawn.

The yeas and nays upon the substitute of Mr. Boreman having been called were taken and resulted as follows:

YEAS—Messrs. Atkinson, Boreman of Tyler, Barns, Bowyer, Burley, Broski, Barrack, Crothers, Crawford, Close, Caldwell, Carskadon, Copley, Flesher, Gist, Graham, Harrison, Hubbard, Hall, Hawxhurst, Johnson, Koontz, Logan, Lamb, Mason, Montague, Nicholls, Polsley, Price, Ritchie, Smith of Marion, Slack, Stuart, Tarr, Trout, Van Winkle, Withers, Wetzel, Watson, President (Boreman of Wood)—40.

NAYS—Messrs. Berkshire, Brown, Burdett, Brumfield, Cather, Carlile, Crane of Preston, Crane of Randolph, Dorsey, Downey, Davis, Evans, Ferrell, Farnsworth, Foley, Fast, Fleming, Hale, Hooton, Howard, Jackson, Kramer, Lewis, Love, Martin of Wetzel, Myers, Michael, Paxton, Parsons, Smith, Scott, Snider, Smith (J. L.), Swan, Taft, Vance, West, Williamson of Pleasants, Wilson, Zinn—42.

The question recurring upon the substitute of Mr. Carlile for that of Mr. Farnsworth, he proposed as an additional section the following, prepared by Mr. Lamb, at the end of the same:

"The government of the State, as reorganized by the ordinance for the re-organization of the State government, shall retain the powers and authority undiminished and unimpaired until the proposed State shall be admitted into the Union by the Congress of the United States."

MR. FARNSWORTH accepted the substitute with this addition, in lieu of his own proposition.

MR. CARLILE took occasion to make some remarks urging the adoption of the proposition, and appealing to them all, whatever the result might be, to go away from here resolved to act in unity and use their best efforts to carry out the objects of the Convention and unite their people in their support.

After MR. CARLILE had finished his remarks,

MR. HALE moved the previous question.

MR. LAMB said if they were thus to be met with the previous question on all occasions he hoped the gentlemen who had acted with him upon this question would leave the Convention and let gentlemen upon the other side raise a quorum the best way they could.

MR. HALE subsequently withdrew the demand.

MR. NICHOLLS offered the following as a substitute for the second section of Mr. Carlile's substitute:

Sec. 2. Be it further ordained, That the General Assembly shall pro-

vide for taking a vote within the boundaries aforesaid on the first Thursday of January next, if the state of affairs will admit of a full and free expression of the popular sentiment within four of the counties above named, and if not then, as soon thereafter as possible, on the question of the formation of a new State, and also for the election of members of a Convention for the purpose of forming a Constitution for the proposed State, in which Convention each county and election district shall have the same number of representatives to which it will be entitled at the next succeeding session of the House of Delegates.

MR. NICHOLLS followed in a very forcible speech of some length, in opposition to a division of the State, and was followed by

MR. SHIDER, who replied to Mr. Nicholls and others, who had preceded him. He favored immediately having an expression of the people, and made some very spicy remarks in reply to what had been said about his hint at a counter revolution among the people in case no action was taken.

MR. FROST succeeded, upon the same side of the question as Mr. Nicholls. He concluded by declaring that whatever should be the action of the Convention, he would give it his entire and hearty support, and he hoped all would do the same.

After some further remarks by MESSRS. NICHOLLS, CATHER and BARNS.

MR. MARTIN of Wetzel called for the previous question. The demand was sustained.

The previous question upon the amendment of Mr. Nicholls, was ordered.

The main question upon the amendment of Mr. Nicholls, was then taken by yeas and nays and resulted, 34 nays, yeas 42.

MR. POLSLEY offered the following as an amendment:

"That five commissioners from as many different counties be appointed by this Convention who shall meet in Parkersburg on the first Monday of ————————, and appoint a day for the holding of said election if in the opinion of a majority of them, a free and fair election can be holden in four-fifths of the counties within the boundaries of the State to be fixed."

MR. POLSLEY spoke briefly in advocacy of his amendment and was followed by Mr. Burdett in a very spicy little speeech in favor of a division of the State and in opposition to the amendment. In the course of his remarks in alluding to the objection made that the slavery question must be dragged into this controversy in forming a constitution, he said that although he was as good a pro-slavery man as any one in the State, he would see the whole institution abolished before his country and its government should be destroyed. He loved his country more than he loved the institution.

MR. FARNSWORTH called for the previous question, which being

sustained, the question upon the adoption of Mr. Polsley's amendment was taken and lost by yeas 31, nays 45.

MR. STUART proposed to strike out the boundaries proposed in the substitute, and insert the boundaries proposed in the report of the Committee.

MR. FARNSWORTH rose to call the previous question. This was only another dodge to kill the bill.

MR. STUART appealed to the House for a few moments to speak upon his amendment.

The call for the previous question was sustained, and upon the question, Shall the main question be put? Mr. Stuart called for the yeas and nays, which being taken, the call was lost, by yeas 32, nays 42.

MR. CROTHERS moved an adjournment.

MR. CARLILE arose to say a few words by general consent, for the benefit of his friend from Ohio and others.

THE PRESIDENT said it could only be by general consent.

Several members objected.

MR. CARLILE said he must say it, and amid great confusion and cries of order, he proceeded to say that if this course was to be pursued by the opponents of compromise after the offer he had made to meet them upon a compromise, he would now take it all back, and if they would and must have war, they could have it.

Some member said "and war it shall be!" another said "We will meet you."

MR. FROST arose and said he too would take back all he had said of a willingness to meet the advocates of a division upon compromise grounds.

MR. CROTHERS withdrew his motion, and

MR. STUART proceeded to make a speech upon boundary; after which the yeas and nays, having been demanded upon the question of adopting Mr. Stuart's amendment, were taken and resulted yeas 38, nays 37.

So the amendment was adopted, being decided by Mr. Atkinson changing his vote.

The question recurred upon the substitute as amended, and Mr. West proceeded to address the Convention on a variety of subjects, but chiefly in relation to boundary.

MR. CARLILE said he had stated repeatedly that he should yield a willing acquiescence to whatever might be the conclusion of the

Convention. He regarded the adoption of this amendment as equivalent to an indication that the Convention had determined not to adopt any measure that would result in the division of the State, or that the voice of the people within what should be the legitimate State, should at this time be heard. They all knew that territory was thus included which must vote down a proposition for separation, and he presumed it was so intended. He was now willing to accept this as an expression of the Convention and as such he would acquiesce in it. Amended as it now was he must vote against the substitute which he himself had offered, still hoping that at some future day they should be able to accomplish the much-desired end now, as he was willing to regard it here defeated.

MR. TARR, with a hope that a little time and reflection would tend to produce a better feeling among members, moved to adjourn.

MR. FARNSWORTH said they now had no further business here, and he moved to adjourn *sine die*.

Several members cried out, "Yes, let's adjourn and go home." "We have no more business here." &c.

THE PRESIDENT decided the motion out of order—the motion to adjourn taking precedence.

This motion was put, and the Convention adjourned with much disorder.

ADJOURNED SESSION—TWELFTH DAY.

MONDAY, AUGUST 19, 1861.

The Convention met and was called to order at half-past 9 o'clock A. M.

Prayer by Rev. Gideon Martin of the M. E. Church.

Minutes of Saturday read and approved.

THE PRESIDENT presented a communication from the Governor, tendering his resignation as a member of the Convention.

MR. LEWIS followed in some remarks upon the form of the government here, and suggested that the executive and legislative department of the government ought to be entirely separated, and that it should be brought back to its original representative character. The Richmond Convention had placed the supreme power in the

executive, and he thought that in re-constructing this government they ought to remedy the evils brought upon us by that Convention. We should be careful of patterning after them in destroying the representative character of our government and investing too much of the authority in the hands of an executive. He favored the acceptance of the resignation.

MR. LEWIS went on at some length to explain the card to which allusion had been made in debate here. He reviewed circumstances which induced him to write it, and defined what he meant by a divided allegiance, to be strictly in accordance with the Constitution of the United States and of the State. He took the position he did at the time, because he understood the movement then being inauguarted here as a counter revolution, and not what it has since proved itself, the reorganizing of the government of the whole State; and because he thought it possessed a disintegration of the State at a time when he thought it would have been unwise. "If that card was mistaken in the doctrines it announced, if it was imprudent in its inception, and ill-judged in the time of its being put forth; it, as was remarked by the gentleman from Ohio, threw impediments in the way of those who are engaged in this great movement. I will from this day make use of all my powers, intellectual, moral and physical, to undo what was wrongfully done in the righting of that card."

The resignation of Mr. Pierpont was accepted.

The order of the day came up being upon the substitute as amended by Mr. Stuart.

MR. HOOTON proceeded to address the Convention. He believed upon the harmonious settlement of this vexed question here depended the welfare of this government. Since Saturday they had all had time to reflect, and he came here this morning holding out an olive branch to gentlemen who advocated the opposite of this question. For this purpose he submitted the proposition that this whole matter be referred to a committee to consist of six members, three from each side, with the express understanding that the committee report tomorrow morning. He moved that the whole matter be thus referred.

MR. FARNSWORTH asked the gentleman to withdraw his motion for a time.

MR. HOOTON declined to do so, as he was aware that there were,

at least, half a dozen propositions to be offered. He could not consistently do so.

MR. FARHSWORTH said his object was to present a modification of his proposition, which he believed would give general satisfaction. If this should fail he would then favor the proposition.

MR. HOOTON said the gentleman could present his modified proposition to the committee for their consideration.

MR. BOREMAN said he was willing to meet gentlemen on the other side half way, and he thought every proposition had much better be referred to the committee.

MR. DORSEY moved to amend the motion by inserting as the committee, the names of Messrs. Carlile, Lamb, Kramer, Carskadon, Jackson and Boreman of Tyler.

MR. TARR moved to amend by making the committee consist of ten, and thought they should be selected from every side of the house.

MR. VAN WINKLE remarked that in the Convention of 1850, when the Compromise Committee was appointed to consider the question of the white basis, they were appointed by ballot, each member voting for half the committee. He did not make the motion to select them in this way, but merely made the suggestion.

MR. WEST expressed a hope that the proposition of the gentleman from Preston would prevail.

MR. DORSEY withdrew his motion.

MR. POLSLEY rose merely, as he said, for the purpose of expressing his cordial approbation of the proposition of the gentleman from Preston.

MR. TARR withdrew his amendment to the motion of Mr. Dorsey.

MR. LAMB suggested that each side of the house upon the question to be determined should select its half of the Committee.

MR. HOOTON accepted the suggestion.

MR. HOOTON'S proposition as thus amended was adopted unanimously.

MR. LAMB, from the Committee on Credentials, reported that E. B. Hall, of Marion, was entitled to a seat in the Convention, to fill the vacancy created by the resignation of Mr. Pierpont.

The report was adopted and Mr. Hall sworn in.

MR. FROST presented an ordinance to provide for holding a special term of the County Court of Jackson county, to commence

on the fourth Thursday of August, 1861, which ordinance was passed.

MR. VAN WINKLE by general consent, offered the Committee on Business an ordinance providing for the collection of the public revenue in certain cases, which was laid upon the table and ordered to be printed.

The Convention then took a recess until the regular hour, to afford opportunity to elect a Compromise Committee.

AFTERNOON SESSION.

Convention met at half-past two. [o'clock.]

MR. FROST said the members of both sides respectfully elected the following gentlemen as the Committee on Compromise: Messrs. Farnsworth, Carlile, Paxton, Van Winkle, Ruffner and Lamb.

MR. VAN WINKLE said he was instructed by that Committee to recommend to the Convention an adjournment until tomorrow morning, in order that all propositions connected with the subject which are pending or may be offered, be referred to that Committee, and that they have liberty to print their report before submitting it to the Convention, if they can agree in time. "In that case the matter will be ready for your action at the opening of the morning session, and will hardly be got ready before. In reference to the other business that is pending here I mentioned it to the Committee, and they said they would like to be present when it is acted upon; and upon the whole, considering the state of anxiety in the minds of the members upon this subject, it was thought if we would dispose of this in the morning, the other business could be taken up and disposed of in perhaps a half hour or an hour.

"I therefore move that all propositions and any proposition that may be offered in reference to a division of the State, be referred to the Select Committee on that subject, and that they have leave to print such report as they may agree to by tomorrow morning."

MR. LEWIS—"In accordance with the suggestion just made, I move that the Convention now adjourn."

MR. FROST asked the gentleman to withdraw his motion a moment to allow him to make a personal explanation, which he proceeded to do as follows:

"The impression seems to have gone abroad, Sir, that on last

Saturday, after making the statement I did, that I had paired off with Mr. Todd, of Taylor county. I voted upon the amendment of the member from Doddridge. I distinctly stated then that I believed under the arrangement I had made with Mr. Todd, I had the right after the proposition of Mr. Boreman was voted down, to vote upon any subsequent proposition, but I declined doing it, lest it might be misinterpreted. I voted upon one proposition alone, and that was upon a motion to put the main question. I voted against that in order to allow the member from Doddridge an opportunity to speak upon his proposition. This impression seems to have gone abroad outside of the hall from the report of members who seemed to have misunderstood the vote I gave. I make this statement in order that reporters may make some minute of it to show why I declined voting. I was in favor of the motion of the gentleman from Doddridge, and should have voted in favor of it, but for the reason assigned I did not vote upon it."

MR. LEWIS then renewed his motion and the Convention adjourned.

ADJOURNED SESSION—THIRTEENTH DAY,

THURSDAY, AUGUST 20, 1861.

Convention met and was called to order at half-past nine A. M.

Prayer by Rev. Gordon Battelle.

Minutes read and approved.

MR. FARNSWORTH—"As Chairman of the Committee, Sir, whose duty it was by special appointment to try, if possible, to compromise upon some measure to be adopted by this Convention, we are ready this morning to report, and, we would say to this Convention, that the labors of that Committee were arduous. We met in the spirit of harmony and union; we met for the purpose of meeting, if possible, upon some general compromise ground that would suit this entire Convention and suit the people. And I am happy this morning to say to this Convention that we have agreed upon a plan to be submitted this morning; and we have not only agreed, but unanimously agreed. Every member of the Committee, and I believe, with heart and hand, has agreed to it. And we take great pleasure this morning in submitting the result of the labors of that Committee, hoping that this Convention may properly appreciate the report we make.

The following is the report:

AN ORDINANCE TO PROVIDE FOR THE FORMATION OF A NEW STATE OUT OF A PORTION OF THE TERRITORY OF THIS STATE.

WHEREAS, It is represented to be the desire of the people inhabiting the counties hereinafter mentioned to be separated from this Commonwealth, and to be erected into a separate and independent State, and admitted into the Union of States, and become a member of the Government of the United States:

SEC. 1. The people of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain that a new State to be called the State of KANAWHA, be formed and erected out of the territory included within the following described boundary: Beginning on the Tug Fork of [Big] Sandy river on the Kentucky line where the counties of Buchanan and Logan join the same, and running thence with the dividing line of said counties, and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line, and thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the south-west corner of Hardy county, thence with the dividing line of the counties of Hardy and Tucker to the Fairfax Stone, thence with the line dividing the State of Maryland and Virginia to the Pennsylvania line, thence with the line dividing the States of Pennsylvania and Virginia to the Ohio River, thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock.

SEC. 2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places

of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State as hereinbefore proposed; and it shall be the duty of the Commissioners conducting the election at the said several places of voting at the same time, to cause polls to be taken for the election of Delegates to a Convention to form a Constitution for the government of the proposed State.

SEC. 3. The Convention hereinbefore provided for may change the boundaries described in the first section of this Ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect Delegates to the said Convention, at elections to be held at the time and in the manner herein provided for.

SEC. 4. Poll Books shall be prepared under the direction of the Governor, for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other, "Against the New State."

And it shall be the duty of the Commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the Governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said Commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as Commissioners in superintending said election. It shall be the duty of such persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding such election, there shall be in any of the said counties, any military force or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of such Commissioners superintending, and officers conducting said election, and the clerks employed to

record the votes, each before entering upon the duties of his respective office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this Convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the Secretary of the Commonwealth, in the City of Wheeling, which return shall be in the following form, or to the following effect:

We, ..., Commissioners, and ....., conducting officers, do certify that we caused an election to be held at ..... in the county of ..... at which we permitted all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following result: For a new State, ...votes; Against a new State, ... votes. Given under our hands, this ..... day of..... 1861.

Under which certificate there shall be added the following affidavit:

.....County, to-wit:

I. ..... a Justice of the Peace, (or any officer now authorized by law to administer oaths, in and for said county, do certify that the above-named commissioners and conducting officers, severally made oath before me that the certificate by them above signed, is true. Given under my hand this.....day of ..... 1861.

.....J. P.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon the demand of the Executive shall be delivered to such person as he may authorize to demand and receive them.

SEC. 5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the Convention hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the persons elected to the said Convention.

SEC. 6. It shall be the duty of the Governor on or before the

fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote, and if the majority of the votes given within the boundaries mentioned in the first section of this ordinance shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling on the 26th day of November next, and organize themselves into a Convention, and said Convention shall submit for ratification or rejection the Constitution that may be agreed upon by it, to the qualified voters within the proposed State, to be voted upon by the said voters on the fourh Thursday in December next.

SEC. 7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two; and the other counties named in the first section of this Ordinance shall each elect one delegate to the said Convention. And such other counties as are described in the third section of this Ordinance shall, for every seven thousand of their population, according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to one delegate.

SEC. 8. It shall be the duty of the Governor to lay before the General Assembly, at its next meeting, for their consent, according to the Constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the Constitution proposed to said voters for their adoption.

SEC. 9. Said new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and just proportion of the ordinary expenses of the State government, since any part of said debt was contracted, and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State within the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands, or land warrants issued by the proposed State, shall interfere with any warrant issued from the Land Office of Virginia, prior to the 17th day of April last, which shall be located on lands within the proposed State, now liable thereto.

SEC. 10. When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that the said new State may be admitted into the Union of States.

SEC. 11. The Government of the State of Virginia, as re-organized by this Convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said re-organized State government in any county which shall not be included in the proposed State.

MR. VAN WINKLE—"The questions involved here are those of boundary and of time. We had conceded to the gentlemen on the other side an opportunity of bringing this matter before the Legislature at its next session, in consideration, partly, at least, of the fact that if the next legislature holds only its regular session it will not meet until two years after December next. It however will be seen, leaves discretion enough in the Legislature to act upon this matter, and if as we have feared the state of the country should be such that this vote cannot be taken in any considerable number of the counties, why, of course, the thing would fail for the present.

Again, Sir, what we think, to some extent, has been conceded to us is that another Convention shall be called for the purpose of making a Constitution for the new State. There were serious objections to going on with the old constitution and organizing a government under its provisions, and in a few months have to make another Constitution. The Constitution of the new State will

therefore be submitted to the people before the application comes before the Legislature.

In reference to the boundary, I can only refer gentlemen to the bill. There have been so many different and conflicting views in reference to that subject that it is hard to say which side has yielded and which has not. And while my views were very strong in the beginning of this matter to endeavor to include the valley, I have somewhat changed in regard to them. One ground of that change is that it would be perhaps taking too much from the old State. Another is that the Valley itself would not consent, or at least no other parts than those for which provision is made in this ordinance. I will only say in conclusion that the ordinance is made up of the different propositions offered here, and is, I believe, really the result of a sincere desire on the part of the Committee to do something that would meet the approbation of the Convention and the people generally.

The dangers that we feared from too early action will perhaps be obviated by the provisions of this ordinance, and I think if this belief is general, that there can be no objection to passing it as it is. If there are any counties in which from the occupation of hostile troops, elections cannot be held, the matter cannot be acted on by the Legislature. At any rate there is discretion left to the Legislature to act properly in this matter, and if we go on to Congress with our application in that way, and if there is any irregularity it is not likely we will obtain their consent. It will, therefore, behoove gentlemen who are favoring this movement most strongly to wait until they have the consent of these counties embraced in this boundary, to insure the assent of Congress. We think that the great concession made on our side is in conceding early action, to refuse which would, perhaps, be fatal to the whole thing. It was to decide between this and the danger of postponing the whole matter, by permitting the friends of a division to risk action now."

MR. CRANE moved to amend by adding at the end of the 88th line in the 7th section the words "the said delegates shall receive the same *per diem* as that which is now allowed to the members of the General Asembly."

The amendment was agreed to.

MR. POLSLEY obtained the floor, and proceeded to give expression to his reasons for opposing the adoption of the report of the

Committee. His real objection was that the Convention had no power to act on this subject; that "although we are *de jure*—we are in fact the rightful government of the whole state of Virginia, according to the principles of American Government and according to the principles recognized by the government of the United States, yet" he contended that "we are not *de facto* the government of the whole of the State of Virginia." For this reason he could not feel that they had any right to adopt measures for a separation of the State.

MR. MARTIN, of Wetzel, moved the previous question.

Several members asked him to withdraw it.

MR. MARTIN consented to withdraw it, but he did not think the subject needed any further elucidation; it was already exhausted, and he did not think any new light could be thrown upon the subject.

MR. LAMB addressed the Convention briefly, in favor of the report of the Committee. He had consented to it somewhat reluctantly, but he would remind his friends that, by the Constitution of the United States, no action of the people of Virginia can effect anything without the consent of the Legislature, towards the formation of a new State, and that consent must be free and untrammelled. This was one security against a division. Another was, that another Convention was to be held to prepare and submit a constitution to our people of the new State. If that Convention should find the state of things would not allow the subject to be fairly and freely acted upon, they certainly would postpone the matter until such an expression could be had. He thought they had at least a reasonable security that no action would be had unless an actual and fair expression of popular sentiment should be previously had.

MR. TARR proposed to amend the Ordinance in the 20th line, of the first section, by inserting the counties of Hampshire, Hardy, Morgan, Berkeley, and Jefferson.

MR. STUART moved to add, as an amendment, the counties of Pendleton and Highland, and made some remarks in favor of his motion, going to show how strong was the Union sentiment in those counties.

MR. BURDETT retorted by saying that some idea could be formed by the strength of the Union sentiment there by the fact that the first rebel troops that invaded Northwestern Virginia were from

Highland county. They had been quartered in his own town (Pruntytown) and in his own house. Among them was one Captain Hull who in the Richmond Convention was a Union man and who finally yielded and perhaps signed the Ordinance of Secession.

MR. STUART inquired if there was not a company of secession troops in the gentleman's own county (Taylor) before these troops came over from Highland.

MR. BURDETT replied, that might be true, but he had alluded to that fact to show how strong was the Union sentiment in Highland. He supposed the gentleman had, perhaps, some relatives over there and he believed it would be cheaper for him to go over to them than to try to bring the country to us.

MR. DOWNEY obtained the floor for the purpose of vindicating the Union element of Hampshire county. He went on at length to advocate the amendment of Mr. Tarr taking in that and other counties.

MR. HOOTON demanded the previous question.

The question was put upon the amendment of Mr. Stuart, and the amendment lost.

The question recurred on the amendment of Mr. Tarr.

MR. BURLEY hoped gentlemen would concede them this one amendment.

The question on the adoption was taken by yeas and nays, and resulted, yeas 35, nays 27.

So the amendment was adopted.

MR. CARLILE took the floor, and said that by the action just taken, he was satisfied it had destroyed the ordinance reported by the Committee, and this being the case, he should not object to any other amendments. He proceeded to speak in opposition to including the counties named in the amendment. A provision was incorporated into the ordinance by which they could come into the new State, if they desired it; if they did not desire to come in, no power to be exercised here could bring them in. One object was to get rid of the secession forces. He believed that Eastern Virginia was willing to let Northwestern Virginia go and form a separate State, but would they be willing to let these counties go, containing some 8,000 slaves, and which were within their natural boundaries, without a fierce struggle to maintain them. Besides we had no assurance that these counties wanted to come with us at all. They were, some of them, largely secession, and would have to be co-

erced, if brought in at all. The provision of the ordinance would afford them an opportunity to come in, if they desired, and if they did not want to, we certainly did not want them.

As to wanting these counties because the Baltimore and Ohio Railroad ran through them he would just say that in times of peace we had free and unmolested use of that road, and in times of war it could not be used anyhow. So that argument had no force whatever.

MR. CALDWELL interrupted Mr. Carlile and moved a reconsideration of the vote by which the amendment was adopted.

MR. NICHOLLS followed in a very eloquent appeal to members not now to again throw an element of discord into the Convention. They all knew he had opposed immediate action as much as any of them, but they had appointed their committee to adopt measures that might harmonize them, and should not captiously oppose what that committee had proposed to them. Let them not now again distract the Convention and ruin everything. He hoped they would adopt the report and let them go home united, and enter upon the field of duty to which their country now called them, the defence of their homes and firesides. For one he was willing to act with all who were ready to aid in saving their country in this hour of its extremity.

MR. TARR proposed to amend his amendment by leaving out the counties of Berkeley and Jefferson.

MR. HALL, of Marion, obtained the floor and occupied some time in vindicating the Union sentiment of Richmond and Eastern Virginia. He was in favor of taking in the counties included in the amendment of Mr. Tarr, and hoped that gentleman would let them all stand, and not be satisfied with half a loaf. He was opposed to being in a hurry. Let them consider this measure calmly and not hasten things too much toward a division of the State.

MR. VAN WINKLE made some further remarks in explanation of the report of the Committee. If these counties were to be left out they could vote themselves in if they chose to, but if a county should so vote with another intervening between it and the new State, of course they could not come in. But if the counties named in the amendment, or any others, were included in the boundaries they must come in whether willing or not. The leaving out of these counties and others, and then making the provision by which

they might come in if they wished was the very essence of the compromise they had effected.

MR. CARLILE demanded the yeas and nays upon the motion of Mr. Caldwell to reconsider, which being taken resulted as follows:

YEAS—Messrs. Berkshire, Brown, Burdett, Brumfield, Burley, Cather, Crawford, Carlile, Crane of Preston, Crane of Randolph, Caldwell, Davidson, Douglas, Davis, Evans, Ferrell, Farnsworth, Fleming, Gist, Graham, Hale, Hagans, Hooton, Howard, Jackson, Kramer, Lamb, Lewis, Love, Martin of Wetzel, Myers, Mason, Nicholls, Smith of Pleasants, Scott (J. L.) Swan, Taft, Vance, Van Winkle, West, Williamson of Pleasants, Wilson and Zinn—43.

NAYS—Messrs. Atkinson, Boreman, Barns, Bowyer, Broski, Close, Carskadon, Copley, Downey, Foley, Fast, Harrison, Hall of Marion, Johnson, Koontz, Montague, Michael, Polsley, Ritchie, Smith of Marion, Stuart, Tarr, Trout, Withers, Wetzel, Watson, and Mr. President (Boreman of Wood)—27.

So the vote adopting the amendment was reconsidered. The time of a recess having arrived the Convention took a recess, MR. STUART having the floor.

AFTERNOON SESSION.

MR. STUART took the floor, and addressed the Convention upon the question which recurred upon the adoption of the amendment of Mr. Tarr. He thought the report of the Committee was the worst proposition that had yet been offered, and yet some gentlemen here thought it was above criticism. He was opposed to this bill much more than the bill proposed by Mr. Farnsworth, originally. He believed the concession had all been one way. He must give Mr. Carlile credit for having managed this thing admirably. After he had concluded

MR. MARTIN of Wetzel called for the previous question.

The main question was then put upon the amendment of Mr. Tarr to add the counties of Hardy, Hampshire, Morgan, Berkeley, and Jefferson, and being taken by yeas and nays resulted, yeas 31, nays 48.

So the motion to so amend was lost.

MR. BURLEY said he would propose as a compromise, that the counties of Hardy, Hampshire, and Morgan, should be included within the boundaries of the new State. The question upon the amendment was taken and decided in the negative.

MR. CARLILE said the Convention had now spent about two weeks discussing this question, and he thought it was about time for

them to come to some conclusion. They had all made their speeches over about ten times—he had he knew—and he hoped this thing was to come to an end.

He was followed by MR. SMITH, of Marion, who urged in opposition to the adoption of the report of the Committee, that this proposition would bring up prominently the consideration of the slavery question, which must result most disastrously; that such was the state of things in many counties that a fair election could not be held. He argued that this Ordinance would override the Ordinance for the organization of the State government in its provision that the Legislature should order an election for executive officers so as to end their term of office at the end of six months, and thus would perpetuate the present executive of this State government until the new State shall be admitted into the Union.

He moved to strike out, in the 24th line, all after the word "proposed," down to the 33d line.

He was replied to by MR. CARLILE, who said that Mr. Smith and his friends had all along during the session of the Legislature and in the early part of this Convention, favored and insisted on a Convention to form a constitution, and now that that Convention was provided for in this proposition the gentleman had turned against his own pet scheme.

The question was taken upon Mr. Smith's amendment, and it was rejected.

MR. STUART proposed to amend the 1st section by striking out "Kanawha" and inserting "West Virginia," as the name of the new State.

MR. HALL, of Marion, asked for a division of the question.

The motion to strike out "Kanawha" was put and rejected.

MR. WEST said he wished to define his position. He said they had in a manner entirely fair and impartial gone into the selection of the Committee that had reported this morning, and while he did not pretend to say that any other members felt bound, for himself he did feel bound in good faith to carry out the objects of the Committee.

MR. CRANE, of Randolph, proposed as an amendment to the end of the 7th section, as amended by himself this morning, to add these words: "But no person shall receive pay as a member of the General Assembly and of the Convention at the same time."

The amendment was agreed to.

MR. SMITH, of Marion, moved to amend the eleventh section by adding at the end of it the words: "*Provided*, That nothing herein contained shall annul the power of the Legislature to call an election to fill the vacancy of Governor, Lieutenant-Governor, and Attorney, and provided for by an ordinance entitled, 'An Ordinance for the re-organization of the State Government.'"

MR. LAMB said if he could see the least necessity in the world for it, he would vote for the amendment cheerfully, but he could not see such necessity.

MR. SMITH said he saw a necessity for it; because these ordinances would come in conflict. The question might arise in the next Legislature, whether we have that power or not, and by having that proviso here, it sets aside the question forever.

The amendment was rejected.

MR. POLSLEY proposed the following amendment: "Strike out the first sentence of the 7th section, and insert:

That each of said counties shall be entitled to one delegate; and each county having a white population of 7,000 inhabitants, two delegates; each county having a like population of 13,000 shall have three delegates; and Ohio county shall have four delegates.

MR. POLSLEY spoke in favor of his amendment and was replied to by Mr. Lamb.

MR. HOOTON called for the previous question.

The question was put and the amendment rejected.

MR. LEWIS now demanded the previous question on the main question.

The main question was ordered, it being upon the adoption of the ordinance reported by the Select Committee, and having been taken by yeas and nays, resulted as follows:

YEAS—Messrs. Berkshire, Brown, Burdett, Brumfield, Cather, Crawford, Carlile, Crane of Randolph, Crane of Preston, Caldwell, Copley, Davidson, Douglas, Downey, Davis, Evans, Ferrell, Farnsworth, Foley, Fast, Fleming, Hale, Hagans, Hooton, Howard, Jackson, Kramer, Lamb, Lewis, Love, Martin of Wetzel, Myers, Price, Paxton, Parsons, Ruffner, Slack, Smith of Marion, Smith of Pleasants, Smith of Upshur, Swan, Scott, Taft, Vance, Withers, Williamson of Pleasants, Wilson and Zinn—48.

NAYS—Messrs. Atkinson, Boreman of Tyler, Barns, Bowyer, Burley, Broski, Crothers, Close, Carskadon, Gist, Graham, Harrison, Hubbard, Hall of Marion, Hawxhurst, Johnson, Koontz, Mason, Montague, Polsley, Ritchie, Stuart, Tarr, Trout, Wetzel, Watson, and Mr. President (Boreman of Wood)—27.

Several members were paired off.

Remainder of members absent.

So the Ordinance as reported by the Committee and amended by the Convention, was adopted.

MR. HARRISON in casting his vote obtained leave to read an address to the Convention, setting forth his reason for the vote he cast.

MR. SMITH, of Marion, in casting his vote said:

"The bill as presented to the House is, in my opinion, evidently defective. But I have ever been disposed to give the people an opportunity to vote on the subject. I think the people abroad require at our hands that some steps should be taken towards a division of the State, and I have struggled throughout this Convention with a view of getting it before the people in the most unexceptionable shape I possibly could. I regard this as the most objectionable shape in which any proposition has been presented to the House, yet so anxious am I that the people shall have a vote on the subject that I shall vote yea. I do so not because I subscribe to the *modus operandi*, but because I subscribe to the sentiment it has embodied in it, viz: that the people shall exercise their inalienable right of suffrage at the polls."

MR. CALDWELL also made an explanation of his vote, but the reporter not attending at the time did not catch it.

MR. LAMB offered the following resolution:

Resolved, That when this Convention adjourn tomorrow, it shall stand adjourned until called together by the President of this Convention or the Governor; and if not so convened on or before the first Thursday of January next it shall then stand adjourned *sine die*.

MR. SMITH, of Marion, moved to amend by striking out after "tomorrow" and insert "it adjourn *sine die*." He thought there could be no necessity for recalling this Convention.

MR. LAMB said it was possible there might arise an emergency that would justify the assembling of this Convention, and it would at any rate do no harm to leave that power in the hands of the Governor and President of the Convention.

MR. HUBBARD suggested the 26th of November next instead of the first Thursday of January, lest, according to the provisions of the ordinance, there might be two conventions in session at the same time.

MR. LAMB reminded him that the Convention to be called together under the operation of the ordinance would have no power to meet any such emergency as was contemplated. It would be a Convention called for a special purpose, the formation of a Constitution.

MR. SMITH could not see that there ever would be any need of summoning this Convention together again, but at the suggestion of friends he would withdraw the motion.

MR. STUART moved to strike out that part authorizing the President to call them together. He preferred to leave it to the Governor alone.

MR. LAMB replied that the Governor might die, or the secessionists might carry him off. They had better have two strings to their bow.

MR. VAN WINKLE said that in the event of the death of the Governor there would be nobody to call the convention together, and should any emergency arise at such a time this government must go all to pieces.

The amendment was rejected and the resolution adopted.

MR. NICHOLLS presented the following:

Resolved, That the doorkeepers of this Convention be allowed three dollars per day for their services, instead of the sum now fixed.

The resolution was adopted.

MR. VAN WINKLE said he had some resolutions to offer, and while he had no doubt they contained the sentiments of every member of the Convention yet he thought possibly it might be best, or at least well, to put something on the record. They refer, he said, to the necessity, the obligation, which rests upon every member here when he goes back among his constituents, to enforce upon them the importance of aiding and of maintaining, in every way possible, the civil power of this government, and also of aiding and co-operating in the raising of State volunteers in our home defence. The armies of the enemy having left our country, we may think there is no more necessity for this. Even if their return were not probable, we ought to be prepared to put down any domestic violence that might arise ourselves, inasmuch as the Government may, thinking there is no longer any necessity of keeping its troops amongst us, withdraw them for some other field of action.

Every one must be sensible that, unless the civil arm is strengthened in every way it can be, and unless all domestic broils and violence can be kept down until peace returns, our business and other interests must remain in their present prostrate condition.

The following are the resolutions as they were unanimously adopted:

Resolved, That this Convention most earnestly urge upon their loyal fellow-citzens the importance of extending to the re-organized government a cordial recognition, and that support in its efforts to establish the civil authority and to cause the laws to be administered and executed, and maintain peace and good order throughout its jurisdiction.

Resolved, That this Convention further urge upon their loyal fellow-citizens the importance of encouraging by their countenance, active co-operation in the enrollment and drilling of, at least, one company of State volunteers in every county for the purpose of suppressing rebellion and insurrection, and aiding the civil authorities in the enforcement of the laws.

MR. VAN WINKLE, from the Committee on Business, reported an ordinance to provide for the election of representatives in the Congress of the United States; also an ordinance to increase the compensation of the Adjutant-General, during the continuance of hostilities in the Commonwealth.

He moved to take up the following ordinance, which was accordingly put upon its passage and adopted:

AN ORDINANCE ASCERTAINING AND DECLARING IN WHAT CASES OFFICES ARE VACATED UNDER THE DECLARATION OF JUNE 17, 1861.

The people of Virginia, by their Delegates assembled in Convention, at Wheeling, do ordain as follows:

1. Every incumbent of an office held under authority of the commonwealth, or of any county, city or town thereof, who, on and before the 17th day of June last was in rebellion against the government of the United States, or who by any overt act, or by writing or speaking, supported and upheld, or attempted to support or uphold, the usurped government at Richmond, or the pretended government of the Confederate States, and who has not before the passage of this Ordinance, taken and subscribed the oath of office prescribed by the Ordinance of this Convention, entitled "An Ordinance for the Re-organization of the State Government," shall be deemed and taken to have vacated his office; and it shall be the duty of the Governor, upon satisfactory evidence thereof, to proceed to fill such vacancy; or cause the same to be filled, in the mode prescribed by the fifth section of the above cited Ordinance.

2. This Ordinance shall be in force from its passage.

He then moved to proceed to the consideration of the following, which was also taken up and passed:

AN ORDINANCE, PROVIDING FOR THE APPOINTMENT OF COLLECTORS OF THE PUBLIC REVENUE IN CERTAIN CASES.

The people of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. If in any County there shall be no Sheriff or Collector of the Public Revenues authorized to act under existing laws and the Ordinances of this Convention, and the County Court of such County cannot be convened, or being convened, shall fail or refuse to appoint and qualify a Collector of the State and County Levies, and other public dues, within the said County, it shall be the duty of the Auditor of Public Accounts, with the approbation of the Governor, to appoint a Collector of the Public Revenues for said County, requiring him to take such oaths and with proper and sufficient sureties, to be approved by the Governor and Auditor, to execute such bonds as are required from Collectors appointed

by the County Courts under the said laws and ordinances. The said bonds shall be filed with the Auditor of Public Accounts, who shall transmit certified copies thereof to the Clerk of the County Court of such County, which copies shall be received as evidence in all the Courts of the Commonwealth.

2. This Ordinance shall be in force from its passage, and may be altered or repealed by the General Assembly.

He then called up the following just laid upon the table and it was taken up and also passed:

AN ORDINANCE TO PROVIDE FOR THE ELECTION OF REPRESENTATIVES IN THE CONGRESS OF THE UNITED STATES.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. In every Congressional District of the State where from any cause an election for Representative in the Congress of the United States was not held on the fourth Thursday of May last, and in the Eleventh District, where a vacancy now exists, an election shall be held on the fourth Thursday of October next, which shall be conducted, and the result ascertained, declared and certified in the manner directed in the 2d section of the 2d edition of the Code of Virginia.

2. If in consequence of the occupation of any county by any army or forces in hostility with, or rebellion against the government of the United States, such election cannot be, or is not, held in such county, any person entitled to vote therein may vote in any other county of his district; and if no election shall be held at the time appointed in the 1st section of this ordinance in any Congressional District therein mentioned, the Governor on receiving satisfactory evidence thereof, may by proclamation or writ appoint another day for holding such election therein.

3. This ordinance shall be in force from its passage.

On motion of MR. CARLILE, the following ordinance was taken up from the table and adopted:

AN ORDINANCE INCREASING THE COMPENSATION OF THE ADJUTANT-GENERAL DURING THE CONTINUANCE OF HOSTILITIES IN THE COMMONWEALTH.

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. During the continuance of hostilities within the Commonwealth, the Adjutant-General, in addition to the salary now allowed by law, shall be entitled to receive the sum of $700.00 per annum.

2. This ordinance shall be in force from its passage, and may be altered or repealed by the General Assembly.

On motion, a committee, consisting of Messrs. Van Winkle, Boreman and Lamb, were selected to revise the ordinances of the Convention.

MR. CALDWELL presented an ordinance relating to grand and petit jurors and attorneys-at-law, requiring them to answer certain questions before entering upon the duties of their offices, which, after some consideration, was indefinitely postponed.

MR. KRAMER offered the following, which was agreed to:

Resolved, That 10,000 copies of the ordinance providing for the forma-

tion of a new State, be published for circulation within the counties of the proposed new State and counties lying contiguous thereto.

MR. BURDETT moved that when this Convention adjourn, it adjourn to meet tomorrow at 4 P. M.

The motion was agreed to, and on motion the Convention adjourned.

ADJOURNED SESSION—LAST DAY,

WEDNESDAY, AUGUST 21, 1861.

The Convention met at four o'clock P. M.

Minutes read and approved.

MR. BOREMAN, of Tyler, offered the following which was adopted:

Resolved, That a committee of three be appointed to wait upon the Governor, and inquire whether he has any communication to make to the Convention before its adjournment.

Messrs. Boreman, Smith of Marion, and Withers, were appointed said committee.

MR. NEWMAN, of Wirt, who had been absent, obtained general consent to vote upon the ordinance creating a new State. He voted nay.

MR. VAN WINKLE, from the Committee of Revision, made their report, which was adopted.

MR. WEST moved to take up the resolution offered some days ago by himself, providing for the next meeting of the next Legislature in Richmond.

MR. CROTHERS suggested that it would not be exactly proper for citizens of Kanawha to meet in Richmond.

A vote was taken and the Convention refused to take up the resolution.

MR. BARNS offered the following resolution of thanks, which was unanimously adopted:

Resolved, That the thanks of this Convention are due and are hereby tendered to the President of this body for the able and impartial manner in which he has discharged the duties of his position.

MR. EVANS offered the following, which was also adopted:

Resolved, That this Convention take pleasure in acknowledging the satisfactory manner in which the Clerk and other officers of the Convention have discharged their respective duties.

MR. WEST offered the following which was also adopted:

Resolved That the thanks of this Convention are due and are hereby tendered to the reverend Clergy who have opened our daily sessions with prayer.

After some time had elapsed in waiting for the return of the Committee,

MR. CARLILE said he believed they had got about through their labors.

A member said the Committee had not returned.

MR. CARLILE—"Well, Sir, we cannot wait here all night on the Committee. I have always found that when we have nothing to do, we are sure to do something we ought not to do. "Idleness is the parent of Vice," is a copy I used to write when a boy at school. I therefore move that this Convention do now adjourn."

MR. WEST—"It would certainly be a very unusual proceeding after having appointed a committee to wait upon the Governor, to adjourn before that committee returned."

THE PRESIDENT reminded the gentlemen that a motion to adjourn could not be discussed.

MR. CARLILE—"I submitted it for that purpose, Sir. I knew we would have to be discussing something while waiting here, and I thought this about as innocent a motion as we could discuss." (Laughter.)

The Committee at this juncture returned.

MR. CATHER offered the following resolution, which was adopted:

Resolved, That the thanks of this body are due to the Reporters of the Proceedings of this Convention.

The Committee reported that the Governor would shortly communicate to the Convention in person.

The Governor appeared in a few minutes and addressed the Convention in executive session.

After the Governor had finished his communication,

MR. WEST moved that the Convention now adjourn.

The motion was put, and the Convention adjourned without day.

THE PRESIDENT (Arthur I. Boreman, of Wood) said:

"*Gentlemen of the Convention:* I desire in parting with you, to say a few words to you, and but a few. I return you my thanks for the complimentary terms in which you have chosen to speak in the resolution you have adopted. We have been assembled in Convention, at the last session and this, about one month; and during that time we have had delicate and responsible duties to perform. It gives me pleasure to say that you have performed those duties fairly, honestly and fearlessly.

At the earlier session, as is well known, you reorganized the government of Virginia, a step which, in my estimation, is fraught with great and grave interests—a step which I trust and believe

you will never regret. I feel proud in saying that so far as my information has extended, that step meets with the cordial approbation of the loyal and patriotic citizens throughout the Commonwealth. They hail it as the best, and, probably, the only hope they have of deliverance from usurpation and despotism. It is for the present, in my estimation, our only salvation. I have assurances from the members of this Convention—I believe from all of them —that they will not desert this government; that they will not abate one jot from their hitherto laudable efforts to assist this government in putting in execution its laws under its authority.

You have passed many ordinances for the purpose of carrying out the objects of your assembling, amongst them one has lately been adopted by you probably more important than any other. You have taken the initiative in the creation and organization of a new State. This is a step of vital importance. I hope, and I pray God it may be successful; that it may not engender strife in our midst, nor bring upon us difficulties from abroad, but that its most ardent advocates may realize their fondest hopes of its complete success. So far as I am personally concerned, I am content with the action of this Convention; I bow with submission to what you have done upon this subject.

Gentlemen, your labors have not been light; they have been arduous. You have not shrunk from the discharge of your duty, however. I feel that your constituents ought to be proud of their representatives, as I am sure that you are proud of a noble, generous and confiding constituency.

Now, gentlemen, permit me to congratulate you upon the harmony, the kind feeling which has characterized all your deliberations during both the sessions of this Convention. If at any time, through a laudable zeal, the members have been led into any manifestation of feeling or excitement, it passed with the moment, and only served to increase their ardor, their zeal and their cordiality in co-operating in the measures adopted by you.

I now hope that each and every one of you may be permitted to go to your homes and that you may find your homes, your firesides, your families, soon restored to their wonted peace and tranquillity and happiness.

I now, gentlemen, bid you adieu, and in accordance with the resolution which was passed on yesterday, I pronounce this Convention adjourned."

APPENDIX[1]

SPEECHES OF JOHN S. CARLILE AND CHAPMAN J. STUART ON A DIVISION OF THE STATE, DELIVERED IN THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA, AT WHEELING, VIRGINIA, AUGUST 8, 1861—THIRD DAY OF THE ADJOURNED SESSION.

Mr. Carlile said:

"Mr. President:—This Convention will at least accord to me sincerity of purpose and honesty of motive in advocating the adoption of these resolutions at this time. The Legislature, to whom I am greatly indebted, have conferred upon me a position worthy the ambition of any man. I am secure in that position at least for four years to come if things continue here as they are. None but the body of which I am a member can deprive me of my place, except action such as I propose. If the Convention shall adopt the resolutions, and a separate State shall be formed, the instant it is formed I cease to be a member of the Senate, and the representatives of the new State will select my successor—Therefore there can be no ambitions personal or pecuniary influences operating on my mind when I seek to obtain the object contemplated by the resolutions; but, Sir, it has been the cherished object of my life; and I would be worse than ungrateful if I could at an hour like this, forget a people who have been engaged ever since my residence among them in showering upon me all the honors within their gift.

There are considerations weighing upon my mind, Mr. President, which induce me to believe that the time has arrived now when we shall act. If we were at peace; if our people were not engaged in a struggle to obtain the government of our fathers, the natural barriers that separate the people inhabiting the region of country embraced in the resolutions make it, in my opinion, to their interest that they should no longer continue a connection which has been

1. NOTE—In a footnote at the bottom of page 190, *ante*, it is stated that these speeches of Carlile and Stuart are printed here as Appendix B. It should read in Appendix, the letter B being omitted.—V. A. L.

nothing but prejudicial to them ever since it began. The channels of trade, business and commercial relations of the counties named in the resolutions I have offered have been everywhere else than with the rest and residue of the State in which we live. All the feelings that operate upon men—the kindest feelings of my nature—the love I have for home, the scenes of my childhood, the place of my nativity, have all struggled with my sense of duty in this matter. Sir, if we act as I propose, I shall be separated by line, an imaginary line it is true, but yet a State line, from the county of my nativity and the home of my birth. But the counties I have designated have no facilities, either of land or water, for any commercial or business intercourse with the rest of the State. We must seek an outlet for our products elsewhere. We must look for our markets in Maryland, Ohio, Pennsylvania and Kentucky. We never can—nature has fixed it and made it impossible— we never can have business relations with the rest of the State. The Southwestern part has its railroads, turnpikes, and canals penetrating through its valleys and mountains and leading to the capital of the State. The centre of the valley, the county of Frederick, my native county, has its public improvements reaching to Alexandria and Richmond, affording to them an outlet. Hence they are not interested as we are, as are the counties mentioned, in commercial relations with other States, and they are not compelled by force of circumstances which cannot be overcome, as we are, to seek a market for their produce and a channel for their industrial interests in other and neighboring States. Therefore, as a mere material question in time of peace, it is the interest of the people inhabiting these counties to separate themselves from the rest of the State, and organize a separate State Government of their own.

But then, Sir, there are other considerations now. We have entered upon a war such as heaven and earth never saw before, and such as I trust in God never will be witnessed again. What is to be its end nobody knows; no man can tell. And what, when peace shall at last come, with a tired and oppressed people, ground down by taxation and oppression, legitimate and natural consequences of war—what consideration would they bestow, the 28,000,000 of people, when coming upon terms and ratifying and concluding a peace, upon the 308,000 people who inhabit the counties set forth in the resolution? How long would they let that people stand in

the way of a settlement at the termination of this war? It is a question I throw out as a suggestion to be revolved by gentlemen in their minds when they rest upon their pillows. God grant that a separation of these States never may take place! I hope it never may; and as it depends on my action, it never shall. — But, Sir, I am but a grain of sand on the sea shore; and you are but a grain of sand, and we are all but grains of sand on the shore of our country's destiny. It is a duty we owe to the people who have confided all their interests to guard and protect them against every possible contingency; and while I admit with you that it is improbable that this war shall ever be terminated in any other way than by maintaining the integrity of the Union, and the supremacy of its laws, yet you must admit with me that there is a possibility of its terminating in some other mode. I, therefore, feel it incumbent upon me as one of the representatives of a people who have ably sustained me upon any and all occasions to guard them against a possibility of injury. Looking at that possibility—and it is a possibility—where, in case of a settlement, if we remain inactive, would we go? Where would we be? Then if we act and that possibility does not take place, we are where you and I and our people wish us to be—disconnected from the rest of the State, the connection being an unnatural one, in contravention to the laws of nature. Ever since you and I have known anything of the workings of the connection it has been prejudicial and to our injury, under any circumstances, in any point of view, in which I have asked you to look at this question. My opinions, formed years ago, in a time of profound peace, have been strengthened by every day's experience. It will be remembered by the members of this Convention that in our last meeting in June, while I was then behind some of my friends in this movement, and while I was pointed at as having abandoned what I had uttered before, in the former Convention, as the matured convictions of my mind, I pledged gentlemen that if they would wait until their purpose really could be accomplished, that then we had no recognition, no Legislature known to the Federal authorities as such, that then we had no Legislature that could give us the assent provided for and required by the Constitution to be given to a separation—but that the moment we had a Legislature, recognized as such, speaking in the name of the State, whose assent should go to the Congress

of the United States and be respected as the assent of a constitutional Legislature, then I promised you, gentlemen, I would go with you at the earliest possible moment for this division. I am here to redeem that pledge today.

It is argued, Mr. President, by some, that action of this kind will not be taken in favor by the Federal Government; that it may embarrass it in its present operations. Will any gentleman tell me how? If it is regarded with disfavor by the Congress of the United States, the war-making power, the power that must supply the means to carry on this war, the power that must be used to assert the supremacy of the laws and maintain the integrity of the Union, they will refuse our admission into the Union, deny their consent; and there is an end of it, and we are no worse off for having made the effort.

It is said by some that we ought to aid the government in extending a loyal government over the rest and residue of the State. Does this interfere with us at all? Does this interefere with this Provisional Government we have inaugurated here, the government of the State of Virginia, as fast as the arms of the Union sweep secession before them, and when the Congress of the United States admits us as a new State? Surely not; surely not? On the contrary it will have a most happy effect on the Federal Government, by showing to them the importance of extending their military operations in other parts of the Commonwealth, whenever they are in a condition to do it. But is there a gentleman here that for one moment supposes that if the armies of the United States, have not swept secession out of the State and relieved the loyal citizens of the state by December next, will they ever do it? How long, gentlemen, do you propose to remain as you are? How long is the Government to be employed in relieving from the evils of secession, and the destruction that rebellion upon the country, the people of this one State? If it takes a longer period than the meeting of next Congress in December to sweep rebellion out of our State, how long will it take to sweep it out of all the rebellious States? Sir, when is this war to end? We happen to know that the only hope of East Tennessee as to relieving her people, is in their organizing a separate and independent State government for the loyal portion of that Commonwealth. And we do happen to know that the government does regard with favor the effort that is to be made there as soon as the advancing columns of the

Federal Army shall march into that region of country and enable its loyal citizens to perform the deed.

But, Sir, it is said that our boundaries are not sufficiently large. I avoided, intentionally avoided, in drawing up those resolutions, including within the limits of this new State a single county which I do not believe, by a large majority of its people, would desire to be a part and parcel of it, except two. There are two counties named above which I have the slightest doubt as to the sentiments of their people, and they are so situated that it is absolutely essential that they shall belong to us; and a necessity for their belonging to us justifies their being included within our limits. Their interests, like ours, are identified with those of other States and the State of Virginia. The great thoroughfare between this and the Atlantic passes through them, and we never can, we never ought, it would be unjust to them and to us, to allow that territory to be included within the limits of any other State.

Then it is said we have friends from Fairfax and Alexandria who would like to go with us. One of the resolutions secures you the way. If Alexandria and Loudon desire, let their people speak, and an ordinance of this Convention will provide for their admission. But, Sir, there is a bill now introduced into the Senate of the United States, and for which I intended to vote unless otherwise instructed by the gentlemen who have honored me with a place there, declaring the law ceding Alexandria county to the State of Virginia unconstitutional and a nullity, and providing for its return to the District of Columbia. This is but in compliance with my own views, expressed on the floor of the Senate of Virginia some years ago, when the question of admission of a delegate in the House was determined favorably under the retrocession of Alexandria county. I introduced resolutions into the Senate then which would have excluded him, and denying the constitutionality of the act; but it was the first winter of my legislative experience, and I was prevailed upon to let the go-by be given to them. I have no doubt, and have always believed that this District was selected by the Father of his Country with a view to placing the capital beyond the reach of any ordinary military assault; and the possession of Alexandria county is necessary today to put Washington in a state of proper military defense. I think the instant the territory was ceded by Maryland and Virginia, all the powers they had they conferred upon Congress, under the Con-

stitution to exercise exclusive legislative jurisdiction to legislate for the people within the prescribed limit.

Thus it seems to me, that the initiation of proceedings now by this Convention, none of them being of binding effect,—none of them affecting at all our political status,—none of them affecting in the slightest degree, our relation either to the State or Union, until they have been assented to by the Legislature, which does not meet until December, and until our admission into the Union by Congress, which does not convene until December—none of them affecting at all our relations either to the rest of the State or of our own State, as a people,—I cannot for the life of me, see how the voice of the people, which comes up to us in tones not to be misunderstood, dare be disregarded by members of this body; and why any effort should be made to procrastinate and delay action in the face of the circumstances that surround us, where by possibility *procrastination may be death.* No man is authorized to say what the Government of the United States will do, or will not do. We have nothing to do with any part of that Government save the legislative department of it, when to Congress, and to Congress alone, it committed by the Constitution the right to determine whether we shall be admitted or not. I care not what other departments of the Government, or what officials of the Government, may think of this question.

But, then, we have been compelled to ask that the forces of the Government be sent on here to protect us, and they might take them away. Sir, how can they desert us, how dare they desert us, when the instant they desert us they desert the Union? Virginia is to be the battle field. This is to be the battle ground. Here is where the question of supremacy of the laws is to be decided. Sweep out Unionism from this portion of Virginia, and secession has nothing to do but to march from the southwest corner of the State into East Tennessee, inaugurate rebellion in Kentucky, and the Southern Confederacy is a fixed fact. Then the Administration dare not desert us in this hour; and we are powerless in our present condition to aid the Administration. Where would we have been had it not been for the United States military force that was sent into our midst? So impressed was I and the rest of the members of the Central Committee, that there must be no delay, and the opinion that longer delay would find us in the power of the secessionists, that they started me on the 23d of May,

to urge these facts upon the attention of the Administration. On the next day after I arrived at Washington, the telegraph bore the order to General McClellan to move. They cannot desert us, whatever their opinions may be. They cannot leave us at this hour, so bondsmen of the field sold to those who have engaged in this effort to destroy our republican institutions. There is no just or well-founded apprehension of this that any member of this body can reasonably entertain.

But there is another objection. It is said that the Legislature at its late session refused its assent to a separation. According to the Constitution, Sir, I think they had no right, or at least there was no necessity for their giving their assent at this time. The assent of Congress to the admission of a State into the Union is never given until after the application has been made. I say never, as a general rule.—When a Territory seeks admission into the Union as a new State, it seeks it after it has assembled its Convention, framed a Constitution and elected officers under it. Then it presents its application, accompanied by its Constitution to the Congress of the United States, and then Congress acts on the application. No previous assent is necessary. Call to mind the action of the Senate of the United States upon the proposition urged with so much ability and zeal by the late lamented Senator from Illinois (Mr. Douglas) in relation to the Kansas question. He desired to introduce a rule that should operate on all future Territories asking admission into the Union, that the consent should not be had after the organization of the Territory into a State by the adoption of a Constitution and the election of officers, but that Congress should, prior to any action taken by their people, pass what he was pleased to call an "enabling act." But, Sir, the project fell still-born from the author. It has never been the practice of this Government before then or since, to act on the application of a State for admission, until the people of the proposed new State acted themselves, and transmitted to Congress with their application their Constitution. Why? Because one of the requirements of the Constitution is that the State to be admitted into the Union must have a republican form of government. And how could Congress give its consent to the admission of a State without having before it the Constitution of the State to enable the members to judge of the form of government pro-

posed for the new State—to see whether it is such a Constitution and form of government as the Constitution requires and demands it to be?

Thus the consent of Congress must come afterwards. There is, Sir, the same propriety that the assent of the Legislature should come after the act of the people.—The Legislature giving its assent to the organization of a government to be thereafter formed! The Legislature giving its assent to the separation of a people, from the State in which they have heretofore lived, before an official sense of that people has come up to them desiring a separation! There was an obvious propriety, in my humble opinion in the Legislature refusing at its last session this assent.—While I, if I had been a member of the body, might have voted for it, for the purpose of hurrying this thing on, and while it might have been repealed at its very next session, after the vote of the people had been taken upon the Constitution, and might have been held for naught, yet I say, entertaining the convictions that I do that three-fourths of the people within this boundary desire a new State. I might have been the foremost of those who desired the Legislature to give its assent. But it would not have been worth that (a snap of the finger:) liable to be repealed, taken back, at the very next meeting of the Legislature, and probably upon the formation of a form of government and of a return of the sense of the people, circumstances could have shown an obvious propriety in withholding the assent.

What is the language of the Constitution on this subject? Will my friend from Marion find in this Constitution the language I desire to quote?

MR. SMITH—With pleasure.

MR. CARLILE—Then, Sir, there is another consideration. In times like these, when all the energies of the people are taxed for the great purpose of aiding the Government in its effort to crush rebellion we should harass our people as little as possible, with expenses to be incured any way. Now, Sir, by the ordinances of this Convention, passed during its session in June, organized this government, every officer is limited in his term to six months, or until his successor shall be elected and qualified. There will, therefore, have to be within or near the period of time when we propose to call the people from their homes and ascertain their sense on this question, an election of some sort or other.

But here is the clause of the Constitution in reference to the formation of new States;

"New States may be admitted by Congress into this Union, but no new State shall be formed or erected within the jurisdiction of any other State, or any such State formed by the junction of two States or parts of States without the consent of the Legislatures of the States, as well as of the Congress."

Is there anything in that provision to limit the action of the Convention in taking the initiatory steps to organize a separate State government, as to time or the manner in which it is to be done? Surely not. Ascertain the sense of the people in your proposed boundaries, lay before them the form of government you expect to extend over them, and with this before them, let them say whether they desire it or not; and if they do, their servants in the Legislature can give their consent.

Sir, you will remember that this Legislature, if recognized at all, is recognized as the Legislature, possessing all the powers that the Legislature of any State can exercise. That thing is fully, clearly decided by the Supreme Court in a case reported in Curtis' report, familiarly known as the case of Luther vs. Borden. The decision says that the admission of representatives in Congress upon the floor of the Senate binds every other department of the Government, settles the question as to what is and who is the government of the State. This is the language of it. The question is settled. If you are the Legislature, if you do represent the State, and are recognized as such by the admission of Senators in Congress, then your legislative capacity can never be questioned again by any department of the Federal Government.

Now, Mr. President, there is a just expectation in the country on the part of the people we represent here, that this action will be no longer delayed. They are looking for it, waiting for it, expecting and demanding it. And I cannot for the life of me—it may be owing to my obtuseness of intellect that I cannot understand the mystery and pierce the clouds that are around and about me—but I cannot see any reason why you should refuse to those you represent:—your masters, my masters, the legitimate sovereigns, the people,—the right, in a form prescribed by you, to declare their wishes and will upon this subject. Why, Sir, should it be withheld? What is driving from our borders many of our people within its limit? And what is preventing thousands upon thousands of others from

coming amongst us? What is wanted to develop the immense deposits of mineral wealth that fill our hills and with which our valleys teem? A separate and independent existence—a position that nature has designed us to occupy. I said here last Spring that in five years, aye, Sir, I will say now that three years will not roll around until our population will be quadrupled, and there will be more people in the limits of the proposed boundary of the new State than there is in the whole State of Virginia today. Our neighbors in Ohio and Pennsylvania and our friends in many other States of the Union are all looking and anxious for it. I have lately received hundreds of letters making inquiry in regard to a separation. Everywhere loyal hearts are beating to come and share with us the destiny we ought to provide for ourselves and which nature has designed for us, if we have but the manliness and are equal to lift ourselves to the circumstances that surround us.

For centuries under the incubus of a false political philosophy, we have remained here, digging, almost in a primitive state, from the bowels of the earth the necessary means of support, while nature has filled us to overflowing with all the elements of wealth, seeking nothing in the world but the hand of industry to develop them and bring them into active use. Borne down by an eastern governmental majority, cut off from all connection or sympathy with a people with whom we have no commercial ties, we have endured the disastrous results that ever must flow from an unnatural connection. Cut the knot now! Cut it now! Apply the knife! You are compelled to wait at best for a realization of your hopes some four or five months, and by that time the advancing columns of the nation's army will have moved rebellion far beyond your borders, or they will have been stayed forever in their march." (Loud applause.)

SPEECH OF JUDGE CHAPMAN J. STUART.

"Mr. President:—I do not propose to discuss the merits of this question. I am sorry it is pressed upon the consideration of this body at this time. A bill on this subject will be reported at an early day by the Special Committee on a Division of the State and the question will then come up in due form. And, Sir, I do not want to see the hand of the Committee tied at this time by resolutions like these. I desire this Committee to be free to discuss the

measures proposed in these resolutions without having any embarrassment to contend with, or without having its hands tied by any proposition of this character.

It strikes me, Sir, that the best way to dispose of these resolutions would be to lay them on the table. Let this Committee report. I presume it will report advisedly when it does, having a member from each county represented on this floor. They are preparing a report; let us have it.

I would like very much, if I had not determined in the outset that I would not go into the merits of this question, to pay my respects to my friend from Harrison. I have been following him, Sir, for a long time. He has assumed many positions. I wish to indicate to the Convention that I will make a motion to lay on the table before I leave the floor. I am not prepared at this time to discuss the merits of this question. I did not anticipate it would be forced upon this body at this time. I supposed no one member would seek to tie the hands of this Committee by instruction, when the indication has been thrown out that a bill for dividing the State is about to be reported.

But I have been following the gentleman for a long time. I have been a member with him in several Conventions and have supported him often, but I must be permitted to say here that if the gentleman in former Conventions had intimated the same things he has in this, he would have found one minus, at least, at a certain time. I have heard him often before, but never did I hear him hold out a single doubt as to the ability of this Government to sustain itself and put down this rebellion.—This is the first intimation of this kind. And now at a time when we should all be united, for our old stand-by and champion to come forward and intimate a doubt on this question—

MR. CARLILE—"Mr. President, if the gentleman from Doddridge had attended to what I said with the same interest I listened to what he said, he would not have represented me as he has done. I said to-day what I have always said heretofore, that I believe this Government would maintain the integrity of the Union; that I believe it would put down this rebellion; but I said, what he and all must know, if I had never said it, that there are things that take place sometimes that have not been anticipated in minds as feeble as mine; and I said there was a possibility—that the thing is possible—that the Government may not do what we believe they will, I give it as

my belief, and it is worth no more than the belief of any one else, that they will put down rebellion; but it is possible I may be mistaken. That was all I said; in other words, I granted it was possible that I might be mistaken."

Mr. Stuart.—"I fully understood the gentleman, Mr. President, and it is the first time that I ever heard him assert the possibility of anything of the kind. He has been the most uncompromising for putting down this rebellion, and never yet had a possible doubt on the question.—Read his speeches, and you will never see a doubt expressed in the mind of the gentleman. Certain members of the Convention now present, know that the position occupied by the gentleman now, is one formerly presented before a certain body by myself—that there was always doubt —that there might be a possibility, you know; but that doubt was expressed by me before any reverse in our arms had taken place, or was even anticipated. But at this stage of things, no man will ever find me expressing a doubt. It is not a time to do so. It is a time to lift ourselves above all personal feelings and motives, and look only at the great issue involved before our country. We should not be looking solely at Western Virginia's interests. Our object should be to support the General Government in putting down this rebellion, and never for one moment hold out a doubt that the Government is to succeed.—I suppose the doubt in the mind of the gentleman, is the reason why he is pressing this matter prematurely, wanting to tie even the hands of the Committee to prevent it from reporting a bill. A doubt! Sir, let us have no doubts, there are no doubts about it.

Why, Sir, the gentleman's resolutions propose to tie the hands of the Committee, and instruct not only this Committee, but the Committee on Business, to report a Constitution and form of government for this new State, saying at the same time, that the State Legislature that was convened by act of this body, repudiated action on this subject at this time. He says this question should rise from the people. Well who are the people? Was not the State Legislature the people? Is not this Convention the people, or is it our constituents, the gentleman appeals and refers to? If it is our constituents, gentlemen, I want you to point me to a solitary act that ever authorized us to come here for the purpose of dividing the State and forming a Constitution. If they have done so, then, Sir, I will be

with the people. If not, then I am for referring this question to the people and let them speak; and if they speak for a division, then Sir, I am willing for it. But I was not sent here for the purpose of dividing the State of Virginia, or making a constitution. The thing never was mooted before my people, but just the reverse. I came here to aid the General Government in putting down the rebellion and if it was not for that, I do not know what I came here for at all.

I do not propose to go into the merits of the question raised by the gentleman from Harrison. I merely wish to indicate to you, why I think hasty or premature action at this time would embarrass the General Government in putting down this rebellion, and place us in a worse attitude even than we are in at present. I simply rose for the purpose of moving to lay these resolutions upon the table. Let the Committee that have this matter under consideration make their report, and do not tie their hands. I move to lay the resolutions upon the table."

ADDENDA

EVENTS OCCURRING IN THE HISTORY OF WEST VIRGINIA.

FROM THE ADJOURNMENT OF THE SECOND CONVENTION OF THE PEOPLE OF NORTHWESTERN VIRGINIA, AUGUST 21, 1861, TO THE ADMISSION OF THE STATE INTO THE UNION, JUNE 20, 1863.

1861 August 20 In the "Ordinance to provide for the Formation of a new State out of a Portion of this State," adopted by the Second Convention of the People of Northwestern Virginia, at its adjourned session; it was provided that an election should be held on the fourth Thursday, (the 24th) of the ensuing October, to vote upon the question of the proposed new State. Poll-books were to be prepared under the direction of the Governor with two separate columns, one to be headed "For the New State," the other, "Against the New State." The commissioners were to be the same as those who conducted the election in the preceding May, and in addition to taking the vote on the question of the proposed new State they were to cause polls to be opened for the election of Delegates to a Convention to frame a Constitution for the government of the new State, in case a majority of the votes cast should be in favor of its formation. The commissioners were to certify the result of the election to the Secretary of State; and the Governor was to make proclamation thereof, fixing therein Wheeling as the place, and November 26, 1861, as the date of the commencing of the Constitutional Convention.[1]

Oct. 24 In compliance with the requirement of Section Four of the "Ordinance to provide for the formation of the new State out of a portion of the territory of this State,"

1. See Ordinances of the Convention, pp. 17, 18, 19.

adopted August 20, 1861, the election was held in all the counties named in the First Section of said Ordinance. The total number of votes cast was 18,889, of which 18,408 were in favor of the new State and 481 against it.[1]

Nov. 6 The returns of the election held October 24th, having been properly certified to Governor Pierpont, he issued his Proclamation calling the members elected, October 24th, to the Constitutional Convention to assemble on the 26th of November ensuing, in the United States Court Room, in the Custom House in Wheeling, for the purpose of organizing themselves into a Convention to form a Constitution to be submitted to the voters for ratification or rejection, within the bounds of the proposed new State.[2]

Nov. 15 Governor Pierpont issued a Thanksgiving Proclamation recommending the observance of Thursday, November 28th, as a day of thanksgiving to Almighty God for the blessings of the year. In this he said:

> "In the midst of war and its afflictions, we are more forcibly reminded of our dependence upon Divine Providence; and while in all we suffer we should own His chastening hand, we should be ready to acknowledge that it is of His mercy that we are not destroyed, and that so many of the blessings of life are preserved to us."

This was the first Thanksgiving Proclamation issued under the Restored Government of Virginia.[3]

Nov. 26 The Convention to frame a Constitution for the new State of KANAWHA assembled in the United States Court Room, and was called to order by Chapman J. Stuart, a Delegate from Doddridge county. Forty delegates had been chosen in forty counties, and thirty-four of them were present. Before the Convention finally completed its work the names of sixty-one members appeared on its rolls. Hon. John Hall, of Mason county, was elected President; Ellery R. Hall, of Taylor county, Secretary; and James C. Orr, of Ohio county, Sergeant-at-Arms. The organization was completed the first day and the Convention proceeded to the work before it.[4]

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1. See Hagans' "Erection and Formation of the State of West Virginia," p. 70
2. See *Daily Intelligencer* of Wheeling, November 6, 1861.
3. See *Daily Intelligencer*, November 16, 1861.
4. See the Journal of the Convention, pp. 3, 4, 5.

LIST OF MEMBERS OF THE FIRST WEST VIRGINIA CONSTITUTIONAL CONVENTION WHICH ASSEMBLED AT WHEELING, VIRGINIA, NOVEMBER 26, 1861, AND ADJOURNED FEBRUARY 18, 1862; TOGETHER WITH THEIR AGE, PLACE OF NATIVITY, OCCUPATION, COUNTY REPRESENTED, AND POST OFFICE ADDRESS:

(REASSEMBLED FEBRUARY 12, 1863: AND ADJOURNED *sine die*, FEBRUARY 20, 1863.)

No.	Name.	Age.	Nativity.	Occupation.	County.	Postoffice.
1	Gordon Battelle	47	Ohio	Minister	Ohio	Wheeling
2	John L. Boggs		Virginia		Pendleton	Franklin
3	James H. Brown	42	Virginia	Lawyer	Kanawha	Charleston
4	John J. Brown	35	Virginia	Lawyer	Preston	Kingwood
5	Richard L. Brooks	52	Virginia	Minister	Upshur	Rock Cave
6	Wm. W. Brumfield	33	Virginia	Farmer	Wayne	Ceredo
7	Elbert H. Caldwell	52	Virginia	Lawyer	Marshall	Moundsville
8	Thos. R. Carskadon	24	Virginia	Farmer	Hampshire	New Creek Sta.
9	James S. Cassady	40	Virginia	Farmer	Fayette	Fayetteville
10	Henry D. Chapman	63	Mass.	Physician	Roane	Spencer
11	Richard M. Cook	40	Virginia	Farmer	Mercer	Princeton
12	Henry Dering	50	Virginia	Merchant	Monongalia	Morgantown
13	John A. Dille	40	Penn.	Lawyer	Preston	Kingwood
14	Abijah Dolly	44	Virginia	Farmer	Hardy	Greenland
15	Daniel W. Gibson			Physician	Pocahontas	Greenbank
16	Samuel T. Griffith			Physician	Mason	W. Columbia
17	Robert Hagar	51	Virginia	Minister	Boone	Boone C. H.
18	Ephraim B. Hall	39	Virginia	Lawyer	Marion	Fairmont
19	John Hall	56	Ireland	Farmer	Mason	Point Pleasant
20	Stephen M. Hansley	42	Virginia	Farmer	Raleigh	Marshall
21	Thomas W. Harrison	37	Virginia	Lawyer	Harrison	Clarksburg
22	Hiram Haymond	55	Virginia	Farmer	Marion	Palatine
23	James Hervey	41	Ohio	Lawyer	Brooke	Wellsburg
24	J. P. Hoback	25	Virginia	Teacher	McDowell	Peeryville
25	Joseph Hubbs	54	Penn.	Farmer	Pleasants	St. Marys
26	Robert Irvine	47	Virginia	Lawyer	Lewis	Weston
27	Daniel Lamb	51	Penn.	Lawyer	Ohio	Wheeling
28	R. W. Lauck	49	Virginia	Lawyer	Wetzel	Martinsville
29	E. S. Mahon	45	Maryland	Farmer	Jackson	Ravenswood
30	Andrew Mann	28	Virginia	Farmer	Greenbrier	Falling Springs
31	John R. McCutchen		Virginia	Farmer	Nicholas	Summersville
32	Dudley S. Montague	61	Virginia	Hotel keeper	Putnam	Red House Sh'ls
33	Emmett J. O'Brien	42	Virginia	Mechanic	Barbour	Burnersville
34	Granville Parker	51	Mass.	Lawyer	Cabell	Guyandotte
35	James W. Parsons	49	Virginia	Farmer	Tucker	St. George
36	James W. Paxton	40	Virginia	Merchant	Ohio	Wheeling
37	David S. Pinnell				Upshur	
38	Joseph S. Pomeroy	40	Penn.	Minister	Hancock	Fairview
39	John M. Powell	36	Virginia	Minister	Harrison	West Milford
40	Job Robinson		Virginia	Farmer	Calhoun	
41	A. F. Ross			Teacher	Ohio	
42	Lewis Ruffner	64	Virginia	Salt Manf'r	Kanawha	West Liberty
43	Edward W. Ryan		Virginia	Minister	Fayette	Kan. Salines
44	Geo. W. Sheetz	38	Virginia	Carpenter	Hampshire	Fayetteville
45	Josiah Simmons	47	Virginia	Farmer	Randolph	Piedmont
46	Harmon Sinsel	44	Virginia	Carpenter	Taylor	Leedsville
47	Benjamin H. Smith	62	Virginia	Lawyer	Logan	Pruntytown
48	Abram D. Soper	66	New York	Lawyer	Tyler	Charleston
49	Benj. L. Stephenson	35	Virginia	Farmer	Clay	Sistersville
50	Wm. E. Stevenson	40	Penn.	Farmer	Wood	Clay C. H
51	Benjamin F. Stewart	52	New York	Merchant	Wirt	Parkersburg
52	Chapman J. Stuart	41	Virginia	Lawyer	Doddridge	Newark
53	Gustavus F. Taylor	26	Virginia	Lawyer	Braxton	West Union
54	Moses Titchenel	54	Virginia	Minister	Marion	Braxton C. H.
55	Thomas H. Trainer	42	Virginia	Minister	Marshall	Fairmont
56	Peter G. Van Winkle	53	New York	Lawyer	Wood	Cameron
57	William Walker	34	Virginia	Lawyer	Wyoming	Parkersburg
58	William W. Warder	40	Virginia	Farmer	Gilmer	Oceana
59	Joseph S. Wheat		Virginia		Morgan	Troy
60	Waitman T. Willey	50	Virginia	Lawyer	Monongalia	Berkeley Spr'g's.
61	Andrew J. Wilson	60	Virginia	Farmer	Ritchie	Morgantown
						Pennsboro

JOHN HALL, Point Pleasant, Mason County.....President
ELLERY R. HALL, Pruntytown, Taylor County.....Secretary
JAMES C. ORR, Wheeling, Ohio County.....Sergeant-at-Arms

Dec. 2 The first General Assembly under the Restored Government of Virginia commenced its first regular session, in the Linsly Institute in Wheeling. The organization made at the extra session in the preceding July was continued. Daniel Polsley, Lieutenant-Governor, and *ex officio* President of the Senate, presided over that body; William Lewis was clerk; Jesse S. Wheat, Sergeant-at-Arms; D. V. Thorp, Doorkeeper; and Alexander Campbell, Page. In the House of Delegates, Daniel Frost, of Jackson county, was Speaker; Gibson Lamb Cranmer, Clerk; Evans D. Fogle, Sergeant-at-Arms; James O. Hawley, First Doorkeeper; and James Musgrave, Second Doorkeeper. The session closed February 13, 1862,[5]

1862

Feb. 18 The Constitutional Convention adjourned having framed a Constitution for the proposed new State of West Virginia, the name having been changed from that of "Kanawha," by the Convention on the 3d of the preceding December. A SCHEDULE attached to this Constitution, designated John Hall, of Mason county; James W. Paxton, of Ohio county; Peter G. Van Winkle, of Wood county; Elbert H. Caldwell, of Marshall county; and Ephraim B. Hall, of Marion county, Commissioners, whose duty it was to cause the Constitution and Schedule to be published in such newspapers printed within the proposed State as they deemed proper.

Poll-books were to be prepared by them for use at the precincts in the forty-four counties proposed to be included therein. These were to have two separate columns; one to be headed "For the Constitution," and the other, "Against the Constitution."—The same persons to superintend this election as conducted that of the preceding October. Election was to be held on the first Thursday (the 3d.) in April, ensuing. All qualified voters under the proposed Constitution were entitled to vote upon the question of its adoption or rejection; and the Commissioners were required to provide for taking the vote at the time of said election, of such voters as were in the Army of the United States either in or beyond the boundaries of the proposed State. Poll-books were to be returned to the clerks of the several counties, and the Commissioners were required to ascertain the result and certify the same to the Governor. If the election insured the adoption of the Constitution by the voters of the forty-four counties first mentioned in the second section of the first article of the Schedule, they, the Commissioners,

5. See Journals of the Senate and House of Delegates, pp. 34, 35, 36.

were to request the said Governor to convene the General Assembly in extra session and request it to give, by act, its consent, according to the Constitution of the United States, to the formation and erection of the State of West Virginia and forward to the Congress of the United States, such consent together with an official copy of the Constitution, with the request that the State of West Virginia may at once be admitted into the Union. Section Eleven of the Schedule, provided that the Commissioners "have power if deemed necessary, to reconvene the members of the Constitutional Convention on such day as they may prescribe"—See Schedule attached to Constitution, pp. 28, 29, 30. Appendix to Journal of the Convention.

April 3 This was the date fixed for the vote on the question of the adoption of the Constitution for the new State of West Virginia. The full vote cast by counties is not available but the following exhibits the unanimity of sentiment existing at the time:

NAMES OF COUNTIES.	For Adoption.	For Rejection	NAMES OF COUNTIES.	For Adoption	For Rejection
Barbour	450	7	Nicholas	184	
Boone	71	1	Ohio	954	23
Brooke	292	45	Pleasants	322	2
Clay	88		Preston	1,466	11
Doddridge	510	15	Raleigh	177	
Gilmer	168	16	Ritchie	601	6
Hancock	225	73	Roane	232	
Jackson	459	2	Tucker	513	15
Kanawha	909	4	Tyler	695	10
Lewis	443	12	Upshur	489	9
Marshall	1,053	34	Wetzel	491	14
Mason	639	23	Wirt	314	3
Monongalia	1,148	17	Wood	1,290	26

Other counties together with these brought the total vote up to 19,376, of which 18,862, were for adoption and 514 for rejection. At this time there were from twelve to fifteen thousand men from the new State in the Federal Army and from three to five thousand in the Confederate Army.[6]

April 18 The Commissioners named in the Schedule having certified the result of the election to Governor Pierpont, he this day in compliance with the requirement of said Schedule, issued a Proclamation convening the General Assembly at the city of Wheeling at eleven o'clock A. M., on the 6th of May ensuing, that he might lay before it a certified original of the Constitution, and ask for

6. See Hagans' "Erection and Formation of West Virginia," p. 73. Also the *Daily Intelligencer* of Wheeling for the month of April, 1862.

its consent, according to the Constitution of the United States, to the formation and erection, as proposed, of the State of West Virginia.[7]

April 30 As is well known, the Second Convention of the People of Northwestern Virginia, at its first session, June 20, 1861, elected Francis H. Pierpont, chief executive of Virginia as the head of the Restored Government, as the successor of Governor John Letcher of Virginia. The fourth Tuesday in May 1862, was the date of the General State election under the laws of the Commonwealth which were being observed and executed by the Restored Government. Now a successor to Governor Pierpont was to be elected. As early as the 7th of April, this year, a convention in Marion County endorsed Governor Pierpont for re-election. On the same day a convention in Mason county endorsed the re-election of Governor Pierpont; of Daniel Polsley, the Lieutenant-Governor; and of James S. Wheat, the Attorney-General. Similar action was taken in other counties and on April 30th a Delegate Convention representing a number of these, assembled at Clarksburg and unanimously renominated Pierpont, Polsley and Wheat for the respective offices held by them.[8]

May 6 The General Assembly convened in its second extra session, at Wheeling, in pursuance of Governor Pierpont's Proclamation of the 18th of April. Daniel Polsley, Lieutenant-Governor, presided in the Senate and Daniel Frost in the House of Delegates. The message of the Governor was received. It was a remarkable State Paper. In it he said:

"I have convened you in extra session, the principal object of which is, to take final action in the proposed division of the State of Virginia as far as the Legislature is concerned." He reviewed the history of the Convention which framed the Constitution, and added: "The Constitution of the United States provides that no new State shall be formed or erected within the jurisdiction of any other State, without the consent of the Legislature of the State concerned, as well as of the Congress. Therefore to complete the work which has been commenced, of the division of the State, it requires the consent of the Legislature of Virginia and the assent of Congress. Of course your honorable body will take such action in the premises as shall seem meet to you.

7. See Wheeling *Daily Intelligencer*, April 19, 1862.
8. See *Daily Intelligencer* for April 9, 15, 24, 26, and May 3, 5.

Perhaps, I have performed my duty in submitting the matter to you without saying more. But I am not willing to leave the question here. It is urged by some that the movement is revolutionary. Those who urge this objection, do not understand the history, and geography and social relations of our State. Geographically, the East is separated from the West by mountains which form an almost impassable barrier, as far as trade is concerned. The barrier is so great that no artificial means of intercourse has ever been made beyond a mud turnpike road. All the trade and commerce of the West is with other States, and not with Eastern Virgina. The two sections are entirely dissimilar in their social relation and institutions. While the East is largely interested in slaves, the West has none and all the labor is performed by free men. The mode and subjects of taxation in the State have been a source of irritation and indeed of strife and vexation, between the two sections for many years past, as well as that of representation in the Legislature. The subject of the division of the State has been agitated at one time and another ever since I can remember."[9]

May 13 The General Assembly passed "An Act giving the assent of the Legislature of Virginia to the Formation and Erection of a new State within the jurisdiction of this State." Section 1, reads as follows:

"*Be it enacted by the General Assembly*, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan, according to the boundaries and under the povisions set foth in the Constitution for the said State of West Virgina and the Schedule thereto annexed, proposed by the Convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one."

It was further provided that the counties of Berkeley, Jefferson and Frederick, might form a part of the State of West Virginia whenever the voters thereof should ratify the Constitution. Also, that copies of this Act, with a certified original of the Constitution and Schedule should be transmitted to the Senators and Representatives in Congress from the Restored Government of Virginia, with the request that they use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the union.[10]

9. See the *Daily Intelligencer* May 7, 1862. Also Journal of the House of Delegates, Extra Session, 1862.
10. See Acts of the General Assembly under the Restored Government, p. 3.

May 14 Governor Pierpont, acting in pursuance of an ordinance adopted June 19, 1861, and of an Act of the General Assembly passed July 26, 1861, issued a Proclamation, requiring all officials, before entering upon their duties, to take the oath or affirmation prescribed in said Ordinance and Act; this being as follows:

"I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the Constitution and laws of the State of Virginia, or in the ordinaces of the convention which assembled at Richmond on the 13th of February 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the Convention which assembled at Wheeling on the 11th day of June, 1861."[11]

May 22 All eyes were now turned towards Washington City, where were centered the fondest hopes of the friends of the new State. It was the Second Session of the Thirty-seventh Congress, and the Virginia members, under the Restored Government, were Waitman T. Willey and John S. Carlile in the Senate; and Kellian V. Whaley, William G. Brown and Jacob B. Blair, members of the House of Representatives. The Commissioners named in the Schedule of the Constitution, viz: John Hall, James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell and Ephraim B. Hall proceeded to Washington. They were accompanied by other prominent new State men; among whom were Harrison Hagans of Preston county, Granville Parker of Cabell county and Daniel Polsley of Mason county. On their arrival at the National Capital, all were introduced by Hon. Ralph Leete, of Lawrence county, Ohio, to the Senators and Representatives of that State.[12]

May 28 Waitman T. Willey gave notice to the Senate that, with the permission of that body he would, on the next day, present documents relating to the admission of the new State of West Virginia into the Union.[13]

May 29 Hon. Waitman T. Willey, in the Senate, presented a certified original of the Constitution, together with a copy of the Act of the General Assembly of Virginia, under the Restored Government, giving its permission

11. See *Daily Intelligencer*, May 15, 1862.
12. See statement in Lewis' "History of West Virginia," based on correspondence with Hon. John Hall, p. 382.
13. See Congressional Globe, Part III, 2d Sess. 37th Cong., p. 2394.

to the formation of a new State within the Commonwealth of Virginia, and the Memorial of that body requesting the Congress to admit the said State of West Virginia into the Union.[14]

June 3 William G. Brown presented in the House of Representatives duplicates of the same documents that Mr. Willey had presented in the Senate on May 29th. His object was to hasten action by having the subject considered in both branches of Congress at the same time.[15]

June 23 At the time that Senator Willey submitted the Constitution of the new State with the Act of the General Assembly of Virginia, giving its permission for the formation of West Virginia, these documents were referred to the Committee on Territories, of which Benjamin F. Wade, of Ohio, was Chairman. He, on this date, reported "Senate Bill No. 365, providing for the admission of West Virginia into the Union and for other purposes." This was as follows:

CHAP. VI.—AN ACT FOR THE ADMISSION OF THE STATE OF "WEST VIRGINIA" INTO THE UNION, AND FOR OTHER PURPOSES.

WHEREAS, the people inhabiting that portion of Virginia, known as West Virginia did, by Convention in the city of Wheeling on the 26th of November, 1861, frame for themselves a Constitution with a view of becoming a separate and independent State; and

WHEREAS, at a general election held in the counties composing the territory aforesaid on the third day of May last, the said Constitution was approved and adopted by the qualified voters of the proposed State; and

WHEREAS, the Legislature of Virginia by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to-wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and

WHEREAS, both the Convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the Constitution aforesaid being republican in form, Congress does hereby consent that the said forty-eight counties may be formed into a separate and independent State. Therefore—

14. See Cong. Globe, Part III, 2nd Sess. 37th Cong., p. 2415.
15. See Cong. Globe, Part III, 2nd Sess. 37th Cong., p. 2526.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census, shall be entitled to three members in the House of Representatives of the United States; *Provided, always*, That this act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the Convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the Constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said Constitution by striking out the same and inserting the following in its place, viz: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore—

SEC. 2. *Be it further enacted*, That whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the Convention may provide, make and ratify the change aforesaid, and properly certify the same under the hand of the president of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.[16]

This Bill was read the first time and ordered to a second reading.[17]

June 26 Senator Wade moved to take up "Senate Bill No. 365," and this was done. It was read a second time and considered as in Committee of the Whole. There was extended discussion, but the Bill was passed to its third reading.[18]

July 14 Again Senator Wade moved to take up "Senate Bill No. 365," The motion prevailed and the report of the discussion which ensued, covers twelve quarto pages in the "Globe". That day Lafayette S. Foster of Connecticut, occupied the chair *pro tem* in the absence of Vice-President Hamlin. At length a vote was reached; Lazarus W. Powell of Kentucky, demanded the yeas and

16. See Statutes at Large of the United States of America, passed at the third session of the Thirty-seventh Congress; 1862-63. Chap. VI, pp. 633, 634.
17. See Cong. Globe, Part III, 2d Sess. 37th Cong. pp. 2941, 2942.
18. See Cong. Globe, Part III, 2d Sess. 37th Cong. pp. 2941, 2942.

nays, and they were ordered. John W. Forney called the roll:

Those voting *yea* were—

Henry B. Anthony and James F. Simmons of Rhode Island; Daniel Clark and John P. Hale of New Hampshire; Jacob Collamer and Solomon Foot of Vermont; William Pitt Fessenden and Lot M. Morrill of Maine; Lafayette S. Foster of Connecticut; Henry Wilson of Massachusetts; Ira Davis of New York; John C. Ten Eyck of New Jersey; John Sherman and Benjamin F. Wade of Ohio; James W. Grimes and James Harlan of Iowa; Timothy O. Howe of Wisconsin; Henry S. Lane of Indiana; James H. Lane and Samuel C. Pomeroy of Kansas; Henry M. Rice and Morton S. Wilkinson of Minnesota; Waitman T. Willey of Virginia.

A total of 23 votes.

Those voting *nay* were—

James A. Bayard and William Saulsbury, of Delaware; Orville H. Browning and Lyman Trumbull of Illinois; John S. Carlile of Virginia; Zachariah Chandler and Jacob M. Howard of Michigan; Anthony Kennedy of Maryland; Preston King of New York; Edgar Cowan of Pennsylvania; Garrett Davis and Lazarus W. Powell of Kentucky; James A. McDougall of California; Benjamin Stark of Oregon; Charles Sumner of Massachusetts; Robert Wilson of Missouri; Joseph A. Wright of Indiana.

A total of 17 votes.

Those not voting were—

James Dixon of Connecticut; John R. Thompson of New Jersey; David Wilmot of Pennsylvania; James A. Pearce of Maryland; James W. Nesmith of Oregon; Milton S. Latham of California; John B. Henderson of Missouri; James R. Doolittle of Wisconsin.

A total of 8 votes.[19]

Thus it is seen that the Senators from Rhode Island, Vermont, Maine, Ohio, Kansas, Iowa, and Minnesota voted for the Bill; while those from Keutucky, Illinois, and Michigan voted against; and those from New York, Massachusetts, Indiana and Virginia were divided. The most earnest friends of the Bill in the Senate were Willey, Wade, Collamer, Hale, Fessenden, Ten Eyck, Pomeroy, Lane of Kansas, and Wilkinson. The most active in their opposition were Carlile, Bayard, Trumbull, Wilson and Sumner.

July 15 On this date, William Hickey, chief clerk of the Senate, appeared at the bar of the House of Representatives, and informed that body that the Senate had passed Senate Bill No. 365, entitled "An Act for the Admission of West Virginia into the Union and for other Purposes;" and he requested the concurrence of the House therein.[20]

19. See Cong. Globe, Part III, 2d Sess., 37th Cong., pp. 3307-3320.
20. See Cong. Globe, Part III, 2d Sess. 37th Cong. p. 2362.

July 16 Senate Bill No. 365 came up for consideration and was read a first and second time. John A. Bingham, of Ohio, moved to put the Bill on its passage; Joseph E. Segar, of Virginia, objected to its third reading and moved to lay it on the table. This the House refused to do, by a vote of seventy nays to forty-four yeas. Then, on motion of Roscoe Conkling, of New York, the further consideration of the Bill was postponed until the second Tuesday in the following December.[21]

Dec. 10 The Thirty-seventh Congress reassembled in its Third Session December 1st. At noon on Tuesday, the 9th, ensuing, John A. Bingham obtained the floor and demanded the regular order of business. "The regular order of business," said the Speaker, "is the consideration of Senate Bill No. 365, pending for the Admission of West Virginia into the Union." Bingham asked that it be put upon passage. Then ensued a discussion, the report of which covers eighteen quarto pages of the "Globe." Debate closed on the 10th; the Bill was read a third time; Charles A. Wickliffe, of Kentucky, demanded the yeas and nays; the demand was sustained.

Those who voted *yea* were—

Cyrus Aldrich and William Windom of Minnesota; Isaac N. Arnold, William Kellogg, Owen Lovejoy and Elihu B. Washburn of Illinois; Elijah Babbitt, Samuel S. Blair, James H. Campbell, John Covode, William M. Davis, James T. Hale, John Hickman, William D. Kelley, John W. Killinger, William E. Lehman, Robert McKnight, Edward McPherson, James K. Moorehead, John Patton, Thaddeus Stevens and John P. Verree of Pennsylvania; William P. Sheffield of Rhode Island; Stephen Baker, Jacob P. Chamberlain, Ambrose W. Clark, Frederick A. Conkling, R. Holland Duell, Alfred Ely, Reuben E. Fenton, Richard Franchot, Augustus Frank, Edward Haight, William E. Lansing, Abram B. Olin, Theodore M. Pomeroy, Charles B. Sedwick, Socrates N. Sherman, Eldridge G. Spaulding, Burt Van Horn, Robert B. Van Valkenburg, Charles H. Van Wyck and William Wall of New York; Portus Baxter and Justin S. Morrill of Vermont; Fernando C. Beaman, Francis W. Kellogg and Rowland E. Trowbridge of Michigan; John A. Bingham, Harrison G. Blake, William P. Cutler, Sidney Edgerton, John A. Gurley, Richard A. Harrison, Valentine B. Horton, John Hutchins, Albert G. Riddle, Samuel Shellabarger, Carey A. Trimble and Samuel T. Worcester of Ohio; Jacob Beeson Blair, Kellian V. Whaley and William Guy Brown of Virginia; Alford A. Burnham and Dwight Loomis of Connecticut; Andrew J. Clements and Horace Maynard of Tennessee; Schuyler Colfax, William McKee Dunn, George W. Ju

21. See Cong. Globe, Part III, 2d Sess., 37th Cong., p. 3397.

lian, William Mitchell, Albert G. Porter, John P. C. Shanks and Albert S. White of Indiana; Thomas M. Edwards and Edward H. Rollins of New Hampshire; Thomas D. Elliott, Samuel Hooper and Amasa Walker of Massachusetts; Samuel L. Casey of Kentucky; Samuel C. Fessenden, Thomas A. D. Fessenden, John N. Goodwin, Anson P. Morrill, Frederick A. Pike and John H. Rice of Maine; Frederick F. Low, Timothy G. Phelps and Aaron A. Sargent of California; John T. Nixon and John L. N. Stratten of New Jersey; John W. Noell of Missouri; John F. Potter and A. Scott Sloan of Wisconsin; James F. Wilson of Iowa—in all ninety-six votes.

Those who voted *nay* were—

William Allen, James M. Ashbey, Samuel S. Cox, James R. Morris, Warren P. Noble, George H. Pendleton, Clement L. Vallandigham and Chilton A. White of Ohio; John B. Alley, Charles Delano, Daniel W. Gooch, Alexander H. Rice, Benjamin F. Thomas and Charles R. Train of Massachusetts; Sydenham E. Ancona, Joseph Bailey, Charles J. Biddle, Philip Johnson, John D. Stiles and Hendrick B. Wright of Pennsylvania; George T. Cobb and William G. Steele of New Jersey; Roscoe Conkling, Isaac C. Delaplain, Alexander S. Diven, James E. Kerrigan, Moses F. Odell, Edward H. Smith, John B. Steele and Elijah Ward of New York; Martin F. Conway of Kansas; James A. Cravens, William S. Hollman, John Law and Daniel W. Voorhees of Indiana; John W. Crisfield and Francis Thomas of Maryland; John J. Crittenden, George W. Dunlap, Henry H. Wadsworth, Aaron Harding, Robert Mallory, John W. Menzies, William H. Wadsworth, Charles A. Wickliffe and George H. Yeaman of Kentucky; James E. English of Connecticut; Bradley F. Granger of Michigan; William A. Hall, Elijah H. Norton, Thomas L. Price and James S. Rollins of Missouri; Anthony L. Knapp, William A. Richardson and James C. Robinson of Illinois; Joseph E. Segar of Virginia; George K. Shell of Oregon,—in all fifty-five votes.[22]

The analysis of this vote presents some interesting facts. The representatives from Maine, six in number, voted solidly to admit West Virginia into the Union; in Illinois there were four votes for it and three against it; Pennsylvania cast sixteen for and six against; New York, twenty for and eight against; Ohio, twelve for and eight against; Indiana, seven for and five against; Massachusetts, five for and six against; Missouri, one for and four against; while New Jersey divided equally—two yeas and two nays.

Dec. 11 Emerson Ethridge, of Tennessee, Clerk of the House of Representatives, appeared at the bar of the Senate, and informed that body that the House had passed Senate Bill No. 365, providing for the Admission of the State of West Virginia into the Union.[23]

22. See Cong. Globe, Part I, 3d Sess., 37th Cong., pp. 37-59.
23. See Cong. Globe, Part I, 3d Sess., 37th Cong., p. 60.

Dec. 15 George T. Cobb, of New Jersey, from the Committee on Enrolled Bills, reported that it had found truly enrolled an act (Senate No. 365) for the Admission of West Virginia into the Union.[24]

Dec. 16 Emerson Ethridge Clerk of the House, informed the Senate that the Speaker of the House had signed Senate Bill No. 365, providing for the Admission of West Virginia into the Union, and that he was directed to present it to the Senate for the signature of its President. Thereupon, the Vice-President signed the Bill, and it was delivered to the proper committee, to be presented to the President of the United States.[25]

Dec. 31 President Lincoln signed the Bill (Senate No. 365) for the Admission of the State of West Virginia into the Union, and for other Purposes.

1863

Jan. 5 John G. Nicolay informed the Senate of the fact that the President had approved and signed Senate Bill No. 365, for the Admission of the State of West Virginia into the Union, and for other purposes.[26]

Jan. 14 The President had signed the Bill providing for the admission of West Virginia, but the State was not yet a member of the Federal Union. In the certified original of the Constitution presented to Congress for the proposed State, the Seventh Section of Article XI, read as follows:

"7. No slave shall be brought, or free person of color be permitted to come into this State for permanent residence."

This was the only reference to the "peculiar institution" contained in it. Congress was not satisfied with this, and required the said Seventh Section to be so changed as to provide for the gradual extinction of slavery as follows:

"The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten, and under twenty-one years, shall be free when they arrive at the age of

24. See Cong. Globe, Part I, 3d Sess., 37th Cong., p. 92.
25. See Cong. Globe, Part I, 3d Sess., 37th Cong., p. 84.
26 See Cong. Globe, Part I, 3d Sess., 37th Cong., p. 184.

twenty-one years: and no slave shall be permitted to come into the State for permanent residence therein."

Section two, of the act providing for the admission of the state into the Union read as follows:

"That, whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of said State, at such time as the Convention may provide, make and notify the change aforesaid, and properly certify the same under the hand of the President of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact and therefore this act shall be to effect and be in force from and after sixty days from the date of the said proclamation."

It will be remembered that in the Schedule attached to the Constitution, it was provided that the Commissioners named therein were given power to reconvene the Convention that framed it, if it became necessary to do this. The necessity had arisen, and these Commissioners, on this date, issued a proclamation requiring the members of the Convention to re-assemble in the Custom House in the city of Wheeling, on the 12th day of February, 1862, to take into consideration the act of Congress entitled "An Act for the admission of the State of West Virginia into the Union, and for other Purposes."[27]

Jan. 30 The members of the General Assembly held a meeting in the Hall of the House of Delegates on Friday evening for the purpose of adopting a plan of organization for the approaching election on the amended Constitution of West Virginia. Daniel Polsley, the Lieutenant-Governor, presided, and Leroy Kramer, of Monongalia county, was Secretary. A State Central Committee was appointed. Its members were Chester D. Hubbard, Daniel Lamb, Elbert H. Caldwell, Campbell Tarr, Alfred B. Caldwell, James W. Paxton, George McC. Porter, Jacob Berger, James S. Wheat, and George B. Martin. Then three prominent men in each county were named to compos a County Central Committee.[28]

Feb. 5 The proclamation of the Commissioners provided for special elections to be held on this date for members of the Constitutional Convention in the counties of Greenbrier, Monroe, Morgan, Pendleton and Pocahontas, not

27. See *Daily Intelligencer*, of Wheeling, January 15, 1863.
28. See the *Daily Intelligencer*, of Wheeling, February 4, 1863.

previously represented; and in Ohio county to fill the vacancy caused by the death of Gordon Battelle; one in Marion county caused by the removal of Hiram Haymond from the State; and another in Mason county, to fill a vacancy caused by the resignation of John Hall, the President of the Convention.[29]

Feb. 12 The Constitutional Convention re-assembled for the purpurpose of making the change in the Constitution of the new State, required by Congress. A. F. Ross had been elected a member of the Convention from Ohio county, to fill a vacancy caused by the death of Gordon Battelle; David S. Pinnell of Upshur county, elected to fill vacancy resulting from the resignation of R. L. Brooks; Joseph S. Wheat, a member from Morgan county, hitherto unrepresented; John L. Boggs, of Pendleton county, not previously represented; J. Robinson, of Calhoun county, it having no representative heretofore; Andrew Mann appeared and took his seat as a representative from Greenbrier county; Rev. Moses Tichenel, of Marion county, to fill vacancy caused by the removal of Hiram Haymond from that county, who thereby vacated his seat; James H. Brown of Kanawha county, re-elected to fill vacancy resulting from his own resignation; Dr. Samuel T. Griffith, of Mason county, appeared as the successor of John Hall, President of the Convention, whose resignation was read and Abraham D. Soper, of Tyler county, elected to the Presidency.[30]

Feb. 19 It was evident to all that the inauguration of the Government of West Virginia was near at hand, and on Thursday evening—this date—promient men from all over the State held a meeting in Wheeling for the purpose of taking the initiative in having a general Convention of delegates from all the counties to nominate candidates for State officers at the election soon to be held under the new Constitution. Judge Abraham D. Soper, of Tyler county, presided. All present were united in the opinion that such a Convention should be

29. See *Daily Intelligencer*, of Wheeling, January 15, 1863.
30. See *Daily Intelligencer*, of Wheeling, February 13, 1863. The Journal of the adjourned Session of the Constitutional Convention has never been printed in book form but the manuscript thereof in the possession of the State Department of Archives and History.—V. A. L.

held, and it was resolved to recommend to the people of each of the forty-eight counties composing the new State of West Virginia, that as soon as practicable after the adoption of the amended Constitution, they appoint delegates to meet in Convention at Parkersburg, on the first Wednesday after the expiration of ten days from the date of the proclamation of the President declaring West Virginia a State in the Union.[31]

Feb. 20 The Constitutional Convention which had re-assembled February 12th preceding, for the purpose of making the change in the Constitution as required by Congress, completed its work and adjourned *sine die*.[32]

Mar. 26 The people voted upon the adoption of the amended Constitution. The total vote cast was 28,321, of which 27,749 were for ratification, and 572 for rejection.[33]

April 17 On this date Abraham D. Soper, President, and Daniel Lamb, Peter G. Van Winkle, Elbert H. Caldwell. Ephraim B. Hall, and James W. Paxton, the Executive Committee of the Constitutional Convention certified the result of the election on March 26th, on the amended Constitution to Governor Pierpont, by whom it was immediately certified to the President of the United States.[31]

PROCLAMATION RELATING TO THE ADMISSION OF WEST VIRGINIA INTO THE UNION, BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

April 20 **WHEREAS, by the act of Congress approved the 31st day of December last the State of West Virginia was declared to be one of the United States of America, and was admitted into the Union on an equal footing with the original States in all respects whatsoever, upon the condition that certain changes should be duly made in the proposed constitution for that State: and**

WHEREAS, proof of a compliance with that condition, as required by the second section of the act aforesaid has been submitted to me:

Now, therefore, be it known that I, Abraham Lincoln, President of the United States, do hereby, in pursuance of

31. See *Daily Intelligencer*, of Wheeling, February 20, 1863.
32. See *Daily Intelligencer*, of Wheeling, February 21, 1863.
33. See "Hagans' "Erection and Formation of the State of West Virginia," p. 78. Also Wheeling *Daily Intelligencer*, April 17, 1863.

the act of Congress aforesaid, declare and proclaim that the said act shall take effect and be in force from and after sixty days from the date hereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 20th day
[SEAL] of April, A. D. 1863, and of the Independence of the United States the eighty-seventh.

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD,
Secretary of State.

May 6 AN UNCONDITIONAL UNION CONVENTION.

The people acting upon the suggestion of the meeting at Wheeling on the evening of the 19th of February, 1863, appointed delegates from the various counties to assemble in Convention at Parkersburg; there to nominate the first State officials of West Virginia. Wednesday, May the 6th, this old town was thronged with people. The Convention assembled at 3:00 P. M. in the Court House. Judge Chapman J. Stuart of Doddridge county, called the body to order, and nominated James G. West of Wetzel county, for temporary President; and Thomas Cather of Taylor county nominated Ellery R. Hall of Taylor county, temporary Secretary. Rev. Mr. Campbell of the Presbyterian church offered prayer in an impressive manner. A Committee on Permanent Organization was appointed, consisting of Chapman J. Stuart, of Doddridge county; Benjamin H. Smith, of Kanawha; Abraham D. Soper, of Tyler; Leroy Kramer, of Monongalia; James R. Carskadon, of Hampshire; Daniel Lamb, of Ohio; Joseph B. Nay, of Marion; and John J. Brown, of Preston.

A Committee on Credentials was appointed as follows: Thomas Cather, of Taylor; George McC. Porter, of Hancock; William Swearingen, of Marion; Chapman J. Stuart, of Doddridge; Robert Irvine, of Lewis; Spicer Patrick, of Kanawha; Robert Hager, of Boone, and T. C. McCann, of Greenbrier.

Judge Stuart of the Committee on Permanent Organization reported the following:

For President—Dr. Spicer Patrick, of Kanawha county.

For Secretary—Ellery R. Hall, of Taylor county.

For Assistant Secretary—Jacob Edgar Boyers, of Tyler county.

The report of the Committee on Credentials showed that there were two hundred and thirty-five delegates present from forty counties. Nominations were declared to be in order. Names were presented for the various offices, with the result that Arthur I. Boreman, of Wood county, was nominated for Governor; Jacob E. Boyers, of Tyler county, for Secretary of State; Campbell Tarr, of Brooke county, for Treasurer of State; Samuel Crane, of Randolph county, for Auditor of State; Aquilla B. Caldwell, of Ohio county, for Attorney-General; and Ralph L. Berkshire, of Monongalia county; William A. Harrison, of Harrison county, and James H. Brown of Kanawha county, for Judges of the Court of Appeals.[34]

May 12 Daniel Lamb, James W. Paxton, Peter G. Van Winkle, Elbert H. Caldwell and E. B. Hall, the Executive Committee of the Constitutional Convention issued a Proclamation declaring May 28th, the day upon which the election of the new State officials would take place.[35]

May 28 The election of State and County officials generally throughout the new State. All State officials were elected without opposition, but in some of the counties the contests for local offices more particularly that of sheriff, were spirited and closely contested.[36]

June 12 Returns from thirty-three counties, of the vote on the 26th of May, had been received by the Executive Committee of the Constitutional Convention. These showed that in the said counties, Arthur I. Boreman, for the office of Governor, had received 25,797 votes; Jacob Edgar Boyers for Secretary of State, 24,996 votes; Campbell Tarr, for Treasurer of State, 25,513 votes; Samuel Crane, for Auditor of State, 24,857 votes; Aquilla B. Caldwell, for Attorney-General, 25,141 votes; and for

34. See *Daily Intelligencer*, of Wheeling, May 9, 1863.
35. See *Daily Intelligencer*, of Wheeling, May 13, 1863.
36. See *Daily Intelligencer*, of Wheeling, May 29, 1863.

Judges of the Supreme Court of Appeals, Ralph L. Berkshire, received 24,537 votes, William A. Harrison 24,924 votes; and James H. Brown 24,225 votes. All were declared elected.[37]

June 20 This was Saturday. That day, the period of sixty days, mentioned in the proclamation of the President, April 20, 1863, expired and West Virginia entered upon her career as a member of the Federal Union.

THE BEGINNING OF THE NEW STATE GOVERNMENT.

It was a remarkable one in the History of the Virginias. In Wheeling a vast multitude thronged the streets; thousands of flags fluttered in the breeze; the display of bunting was the most attractive ever seen in the "Western Metropolis." It threatened rain—June showers; now all the beauties of a clear sunlight were shown, then a cloud chased all away. There were June showers—little ones—not enough to drive the people from the streets. A procession marched through the principal streets and then halted in front of the Linsly Institute. It was filled with people; the streets were filled with men, women and children, and the yards, windows and roofs were full of eager faces. A large platform had been erected in front of the Institute, and thither the officers—officials of two State Governments—were conducted as they arrived. Hon. Chester D. Hubbard called the multitude to order. Thirty-five tastefully attired and beautiful little girls, representing the American States—all of them—sang the "Star Spangled Banner." Rev. J. T. McClure addressed the Throne of Grace. Then came two Governors—Francis H. Pierpont, the head of the "Restored Government; and Arthur I. Boreman, chief Executive of a State just then beginning to be. The first delivered a Valedictory, the second an Inaugural Address. The sovereignty of the Restored Government of Virginia was terminated on the soil of West Virginia. Governor Pierpont retired with the Restored Government to Alexandria on the Potomac, nine miles below Washington City. Three

37. See *Daily Intelligencer*, of Wheeling, June 13, 1863.

HOW WEST

for West Virginia; the little girls sang
cheers were given ; the band played the "Star Spangled
E Pluribus Unum us terminated the ceremonies of the
Banner," and th est Virginia as a free and independent
inauguration of W ed Government of Virginia which left
State.[38] The Restor for Alexandria on the Potomac; and
Wheeling that day noved to Richmond, on the James, is
in May, 1865, re ernment of the Commonwealth of
the present Gov ernment organized at Wheeling that
Virginia; the Gov be the Government of the State of
day, continues to
West Virginia.

38 See *Daily Intelligencer*, of Wheeling, June 22, 1863.

INDEX.

A.

Addenda, containing events leading up to the admission of West Virginia into the Union, 317.
Address to the People of Northwestern Virginia by the First Convention at Wheeling, May, 1861, 72.
Alabama, adopts Ordinance of Secession, 8.
Alexandria, town of, 3, 4, 336.
Allegiance to United States, people of Virginia absolved therefrom, 21.
Alliance between Virginia and the Confederate States, 15.
Ambler, William, member Committee on Elections in Secession Convention at Richmond, 11.
Anderson, Fulton, Confederate Commissioner from Mississippi, addresses Secession Convention at Richmond, 12.
Archives and History, State Department of, 4.
Armstrong, Edward M., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Atkinson, John H., member of Second Convention at Wheeling, 80.

B.

Baldwin, John B., member of Committee on Federal Relations in Secession Convention at Richmond, 11.
Barbour, Alfred M., member of Secession Convention at Richmond, 29.
Barbour, James, member of Committee on Federal Relations in Secession Convention at Richmond, 11.
Barns, John S., member Second Convention at Wheeling, 80; remarks by, 208, 210; resolutions by, 123, 300.
Barracks, James J., member Second Convention at Wheeling, 80.
Battelle, Rev. Gordon, member of Second Convention at Wheeling, 80; opened Convention with prayer, 78, 83, 147, 283.
Bedford County, resolutions by people of, 13.
Benning, Henry L., Commissioner from Georgia, addresses Secession Convention at Richmond, 12.
Berlin, George W., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Blow, George, Jr., member of Committee on Federal Relations, in Secession Convention at Richmond, 11.
Boggess, Caleb, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Boreman, Arthur I., member of Second Convention at Wheeling, 80; elected President thereof; takes oath of office, 81; thanks Convention for honor conferred, 81; makes statements to Convention, 94, 131, 132, 138, 141, 143, 149, 185, 187, 188, 190, 191, 192, 193, 197, 198, 203, 216, 241, 278, 279, 301; announced the order of the day, 96; address to the Convention at close of Regular Session, 155, 156, 157; calls Adjourned Session to order, 183; final address of, to the Convention, 301; mentioned, 218.
Boreman, William J., member of Second Convention at Wheeling, 79; remarks by, 132, 271, 274, 281; resolution by, 300; submits proposition, 211; substitute of, for report of Committee on Division of State, 215; mentioned, 228, 274.

Bowen, Lot, member of Second Convention at Wheeling, 80; resignation therefrom, 203.
Bowyer, George C., member of Second Convention at Wheeling, 80.
Boyd, William W., member of Committee on Federal Relations in Secession Convention at Richmond, 11.
Breckenridge, John C., mentioned, 232.
Brooke County, action of people therein, 26.
Brown, William G., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; member of Committee on Elections therein, 11; expelled therefrom, 31; mentioned, 231.
Brown, John J., member of Second Convention at Wheeling, 80, reports by, from Committee on Credentials, 185, 192, 196, 212.
Brockunier, Rev. S. R., opened Convention with prayer, 112, 194.
Broski, George W., member of Second Convention at Wheeling, 80.
Brumfield, William W., member of Second Convention at Wheeling, 80.
Bruce, James C., member of Secession Convention at Richmond, 29; member of Committee on Federal Relations therein, 11.
Burdett, John S., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; expelled therefrom, 31; remarks by, in First Convention at Wheeling, 40, 42, 43, 44, 62; member of Second Convention at Wheeling, 80; remarks therein by, 89, 90, 122, 134, 152, 217, 245, 290, 291; motions by, 96, 130, 217, 300; resolution by, 217; mentioned, 277.
Burley, James, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Secession Convention at Powhatan Hotel, 30; resolutions by, 27, 28, 196, 228; expelled therefrom, 31; member of First Convention at Wheeling, remarks therein, 196, 197, 212, 228, 291, 293; mentioned, 200, 211.
Byrne, Benjamin W., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.

C.

Caldwell, Elbert H., member of Second Convention at Wheeling, 80; remarks by, 118, 128, 132, 296; motions by, 130, 191, 257, 292; obtained leave of absence, 113; report by, from Committee of Seventeen, 153; presented ordinance relating to grand and petit jurors, 299.
Campbell, Archibald W., Editor of Intelligencer, 4.
Campbell, John A., member of Secession Convention at Richmond, 29; member of Committee on Federal Relations, 11.
Caperton, Allen T., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; member of Committee on Elections in Secession Convention at Richmond, 11.
Carlile, John S., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; left Richmond Convention, 30; expelled therefrom, 31; member of First Convention at Wheeling, 35; member of Second Convention at Wheeling, 80; remarks by, 36, 37, 38, 39, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 64, 65, 66, 78, 83, 84, 89, 95, 96, 97, 98, 99, 100, 107, 108, 109, 114, 120, 122, 123, 125, 126, 129, 130, 133, 138, 140, 143, 146, 147, 148, 152, 190, 191, 193, 227, 228, 229, 232, 234, 242, 246, 248, 254, 257, 267, 268, 271, 276, 277, 278, 291, 293, 294, 301; motions by, 115, 193, 299; resolutions by, 48, 84, 89, 112, 136, 150, 190; report by, from Committee of Seventeen, 153, 154; speech of, in Adjourned Session of Second Convention at Wheeling, 303, 312; report by, from Committee on Business, 115, 116; mentioned, 43, 229, 231, 253, 260, 262.

Carskadon, James R., member of Second Convention at Wheeling, 80.
Cather, Thomas, member of Second Convention at Wheeling, 80; remarks by, 254, 271; resolutions by, 199, 301.
Chambliss, J. R., member of Secession Convention at Richmond, 29; member of Committee on Elections, 11.
Clark, Rev. J. L., opened Convention with prayer, 152, 212.
Clarksburg, Convention at, 33; Preamble and Resolutions adopted thereby, 33, 34.
Clemens, Sherrard, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Richmond Convention at Powhatan Hotel, 30.
Close, James T., member of Second Convention at Wheeling, from Alexandria County, 79; resolution by, 151.
Coercion, Richmond Convention makes inquiry concerning, 12.
Committee on Elections, in Secession Convention at Richmond, 11; Committee on Federal Relations therein, 11; Committee, a central, appointed, names of members thereof, 65; Committee on State and Federal Relations, Report of, 62, 63; Committee on a Division of the State appointed, names of, 188; Committee to revise ordinance of the Convention, names of members thereof, 299; Committee to wait on Governor, names of members thereof, 300.
Compromise Committee, appointed, names of, 282.
Confederate Congress, approved Convention between Virginia and Confederate States, 22.
Confederate States of America, Government of, organized, 8; Convention of, with Virginia, 17, 18; Provisional Government of, adopted by Virginia Convention, 19.
Congressmen elected to represent Virginia in the Confederate Congress, 21.
Congress, vote in Senate on Bill admitting West Virginia into the Union, 327; vote in House of Representatives on Bill admitting West Virginia into the Union, 328, 329.
Conrad, Robert Y. member of Secession Convention at Richmond, 29; member of Committee on Federal Relations, 11.
Conrad, C. B., member of Secession Convention at Richmond, 29.
Constitutional Convention, assembled at Wheeling, 318; convened, to Frame a Constitution for the New State of Kanawha, 318; Roll of members thereof, 319; adjournment of, 320; reassembled, to change Constitution as required by Congress, 332.
Constitution, First of West Virginia, vote upon, 321; a second time ratified by the people, 333.
Convention at Clarksburg, issues call for united action, to oppose Secession, 33.
Convention (agreement) between Virginia and Confederate States, 18.
Convention, Secession, at Richmond, adopts Provisional Government of Confederate States, 19; provides for organization of Provisional Army, 20; Sessions of, 23.
Convention, First, at Wheeling, of the People of Northwestern Virginia, 35-76; names of members of Committee on Credentials, 44, 45; names of members of Committee on State and Federal Relations, 45; names of delegates thereto, 55; Reports of Debates therein, 35, 71; Address of, To the People of Northwestern Virginia 72, 73; Proceedings and Journals thereof, 3.
Convention, Second, at Wheeling, Introductory Note thereto, 77; organization of, 78, 79; list of members of, 79, 80; debates therein, 78-157; address of, 175-182; Journal of, 78-157; adjournment of Regular Session, 157; reassembling of Adjourned Session, 183; Journal of, 183-302; adjournment of, 302.
Convention, at Parkersburg; nominated first State officers of West Virginia 334, 335.

Cooper, William T., elected member of Secession Convention, to fill seat made vacant by expulsion of John S. Carlile, 32.
Copley, William, member of Second Convention at Wheeling, 80.
Couch, James H., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Council of State, elected; names of members thereof, 142.
Cowan, Robert E., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of William G. Brown, 32.
Cox, James H., temporary President of Secession Convention at Richmond, 10.
Crane, William B., member of Second Convention at Wheeling, 80.
Crane, Samuel, member of Second Convention at Wheeling, 80; remarks by, 111, 132, 147, 185, 186, 190, 191, 192, 193, 204, 216, 294; motions by, 95, 136, 138, 186, 196, 200, 211, 289; resolutions by, 186, 202; mentioned, 233.
Cranmer, Gibson Lamb, member of First Convention at Wheeling, 41; elected Secretary, 41; member of Second Convention, 81; elected Secretary, 81; read report of Committee on Credentials, 198; directed to secure files of papers containing proceedings of May and June Conventions, 199; mentioned, 3, 4.
Crawford, William L., member of Second Convention at Wheeling, 80; motion by, 131.
Cresap, C. J. C., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of James C. McGrew, 32.
Crothers, Hugh W., member of Second Convention at Wheeling, 79; motion by, 276; suggestion as to meeting of Legislature, 300.

D.

Davidson, Lemuel E., member of Second Convention at Wheeling, 80; motion by, 194.
Davis, John J., member of Second Convention at Wheeling, 80.
Davis, Jefferson, President of Confederate States, 8.
Dayton, Spencer, member of Second Convention at Wheeling, 80; succeeded by Nathan H. Taft, 94.
Declaraton, of the people of Northwestern Virginia, represented in Second Convention at Wheeling, 86; of Rights of the people of Virginia, 170, 173.
Delaware, State of, mentioned, 11.
Delegates, list of, in First Convention at Wheeling, 55, 56, 57.
Dent, Marshall M., member of Secession Convention, at Richmond, 29; vote by, on Ordinance of Secesson, 30; attends meeting of Western members of, at Powhatan Hotel, 30; expelled therefrom, 31; member of First Convention at Wheeling, 56; Secretary thereof, 3, 41.
Dodds, Rev. R. D., opens Convention with prayer, 114.
Dorsey, Dennis B., member of Second Convention at Wheeling, 80; remarks by, 96, 99, 100, 101, 102, 103, 104, 105, 106, 110, 111, 114, 115, 119, 136, 137, 145, 146, 148, 191, 193; motions by, 96, 123, 133, 152, 193, 196, 275, 281; resolutions by, 83, 136, 147; opened Convention with prayer, 270; mentioned, 200, 241.
Douglas, William, member of Second Convention at Wheeling, 80.
Downey, Owen D., member of Second Convention at Wheeling, 80; remarks by, 291.

E.

Echols, John, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Eggleston, D. O., Secretary of the Commonwealth of Virginia, 4.
Eubank, John L., member of Secession Convention at Richmond, 29; Secretary, thereof, 11.
Evans, James, member of Second Convention at Wheeling, 80; remarks by, 133, 204, 206; resolution by, 300.

F.

Farnsworth, Daniel D. T., member of Second Convention at Wheeling, 80; remarks by, 90, 118, 124, 193, 203, 255, 281; motions by, 154, 279; resolutions by, 118, 154, 199; member of Committee on Division of the State, 194; vote on resolutions by, 127, 186, 195; proposition presented by, 212; substitute of, for the report on Division of the State, 213; call for previous question, 277; report by, as chairman of Compromise Committee, 283; mentioned, 201, 232, 234, 240, 276.
Fast, Richard, member of Second Convention at Wheeling, 80; remarks by, 270; resoluton by, 199; mentioned, 201.
Federal Relations, Committee on, Secession Convention at Richmond, 11.
Federal Government, property of, captured by Virginia troops, 19.
Ferrell, James P., member of Second Convention at Wheeling, 80.
Fisher, Rev. D. W., opened Convention with prayer, 217.
Fleming, Solomon, member of Second Convention at Wheeling, 80; resolution by, 185.
Flesher, Andrew, member of Second Convention at Wheeling, 80; remarks by, in First Convention at Wheeling, 57; remarks by, 91, 94, 114, 139; motion by, 117; resolutions by, 113, 188; mentioned, 260.
Florida, adopts Ordinance of Secession, 8.
Formation of New State, vote of people thereon, 318.
Foley, James A., member of Second Conventon at Wheeling, 79; resolution by, 184.
Fort Sumter, bombarded by South Carolina troops, 13
French, Napoleon B., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
French, Col. S. Bassett, transmits to President of Secession Convention, resolutions of people, 15.
Frost, Daniel, member of Second Convention at Wheeling, 80; remarks by, 122, 123, 187, 271, 276, 278, 281, 282; motions by, 113, 115, 119, 130, 146, 183, 185, 199, 203, 270, 275; resolutions by, 89, 90, 199; presented credentials of James Smith, 184.

G.

General Assembly, Extra Session of, 8; convened at Richmond, 8; resolutions of, 9; provides for State Convention, 9; First Extra Session of, 142; under Restored Government, convened in First Regular Session, 320; Second Extra Session under Restored Government, convened at Wheeling, 321.
Georgia, adopts Ordinance of Secession, 8.
Gillispie, Henry L., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Gist, Joseph, member of Second Convention at Wheeling, 79.
Glencoe, town of, 3.
Goggin, William L., member Committee on Elections, Secession Convention, 11.
Gordon, William F., temporary Secretary, Secession Convention at Richmond, 10.
Graham, E. T., member of Second Convention at Wheeling, 80.
Gray, Algernon S., member of Committee on Elections, Secession Conventon at Richmond, 11.

H.

Hagans, Harrison, member of Second Convention at Wheeling, 80; remarks by, 185, 186; became chairman of the Committee on Business, 185; resolution by, 96.
Hale, Perry M., member of Second Convention at Wheeling, 80; motion by, 276.
Hall, Granville D., stenographic reporter of Wheeling Conventions, 3, 35.
Hall, Addison, member of Secession Convention at Richmond, 29; member of Commttee on Elections, 12.

Hall, Cyrus, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Hall, Leonard S., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Hall, Ephraim B., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; expelled from Convention, 31; member of Second Convention at Wheeling, 80; admitted to seat of Francis H. Pierpont, resigned, 281; remarks by, 292, 294.
Hammond, Allen C., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Harper, Kenton, Major-General, in command at Harper's Ferry, 20.
Harper's Ferry, occupied by Virginia troops, 20.
Harris, John W., Secretary of Clarksburg Convention, 34.
Harrison County, Action of the People therein, 24-27.
Harrison, George, member of Second Convention at Wheeling, 80; remarks by, 296; motion by, 133; resolution by, 128; mentioned, 275.
Harvey, Lewis E., member of Secession Convention at Richmond, 29; member of Committee on Federal Relations, 11.
Hawxhurst, John, member of Second Convention at Wheeling, from Fairfax county, 79; remarks by, 241, 246; motions by, 192, 198; resolution by, 88.
Haymond, Alpheus F., member of Secession Convention at Richmond, 29; Chairman of Committee on Elections, 11; vote by, on Ordinance of Secession, 30.
Heck, Jonathan M., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of Marshall M. Dent, 32.
Hervey, Rev. David, opened Convention by prayer, 91, 135.
Hoge, James W., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Hooton, Charles, member of Second Convention at Wheeling, 80; remarks by, 114, 130, 191, 198, 280, 281; presented petitions from citizens of Preston county, 193; demanded previous questions, 291, 295.
Hornbrook, Thomas, elected Sergeant-at-Arms, of Second Convention at Wheeling, 81.
Howard, John, member of Second Conventon at Wheeling, 80.
Hubbard, Chester D., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Convention at Powhatan Hotel, 30; expelled from Convention, 31; member of First Convention at Wheeling, 35; motion by, 40; member Second Convention at Wheeling, 80; remarks by, 123, 133, 232, 233, 234, 296; motions by, 115, 151; nominated James S. Wheat for Attorney General of Virginia under the Restored Government, 151; mentioned, 240, 241.
Hubbard, John R., member of First Convention at Wheeling, 56; remarks by, 59.
Hughes, John N., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; killed at battle of Rich Mountain, West Virginia, 31.
Hursey, John, Chairman of Clarksburg Convention, 34.
Hutton, Eppa, member of Committee on Elections, Secession Convention at Richmond, 11

I.

Illinois, State of, 3.
Intelligencer, Daily, of Wheeling, 3, 4, 5; files of, 5.

J.

Jackson, John J., member of Secession Convention at Richmond, 29; member of Committee on Federal Relations, 11; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Convention at Powhatan Hotel, 30; expelled from Convention, 31; member of First Convention at Wheeling, 57; remarks by, 36, 37, 38, 39, 40, 42, 43, 44, 47, 53, 59, 64, 65.

Jackson, John Jay, Jr., member of First Convention at Wheeling, 57; remarks by, 39, 58, 61.
Jackson, Blackwell, member of Second Convention at Wheeling, 80; mentioned, 229.
Janney, John, member of Secession Convention at Richmond, 29; permanent President thereof, 10; Address of, to Convention, 10, 11.
Johnson, Peter C., member of Secession Convention at Richmond, 29; member of Committee on Federal Relations, 11.
Johnson, Daniel D., member of Second Convention at Wheeling, 79; remarks by, 133, 275; resolution by, 199; mentioned, 201, 211.
Johnson, Joseph, ex-Governor of Virginia, mentioned, 232.

K.

Kidd, George H., resolution by, in First Convention at Wheeling, 41.
Koontz, George, member of Second Convention at Wheeling, 80; qualified and took seat as member of said Convention, 185.
Kramer, Leroy, member of Second Convention at Wheeling, 80; remarks by, 91; resolution by, 299; substitute offered by, for ordinance providing for publication of Ordinance and Laws, 196; mentioned, 200.
Laidley, Albert, member of the Second Convention at Wheeling, 79; did not qualify, name stricken from roll of, 135.
Laishley, Rev. Peter T., delegate to First Convention at Wheeling, 41.
Lamb, Daniel, member of Second Convention at Wheeling, 80; remarks by, 90, 94, 95, 113, 131, 134, 241, 257, 263, 264, 268, 281, 290, 295, 296, 297; motions by, 90, 95, 111, 151, 154, 256; resolutions by, 136, 199, 296; nominated Francis H. Pierpont for Governor of Virginia under Restored Government, 140; report by, from Committee of Seventeen, 154; from Committee on Credentials, 93, 139, 152, 153, 200, 281; submitted credentials of Henry C. Moore, and Duncan McLaughlin, 136; mentioned, 276.
Latham, George R., member of First Convention at Wheeling, 57; temporary Secretary thereof, 36.
Lawson, James, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Lazier, William, remarks by, in First Convention at Wheeling, 46, 53, 58, 65.
Letcher, John, Governor of Virginia; Proclamation by, convening General Assembly in Extra Session, 8; message to Assembly, 8; received telegram from Jefferson Davs, 16; received telegram from Governor Pickens, of South Carolina, 13.
Lewis, Charles S., member of Second Convention, at Wheeling, 80; admitted to seat as successor of Lot Bowen, resigned, 212; remarks by, 223, 224, 230, 232, 274, 275, 279, 280, 282; demanded previous question, 295; mentioned, 232, 253, 254, 276.
Lightburn, J. A. J., member of Second Convention at Wheeling, 80; remarks by, 191; motions by, 191, 192; resolution by, 193.
Lincoln, Abraham, signed Senate Bill admitting West Virginia into the Union, 330; Proclamation by, admitting West Virginia into the Union, 333, 334; supported by Intelligencer, 4.
Logan, Thomas H., member of Second Convention at Wheeling, 80.
Love, John, member of Second Convention at Wheeling, 80.

M.

Major-General of Virginia, office of, created by Virginia Convention, 21.
Marshall, Jacob W., elected member of Secession Convention at Richmond, to fill seat of John N. Hughes, killed in battle of Rich Mountain, West Virginia, 32.
Marshall County, Action of people therein, 26, 28.

Martin, Jefferson T., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of James Burley, 32.
Martin, Henry S., member of Second Convention at Wheeling, from Alexandria county, 79.
Martin, Reuben, member of Second Convention at Wheeling, 80; remarks by, 187; motions by, 153, 290; resolution by, 193; call for previous questions, 277, 293; mentioned, 200, 211.
Martin, Rev. Gideon, opened Convention by prayer, 200 279.
Maslin, Thomas, member of Secession Convention at Richmond, 29.
Mason County, Action of People therein, 26, 27.
Mason, Eben E., member of Second Convention at Wheeling, from Fairfax county, 79.
Masters, Henry H., member of Second Convention at Wheeling, 23; vote by, on Ordinance of Secession, 30.
Mercer, William F. remarks by, in Second Convention at Wheeling, 95.
Michael, John, member of Second Convention at Wheeling, 80.
Militia, enroll, Governor Letcher to furnish number of, 12.
Mississippi, adopts Ordinance of Secession, 8.
Monongalia County, Action of People therein, 25.
Montague, Robert, member of committee on Federal Relations, 11.
Montague, Dudley, member of Second Convention at Wheeling, 80.
Moore, Henry C., member of Second Convention at Wheeling, 80; credentials, submitted, 136; qualified and took seat as member thereof, 139; remarks by, 152; resolution by, 150.
Moore, Samuel McD., member of Committee on Federal Relations, 11.
Morgan, Stephen A., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of Ephraim B. Hall, 32.
Morris, Robert, member of Second Convention at Wheeling, 80.
Moss, John W., member of First Convention at Wheeling, 57; permanent President thereof, 41; Address of, to Convention, 41, 42, member of Second Convention at Wheeling, 80; motion by, 94; nominated Daniel Polsley for Lieutenant-Governor of Virginia under Restored Government, 140.
Myers, D. M., member of Second Convention at Wheeling, 79.
McClure, Rev. J. T. opened Convention with prayer, 128, 189.
McComas, William, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; member of Committee on Federal Relations, 11.
McDermot, John F., Proprietor of Wheeling Intelligencer, 4.
McFarland, William H., member of Committee on Federal Relations, 11.
McGrew, James C., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Convention at Powhatan Hotel, 30; expelled from Convention, 31.
McGuire, Edward D., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of John J. Jackson, 32.

N.

National Congress, election of members of, prohibited in Virginia, 15; Southern members resign seats in, 8.
Newman, Henry, member of Second Convention at Wheeling, 80; obtained consent to vote on ordinance creating a new State, 300.
New Year's Day—that of 1861, 7.
New York, State of, mentioned, 11.
Nicholls, John D., member of Second Convention at Wheeling, 79; remarks by, 110, 119, 124, 192, 276, 292; motion by, 118; resolution by, 297.
Northwestern Virginia, Convention of the People thereof, 35.

O.

Oath of office subscribed to, by officials under the Restored Government of Virginia, 140.
Ohio County, Action of people therein, 3, 25, 26, 27, 28.
Ohio, State of, mentioned, 11; river, 4.
Ordinance of Secession, Resolutions regarding, adopted by people of Richmond, 15; schedule accompanying, 15; text of, 14.
Ordinance, for reorganization of the State Government adopted by the Second Convention at Wheeling, 92; to authorize the apprehending of suspicious persons in time of war, 116; fixing the compensation of certain officers therein mentioned, 118; relating to the receipts and disbursements of a Public revenue, and providing for the appointment of an Auditor, Treasurer, and Secretary of the Commonwealth of Virginia, 148; relating to the collection of the Public Revenue, 153, 201; requiring the evidence of the taking of certain Oaths to be filed in the office of the Secretary of the Commonwealth of Virginia, 154; providing for the discharge of the duties of the Board of Public Works, 194; discharge of duties of Second Auditor, 194; declaring null and void the Proceedings of Secession Convention at Richmond, 195; providing for the publication in newspapers of the Ordinances of the Convention, and the public laws passed by the General Assembly, 195; ascertaining and declaring in what cases offices are vacated under Declaration of June 17, 1861, 202, 298; to provide for the punishment of certain offences and for other purposes, 202; for the division of the State, 204; to provide for the formation of a new State out of a portion of this State, 284, 317; providing for the appointment of collectors of the Public Revenue in certain cases, 298; to provide for the election of representatives in the Congress of the United States, 299; increasing the compensation of the Adjutant General, during the continuance of hostilities in the Commonwealth of Virginia, 299.
Orick, Johnson, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Osburn, Logan, member of Secession Convention at Richmond, 29, vote by, on Ordinance of Secession, 30.

P.

Parsons, Solomon, member of Second Convention at Wheeling, 80; remarks by, 90, 115.
Patrick, Spicer, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Secession Convention at Powhatan Hotel, 30.
Paxton, James W., member of Second Convention at Wheeling, 80; remarks by, 87, 217, 222; motion by, 95.
Pendleton, Edmund, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Pendleton, Joseph H., elected by Secession Convention to fill seat made vacant by expulsion of Chester D. Hubbard, 32; mentioned, 4.
Pennsylvania, State of, mentioned, 11.
Phelps, Rev. John M., opened Convention with prayer, 198.
Pickett, Joseph D., member of Secession Convention at Richmond, 29; elected to fill vacancy made by expulsion of Campbell Tarr, 32.
Pickens, Governor of South Carolina, telegram to Governor Letcher, 13.
Pierpont, Francis H., member of Second Convention at Wheeling, 80; remarks by, 40, 58, 59, 61, 89; resolutions by, 78, 85; speech of, in Second Convention, 159, 170; report by, of Committee on Organization, 81, nominated and elected Governor under Restored Government, 140; addressed Convention, 279; Proclamation of,

convening Constitutional Convention, 318; issues Thanksgiving Proclamation, 318; mentioned, 229, 322.
Polsley, Daniel, member of Second Convention at Wheeling, 80; remarks by, in First Convention at Wheeling, 58, 60, 64; remarks in Second Convention, 200, 211, 227, 228, 229, 231, 232, 277, 281, 289, 295; resolution by, 199; nominated and elected Lieutenant Governor of Virginia under Restored Government, 141; entered upon the duties of Lieutenant Governor of Virginia, 145.
Porter, George McC., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Secession Convention at Powhatan Hotel, 30; expelled from Convention, 31; report of, as Chairman of Committee of State and Federal Relation, in First Convention at Wheeling, 54; member of Second Convention at Wheeling, 80; motion by, 155.
Preston, John S., Commissioner from South Carolina, addresses Secession Convention at Richmond, 12.
Preston, William Ballard, member Secession Convention at Richmond, 29; member Committee on Federal Relations, 11.
Preston County, Action of People therein, 24.
Price, Samuel, member Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; member of Committee on Federal Relations, 11.
Pugh, David, member of Secession Convention, at Richmond, 29; vote by, on Ordinance of Secession, 30.

R.

Radcliffe, William, member of Second Convention at Wheeling, 89; qualified and took seat, 153.
Report of Compromise Committee, vote on, 295.
Restored Government of Virginia, beginning of, 142.
Richardson, William H., Adjutant General of Virginia, communication from, 20.
Richmond, State Convention at, 5.
Ritchie, A. F., member of Second Convention at Wheeling, 80; remarks by, 218; resolution by, 200; submits letter from Edward Bates, Attorney General of United States, 219.
Rives, Timothy, member of Committee on Federal Relations, 11.
Rhode Island, State of, mentioned, 11.
Roberts, T. A., member of Second Convention at Wheeling, 80.
Roberts, Jonathan, adverse report on credentials of, 192, 196, 198.
Robinson, John A., elected member of Secession Convention at Richmond, to fill seat made vacant by expulsion of John S. Burdett, 32.
Ruffner, Lewis, member of Second Convention at Wheeling, 80.

S.

Schedule Accompanying Ordinance of Secession, 15; prohibits election of members of National Congress, 15.
Scott, Robert E., member of Committee on Federal Relations, 11.
Scott, James F., member of Second Convention at Wheeling, 80.
Secession, Ordinance of, adopted by Richmond Convention, 14, 29; List of Western Virginians who were members thereof, 29.
Senseny, George S., member of First Convention at Wheeling, 55; remarks by, 40.
Shuttleworth, John H., member of Second Convention at Wheeling, 79.
Shuttleworth, Benjamin F., member of Second Convention at Wheeling, 80.
Slack, Greenbury, member of Second Convention at Wheeling, 80.
Smith, Rev. Wesley, opened Convention with prayer, 79, 115, 203.

Smith, James, member of Second Convention at Wheeling , 80; credentials, presented, 184.
Smith, C. W., member of Second Convention at Wheeling, 80.
Smith, John L., member of Second Convention at Wheeling, 80.
Smith, Fontain, member of Second Convention at Wheeling, 80; remarks by, 216, 218, 220, 227, 245, 246, 294, 295, 296; motion by, 199.
Smythe County, Resolutions of People of, 13.
Snider, Joseph, member of Second Convention at Wheeling, 80; remarks by, 190, 216, 217, 276; resolution by 123; mentioned, 216, 217.
South Carolina, Ordinance of Secession of, 7.
Southall, Valentine W., member of Committee on Federal Relations, 11.
Spurlock, Burwell, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
State Convention, provided for, 9; assembles at Richmond, 10.
Stephens, Alexander H., Vice-President of Confederate States, 8; arrival in Richmond, 16, 17; Commission from Jefferson Davis to treat with Virginia, 16.
Stuart, Chapman J., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Convention at Powhatan Hotel, 30; expelled from Convention, 31; member of Second Convention, at Wheeling, 79; remarks by, 93, 94, 96, 110, 148, 188, 190, 191, 199, 204, 241, 248, 252, 254, 255, 277, 278, 290, 293, 297; motions by, 111, 151, 189, 275, 294, 297; speech of, in Adjourned Session, 312-315; mentioned, 280.
Summers, George W., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Swan, Remembrance, member of Second Convention at Wheeling, 80.
Swearingen, E. B., mentioned, 4.

T.

Taft, Nathan H., member of Second Convention at Wheeling, 79; admitted to seat in Convention as successor of Spencer Dayton.
Tarr, Campbell, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; attends meeting of Western members of Convention at Powhatan Hotel, 30; expelled from Convention, 31; member of First Convention at Wheeling, 55; remarks by, 40; motions by, 279, 281, 292; member of Second Convention at Wheeling, 79; remarks by, 78, 125, 290.
Taylor, Oliver J., mentioned, 4.
Telegram from Jefferson Davis to Governor Letcher, 16.
Todd, Samuel B., member of Second Convention at Wheeling, 80; remarks by, 91; resolution by, 189; mentioned, 283.
Trans-Allegheny Regions, Loyalty of People therein to Federal Government, 24.
Tredway, William M., member of Committee on Elections, Secession Convention at Richmond, 11.
Trout, James H., member of Second Convention at Wheeling, 80.
Turner, Franklin P., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.
Tyler, ex-President John, member of Secession Convention at Richmond, 10.
Tyler County, Action of People therein, 27.

U.

United States, Allegiance thereto by People of Virginia, absolved, 21; Senators, from Virginia under Restored Government, election of, 143.
Vance, John C., member of Second Convention at Wheeling, 80; remarks by, 124, 126, 128, 134; motion by, 133.
Van Winkle, Peter G., member of Second Convention at Wheeling, 80; remarks by, 90, 106, 107, 112, 113, 121, 134, 138, 185, 186, 193, 195, 198, 216,

224, 245, 246, 270, 281, 282, 287, 297; motions by, 113, 130, 183, 186, 189, 193, 194, 197, 198, 203, 211, 212; resolutions by, 184, 194, 203; report by, from Committee on Division of the State, 189; report from Committee on Business, 155, 200, 201, 212, 298; report by, from Committee on Revision of Ordinances, 300; report by, from Compromise Committee, 282; mentioned, 216, 255, 275.
Virginia, beginning of Restored Government of, 142; Restored Government of, 3, 5; Convention of, with Confederate States, 17, 18; People of, absolved from Allegiance to United States, 21; Public Debt of, referred to, 121, 224, 225, 246, 253, 255; provision relating to, 287.

W.

Waggener, Charles B., Secretary of First Convention at Wheeling, 3; member of Second Convention, 80.
Watson, James O., member of Second Convention at Wheeling, 80; qualified and took seat, 136.
West, James G., member of Second Convention at Wheeling, 80; remarks by, 137, 151, 187, 193, 196, 197, 198, 204, 216, 218, 263, 264, 271, 275, 281, 294, 301; motions by, 131, 151, 186, 198, 203, 206, 275, 300, 301; resolutions by, 183, 192, 270, 280; report by, as chairman of Committee on Division of the State, 204; mentioned, 201.
West Virginia, new State of, mentioned, 4; Act for Admission thereof into the Union, 325; beginning of the New State Government, 326, 327; first State officials of, elected, 335.
Western Virgnia, members of, in Secession Convention at Richmond, 29; members thereof, expelled from the Convention, 31.
Wetzel, Lewis, member of Second Convention at Wheeling, 80.
Wheat, James S., member of First Convention at Wheeling, 56; remarks by, 49, 52, 60; resolution by, 48; elected Attorney General of Virginia under Restored Government, 152.
Wheeling, City of, mentioned, 3; Constitutional Convention at, 5, 318, 319; meeting of the People of the Northwestern Convention thereat, 35; Second Convention thereat, 78; Public Library of, 4; Island of, 3, 4.
Willey, Waitman T., member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30; member of Committee on Federal Relations, 11; expelled from Convention, 31; member of First Convention at Wheeling, 56; remarks by, 42, 45, 46, 47, 49, 57, 58, 60, 66, 67, 68, 69, 70; mentioned, 229.
Williams, Samuel C., member of Committee on Federal Relations, 11.
Williamson, James A., member of Second Convention at Wheeling, 80.
Williamson, James W., member of Second Convention at Wheeling, 80; failure to attend, 80; name stricken from the roll, 135.
Wilson, Benjamin, member of Secession Convention at Richmond, 29.
Wilson, Andrew, member of Second Convention at Wheeling, 80; administered oath of office to Governor Pierpont, 145.
Wise, Henry A., member of Committee on Federal Relations, 11.
Withers, Henry W., member of Second Convention at Wheeling, 79.
Wood County, Action of People therein, 26.
Woods, Samuel, member of Secession Convention at Richmond, 29; vote by, on Ordinance of Secession, 30.

Z.

Zinn, William B., member of Second Convention at Wheeling, 80; temporary President of Convention, 35; mentioned, 200, 205; remarks by, 234; motion by, 217; presented Petition of Citizens of Preston County, 192.

69701

Supreme Court of the United States

OCTOBER TERM, 1906

No. 3

STATE LIBRARY
DEC 22 1911

ORIGINAL

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

RECORD

Table of Contents

Bill of Virginia and Exhibits..... 3-104
The Bill 3- 17
Exhibit No. 1. Funding Act of 1871..... 17- 21
2. Funding Act of 1879..... 21- 26
3. Funding Act of 1882..... 26- 38
4. Funding Act of 1892..... 38- 47
5. Resolution creating Va. Debt Commission, March 6, 1904 ..... 47- 49
6. Act for assembling "W. Va. Deferred Certificates" and enlarging powers of Debt Commission..... 49- 51
7. Statement of Debt—Amount of Principal and Interest paid thereon, Feb. 1, 1906..... 51
8. Report of Va. Debt Commission, Jan. 9, 1906, and accompanying documents..... 52-104
The Report 52- 59
Form of Deferred Certificate of 1871..... 56- 57
Form of Deferred Certificate of 1882..... 36
Form of Deferred Certificate of 1892... 44
Agreement of July 28, 1898, between Depositing Committee and holders of Deferrred Certificates. 59- 62
Act of March 6, 1900, enlarging powers of Debt Commission 62- 64
Proposal of Depositing Committee to Debt Commission, Sept. 18, 1902..... 64- 66
Acceptance by Debt Commission, and approval by Attorney General of Va..... 66
Plan of Settlement of the W. Va. Debt by Advisory Board of the Depositing Committee and said Committee 67- 69
Copy of Notices to Depositors of "W. Va. Deferred Certificates" and proof of publication of notices. 69- 72
Declaration of Depositing Committee that Plan of Settlement has become effective, Dec. 13, 1904. 73
Message of Gov. A. B. White communicating to the Legislature of W. Va. the letter of the Committee of Va. Debt Commission addressed to him, and copy of said letter, Jan. 27, 1905..... 73- 77
Address of Randolph Harrison on behalf of Va. Debt Commission before the Finance Committees of W. Va. Legislature, Feb. 1, 1905..... 77- 92
Agreement of Dec. 14, 1904, between Depositing Committee and Va. Debt Commission..... 92- 96

Agreement between same parties of Nov. 24, 1905. 96- 99
Statement to Va. Debt Commission of Depositories, of amount and kind of Va. Deferred Certificates held in trust for the Commission..... 99-103
Statement of 2d Auditor of Va., of West Virginia Certificates issued by Va. in funding her debt, Sept. 17, 1902..... 104

Demurrer of West Virginia:
Petition to file..... 107
The Demurrer 109-110
Amended demurrer, notice of..... 112
Petition to file 113
The Amended Demurrer 114-116
Decision overruling 119-137
Order overruling demurrer and granting leave to Defendant to answer 138

Answer of West Virginia and Exhibits:
The Answer 141-164
Exhibit No. 1. Act of Virginia Legislature, May 13, 1862, giving consent to formation of West Virginia 165
2. Letter of Nov. 16, 1871, of Asa Rogers, 2d Auditor of Va., to A. W. Campbell, Secretary of West Va. Debt Commission of 1871..... 166
3. Report of W. Va. Senate Finance Committeee of Dec. 22, 1873.....166-170
Decree of Reference.....173-175
Defendant's motion to modify.....179-180
Order amending 207
Report of Commission—John Marshall, Chairman:
Preliminary note by counsel for Va.....183-184
The report 185-205
Special Master, order appointing..... 209

Paragraph I of Decree.

Plaintiff's and Defendant's Joint Exhibit A-1 215-218
Plaintiff's Exhibit A-2 (form of bonds) 219-285
Plaintiff's Supplementary Exhibit A-1 (Contingent liability on account of C. & O. Canal Co.) 287-290
Cross Examination of A. G. Potter 291-296
Testimony of A. W. Harman, State Treasurer 297-303
Certificates Nos. 1, 86, 87 and 88 of James River Company.....297 303
Testimony of Thomas B. Dixcy.....305-312
Cross Examination of Thomas B. Dixcy.....312-330
Re-direct Examination of Thomas B. Dixcy.....330-333
Letter of John Coalter, President of James River Company..... 330
Extract from book of original entry—James River Company loans...331-332

Agreement as to date when accounting should begin..... 334
Plaintiff's substitute Exhibit A-1 filed and discussed (not printed)....334-342
Plaintiff's Supplemental Exhibit A-1 filed..... 342
Agreement as to amount, purposes, etc., of the Public Debt..... 335

Paragraph II of Decree.

Plaintiff's and Defendant's Joint Exhibit B-1..... 347
Agreement as to area of the two States.....349-357
Cross Examination of Arthur G. Potter.....351-358
Direct examination of Thomas B. Dixcy.....359-361
Defendant's Exhibit B-1 filed (not printed)..... 359
Cross examination of Thomas B. Dixcy..... 361
Agreement as to population of the two States.....365-369
Plaintiff's substitute Exhibit B-1 filed (not printed).....366-367

Paragraph III of Decree.

Plaintiff's and Defendant's Joint Exhibit C-1.....371-377
Testimony of Arthur G. Potter.....379-380
Plaintiff's Exhibit C-1 filed (not printed)..... 380
Cross examination of Arthur G. Potter.....380-426
Berkeley and Hampshire Turnpike.....385, 389
Berryville & Charlestown Turnpike..... .....386, 389, 416
Covington & Ohio Railroad (now Chesapeake & Ohio Railroad) 386, 421-422
Alleghany Tunnel 386, 421-422
Cross Roads and Summit Point Turnpike..... 389
Franklin and Monterey Turnpike..... 389
Mountain Lake and Sulphur Springs Turnpike.....389, 420-421
Giles, Fayette and Kanawha Turnpike..... 390
Hardy and Winchester Turnpike..... 390
Huntersville and Warm Springs road..... 390
Martinsburg and Winchester Turnpike..... 390
Morgan and Frederick Turnpike..... 390
Northwestern Turnpike 390-393
Price's Turnpike and Cumberland Gap road..... 393
Raleigh and Wythe line..... 394
Raleigh and Grayson Turnpike..... 394
Staunton and Parkersburg Turnpike.....394-398
Skidmore Fork to South Branch of Potomac road..... 398
Strasburg and Capon Turnpike.....398-399
Winchester and Potomac Railroad Company.....399-401
Hillsboro and Harper's Ferry road..... 401
Harrisonburg and Hardy road..... 401
James River and Kanawha Improvements (James River Company; James River and Kanawha Company; Kanawha Board) 401, 406, 409

Alleghany Mountain Turnpike 406
Trans-Alleghany Lunatic Asylum at Weston..... 406-407
Abbs Valley & Tug road..... 407
Brandonville, Kingwood and Evansville road..... 408
Clarksburg and Buchanan road..... 408
Coal River Bridge Company 408
Coal River Navigation Company..... 408
Buckhannon Bridge Company..... 408
Gauley Bridge 409
Bank of Fairmont 409-410
Guyandotte Navigation Company 410
Kingwood and West Union Turnpike..... 410
Lewisburg Law Library 410-411
Louisa Fork of the Sandy River road..... 411
Morgan County road from Bath to St. John's River..... 411-412
Loan to the Trustees of the Town of Bath..... 412
Monongalia Navigation Company..... 412
Moorefield and Alleghany Turnpike 412
Northwestern Bank of Wheeling 412-415
South Branch and Kitterman's road to Hardy County 415-416, 424-426
South Branch of the Potomac to Brock's Gap and Rockingham County road 416, 424-426
Road from South Fork of the South Branch of the Potomac to Petersburg in Hardy County..... 425-426
Williamsport Turnpike 416
"Sundry Expenses" 417-418
Interest on Bonds of City of Wheeling..... 418-419
Harper's Ferry Raid..... 419-420
"Payment to West Virginia counties for School purposes".. 419, 421-424
Dividends paid by banks; bonus stocks..... 420
University of Virginia 423
Educational institutions generally 423-424
Testimony of John B. Lightfoot, Jr..... 426-438
Abbs Valley and Tug road..... 429
Beverly and Fairmont road 429
Berkeley and Hampshire road 430
Coal River Navigation Company..... 431
Guyandotte Navigation Company..... 431
Monongalia Navigation Company..... 431
Tug Fork Navigation Company..... 431
Kanawha Turnpike road and extension..... 432
Kanawha River and Board 432
Winchester and Potomac Railroad..... 433
Covington & Ohio Railroad..... 433-434
Northwestern Bank 435
Fairmont Bank 435
Harper's Ferry raid 435-436
Report of W. Va. Debt Commission of 1871 (referred to and discussed) 437
Plaintiff's Exhibit C-2 filed (not printed)..... 438

Cross Examination of John B. Lightfoot, Jr. 438-450
Covington & Ohio Railroad 438-439, 441-445
Northwestern Turnpike 441, 446
Staunton and Parkersburg Turnpike 441, 446
School Expenditures in West Virginia 444
Harper's Ferry raid 446-449
Back Creek Valley road 449
Abbs Valley and Tug road 449
Alleghany Mountain Turnpike 450
Louisa Fork of Sandy road 450
Re-direct examination of John B. Lightfoot, Jr. 450-451
Direct examination of T. B. Dixcy 451-466
Changes in Defendant's Exhibit C-1 451-452
Brandonville, Kingwood and Evansville road 451-452
Clarksburg & Buchanan road 451-452
Kingwood and West Union Turnpike Company 451-452
Trans-Alleghany Lunatic Asylum at Weston 452
Defendant's Exhibit C-1 filed (not printed) 452
Stem to Petersburg of Moorefield and Alleghany Turnpike Company 453
Moorefield and Alleghany Turnpike Company 453
Abbs Valley and Tug road 454
Alleghany Mountain Turnpike 454
Berryville and Charlestown Turnpike 454-455
Northwestern Turnpike road 455-457
South Branch of Potomac River to Brock's Gap in Rockingham county road 457
Staunton and Parkersburg road 457
Middlebourne & Pennsylvania road 451-458
Tyler County to Green County road 458
Morgantown and Beverly road 458
Morgantown to Beverly road 458
Trans-Alleghany Lunatic Asylum at Weston 459
Winchester and Potomac Railroad 459-464
Covington & Ohio Railroad (now Chesapeake & Ohio Railroad) 465
Virginia Central Railroad Company 465
Chesapeake & Ohio Railroad 466
Cross examination of T. B. Dixcy 466-480
Coal River bridge; Coal River improvements 471
Trans-Alleghany Lunatic Asylum at Weston 471
Moorefield and Alleghany Turnpike Company—building stem to Petersburg 471-472
Letart Falls & West Columbia Turnpike 473-475
Covington & Ohio Railroad 476-478
Franklin and Monterey road 476-477
Winchester and Potomac Railroad 478-479
Baltimore & Ohio Railroad 478-479

Baltimore & Ohio Railroad, lessee of Winchester & Potomac Railroad 479
Direct examination of C. E. Scoville 480-495
Brandonville, Kingwood and Evansville road 480-481
Clarksburg and Buckhannon road 481
Kingwood and West Union Turnpike Company 481-482
Morgantown to Beverly road 482
Beverly and Clarksburg road 482
Monongalia County to Beverly and Clarksburg road 482
Middlebourne & Pennsylvania road 482
South Fork of South Branch of Potomac River to Petersburg and Hardy County road 482-483
South Branch of Potomac River to Brock's Gap and Rockingham County road 483
Abbs Valley and Tug road 483-484
Alleghany Mountain Turnpike 484
Trans-Alleghany Lunatic Asylum at Weston 484-485
Covington & Ohio Railroad 485-487
Blue Ridge road 487-488
Virginia Central Railroad 487-488
Chesapeake & Ohio Railroad 487-488
Strasburg & Capon Turnpike 488
Winchester and Moorefield road 488
Winchester and Potomac Railroad 488-489
James River and Kanawha improvements 489-491
Morgan County road from Bath to St. John's River 491-492
Loan to the Trustees of the Town of Bath 491-492
Louisa Fork of the Sandy River Road 492-493
Bonds of the City of Wheeling 493
Cross examination of C. E. Scoville 495-496
Northwestern Bank at Wheeling 495-496
Fairmont Bank 495-496
Exchange Bank at Weston 495-496
Kanawha River improvements 495-496
Further direct examination of C. E. Scoville 497-503
Gauley Bridge 497-498
James River & Kanawha improvements 497-498
Northwestern Bank of Virginia—its branches 498-500
Northwestern Turnpike road 500-502
Staunton and Parkersburg road 502-503
Plaintiff's Revised Exhibit C-1 filed (not printed) 503-505
Plaintiff's Substitute Exhibit C-1 filed (not printed 505
Abbs Valley and Tug road 506
Berkeley and Hampshire Turnpike 506
Mountain Lake and Sulphur Springs turnpike 508
Trans-Alleghany Lunatic Asylum 510-512
Winchester and Potomac Railroad 512-513

Paragraph IV of Decree.

Plaintiff's and Defendant's Joint Exhibit D-1 514-538
Defendant's Exhibit D-2 (Literary Fund) ..... 538 A-538 H
Testimony of Arthur G. Potter 539-542
Plaintiff's Exhibit D-1 filed (not printed) 541
Plaintiff's Exhibit D-2 filed (not printed) 541
Cross examination of A. G. Potter 542-569
General Assembly expenses 542
"Officers of the Government" 543-554
"Criminal Charges" 543
Interest on Public Debt 546-551, 555
Northwestern Bank of Wheeling 547
Exchange Bank of Norfolk 547
C. & O. Canal 546
James River & Kanawha guaranteed Bonds 549
Washington & Lee College, annuity to 550
James River Stock presented to George Washington 550
James River Company Loan No. 1 ..... 551, 556-560
James River Company loans 556-560
Ordinary expenses, what included in 561-568
Deaf, Dumb and Blind Institution 562-568
General Government 562
Pensions 562
Expenses of representation 562
Public Arsenals 562
Maps 563
Surveys, salaries, and expenses 563
Literary Fund disbursements 564
Hampden City College 564
"Medical College, $5,000" 564
"Davis' Book on Criminal Law, $12,000" 564-565
"Expenses—sale of slaves and free negroes" 565
"State claims against the United States" 565-567
"Taxes and salaries, $217.23" 566-567
"Expenses account of purchase of stock by J. Bauer" 567
Commission on United States debt 567
"Judgments and commissions on escheats, delinquent and redeemed bonds" 568
"University of Virginia, $649,874" 568
Virginia Military Institute, $28,500 568
Interest on James River and Kanawha guaranteed bonds, $617,502.46 568-569
Direct examination of T. B. Dixcy 569-575
Defendant's Exhibit D-1 filed (not printed) 569
Item, "Primary Schools, out of Income," $2,400,331.11, withdrawn 569-571
Cross examination of T. B. Dixcy 575-578

Direct examination of C. E. Scoville....578-597
"General Government," $8,495.63....579-580
Pensions, $88,548.74....579-580
"Expenses of representation," $24,120.17....580-581
"Public Arsenals," $96,709.63.... 581
"Warrants on account"....581-582
"General appropriations"....581-582
Miscellaneous expenditures.... 582
"Slaves transported and executed," $611,351.23.... 583
"Gun carriages," $14,317.05....583-584
"Revising Laws," $4,500.... 584
"$71.10 for seines".... 584
"Public Warehouses," $35,722.00....584-585
"Tobacco sales," $454.91.... 585
"Armory, manufacture and repairs of Arms," $243,015.60..... 586
"Sale of slaves," $99.26.... 586
Revolutionary claims agent, $3,861.67.... 586
"Administrators of J. Merrywether and R. Graves," $11,067.33.... 586
"Clerk hire, etc., on account of delinquent lands," $18,374.27....586-587
Buckingham furnace lands, $771.72.... 587
"Transportation of free persons of color to Liberia," $26,103.50.. 587
"Unexpended postage returned to Treasury," $53.13.... 587
"Penitentiary; Hatcher vs. Commonwealth," $12,897.96.....587-588
Ferriage of troops, $54.71.... 590
"Criminal and Civil Code," $52,073.88....590-591
Rent, $52.25.... 591
Virginia Volunteers, $29,470.05.... 591
Tobacco sales and burnt tobacco, $1,931,30.... 592
Land Taxes, $296.59.... 592
"Assessment of free negroes," $897.21....592-593
"Fugitive slave Fund." $5,201.... 593
Land sold in 1855, $[illegible].48.... 593
"Public Printing," $23,092.31.... 593
"Claims under 27th and 45th chapters Code of Va.," $1,344.05.... 593
Treasury note expenses, $375.45....593-594
"Tax on Dividends," $128.50.... 594
"Arms and munitions of war," $4,111.13.... 594
"Survey of Washington's birthplace," $139.21.... 594
"Temporary clerks in Auditor's office," $3.826.64.... 594
"Marking Virginia and Maryland Boundary," $6.094.44.... 595
Maps, $11,400.90.... 595
Public Arms, $11,499.97.... 595
State Constitutional Conventions, $258,677.40.... 596
"Medical College," $25,000....596-597
"Experimental Railroad," $10,000.... 597
Blair and Bolling, special service, $200.... 597
Plaintiff's Revised Exhibit D-1 filed and discussed (not printed)....599-635
Reconcilement of the discrepancy of $50,000....599-601
As to introduction of further evidence concerning....601-603

As to agreement of parties on differences in schedules as to ordinary expenses....602-610
Plaintiff agrees to Defendant's modified Exhibit D-1, "as far as it goes" 610-612
Items of differences between Plaintiff's and Defendant's Exhibit D-1 611
Tobacco receipts 612-619

Items of agreement as to amounts in Plaintiff's and Defendant's Exhibit D-1 619-624
Constitutional Conventions 619
"Slaves, cost of slaves transported and executed". 619
"Boundary Line" 619
"Maps, Commonwealth and Board of Public Works" 619
"Deaf and Dumb and Blind Institution, 1845 to 1860" 619-620
"International Exchanges" 620
"Overpayment of Treasury Note".... 620
"Printing Treasury Notes".... 620
"Loss account of counterfeit Money".... 620
"Virginia Military Institute, additions and Improvements to buildings" 620
"University of Virginia. Water Supply" 621
"Improvements, Public Square and Improvements, Capitol Square" 621
'Fugitive Slave expenses" 621
"Penitentiary Lot and new Hospital Building".. 621
Calling out the Militia at Wheeling in 1838 (1836). 621
"Medical College of Virginia, additions and Improvements to buildings 621
"Attorney General's fees for prosecuting Selden Withers & Co." 622
"Eastern and Western Lunatic Asylum....622, 624, 625
"Cannon House, Surry County".... 623
"Gun House for Richmond Artillery".... 623
"Sundries, B. P. W. Expenses".... 623
Interest on Public Debt, $18,574,747.84.... 623
Items of Indian Defense, 1834, 1835....621-624
Apportionment of ordinary expenses on population—Plaintiff's contention or method 625-627
Testimony of Arthur G. Potter concerning the items of ordinary expense above mentioned 627-635
Defendant's Exhibits "West Va. 1." "West Va. 2," and "West Va. 3," filed (printed, pp. 821-825)....627, 736

Paragraph V of Decree.

Plaintiff's and Defendant's Joint Exhibit E-1.....639-646
Plaintiff's Exhibit E-2 (depreciation of Confederate Treasury Notes). 647
Plaintiff's Exhibit E-3 (comparisons assessed values in Va. and W. Va., 1867-1908)..... 651
Plaintiff's Exhibit E-4 (comparisons of depreciation of property in Richmond City and certain counties, 1863).....653-664
Plaintiff's Exhibit E-5 (Auditor's certificate of assessments shown in E-4) 659-664
Plaintiff's Exhibit E-6 (proportion of ordinary expenses on basis of fair estimated value of property, 1863)..... 667
Plaintiffs Exhibit E-7 (fair estimated value of property, June 20, 1863) 669-672
Defendant's Exhibit E-2 (valuation of slaves in 1860 and 1861)..672 A-672 E
Defendant's Exhibit E-3 (U. S. Treasury Statement showing gold value of greenback currency, 1862-1878, and Defendant's alternative method of determining proportion of ordinary expenses.....672 F-672 H
Testimony of Arthur G. Potter as to Plaintiff's Exhibit E-1, explaining how he arrived at valuation of property in the two States.....673-679
Cross examination of Arthur G. Potter on above matter.....679-683
Defendant's Exhibit E-1 filed (not printed)..... 682
Testimony of T. B. Dixcy in explanation of said exhibit; how and when assessments made; land books and personal property books..682-694
Discussion as to agreement on the assessed values.....686-688, 690-693
Cross examination of T. B. Dixcy.....694-695
Further discussion as to agreeing on statement of assessed value of property 695-711
Joint Exhibit respecting assessed values to be made.....711-713
Testimony of J. M. McWhorter on behalf of West Virginia.....713-716
Cross examination 717-723
Re-direct examination 723-725
Statement of capitations returned in West Virginia counties 1860 and 1865 725-726
Depositions of Robert W. Hunter and others filed (hereafter referred to in detail) 728
Plaintiff's Exhibits E-2, E-3, and E-4 filed.....729-730
Testimony of John B. Lightfoot, Jr.....731-734
Plaintiff's Exhibits E-4, E-5, E-6, and E-7 filed.....733-735
Depositions taken on behalf of Plaintiff.....739-786
Robert W. Hunter..... 739
W. W. Scott 747
John P. Branch 753
Philip A. Wellford..... 759
William G. Taylor 767
S. H. Hawes 771
Charles U. Williams 777
W. Gordon McCabe 782
Deposition of George W. Atkinson, taken on behalf of Defendant....786-802

Paragraph VI of Decree.

Plaintiff's and Defendant's Joint Exhibit F-1 805
Testimony of Arthur G. Potter 807
Sources of his accounting for said exhibit 807
Cross examination of Arthur G. Potter 808
Dates of beginning and ending of his accounting 809
Plaintiff's Exhibit F-1 filed (not printed) 808
Plaintiff's Exhibit F-2 filed (not printed) 808
Direct examination of T. B. Dixcy 809
Defendant's Exhibit F-1 filed (not printed) 809
Explains item "Merchants' and Mechanics' Bank of Wheeling; sale of 400 shares; bonus stock held by Bd. of Pub. Wks., $43,103.35" 809
Cross examination of T. B. Dixcy 810
Items of difference between Plaintiff's and Defendant's Exhibits F-1 810
Defendant includes certain dividends 810
Dividends on bank stocks 811
Tolls on Northwestern Turnpike 812
Bonus received from banks 812
Re-direct examination of T. B. Dixcy 813
How money was paid in from West Virginia counties 814
Plaintiff's Substitute Exhibit F-1 filed (not printed) 815
Accountants for Plaintiff and Defendant agree thereon 816

Paragraph VII of Decree.

Plaintiff's Exhibit G-1 819
Defendant's Exhibit G-1 ..... 820 A-820 M
Exhibit "West Va. 1" 821
Exhibit "West Va. 2" 823
Exhibit "West Va. 3" 825
Anderson explains as to Plaintiff's Exhibit G-1 827
Testimony of Arthur G. Potter 828-829
Area of Virginia; whence compiled 828
Plaintiff's Exhibit G-1 filed 829
From what sources Plaintiff's Exhibit G-1 was compiled 829
Explanation as to item of stock in Merchants' & Mechanics' Bank of Wheeling 829
Cross examination of Arthur G. Potter 830-835
As to item of $225,279.83 charged to West Virginia, as money received from Virginia 830-833
Report of S. P. Hildreth and message of Governor Boreman (for these in full see pp. 1014-1021) 831-832
Item of charge to West Virginia of $9,937.86 833
Item of charge to West Va. of $1,343.80 833
Item of stock in Merchants' & Mechanics' Bank of Wheeling, $40,000 834

Direct examination of T. B. Dixcy 835-839
Defendant's Exhibit G-1 filed 835
Item, p. 2, of total of turnpikes, roads, etc., $700,103.49 835
Item, Navigation Companies, $210,500 836
Item, Monongalia, $8,180, of Plaintiff's Exhibit C-1, page 11 836
Item, "1822, $5,520" of Plaintiff's said last exhibit, page 11 836
Item, Bridge Companies, $78,412.50, p. 2 of Defendant's Ex. G-1. 836
Item, Interstate roads, $114,652.84 837
Loan to the Trustees of the Town of Bath 838
Northwestern Bank of Va. at Wheeling, $341,800, page 9 838
Fairmont Bank, Marion County, $50,000 839
James River & Kanawha Company, $9,542,004.30, page 2 839
Cross examination of T. B. Dixcy 840-849
As to stock and property received by West Virginia from Virginia. 840-843
As to the footing, $11,079,973.19, on page 2 Defendant's Ex. G-1 .. 840
As to value of stocks and property received by West Virginia from Virginia 840
$9,542,004.30 stocks of James River & Kanawha Company 841-843
$539,000 stock of Virginia in West Virginia banks, received by West Va. per statement in report of Jackson, Bennett and Campbell 847, 848-851
List of Acts for printing on behalf of West Virginia 849-860
Deed of Trust of Coal River Navigation Company—"Defendant's General Exhibit No. 2" (printed in full on p. 990) 850
Deed of Trustees in said deed of trust to the purchasers—"Defendant's General Exhibit No. 3" (printed in full on p. 997) 850
Report of said trustees—"Defendant's General Exhibit No. 4" (printed in full on p. 1001) 850
Affidavit of J. S. Darst, Auditor of West Virginia 850-851
Direct examination of C. E. Scoville 852-853
Amount of money received by West Virginia from Virginia 852-853
Report of Samuel Crane, Auditor of Public Accounts ("West Virginia General Exhibit No. 5," p. 1004) 854
Amount of balances in Hildreth's report 854
Amendments to heading of Defendant's Exhibit G-1 ..... 855, 857, 866
Amounts agreed to in Plaintiff's and Defendant's Exhibit G-1 855-859
Agreed statement of Attorneys-General of Virginia and West Virginia. 862-864
Joint statement to be made and submitted as to which roads and bridges paid dividends 865
Joint statement to be made and submitted as to amount of Literary Fund on March 19, 1823, and March 1, 1861 866
Depositions of witnesses taken on behalf of Defendant 868-899
Peter E. Love 868
Frederick Lee Baumgardner 869
B. F. Swann 871
William Griffith 873
Henry V. Sattes 877
W. F. Gregory 879
James H. Wright 880
James M. Payne 882

Dr. C. I. Lewis 883
John Slack 884
William H. Tompkins 887
Charles W. Dering 892
J. K. Thompson 894
Thomas Swinburn 897
Geo. W. Atkinson 786

Matter Relating to the Case Generally.

Plaintiff's General Exhibit No. 1 (Taylor's Abstract of Acts of Va., 1820 to 1860, relating to public debt) 988, 900-987
Defendant's General Exhibit No. 2 (deed of trust of Coal River Navigation Company and extracts from minutes of said company) 990-996
Defendant's General Exhibit No. 3 (deed of the trustees in said deed of trust to the purchasers) 997-1000
Defendant's General Exhibit No. 4 (report of said last named trustees) 1001-1003
Defendant's General Exhibit No. 5 (Auditor Samuel Crane's report) . 1004-1013
Defendant's General Exhibit No. 6, A, B, and C 1014-1021
A—Message of Gov. A. I. Boreman 1014
B—Letter of Gov. F. H. Peirpoint to Gov. A. I. Boreman 1016
C—Statement of Samuel P. Hildreth 1018
Plan of marking Exhibits 1023
Procedure as to objections 1023
Plaintiff's Exhibit H-1, "Biennial Report of the Auditor of Public Accounts, 1860 and 1861," discussed and filed 1024
Nature and effect of agreement between Accountants 1027
Official documents, introduction of, in evidence 1028
Direct examination of Arthur G. Potter as to his qualifications as an accountant 1029
Cross examination of Arthur G. Potter as to methods and sources used by him in making up exhibits and schedules for Plaintiff .. 1030
Direct examination of T. B. Dixcy, as to his qualifications as an accountant, and methods and sources used by him in making up exhibits and schedules for Defendant 1036
Cross examination of T. B. Dixcy thereon 1037
Direct examination of C. E. Scoville as to his qualifications as an accountant, etc. 1043
Record of the openings and adjournments of the sessions before the Special Master 1044-1049
Defendant's Exhibit "Summary of Cash Receipts and Disbursements from March 19, 1823, to January 1, 1861" 1053
Filing of same 1026-1027

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD
PART ONE

BEING THE PLEADINGS AND PROCEEDINGS IN
THE SUPREME COURT OF THE UNITED STATES
PRIOR TO REFERRING
OF THE CAUSE
TO A SPECIAL MASTER.

IN THE

Supreme Court of the United States.

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States: 1

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose, but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

II. 2

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia: and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river, since the first day of January, 1861, has increased to very great and material extent the values of real estate, including coal and timber, in 3
the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to tax-

ation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, 4 where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the

territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State;" Section 9 of which ordinance was as follows, to-wit:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and

shall be determined by the laws now existing in the State of Virginia."

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein, and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been 7
made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public 8
works, in any parent bank or branch doing business within

said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been 9
obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located out-

side of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property 10 of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by Section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by Section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accru- 11 ing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of Janu-

ary, 1861. By section 5 of the same Article VIII., above set forth her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, 12
and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and reconstruction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then

just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay to the uttermost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871. 13

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy One Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to Exhibit Number 7. 14

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has al-

ready done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

XIV. 15

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and con-

tracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution 17
to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period

of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia 18
was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is embedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter 19
to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact repre

sented in said "Restored Government" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: *"A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,"* approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled *"An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,"* the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last-mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906,

made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (eight in number) which she prays may be read as a part of her bill, to-wit:

Exhibit Number 1. A copy of the said Act of the General 21
Assembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A Copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the appointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1906, together with the accompanying papers.

XXII. 22

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to de-

termine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
HOLMES CONRAD.

EXHIBITS WITH BILL. 23

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1. 24

CHAP. 282.—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this State, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts dues, and demands due the state, which shall be so expressed on their

face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued; and new 26
certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared shall commence the issuance of the same as herein provided. 27
The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or

engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts, respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable. 28

5. Whatever sum may be realized from the claims of this state against Seldon, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale and disposition of the stocks and bonds, and debts owned by the state in and against any and all railway or other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the

bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and the second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expense incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

CHAP. 24.—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial interests of the state and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per

centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall be receivable at and after maturity for all taxes, debts, 31
dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate All obligations created under this act shall be forever exempt from all taxation direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is divided into two classes, as follows, to-wit:

Class I. which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II. which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be funded in the new bonds, to be issued under this act, as fol- 32
lows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II, refunded, shall never exceed in amount one-third (1-3) of the total

amount refunded, until eighteen million dollars of Class I. have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided at least eight millions of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations aforesaid, in the amounts and in the periods aforesaid, 33 they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the con-

trol of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip 34 therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligation so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the 35 same as, and together with other taxes, a tax of two cents on

the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the auditor shall not be able to 36
raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to

borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hun- 37
dred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

EXHIBIT NUMBER 3. 38

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

		Interest.	Principal.
	Principal outstanding at this date:		
1861, January 1st,	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,533,582 90		
	Debt guaranteed bearing 6 per cent. interest..... 294,130 00		
	Total principal		$31,800,712 90
	Interest:		
	Past due and uncalled for at this date..... 101,023 63		
	Maturing at this date, January 1st, 1861..... 944,156 38		
	Total interest	$1,045,183 01	
1863, July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.		
39	*Principal July* 1st, 1863:		
	Sterling debt bearing 5 per cent. interest..... $ 1,973,000 00		
	Dollar debt bearing 6 per cent. interest..... 29,827,712 90		

	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02		
	Total principal July 1st, 1863			33,141,212 92
	Interest July 1st, 1863:			
	Past due January 1st, 1861, and uncalled for	1,045,183 01		
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07		
	Total interest to July 1st, 1863, inclusive		5,954,716 08	
1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—			
	Principal:			
	Two-thirds of $1,973,000 sterling debt	1,315,333 34		
	Two-thirds of $31,168,212.92 dollar debt	20,778,808 62		
	Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96
	Interest:			
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive	3,969,810 72		

	Less amount of interest paid by Virginia since January 1st, 1861, exclusively, out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto..	3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive		307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..	1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above $20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date 3,710,449 67			
	Total dollar bonds.....	17,068,358 95		
	Total principal			18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*			
	On $1,315,333.34 sterling bonds at 5 per cent.....	526,133 28		
	On $20,788,808.62 dollar bonds at 6 per cent.....	9,973,828 14		
		10,499,961 42		
	Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed 445,257 58			

	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11		
			4,039,546 69	
40	*Interest*:			6,460,414 73
	Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive		3,969,810 72	
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55	
	Balance of interest due and unpaid July 1st, 1863, inclusive..			307,376 17
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above..		1,315,333 34	
	Principal July 1st, 1863, in dollar bonds as above....	$20,778,808 62		
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67		
	Total dollar bonds		17,068,358 95	
	Total principal			18,383,692 29
	Interest from July 1st, 1863, *to July* 1st, 1871, *inclusive:*			
	On $1,315,333.34 sterling bonds at 5 per cent.....		526,133 28	

On $20,778,808.62 dollar bonds at 6 per cent.....		9,973,828 14	
		10,499,961 42	
Less amount covering average time of the redemption of the $3,710,449.67 dollar bonds redeemed	445,257 58		
Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive.....	3,594,289 11		
		4,039,546 69	
			6,460,414 73
Add interest accrued to July 1st, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1st, 1871, and October 1st, 1881,—in money	$2,415,973 56		
In coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,658.12 bonds redeemed	331,800 00		
Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		

Less tax-receivable coupons maturing in January and July, 1882....	1,117,724 87		
Amount of interest (special):			
Redeemed and cancelled.....	380,110 02		
Total deductions.....		13,848,945 95	
Balance of interest to July 1st, 1882.....		4,192,342 98	
Total debt to July 1st, 1882:			
Principal as above			16,843,034 17
Interest, as above			4,192,342 98
Total			$21,035,377 15

Including bonds held by the literary fund to the amount of $1,428,245.25, and interest on the same—in arrears July 1st, 1881, 516,322.19—and interest added from that date to July 1st, 1882, $85,694.71, making $602,016.90 included in the above sum of $4,192,342.98.

Total debt	21,035,377 15

And whereas by this account it appears that Virginia owes 41
her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon; that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears, one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of the government and the maintenance of their schools, as required by the

constitution; and whereas the net revenues of the state remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the ar- 42
rearages to the Literary fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published in Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia acknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and

the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer,*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No. —— (of bond). 43

The commonwealth of Virginia will pay to bearer —— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty-three.

—— ——, *Treasurer.*

$——.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of a different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore numerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

No. ——. 44

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day of——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificate of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this——day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered. 45

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of the issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having juris-

diction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

EXHIBIT NUMBER 4. 46

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.
(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded

under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an 47
agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually, of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three million of dollars, and

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore

1. Be it enacted by the general assembly of Virginia, That the commissioners of the sinking fund, a majority of whom 48
may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and

ninety-one, and be payable at the office of the treasury of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved —— day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be indebted to —— —— (in case of a coupon bond to the bearer, 49 and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London, England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.] —— ——, *Treasurer.*

—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of —— the commonwealth of Virginia will pay to bearer —— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number ——, —— dollars.

—— ——, *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the

examination proceeds. Each of the packages shall be numbered, and upon each package shall be endorsed the amount and 51
character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of
twenty-three million of dollars or more, if the engraved bonds 52
hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount,
or the face value thereof in cash, to be presented with such 53
bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated —— day of ——, and No. —, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this —— day 54
of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bond-holders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bond-holders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportions, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be 55
received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one: but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently

tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nineteen hundred and twenty-nine, one half of one per cent. upon 56
the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest), of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act

aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

12. All coupons heretofore tendered for taxes and held by 57
said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: Provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto to-wit: an act entitled "an act to declare the true in- 58
tent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and

eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

EXHIBIT NUMBER 5. 59

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

(Approved March 6, 1894.)

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eight, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, 60
eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state; now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia 61

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

EXHIBIT NUMBER 6. 62

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates 63
for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt: now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said com-

mission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia
on said certificate as a full settlement of all their claims there- 64
under.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account.

3. This act shall be in force from its passage.

EXHIBIT NUMBER 7. 65

Showing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * * * * *

Amount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906	$35,551,642.82
Bonds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, p. 21, and now held by Virginia	10,771,791.49(*)
New Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her—See Second Auditor's Report for 1905, p. 9 ...	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include some considerable amounts of ante bellum bonds of Virginia paid her by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest of the State in such Companies or for property sold them by the State; nor does it include considerable amounts of said bonds received by the State from the sureties of certain Sheriffs—nor does the Statement include amounts paid by Virginia since 1861 in settlement of open accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

EXHIBIT NO. 8.

Report of the Commission appointed and acting under the 66
joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., January 9th, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March 6th, 1894, and an Act of the General Assembly entitled "An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State with the request that such negotiations might accordingly be 67
opened, which communication was laid before the Legislature

of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899-90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two-thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your commission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and institute such proceedings on behalf of the State as might, in the 68
judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871 required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on

the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but subject to renewal or extension by the parties, and to such 69
amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advisory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the proposed settlement, which notice the agreement provided was 70
to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that

in the absence of such notification from a majority of the depositors the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the Depositing Committee to Messrs. Brown Bros. & Co. the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64, of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind. A copy of this agreement and receipt of December 14th, 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Commission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a sub-committee consisting of Messrs. Randolph Harrison, Chairman, H D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White, Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va.

by the Attorney General and the chairman of the sub-committee and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into negotiations in regard to a settlement in an address made by him to the Senate and House Finance Committees aforesaid. It was considered by your Commis- 72
sion that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that it was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed.

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved, by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an Act approved March 30th,

1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amounting to $—. Payment of said one-third with interest thereon 73
at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"——— ———.

"Treasurer of the Commonwealth of Virginia

"— — ———.

"Second Auditor of Virginia."

So it would appear that if the contention of West Virginia is correct, the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certificates of 1871 and have only been restrained and prevented
by the prospect of some definite action on the part of Vir- 74
ginia.

So your Commission were confronted with the alternative of either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distributive share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement en-

dorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of December 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act of March 6th, 1900, to accept the amount recovered in such 75
suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77, of which $1,491,231.13 were those of 1871, had been deposited with them and were subject to the control and disposal of your Commission making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in

them, because your Commission have every reason to believe them to be entirely responsible, but because it was deemed 76
best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68 are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,678,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902 was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted,

JOHN B. MOON.
J. THOMPSON BROWN.
H. T. WICKHAM.
H. D. FLOOD 77
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

AGREEMENT.

This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The 78
Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to-wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

Said board may add to their number, and any vacancy may be filled by the remaining members. 79

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors

agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to-wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in two of the newspapers published in New York City and London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If, within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

(3.) After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

(4.) Each depositor shall, when he receives his new bonds, in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges and expenses of settlement, including the compensation of the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of cer-

tificates as may be necessary to reimburse the expenses actually incurred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

(5.) The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th day of July, 1898.

An act to provide for the settlement with West Virginia of the portion of the public debt of the original State of Virginia properly to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises. 82

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to-wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt

payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates 83 for such proportion of the obligation—surrended by them as was deemed proper to be borne by the State of West Virginia—to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia, That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with 84 West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in

amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

Proposal. 85

To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and contract aforesaid, then your commission should 86
be authorized, by and with the approval of the Attorney-

General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreements that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to-wit, $8,565.095.70 and a majority of all the other certificates aforesaid, to-wit, $1,782,-475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
acting for the State of Virginia under the said joint resolu- 87
tion and act of Assemby aforesaid, that your commission will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia

for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBERT L. HARRISON, *Secretary.*

Richmond, Va. September 18th, 1902.

The undersigned, Brown Brothers & Company, Bankers of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to-wit: 88

$8,565,095.70	certificates of	1871
1,782,475.13	" "	1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,

Chairman of the Virginia Commission.

Attest: JOS. BUTTON, *Secretary.*

Richmond, Va., September 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,

Attorney General of Virginia

Plan for the Settlement of the West Virginia Debt.

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney General be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder. On the 18th of September, 1902, the Committee held 90 on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

settlement with respect to said certificates, and would by and with the advice and approval of said Attorney General, take such action as they might deem needful in the premises; the amount realized on such settlement to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended, more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by the Virginia Commission either under the agreement of Sep- 91
tember 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious.

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different

certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows;* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

The following are the affidavits showing publication in two newspapers in London and New York on the notice given under Article 2 of the Agreement of July 28, 1898: 92

STATE OF NEW YORK, *City and County of New York, ss*:

Thomas Mulhearn being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy has been regularly published in the said Mail and Express six times to-wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.
R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of

London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

STATE OF NEW YORK, *City and County of New York, ss:* 93

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times to-wit: on January 14, 17, 21, 24, 28, 31st, 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York at the offices of Messrs. Brown Brothers and Company, 59 Wall Street, and in the City of London, England, at the office of Messrs. Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 94

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me.

FRANCIS W. FRGOUT,
Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under the said agreement, and all partied in interest are notified that the plan may be obtained without cost in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 95

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

(Copy.) 96

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was ordered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March, 1903.

(Signed) RICHARD WESTCOTT,

Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C., and 123 Pall Mall, W.

Dated New York, January 13, 1903. 97

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

Committee.		Advisory Board.
John Crosby Brown, Chairman.	George F. Baker,	W. Pinkney Whyte.
J. Kennedy Tod,	Bartlett S. Johnston,	Wayne MacVeigh.
Clarence Cary,	Wm. C. Legendre,	Lyman J. Gage.

R. P. Chew, of West Virginia.
Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th*, 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebtedness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th day of December, 1904.

(Signed) BROWN BROTHERS & CO.

EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905. 99

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney-General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening negotiations with the State of West Virginia looking to the 100 adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and

disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized and empowered by and with the advice and approval of the Attorney General, to make a settlement and adjustment with 101
West Virginia as provided in said act of March 6th, 1900.
The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the Commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Dowaing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration: and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the original State of Virginia was deprived of more than one-third of its white population and about one-third of its territory, em- 102
bracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia, further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the

moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1961, shall be assumed by this state; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the Original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia. 10?

4. It has been understood that West Virginia was not willing to negotiate directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to Your Excellency and through you to the Legislature of your State, because they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlement between the States, it is hoped that the suggestions herein contained will re-

ceive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

ADDRESS 104

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

BY RANDOLPH HARRISON.
Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the State of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing
the state of West Virginia contained immense resources of 105
wealth, but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been governed by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in
the town of Clarksburg, met together and called a convention 106
to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what was known as the "Restored Government of Virginia." They ignored the gov-

ernment at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia, and called a legislature together at Wheeling on July the 1st, 1861, which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congressmen. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. "The Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created.

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state, during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated that the old state would consent to her dismemberment only 107
on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eighth article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd day of May, 1862, this constitution was submitted to the people of the counties composing the new State of West Virginia for ratification, and it was duly reported as ratified by a majority of the voters at the polls.

On the 13th of May, 1862, the legislature of the "Restored 108
Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December, 1862, the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

MR. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

MR. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"

MR. CRITTENDEN: "* * * There is another question; the state of Virginia owes a large debt. How is this debt to be divided?"

MR. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

MR. CRITTENDEN: "I only knew that in this bill there was
no provision made for a division of the said debt. The gen- 109
tleman tells us there is a provision made for it in the constitu-

tion, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe, 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virginia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt:

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863, passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on the condition that West Virginia should account for it in the settlement to be had 110 with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made

by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and the legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the manner in which they had been received by the authorities in 111
Virginia; but it is, of course, difficult to determine at this distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court

instituted by the state of Virginia against West Virginia to recover jurisdiction over the counties of Jefferson and Berk- 112
ley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.)

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill was as follows:

Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA. 113

No. ——. $ ——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per

cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"____ ____,

"Treasurer of the Commonwealth of Virginia.

"____ ____,

"Second Auditor of Virginia."

Under the foregoing act about fifteeen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. These certificates do not in terms release Va from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the debt; but under the form of the certificate it might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only because it is a duty she owes the creditor, but especially for 114 her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certifi-

cates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February, 1892, Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as follows in respect to these certificates: 115

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued and are outstanding in the hands of the public, certificates amounting to	$ 564,258.87
Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by resolution of March 6, 1894, appointed commissioners for the 116
purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January, 1895, Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been assembled and are held on deposit subject to the control of
the Virginia commission under an agreement with the owners 117
of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440,642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September 1905, unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate these facts to the governor and legislature of West Virginia, and invite their co-operation in a friendly adjustment 118
and settlement of the account between the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your notice the exceptional opportunity now presented to dispose finally of this vexatious question.

Is there any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you cannot dissent from the proposition that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declaration of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How then can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this ac-

count. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount that will end the matter. We only ask that your state will through the proper authorities, unite with Virginia in stating the account between the two states in order that the question of her liability, if any, may be authoritatively ascertained. The 119
work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her liability on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly foreshadowed. In the case of Hartman *v.* Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field had this to say:

"It appears from the statutes to which we are referred—and we know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were obtained upon her bonds, which were issued to an amount exceeding $30,000,000. Being the obligation of a state of large wealth, 120
which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until

1871, with the exception of a few small sums remitted in coin during the war to London for foreign bondholders, or paid in Virginia in Confederate money, and a small amount paid in 1866 and 1867, no part of the interest or principal was paid. During the war a portion of her territory was separated from her, and by its people a new state, named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But, as the whole state had created the indebtedness for which the bonds were issued, and participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: "If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common." (I Com., 26.) And Halleck, in speaking of a state divided into two or more distinct and independent sovereignties, says: In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts, and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement. * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art. 8, sec. 8.)

Virginia lost by the formation of the state of West Virginia one-third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new

state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit of the whole? The Supreme Court of the United States has, 121
as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer "No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286.

North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota-North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virginia and West Virginia to compel the settlement of the account between them, and the payment of the liability apportioned to each one. We are reliably informed that the governor of one of the states has already 122
been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by compulsion.

Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January 1, 1861:

123

Amount of interest paid from January 1, 1861, to January, 1905		$34,551,642 85
Bonds now held in sinking fund	$1,111,500 00	
Bonds paid off and cancelled	8,863,994 49	
		9,975,441 49
Total of interest and bonds paid off		$45,527,134 34*
New bonds of Virginia issued for portion of debt funded and assumed by her		26,850,820 00
Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt		$72,377,954 34*

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne her share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be

*[Errors in addition:
The first result should be $44,527,084 34.
The second result should be $71,377,904.34.]

expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the account between the two states. If, however, your action shall be 124
unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can assure you that whatever may be the result of our mission we will recall with pleasure the considerate attention you have shown us.

Memorandum of agreement, made this 14th day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constituted under the contract of July 28, 1898, and of which John Crosby Brown is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd, 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900, and of which John B. Moon is Chairman, and Joseph Button is Secretary, hereinafter referred to as the Virginia Commission, party of the second part: 125

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission

should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in accordance with the said contract of July 28th, 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it
was agreed that the amount realized thereon should be ac- 126
cepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September, 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and,

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed set-
tlement as set forth in the said plan so published and more 127
than thirty days having elapsed after the said publication

was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59 Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such certificate to the said Virginia Commission in such 128
form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18 day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia in pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable

basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commission, attested by the respective Secretaries thereof, are hereunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*
JOHN B. MOON,
Chairman of Virginia Commission.
JOSEPH BUTTON, *Secretary.*

The foregoing agreement is hereby approved as having 129
been entered into by my advice and approval.
Dated December 14, 1904.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

The foregoing agreement of December 14th, 1904, together 130
with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of Sept. 1905.

JOHN CROSBY BROWN,
Chairman Depositing Committee.
ROBT. L. HARRISON, *Secretary.*
JOHN B. MOON,
Chairman Virginia Commission.
JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved this 9th day of September, 1905.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

Upon the execution of the foregoing contract of December 131
14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding.

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all thus leaving to the Virginia Commission and Attorney General of that State no possible means of 132
bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States.

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the first day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of the said Commission for the purpose of carrying out this 133 agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of

obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said 134
Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on ac- 135
count of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certifi-

cates as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW,
WM. C. LEGENDRE,
CLARENCE CARY,
J. KENNEDY TOD,
GEO. F. BAKER,
BARTLETT S. JOHNSON,
Depositing Committee.

JOHN B. MOON,
WM. F. RHEA,
H. D. FLOOD,
H. H. DOWNING,
H. T. WICKHAM,
RANDOLPH HARRISON,
J. THOMPSON BROWN,
Virginia Commission.

Attest:

JOS. BUTTON,
Sec't'y Va. Commission.
RO. L. HARRISON,
Secretary Committee.

The foregoing contract of this date was entered into by 136
and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract stated and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

This is to certify that we, the undersigned, Brown Broth- 137
ers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1900, and of which John B Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to-wit:

Certificates of 1871:			
Principal		$9,317,009.30	
Sterling scrip	$10,666.66		
Dollar scrip	32,387.00	43,053.66	
			$9,360,062.96
Certificates of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal		$716,416.07	
Scrip		545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal		$259,825.71	
		$284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

Brown Brothers & Co., 59 Wall Street. 138

West Virginia Debt Settlement. (C)

NEW YORK, *January 23rd, 1905.*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR:—Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of	1871,	to amount of	.....	$1,279,713.46
do.	1882,	do.	.....	23,477.12
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,303,257.25

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

Brown Brothers & Co., 59 Wall Street. 139

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th, 1906*

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under the act of	1871,	to amount of	.....	$1,491,231.13
do.	1879.	do.	.....	23,250.00
do.	1882,	do.	.....	51,588.97
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,566,136.77

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:

Principal	.....	$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09

Issue of 1879:

Principal	.....	$ 426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61

Issue of 1882:

Principal	.....	$ 757,653.05	
Scrip	.....	556,139.35	
			1,313,792.40

Issue of 1892:

Principal	.....	$ 259,825.71	
Scrip	.....	284,630.60	
			544,456.31
Total deposit to January 4th, 1906			$13,173,435.41

BROWN BROTHERS & CO.

STATE OF NEW YORK,

County of New York, To-wit: 140

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia deferred Certificates, and that I have had charge of the filing

of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers & Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,

[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

Central Trust Company of New York. 141

54 WALL STREET, *January 5th, 1906.*

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia Deferred Certificates to the amount of $13,173,435.41 referred to in the communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon,, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

CENTRAL TRUST CO., OF N. Y.,

(Signed) F. L. GRANT, *Sec'y.*

Virginia, Second Auditor's Office. 142

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public
Act March 30, 1871	$15,281,970 47		
" " " " held by Com.			
" " " " sinking fund .	2,026,439 39		
" " " " literary fund .	552,079 29		
		$2,578,518 68	
			$12,703,451 79
Act March 28, 1879			564.258 87
Act Feb. 14, 1882		$1,775,603 48	
Held by literary fund		166,943 33	
			1,608,660 15
Act Feb. 20, 1892			605,320 78
Total amount in the hands of the public			$15,481,691 59
Total amount held by the Com. S. Fund			2,026,439 39
Total amount held by the literary fund			719,022 62
Total amount of W. Va. script issued			$18,227.153 60
In hands of public		$15,481,691 59	
Held by State of Virginia		2,745,462 01	
Total issue of W. Va. script		$18.227,153 60	

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her old obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,
Second Auditor of Virginia.

Supreme Court of the United States

OCTOBER TERM 1907

No. 7.

ORIGINAL

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PETITION AND DEMURRER

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

Commonwealth of Virginia,
vs.)
State of West Virginia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn demurrer herewith presented, to the bill of complaint in the above entitled cause.

It is humbly submitted that, by an examination of the bill of complaint in this cause, it will be observed that there is nothing in said bill contained showing a controversy between said Commonwealth of Virginia and said State of West Virginia justifiable in this court.

Wherefore, your petitioner humbly prays leave to file her said demurrer, and that a day may be fixed by your Honors for the hearing of the same.

_____
Governor of West Virginia.

_____
Attorney General of West Virginia.

_____,

_____,

_____, *Counsel.*

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA
vs.)
STATE OF WEST VIRGINIA.

The demurrer of the State of West Virginia, defendant above named, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General of said State of West Virginia, to the bill of complaint of the Commonwealth of Virginia, complainant, by William A. Anderson, Attorney General of said Commonwealth of Virginia.

The defendant the State of West Virginia, above named, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are set forth and alleged, or in any way or manner, demurs thereto, and for the cause of demurrer shows:

First: The jurisdiction of this Court does not extend to the character of demands, alleged in the bill in this cause, being in substance simple demands for money, and this Court could not enforce a judgment for money against one of the sovereign states of the Union of the United States in any way or manner.

Second: The bill on its face shows that the said Commonwealth of Virginia has no suable interest in the demands for money set out therein which would entitle her to the relief prayed for therein and that the said demands if recovered would be only for the benefit of certain individuals, who are the holders of the alleged evidences of debt mentioned in said bill.

Third: The bill on its face shows that so far as said Commonwealth of Virginia may have any ownership of any of such alleged evidences of debt, the acts of the Legislature of said Commonwealth, claimed by the said Attorney General thereof as authority to institute this cause, do not in fact authorize any suit therefor to be instituted, but only authorizes, if any authority at all is given, action on the part of the Commission in said bill mentioned and

said Attorney General for the benefit and at the expense of the individuals in the bill and exhibits called "Certificate holders," which is in effect giving the use of the name of said Commonwealth to such "Certificate holders," for the purpose of attempting to collect their alleged private money demands against said State of West Virginia.

Fourth: The said bill does not sufficiently and definitely set out therein the alleged demands for money claimed therein, so that a complete and proper answer can be made thereto.

Wherefore, and for divers other good causes of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this Court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

Governor of West Virginia.

Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss.

This day there personally appeared before me, the undersigned Clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing demurrer and being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as Clerk of said Court and the official seal thereof —— day of October, 1906.

Clerk of the Supreme Court of Appeals of the State of West Virginia.

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

Attorney General of West Virginia.

Supreme Court of the United States.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE AND AMENDED DEMURRER.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

NOTICE.

TO THE COMMONWEALTH OF VIRGINIA AND WILLIAM A. ANDERSON, *Attorney General:*

You are hereby, notified that the defendant, The State of West Virginia, will, on Monday, February 25, 1907, or as soon thereafter as the motion can be made, ask leave of the court to file an amended demurrer in the above-entitled cause. A copy of said proposed amended demurrer is hereto attached.

FEBRUARY 16, 1907.

Supreme Court of the United States

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, one of the United States of America, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, humbly prays leave to file the sworn amended demurrer herewith presented to the bill of complaint in the above-entitled cause, and asks that a day may be fixed by your Honors for the hearing of the same.

And, as in duty bound, your petitioner will ever pray.

____ ____,
Governor of West Virginia.

____ ____,
Attorney General of West Virginia.

____ ____,
____ ____,
____ ____,
Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1906

ORIGINAL, NO. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

AMENDED DEMURRER.

The defendant, The State of West Virginia, by William M. O. Dawson, Governor, and Clarke W. May, Attorney General, of said State, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in manner and form as the same are set forth and alleged, or in any way or manner, presents this amended demurrer thereto, and for cause of demurrer shows:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill, that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and deter-

mined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and considered.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia, in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

Wherefore, and for divers other good causes, of demurrer in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether she shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with her costs and charges in the matter most wrongfully sustained.

W. M. O. DAWSON,
Governor of West Virginia.
CLARKE W. MAY,
Attorney General of West Virginia.

State of West Virginia,
County of Kanawha, ss:

This day there personally appeared before me, the undersigned clerk of the Supreme Court of Appeals of the State of West Virginia, William M. O. Dawson, Governor of said State, and Clarke W. May, Attorney General of said State, representing the said State of West Virginia, the defendant in the above entitled cause, and whose names as such are signed to the foregoing amended demurrer, and, being by me duly sworn, say that they are respectively the officers of the defendant, the said State of West Virginia, as above set out, and that

the foregoing amended demurrer is not interposed for delay and that the same is true in point of fact.

Given under my hand as clerk of said court and the official seal thereof this 23rd day of February, 1907.

WM. B. MATHEWS,
Clerk of the Supreme Court of Appeals
of the State of West Virginia

I, Clarke W. May, Attorney General of the State of West Virginia, hereby certify that in my opinion the foregoing amended demurrer is well founded in point of law.

CLARKE W. MAY,
Attorney General of West Virginia.

Supreme Court of the United States

No. 7, Original—October Term, 1906.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIGRINIA.

IN EQUITY.

OPINION OF THE COURT.

Delivered By Mr. Chief Justice Fuller.

May 27th, 1907.

In the Supreme Court of the United States

OCTOBER TERM, 1906.

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA
vs.) *In Equity.*
STATE OF WEST VIRGINIA.

[May 27, 1907.]

This is a bill filed, on leave, February 26, 1906, by the Commonwealth of Virginia against the State of West Virginia.

The bill averred that—

"On the first day of January, 1861, complainant was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

"In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

"The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

"(2) That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentalities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio River, that the Commonwealth of Virginia, in the first quarter of the Nineteenth Century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio River, since the first day of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvments. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

"(3) The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvements, in a very large measure for the purpose of developing the aforesaid

resources of the western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment. and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been a fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

"4. The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

"5. On the 17th of April, 1861, the people of Virginia, in gener-

al convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the 'Restored State of Virginia,' and will be hereafter referred to in this bill as the 'Restored State.'

"6. On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to 'provide for the formation of a new State out of the portion of the territory of this State;' Section 9 of which ordinance was as follows, to-wit:

'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'

"7. On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

"8. Pending the admission of the State of West Virginia to the

Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

'That all property, real, personal and mixed, owned by, or appertaining to the state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.'

'That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.' ''

Complainant charged "that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

"9. And by a further act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

'1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out

of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

'2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.'

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

"10. The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

"By Section 5 of Article VIII. of said Constitution it was provided:

'5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability to the State, to suppress insurrection, repel invasion, or defend the State in time of War.'

"And by section 7 of Article VIII. it was provided:

'7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.'

"And by section 8 of Article VIII. it was provided:

'8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'

"At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed,

any 'public debt' or 'previous liability,' except for her just, contributive proportion of the public debt of the original State of Virginia, and for money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt 'except to meet casual deficits in the revenue, to redeem a previous liability of the State,' &c., and there was not and could not have been any such 'previous liability,' except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized the sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

"11. After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

"12. The efforts looking to a settlement by the concurrent action of the two States having proved abortive and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

"The first of these was made by the General Assembly which was chosen at the close of the period of 'destruction and reconstruction,' which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

"The purpose of the representatives of the Commonwealth, then just emerging from conditions which had improverished her people and paralyzed their productive energies, to assume and pay to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

"By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,0000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

"It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

"13. As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-one Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

"It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution toward the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

"It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of

the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

"A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

"14. By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the some with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

"Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

"Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

"15. All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of

indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

"16. Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

"For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

"17. In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereafter prayed for to be taken between the two States; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

"18. Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

'First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia

did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

'Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

'Third. The State of West Virginia has further, by the repeated enactments and joint resolutions of her legislature, recognized her liability for a just proportion of this debt.

'Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property amounting in value to many millions of dollars, and held and enjoyed the same, but upon express condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

'Fifth. While the transfer of this property, real and personal, and also certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of 'The Restored Government of Virginia,' there were in fact represented in said 'Restored Government' and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.'

"19. The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: 'A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,' approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

"Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

"The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled 'An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,' the purpose of which Act is sufficiently set forth in its title, and a copy of the act will also be hereinafter shown as one of the exhibits herewith filed.

"20. The Commission acting under said last mentioned act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill."

21. Enumerates exhibits attached to the bill and prayed to be regarded as part thereof.

22. The bill prayed: "Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as

may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet."

Attached to the bill were the numerous exhibits referred to.

The State of West Virginia demurrred and assigned special causes as follows:

"First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

"Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

"Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

"Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

"Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

"Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

"Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

'Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

Hearing on the demurrer was had March 11, 12, 1907.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The ninth section of the ordinance adopted by the people of the Restored State of Virginia in convention assembled in the city of Wheeling, Virginia, on August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . ."

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3 and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of

dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt and hereafter the State shall not become a stockholder in any bank."

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the original debt of the original State of Virginia and liability for the money and property of the original State, which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore, invoked by Virginia to procure a decree for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the

matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court, and because the court has no power to enforce and therefore none to render any final judgment or decree therein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia*, 6 Wheat. 264, 378, 406; *Kansas* v. *Colorado*, 185 U. S. 125; *Kansas* v. *Colorado*, May 13, 1907, 206 U. S. p. ; *Missouri* v. *Illinois*, 180 U. S. 208; *Same case*, 200 U. S. 496; *Georgia* v. *Copper Company*, May 13, 1907, 206 U. S. p ; *United States* v. *Texas*, 143 U. S. 621; *United States* v. *North Carolina*, 136 U. S. 211; *United States* v. *Michigan*, 190 U. S. 379.

In *Cohens* v. *Virginia*, the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and the citizens of another State,' 'and between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases and in these a State may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was no reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended

to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan*, *supra*, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provision: "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by the State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto an-

nexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, West Virginia has never indicated that she stood upon such a compact, and, if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount of two-thirds of the total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds so far as unfunded in trust for the holders or their assignees to be paid by the funds expected to be obtained from West Virginia as her "just and equitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds to Virginia, satisfied as to two-thirds, and held as security for the creditors as to one-third. We do not care to take up and

discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado,* 185 U. S. 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackey,* 1 Mylne & Craig, 603, that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been often affirmed in this court. *Oliver* v. *Piatt,* 3 How. 333, 411; *Gaines* v. *Relf,* 2 How. 619, 642. But we do not mean to rule that the bill is multifarious. It is true that the prayer contains, among other things, the request "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the inest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public debt of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia,* 17 How, 491, 492; *California* v. *Southern Pacific Company,* 157 U. S. 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term.

[ORDER OVERRULING DEMURRER.]

Supreme Court of the United States.

No. 7, ORIGINAL, OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA,

vs. Complainant,

STATE OF WEST VIRGINIA.

This cause came on to be heard on the bill of complaint and the demurrer of the defendant thereto, and was argued by counsel. On consideration whereof, It is now here ordered by the Court that said demurrer be, and the same is hereby, overruled without prejudice to any question, and leave is hereby granted the defendant to file answer on or before the first Monday of the next term.

May 27, 1907.

Supreme Court of the United States

OCTOBER TERM 1907

ORIGINAL No. 7.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

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In the Supreme Court of the United States

ORIGINAL NO. 7.

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

ANSWER OF WEST VIRGINIA.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The answer of the State of West Virginia, by William M. O. Dawson, Governor, and Clarke W May, Attorney General, by leave of this Honorable Court, to the bill of complaint exhibited against said State of West Virginia by William A. Anderson, Attorney General, for and on behalf of the State of Virginia.

This defendant, now and at all times hereafter saving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or so much thereof as this defendant is advised is material or necessary for her to make answer to, answering, says:

I.

That believes it is true as alleged that on the first day of 1861, plaintiff was indebted in "about" the sum of upon obligations and contracts made in connection with ion of works of internal improvement within her then

territory; and it may be true that the greater part of said indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for said purpose; and it may also be true that all her liabilities, though arising under contracts made before that date, had not then been covered by bonds issued for their payment; but as to this allegation respondent has no knowledge or information except what is derived from said bill. This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and Literary Fund of the said State of Virginia as created under her laws, amounting the former to $1,462.993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere State agencies, and public officials of the State, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that State on the first day of January, 1861, and denies that the certificates representing one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity.

II.

It is true as alleged that said portion of the territory which now constitutes the present State of Virginia was, prior to January 1, 1861, devoted mainly to agriculture, and, to some extent, to grazing and manufacture, which afforded its chief source of revenue at that time; but this defendant avers that the territory which now composes the State of Virginia was largely underlaid with rich and valuable minerals only awaiting the opportunity and means of development to make the said State exceedingly wealthy in varied mineral resources such as coal, iron, manganese and other valuable and marketable products, and the said State abounded at that time in large forests of valuable timber which have since dev[illegible]d into a great source of revenue to the said State and its cit[illegible] It true that the portion included in what now constitute[illegible] West Virginia had vast potentialities of wealth and r[illegible]

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developed stores of mineral and timber, and respondent avers that the same was inaccessible and of very little value on the first day of January, 1861, and during all the years prior thereto, and that it has been only within recent years that the development of said resources has been begun in the said State of West Virginia, and this required the outlay of many millions of dollars, since January 1, 1861, in the construction of railroads and other public works and the appropriation by the Congress of the United States of many more millions of dollars for the improvement of her waterways in order to afford an outlet for her mineral and other products. This respondent denies that the prime object of the State of Virginia in entering upon a system of internal improvement was to hasten and facilitate the development of the resources of wealth and revenue in West Virginia by the construction of graded roads, bridges, canals and railways extending through the then State of Virginia from tidewater toward the Ohio river, and avers that the main object of said system of internal improvements was to afford the eastern part of the State an outlet for its own products to the Ohio river on the west and to the seaboard on the east, and to afford convenient communication with those points so as to create a market for such products at points on the eastern coast of Virginia at tidewater, and thus open up and develop the resources of the territory now constituting the State of Virginia, and not, as alleged in said bill, for the purposes of developing the resources of the western part of her territory, now constituting the State of West Virginia. This respondent further says that it is true as alleged in said bill that the larger portion of these public works was constructed east of the Appalachian range of mountains and within the present territorial limits of Virginia, and respondent avers that nearly all of the money derived from the sale of the bonds was in fact expended in the development and improvement of what now constitutes Virginia, and only a comparatively small sum was expended in developing, and improving the portion now composing West Virginia; that these expenditures in Virginia were of very little practical benefit to the people living in the western part of the State up to and including the first day of January, 1861. This respondent further says that it is true that property values within the limits of West Virginia have been largely increased since 1861, but denies that such increase was caused by the improvements made within her present territory prior to 1861, but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years and are due to railroads and other public works constructed by her own people and by private capital brought within her territory and by appropriations made by Congress, and are almost entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by

the proceeds of bonds issued and sold by her or from any other means derived from the creation of any debt by her. Respondent admits that the money appropriated and the payment of the annually accruing interest on said debt prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof was derived from taxes imposed upon property subject to taxation throughout the entire state, but respondent avers that the large amount thus derived from taxation to which the present State of West Virginia, then a part of Virginia, contributed her full share, was not kept intact by the State of Virginia after her ordinance of secession from the union in the year 1861, but was used by her in the administration of the so-called State Government at Richmond and for many other purposes while she claimed to be a part of the Confederate States of America, and that the part of the Sinking Fund so expended should be accounted for to this State and constitute a credit to her in the settlement of her equitable proportion of said debt; this respondent calls upon the State of Virginia to show what the aggregate amount of said Sinking Fund was on the first day of January, 1861, and of what it consisted, together with the interest thereon since accruing, and that she shall be required to give credit to this respondent for the amount contributed thereto by her prior to January 1, 1861, in case this court shall determine that an accounting shall be had between the said States in this action.

III.

This respondent denies that the Commonwealth of Virginia was induced to enter upon the construction of her general system of improvement, in a very large measure, for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, and thereby as alleged in said bill, ameliorating the condition of her citizens residing therein, and denies that it was with this view that she took upon herself the alleged burden of her public debt, for which her bonds were issued, without which debt, it is alleged, said improvements could not have been undertaken. The respondent avers that Virginia appropriated to her own use, within the territory now constituting the present state of Virginia, about nine-tenths of all the money derived from the proceeds of said bonds, and that this large part of said proceeds enured to the sole benefit of the people living in what now constitutes the State of Virginia, while the territory now constituting the State of West Virginia received but a small proportional part thereof, and that all the money appropriated was expended under and by direction of the officers of the State of Virginia who were elected and controlled by the voters then living within the present limits of that State.

It may be true that a majority of the representatives residing in that part of Virginia now composing the State of West Virginia voted for the appropriations for the said public improvements, but if so, it was with the expectation and belief that an equitable proportion thereof would be expended in their section of the State which, as hereinbefore averred, was not done; and at the times when said debt was created the Legislature was in the absolute control of the very large majority of members chosen by the people living within what now constitutes the State of Virginia and they could, and actually did, control the legislation of the State.

IV.

It may be true that the development of this system of public improvements was, from its character and extent, progressive, as is alleged, and that the same extended with the general growth and increasing needs of the State, and was incomplete in 1861; but this respondent denies that prior to that time a very considerable portion of such improvements had been constructed in the territory now constituting West Virginia in order to meet the needs of the people of that portion of the State for their local purposes. On the contrary, the principal object of the State in entering upon this system was for the construction of a canal from the James River to the Ohio River for the purpose of connecting the Virginia seaboard with the western waters, the building of certain railroads projected in the same direction and in certain other directions, all within the present territorial limits of the State of Virginia, and for the construction of highways and bridges and certain public buildings, nearly all of which were located and constructed within the present limits of the State of Virginia. It is true, as alleged, that the expenditures of this money were under the direction and control of the Board of Public Works, the members of which were elected by the voters of the State at large, but respondent avers that this Board of Public Works was at all times composed of a majority of members residing within the present limits of Virginia and that only such members were chosen as were acceptable to the people residing within the present limits of Virginia and to promote their views and interests as to the method and policy of the expenditures of said moneys.

V.

It is true that on the 17th day of April, 1861, the people of Virginia in general convention assembled adopted an ordinance by which it was intended to withdraw Virginia from the union of the States, and it is also true that a considerable portion of the people

of Virginia dissented from this action and that a great majority of the people residing in the territory now composing the State of West Virginia opposed the action thus taken by the people of Virginia then residing within the present territorial limits of that State, and representatives of the people organized a separate government within the territorial limits of Virginia, known and recognized by the people now living within the State of Virginia as the "Restored State of Virginia;" and this government was thereafter recognized by the executive and all the other departments of the United States Government and treated as the State of Virginia until long after the close of the Civil War.

VI.

It is also true that on the 20th day of August, 1861, the State of Virginia, in a convention assembled at the city of Wheeling, adopted an ordinance "to provide for the formation of a new State out of a portion of the territory of this State," and that section nine of said ordinance is in the following words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private right and interests in lands within the proposed State derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of West Virginia."

Section ten of said ordinance provided as follows:

> "When the General Assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States."

The same ordinance also provided for a convention of the people to be held within the territorial limits of the then State of Virginia by representatives to be selected by a popular vote of the people within the limits of the proposed new State to adopt a constitution

for such proposed new State, and the said convention assembled at Wheeling in November, 1861, and framed a constitution which was thereafter duly ratified by a vote of the people, which constitution contained the following provision relating to the public debt of the State of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Subsequently, on the 13th day of May, 1862, an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia. Section one of this act provided as follows:

> "That the consent of the Legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, (and many other counties) according to the boundaries and under the provisions set forth in the Constitution of the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section three of said act provided:

> "Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the union."

The respondent avers that said act was transmitted to the senators and representatives of Virginia in Congress. A correct copy of the same is attached to this answer and made part thereof as "Exhibit No. 1."

VII.

This respondent further says that the allegations contained in Paragraph VII of said bill with reference to the act of Congress and the admission of the State of West Virginia into the Union are true.

VIII.

This respondent for further answer to said bill says it is true that pending the admission of the State of West Virginia into the Union the general assembly of the Commonwealth of Virginia passed the act of February 3, 1863, which is set forth in Paragraph VIII of said bill; but this respondent denies that the property which was by this act appropriated and transferred from the Commonwealth of Virginia to the State of West Virginia amounted in the aggregate to several millions of dollars on the 3d day of February, 1863, as in said bill is alleged, and denies that the State of West Virginia realized and received into her treasury from the sale of bank stock alone about $600,000 as is in said bill alleged.

Respondent denies that she is chargeable for or on account of the transfer of said property, except the stocks of companies or corporations and the credits, or for any part thereof, otherwise than in a settlement with the State of Virginia for this respondent's just proportion of the public debt of that State as provided in the said ordinance of August 20, 1861, and in the said act of February 3, 1863; and respondent avers that she is not chargeable in any settlement for or on account of such stocks or credits with any sum in excess of the actual market value of the same at the times when they were transferred to her; and she avers that at the times when such stocks and credits were transferred they were greatly depreciated and were of but little value.

IX.

Respondent admits the passage of the act of February 4, 1863, as alleged in Paragraph IX of said bill, but denies that she received or that it was intended by said act that she should receive any money except such as had then been collected, or might be thereafter collected, within the territory constituting the present State of West Virginia prior to the admission of the State into the Union, and she denies that she is legally or equitably liable to the plaintiffs for any part thereof, or that said act of the Legislature imposed, or purported to impose, any liability upon her or was so intended or understood. Respondent avers that after the Wheeling Convention and the passage of the ordinance providing for the formation of a new State, the Restored State of Virginia con-

tinued to impose and collect taxes in the territory now composing the State of West Virginia until the admission of that State into the Union, and a small part of the money realized by such taxation was returned to the new State under the said act of February 4, 1863, and no other money was appropriated or received under that act.

Respondent avers that nearly the entire amount of revenue collected by the "Restored State of Virginia," prior to the admission of West Virginia into the Union was collected from the counties now constituting the latter State, and that much the largest part of it was expended by the said state government outside of those counties, and that it was only just and equitable that such surplus as might remain at the time of admission into the Union should be restored to her in order that she might be able to install her government, establish courts and preserve order within her limits; and this just and equitable claim was recognized by Virginia when the said act was passed.

X.

This respondent, for further answer to said bill, says that it is true that the Constitution of the State of West Virginia contained the provision, among others, set forth and alleged in Paragraph X of said bill, but this respondent denies that the terms "public debt" or "previous liability" referred to either the property or money formerly belonging to the State of Virginia which had been transferred to and received by West Virginia under the acts of the general assembly of the Commonwealth of Virginia set forth in Paragraph VIII and Paragraph IX of said bill, for the reason that said constitution was adopted long before the said acts of the general assembly of Virginia were passed, and before the act passed in May, 1862, by the said general assembly of Virginia giving her consent to the formation of the proposed new State out of the territory within her limits. This respondent therefore denies that anything contained in sections 5, 7, or 8 of Article VIII of the Constitution of West Virginia, adopted in 1861, bears any such construction, or is susceptible of any such meaning, as is given thereto by the allegations contained in Paragraph X of plaintiff's said bill.

XI.

This respondent for further answer to said bill says that she denies that the Commonwealth of Virginia made attempts at different times to ascertain and settle the equitable proportion of her public debt to be borne by West Virginia, upon the terms and in the manner contemplated by section nine of the ordinance adopted

by the convention of the State of Virginia on the 20th day of August, 1861, in section eight of Article VIII of the Constitution of West Virginia, or in the manner prescribed by either of said instruments. The facts relating to the efforts of the Commonwealth of Virginia and the State of West Virginia to make an adjustment of the liability of the latter State, if any such liability exists, between the year 1865, when communications between the two States was re-established, and the year 1872, are as follows:

Prior to December, 1866, the Commonwealth of Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. The effect of the pendency of this suit for over four years was to prevent a satisfactory adjustment of West Virginia's liability for the payment of an equitable proportion of the public debt of Virginia as provided in said ordinance of the Wheeling Convention because of the fact that West Virginia's boundaries could not be known and therefore it could not be determined what amount of money had been expended within her limits for public works or other purposes prior to the 1st day of January, 1861. 11

Respondent avers that the Governor of West Virginia in his message to the legislature in January, 1866, recommended that Commissioners be appointed to settle with the Commonwealth of Virginia respecting the said public debt; but no action was taken by the legislature of West Virginia of 1866 for the reason that the authorities of Virginia had made, at that time, no provision for a settlement, so far as was known to the authorities of West Virginia.

In his message to the legislature of West Virginia in 1867, the Governor again directed the attention of that body to the subject of the adjustment of the said public debt, stating that he was informed that Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the General Assembly of Virginia: First for the purpose of securing a reunion of the two States, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On the 28th day of February of the same year, the legislature of West Virginia by resolution declared that the people of that State were unalterably opposed to a reunion with the people of the commonwealth of Virginia, but expressed the willingness of the citizens of West Virginia to effect a prompt and equitable settlement between the States and directed the Governor as soon as the said suit in the Supreme Court of the United States, relating to the counties of Berkeley and Jefferson, had been disposed

of, to appoint three commissioners on the part of West Virginia to treat with the Commissioners of Virginia upon the matter of adjusting the public debt of that State as provided in the ordinance of 1861, and the Constitution of West Virginia, adopted by the convention which assembled in November, 1861, and also requiring a report of their action to the Governor in order that the same might be communicated to the legislature of West Virginia for its action.

In January, 1868, the Governor of West Virginia informed the legislature in his annual message that the commissioners had not been appointed under the resolution because the suit in relation to the counties of Berkeley and Jefferson had not been disposed of. But in February of that year the Committee on Claims and Grievances of the House of Delegates, upon the petition of one of Virginia's creditors asking that the State of West Virginia provide for the payment of certain bonds of the State of Virginia of which he claimed to be the bona fide holder, reported that the settlement of West Virginia should be with the State of Virginia and not with the creditors of Virginia. And again in his message of 1869 to the Legislature of West Virginia the governor referred to the subject of the settlement of the public debt of Virginia and stated that commissioners had not been appointed by him up to that time owing to the fact that the suit between the States was still pending. The State of Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of the State of West Virginia, the governor of West Virginia, by communication dated February 24, 1870, advised the Legislature of West Virginia of the passage of that act by Virginia, and thereupon the Legislature of West Virginia, on the 1st day of March, 1870, appointed a joint committee of the two Houses of the Legislature to confer with the Virginia Commissioners and report to the Legislature, provided, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit in equity brought against her by the commonwealth of Virginia as hereinbefore stated, which was still pending in this court.

Afterwards, on March 3, 1870, the governor of West Virginia was authorized by the Legislature to appoint three resident citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the proper adjustment of the public debt of that State, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson; but as there was an omission to make an appropriation to pay the expenses of West Virginia's commissioners, and the resolution authorizing their ap-

pointment was passed on the last day of the session of the Legislature, the Governor of West Virginia again in his message of 1871 stated that no appointment had been made owing to the lack of funds to pay the expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, on February 20, 1871, through the Governor of that State, tendered to West Virginia a proposition for an arbitration of the question relating to the public debt of that State, the arbitrators not to be citizens of either State, each State to appoint two arbitrators and the two to select an umpire if deemed necessary. This proposal made by the Commonwealth of Virginia was submitted to the Legislature of West Virginia on the 17th day of February, 1871, but on the 15th day of February, 1871, two days prior to the communication of this action of the General Assembly of Virginia, the Legislature of West Virginia had passed a joint resolution authorizing the Governor to appoint three disinterested citizens of the State to treat with the authorities of the Commonwealth of Virginia upon the subject of the adjustment of the public debt of that State existing prior to the 1st day of January, 1861, to report on various matters relating to the creation of the debt; upon the investments held by the State of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk.

The proposal of Virginia relating to arbitration was referred by the Legislature of West Virginia to a joint special committee of the two Houses, which committee reported a preamble and joint resolution rejecting the tender of arbitration made by the Governor of Virginia because the adjustment of the debt should be subject to the ratification of the legislatures of the two States and because citizen commissioners from both States would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. The said joint resolution also invited the Commonwealth of Virginia to appoint three disinterested citizens of that State as commissioners, with authority to treat with the commissioners, therefore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the General Assembly of the Commonwealth of Virginia; and the Governor of West Virginia was also directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. Accordingly, in pursuance of this resolution, the Governor of West Virginia appointed three commissioners to negotiate with the State of Virginia for a settlement of West Virginia's equitable part of the public debt. After their appointment the said commissioners

proceeded to Richmond, where all the accounts, vouchers and other evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible, but realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of the Commonwealth of Virginia soliciting specifically the necessary information. To this request on the part of the Commissioners of West Virginia, the said second auditor made a reply in which he declined to furnish the information desired, a copy of which reply is herewith filed as "Exhibit No. 2" and made a part of this answer.

The failure and refusal of Virginia to co-operate with the said commissioners placed them at a great disadvantage in the examination of the records at Richmond, and they therefore obtained only such facts and figures as to enable them to make an imperfect report to the Governor of the State of West Virginia with reference to said public debt, showing the part of said public debt for which, in their opinion, according to such information as they could procure, West Virginia was liable.

Respondent avers that by reason of the inability of said commissioners to procure from the State of Virginia the necessary information concerning the public debt and other matters connected therewith, their report was not only very incomplete and inaccurate, but it appeared therefrom, that in making their investigations they wholly disregarded the provisions of the ordinance of the Wheeling Convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed and respondent avers that for these and other reasons the conclusions of said commissioners were not agreed to or accepted by the Legislature of West Virginia; but subsequently the Senate of West Virginia proceeded to make an investigation of the subject through its Finance Committee, of which J. M. Bennett, who was for eight years auditor of the old State of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. Said committee made a report on the 22nd day of December, 1873, from which it appeared that the State of West Virginia upon a settlement with the Commonwealth of Virginia based upon the provisions of section nine of the ordinance passed by the commonwealth of Virginia at the Wheeling Convention did not owe to the said Commonwealth of Virginia anything whatever, but that, on the contrary, the said Commonwealth was indebted to West Virginia on account of said debt on the 1st day of January, 1861, in the sum of $512,000, not including interest. A copy of said report is filed herewith, and made a part hereof as Exhibit 3.

The State of West Virginia has never receded from the provisions

contained in section nine of the Wheeling Ordinance with reference to the settlement of this respondent's just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a State; and the resolutions adopted by her Legislature in recent years in which she declared that she did not owe the State of Virginia anything on account of said public debt were based upon the said report of the Senate Committee made in 1873 as aforesaid, and upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance as the just and true one upon which a settlement between the two States could legally and equitably be made.

After the proposition of the Commonwealth of Virginia to select arbitrators, which was declined by the State of West Virginia as hereinbefore stated the said Commonwealth of Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt until the adoption of a joint resolution approved March 6, 1894, after she had compromised and settled with her creditors and been released from all liability, which resolution provided for the appointment of a commission of seven members who were thereby authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter State's part of the public debt proper to be borne by her, but which also expressly provided that such commission should not proceed with such negotiations until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under the acts hereinafter referred to, that they desired the said commission to enter into and undertake such negotiations and would accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State which had not been assumed by the State of Virginia; and it was also provided in said resolution that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original State and which, as recited in said resolution she had already provided for as her equitable proportion thereof. Under the aforesaid resolution no negotiations were proposed to West Virginia until the year 1895 and then only upon the conditions prescribed in the joint resolution of 1894, which has never yet been repealed or modified in this respect; and negotiations were again offered by Virginia in 1906 but upon the same condition, that West Virginia should enter upon such negotiations with the admission on her part that the said Commonwealth of Virginia should only be liable for two-thirds of said debt, which was again declined by the said State of West Virginia.

XII.

This respondent further answering the said bill, says that the efforts looking to a settlement, and the only efforts looking to a settlement, are those hereinbefore stated in paragraph XI in this answer; the said commonwealth of Virginia having declined in 1871 to appoint any commissioners empowered and authorized to adjust or confer with the commissioners appointed by the State of West Virginia to adjust and determine what was the proportion of the public debt of said commonwealth to be assumed by this respondent. But, on the contrary, the said State of Virginia in 1871, assumed the right herself to settle the said public debt, created prior to January 1, 1861, with her creditors and for that purpose, without advising or consulting with West Virginia, passed an act, approved March 30, 1871, whereby she repudiated the ordinance of the Wheeling convention and adopted a method of her own as a basis of settlement and set apart as her own just proportion of said public debt two-thirds thereof, providing for its adjustment and funding as in the said act is set forth; a copy of which is filed with said bill as exhibit No. 1.

XIII.

This respondent further answering said bill, says that any burden that the commonwealth of Virginia assumed with reference to the payment of said debts; was made upon the assumption that she owed only two-thirds thereof and which she thereby admitted was not more than her just proportion; and therefore whatever she has paid on account thereof is a matter that cannot affect any controversy involved in this suit and is a matter of which the commonwealth of Virginia cannot complain. It is true, as alleged in said bill, that the great mass of creditors of the commonwealth of Virginia have agreed to accept the certificates issued under the acts of 1871, 1879, 1882 and 1892, for the one-third of her public debt, created prior to January 1, 1861, and have likewise agreed to accept the adjudication of this court what ever it may be, in full discharge of all their claims against Virginia on account of the old bonds and their claims represented by said certificates, thus relieving said commonwealth from any further liability as to said one-third of the public debt, or any part thereof, and this was the effect which the commonwealth of Virginia and the creditors intended and understood that the act of March 30, 1871, should have as to all the certificates issued under that act.

XIV.

This respondent for further answer to said bill, and especially that part contained in paragraph XIV, says that the old bonds were all required by the acts of the Legislature to be surrendered by the holders thereof to the State of Virginia and canceled, and they were all surrendered and canceled and new bonds were issued in lieu thereof for two-thirds of the said debt, not including interest, and certificates were issued for the other one-third; and it was declared by Virginia in the acts authorizing the issues and in the certificates that they were to be paid by West Virginia; and respondent avers that the said commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

This respondent denies that Virginia used any means for an amicable settlement of said debt with West Virginia, or made any overtures to that end which were repeatedly refused, as alleged in said bill, except as hereinbefore stated in paragraph XI of this answer.

XV.

This respondent, for further answer to said bill, avers that even if all the bonds and obligations and other evidences of indebtedness of the original State of Virginia outstanding or contracted before January 1, 1861, as stated in paragraph I of said bill, except a comparatively insignificant sum, not amounting to one percentum of this liability, have been taken up and are now actually held by the commonwealth of Virginia, this fact does not give to the plaintiff the right to call upon West Virginia for settlement with respect thereto, because this respondent avers that the said bonds and obligations and other evidences of public indebtedness of the commonwealth of Virginia, contracted prior to January, 1861, have been taken up by the issuance of other bonds in lieu of two-thirds thereof as before stated, and by the issuance of the certificates hereinbefore mentioned for the other one-third thereof, the said one-third to be paid by West Virginia, according to the plan of funding the said debt by said commonwealth of Virginia, and that all the said original bonds and obligations and other evidences of said indebtedness are without any force, effect or value and have been canceled and annulled as aforesaid. Respondent avers that whatever has been paid upon said old indebtedness, by Virginia, if anything, was paid only on account of her own separate and equitable proportion thereof as recognized and declared by herself; and this respondent denies that the commonwealth of Virginia has any claim either in law or equity for any accounting with reference to said bonds or certificates or other evidences of indebtedness mentioned in paragraph XV of said

bill or any part thereof. Respondent avers that the plaintiff does not allege or admit in said bill, nor does it appear thereby, that she is liable on account of the other one-third or for any part thereof, which is represented, as before alleged, by said certificates.

XVI.

For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted, but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said commonwealth of Virginia has, in her own right, a "just claim" against West Virginia for contribution on account thereof.

Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000 or any part thereof, and demands strict proof.

XVII.

This respondent, for answer to paragraph XVII of said bill, avers that the matters therein contained do not relate to the public debt of Virginia within the meaning and contemplation of section 9 of the Virginia ordinance of August 20, 1861, and cannot be brought into this suit for adjudication and determination. This respondent denies any and all liability for or on account of the matters referred to in said paragraph and avers that the said allegations are so uncertain, general and indefinite that respondent cannot answer them specifically and that no claim against this respondent can be founded upon them in this action.

XVIII.

This respondent, for further answer to said bill, says that she denies that the alleged liability of the State of West Virginia for a just and equitable proportion of the public debt of the commonwealth of Virginia rests upon any of the grounds specified in paragraph XVIII of said bill except the second, upon which, as hereinbefore averred in this answer, the State of West Virginia has always been ready and willing, and is now ready and willing, to adjust her liability, and upon which she proposed adjustment from 1866 to 1873, at which time Virginia had clearly evinced by her legislative action with reference to her public debt, her intention not to observe or abide by section 9 of the ordinance adopted by the Wheeling convention, and actually repudiated the agreed method upon which a settlement between the States should be made.

XIX.

This respondent, for further answer to said bill, avers that the only acts of Virginia indicating a desire to treat with West Virginia with reference to said public debt was that in which she tendered a proposition to arbitrate the same, thereby proposing to ignore the mode of settlement provided in said ordinance, and the two subsequent ones whereby she declared the only conditions upon which she would negotiate with the said State of West Virginia was that West Virginia should admit that the said Commonwealth of Virginia was only liable for two-thirds of the said public debt; and this respondent avers that if it is intended by paragraph XIX of said bill to aver that plaintiff ever attempted an amicable negotiation with West Virginia, except the ones hereinbefore stated, then this respondent denies the allegations contained in said paragraph of the bill and calls for proof thereof.

XX.

This respondent, for further answer to said bill, avers that what has already been stated in paragraph XIX of this answer is also applicable to paragraph XX of said bill and is hereby adopted as part hereof; and respondent avers in addition thereto that the alleged attempts of said commission to negotiate with West Virginia with reference to the said public debt related solely to the certificates owned by third parties and held in trust by said commission and the state of Virginia, which certificates represented about all, or practically all, of the one-third of the public debt not including interest of that State created prior to January 1, 1861; and these efforts on the part of said commission to negotiate

were upon the expressed condition that this respondent should concede that the Commonwealth of Virginia was, and is, liable for two thirds of the said public debt, and no more; which proffered negotiations were declined by the State of West Virginia because the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia on account of the said public debt under the ordinance of the Wheeling Convention, and this respondent now denies that she owes or will owe any sum whatever to the State of Virginia upon a settlement made in the mode provided in said ordinance.

For further answer respondent says that the ordinance adopted by the Wheeling Convention in August, 1861, provided for the formation of the new State out of a part of the territory of the Commonwealth of Virginia, defined in the manner in which the respondent's equitable proportion of the public debt of Virginia should be ascertained, as appears from section nine of the said ordinance, which is set out in paragraph VI of the plaintiff's bill, and is heretofore referred to and made part of this answer.

And the said Commonwealth of Virginia also provided by section 10 of said ordinance as follows:

> "When the General Assembly shall give its consent to the formation of such new state, it shall forward to the Congress of the United States such consent, together with an official copy of such Constitution, with the request that the said new state may be admitted into the Union of States."

And respondent avers that the General Assembly referred to in section ten was the General Assembly of the Commonwealth of Virginia and the constitution referred to in said section was the constitution to be thereafter adopted by the proposed new state.

The said ordinance as heretofore stated also provided for the holding of a convention by the citizens within the territory of the proposed new state for the purpose of framing a constitution. After the promulgation of the ordinance of the convention, the people of Virginia, as well as those residing in that part of the territory to be converted into a new state as those residing in the other part of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance defining the manner in which the equitable proportion of the said debt was to be ascertained, and when the Constitution of West Virginia was framed and adopted in the year 1861 the said section nine was in full force, and both the Com-

monwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new state was to be formed were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said public debt was assumed on the basis of the said ordinance, and not otherwise. It was provided in section eight, Article VIII, of the Constitution of the State of West Virginia:

> "An equitable portion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

After the adoption of this Constitution the Commonwealth of Virginia, on May 13, 1862, as hereinbefore stated, by an act of her Legislature, gave her consent to the formation of the new state. "According to the boundaries and under the provisions set forth in the Constitution for the said state of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day of November, 1861."

Subsequently, by an act of Congress approved December 31, 1862, provision was made for the admission of West Virginia into the Union, the said act providing a change in the seventh section of the eleventh article of the constitution of the said new state, relating to slavery, and providing for a vote to be taken relative thereto, and the proclamation thereof by the President of the United States, under which West Virginia, on the 20th day of June, 1863, became one of the states of the Union.

And so this respondent is advised, and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia and the Commonwealth of Virginia, through her Legislature, by the act aforesaid, approved the constitution of West Virginia as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act Congress admitting the said state into the Union, a compact between the two states prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.

The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia through her Legislature, as provided by her constitution, nor can its liquidation be otherwise provided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. Respondent therefore pleads and relies upon said compact in bar of the plaintiff's right to prosecute and maintain this suit in this Honorable Court and prays that the said bill may be dismissed.

XXII.

This respondent further answering and as a defense to said bill avers that the Commonwealth of Virginia, by her said bill and exhibits therewith filed and made part thereof, shows that she has adjusted before the institution of this suit to the entire satisfaction of her people and her creditors her alleged equitable proportion of her whole public debt existing on the first day of January, 1861, which she claims is only two-thirds thereof, and that therefore this respondent should be made liable for the other one-third thereof. In effecting this adjustment she refunded all the evidences of indebtedness created prior to January 1, 1861, except about one per centum thereof, and required the same to be surrendered to her and cancelled and annulled. Respondent avers that the said Commonwealth of Virginia did not refund two-thirds of her public debt, as alleged, in said bill although she proposed to do this by an act of her Assembly approved March 30, 1871; but finding that she could probably secure more favorable terms of settlement of what she decided to be her just portion, another act was passed by her General Assembly which was approved March 28, 1879, whereby the debt was divided into two classes as shown by said act, and thereby made a further reduction in the principal of her indebtedness, as well as securing a lower rate of interest to be paid thereon.

After various efforts to adjust the indebtedness on terms most favorable to herself, she secured a settlement whereby she funded and settled what she claimed to be her equitable proportion of her debt at a fraction less than forty-seven per cent upon the entire amount, including interest, a part of which she may have paid, but for the great volume of which she has issued her bonds, and which are now outstanding and unpaid. For one-third of her original indebtedness, created prior to January 1, 1861, she has issued certificates amounting in the aggregate to $18,227,153.60, of which

it is alleged her Commissioners of The Sinking Fund and the Literary Fund hold $2,745,462.60, leaving $15,281,970 in the hands of the public.

Said certificates were issued by the State of Virginia and accepted by her creditors under the following acts of the General Assembly of that State, to-wit:

Under the act of March 30, 1871, certificates were issued for the sum of $15,281,970, of which it is alleged the Commissioners of the Sinking Fund and the Literary Fund held $2,578,515, leaving $12,703,451 in the hands of the public. Of these certificates issued to the public $10,851,294 had been deposited with the Virginia Commission on the fourth day of January, 1906, and only $1,852,157 had not been deposited at that time.

Under the act of March 28, 1879, certificates were issued to the amount of $564,258, of which $463,892 had been deposited with said commission at the date aforesaid, leaving $100,366 which had not been deposited. Neither the Commissioners of the Sinking Fund nor the Literary Fund held any of these certificates. The act of the Legislature under which all these certificates were issued and accepted by the creditors expressly provided that they should be taken "as a full and absolute release of the State of Virginia from all liability on account of said certificates."

Under the act of February 14, 1882, certificates were issued to the amount of $1,775,603, of which $166,943 were issued to the Virginia Literary Fund and $1,608,660 were issued to the public. Of the amount issued to the public $1,313,792 had been deposited with the Virginia Commission on the date aforesaid, leaving outstanding at that time $294,868.

Under the act of February 20, 1892, certificates were issued to the amount of $605,320, of which $544,456 had been deposited on the date aforesaid, leaving $60,844 still in the hands of the old bond-holders or their successors in interest. Neither the Commissioners of the Sinking Fund nor the Literary Fund received any of the certificates issued under said act.

The certificates for $1,774,603 issued under the act of 1882 and the $605,320 issued under the act of 1892 were in the following form, and respondent avers that the State of Virginia has been wholly released from liability thereon.

No..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond ..... dollars, dated ..... day of ....., from ....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

..... Second Auditor.

..... Treasurer.

And respondent says that the amount of certificates of all classes deposited with the Virginia Commission on the date aforesaid was $13,173,435.41, but respondent does not know what amount, if any, has been deposited since that time, and respondent asks that the State of Virginia be required to show on the hearing of this cause, what amount of certificates have been so deposited since January 4, 1906, and under what acts of the Legislature the same were issued. Respondents avers that all said deposits were made under and in accordance with the agreement made between the Virginia Commission and the Depositing Committee for the certificate holders on the 24th day of November, 1895, which, among other things provides as follows:

> "And the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia."

And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of said certificates and not in her own right; and that she has agreed through her said commission with the said creditors that she is to incur no expense on account of this action and that the whole expense thereof is to be borne by the holders of said certificates in whose behalf and for

whose exclusive benefit the same was instituted and is now being prosecuted.

XXIII.

This respondent for further answer to said bill says that all the matters and allegations therein contained and not admitted in this answer to be true or heretofore specifically denied, are now and hereby denied and strict proof thereof is required.

Wherefore, this defendant, having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of plaintiff, material to be answered, according to her best knowledge and belief and humbly prays this Honorable Court that the said plaintiff's bill be dismissed and that this defendant have and recover her reasonable costs.

And as in duty bound she will ever pray, etc.

CLARKE W. MAY,
Attorney General,
J. G. CARLISLE,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
For West Virginia.

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, SS:

This day there personally appeared before me, the undersigned authority in and for said County and State, William M. O. Dawson, Governor of the State of West Virginia, the defendant named in the foregoing cause, and being by me duly sworn, says that he is the Governor of the defendant, the said State of West Virginia, and that he has read the foregoing answer and knows the contents thereof, and that the matters and things therein contained and alleged are true as therein alleged and stated to the best of his information and belief.

WM. M. O. DAWSON,
Governor of West Virginia.

Sworn to and subscribed before me this 5th day of October, A. D. 1907.

W. B. MATHEWS,
Clerk Supreme Court of Appeals.

EXHIBITS WITH ANSWER.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

EXHIBIT NUMBER 1.

An Act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862.

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Mason, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

EXHIBIT NUMBER 2.

SECOND AUDITOR'S OFFICE,
RICHMOND, Nov. 16, 1871.

A. W. Campbell Esq., Secretary, &c.:

DEAR SIR:—Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to use in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,
Most respectfully yours,
ASA ROGERS.

EXHIBIT NUMBER 3.

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

STATE OF WEST VIRGINIA,
CHARLESTON, December 22, 1873.

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequences to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations or fundamental conditions

by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of the territory of this State," [Virginia] passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the commonwealth of Virginia *prior to the first day of January*, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and to provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commissioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt Commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State." But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department, and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued nevertheless the expenditures would seem to import an obligation

upon our people to return every dollar which has been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution, but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1822 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our state is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts by conditions precedent prescribed by Virginia under the restored government which government has been approved as aforesaid by Congress, by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been

called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar, in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which a State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second. that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say, and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our Constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration, to cultivate our forests and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM,
A. E. SUMMERS,
J. T. MCCLASKEY,
R. B. SHERRARD,
ELLIOTT VAWTER.

Supreme Court of the United States

OCTOBER TERM, 1907

[May 4, 1908.]

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

DECREE REFERING THE CAUSE TO A SPECIAL MASTER.

[DECREE ENTERED MAY 4TH, 1908, REFERRING CAUSE TO MASTER.]

Supreme Court of the United States.

No. 4, Original.—OCTOBER TERM, 1907.

Commonwealth of Virginia, Complainant,
vs.
State of West Virginia, Defendant.

[MAY 4, 1908.]

This cause having been heard upon the pleadings and accompanying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and *value of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

*See Amendment, page 207

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make, or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference.

and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorneys General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.

SUPREME COURT OF THE UNITED STATES.

I, JAMES H. MCKENNEY, Clerk of the Supreme Court of the United States, do hereby certify that the foregoing is a true copy of the order of said Supreme Court entered on the 4th day of May, A. D. 1908, in the case of *Commonwealth of Virginia, Complainant,* v. *State of West Virginia,* No. 4, Original, October Term, 1907, as the same remains upon the files and records of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this.....day of May, A. D. 1908.

.....

Clerk of the Supreme Court of the United States.

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, *Complainant.*
against
WEST VIRGINIA, *Defendant.*

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

> "5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

CLARKE W. MAY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 7.

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.
FILED AS AN EXHIBIT FOR THE COMPLAINANT.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA.
vs.
STATE OF WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN.

Filed as an Exhibit for the Complainant.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore reprinted and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer of Virginia, and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

> "The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding

session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.

"A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbrier, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.

"A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen of the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, surveyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

REPORT

OF THE

COMMISSIONERS

APPOINTED TO VIEW CERTAIN RIVERS

WITHIN THE

COMMONWEALTH OF VIRGINIA,

CONFORMABLE TO AN ACT OF SAID COMMONWEALTH, PASSED THE FOURTEENTH DAY OF FEBRUARY, 1814.

PRINTED ACCORDING TO A JOINT RESOLUTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY.

AND

ACCOMPANIED BY A MAP,

EXECUTED UNDER THE DIRECTION OF THE EXECUTIVE

IN CONFORMITY WITH THAT RESOLUTION.

PRINTED...1816.

STATE OF VIRGINIA.

Inland Navigation and Improvements.

PREAMBLE AND RESOLUTION,

For Re-printing the Report of the Commissioners on the Navigation of the Great Kanawha, &c.

[*Agreed to by both Houses of Assembly, February 14, 1814.*]

Whereas, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanawha, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS OF THE COMMISSIONERS.

Letter of Mr. Marshall, One of the Commissioners.

A communication from the Governor, enclosing a letter from the Honorable John Marshall, and a report from the Commissioners who

executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said letter and Report were read as follows:

Richmond, December 26, 1812.

SIR:—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excellency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,
Sir, with great respect,
Your obedient servant,
J. MARSHALL.

His Excellency Governor BARBOUR.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary prepara-

tions having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlops-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate, they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys; distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presumed that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shallows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expensive, be rendered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, the difficulties become more considerable and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlop's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most com-

monly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable, depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as far as Dunlop's-creek, more water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlop's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles; the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half

feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crows Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches; making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlop's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlop's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlop's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlop's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlop's-creek, a direction, as is understood from some of the inhabitants of that neighborhod, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because

guides could not readily be procured, and your Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses Howard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horizon. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shallow for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were enabled to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the

last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn; and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testimony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidedly of opinion, that its navigation may be rendered as safe, as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose; and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howards-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered

navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanawha which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it, the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanawha.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable, of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with movable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanawha, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same distance, is greater than above. For a part of this space, the scene is awful and discouraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed

of rugged and perpendicular cliffs or entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanawha. The height of these falls is twenty feet four inches. With its name, the river loses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interests of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanawha. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyers Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed; but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all danger of being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanawha, will probably require and admit of a different course.

The first of these which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursuing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel, but the toil of ascending must, at this place, be considerable.

At the Great Falls of Kanawha, there is, near Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be entirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanawha they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a

channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following propsition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the Great Falls of Kanawha and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanawha and Bowyer's Ferry; your Commissioners are entirely persuaded

of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty has been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork though Rockbridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanawha, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some

others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlop's-creek to the mouth of Howard's creek, is twenty-six miles and forty-four poles. From the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horizon of less than three-quarters of a degree. From the summit of the mountain to the mouth of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horizon an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part; next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlop's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture would

mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western counties, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawha and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commer-

cial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different countries, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but in the vicissitudes of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their preservation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belongs to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will render this disparity between the commercial and agricultural capital still more sensible. It will tend still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsiderable magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory; that the island of Cuba and the coast of East Florida completely guard the passage from its mouth to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much

reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlop's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanawha, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanawha, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so laborious as to be little less expensive than carriage by land, will never change the channels in which the trade already flow.

The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanawha. A similar necessity may often occur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL.
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

[ORDER AMENDING DECREE OF REFERENCE.]

On consideration of the motion to modify the decree of reference herein.

IT IS NOW HERE ORDERED BY THE COURT that said motion be and the same is hereby, sustained so far as to make the first line of paragraph 2 read "The extent and assessed valuation," and in all other respects that said motion be, and the same is hereby, denied.

June 1, 1908.

A true copy.

Test: JAMES H. McKENNEY,

(SEAL) Clerk of the Supreme Court of the United States.

In the Supreme Court of the United States

OCTOBER TERM, 1907.

NO. 4, ORIGINAL.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA.

[ORDER APPOINTING SPECIAL MASTER.]

It is ordered by the Court that MR. CHARLES E. LITTLEFIELD, a member of this Bar, be, and he is hereby, designated and appointed as Special Master under the decree entered herein on May 4, 1908.

June 1, 1908.

A true copy.

Test: JAMES H. McKENNEY,

(SEAL) Clerk of the Supreme Court of the United States.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

RECORD
PART TWO

BEING THE EVIDENCE TAKEN AND PROCEEDINGS HAD
BEFORE THE SPECIAL MASTER
HON. CHARLES E. LITTLEFIELD
AT RICHMOND VIRGINIA
NOVEMBER 16TH, 1908 TO JULY 2ND, 1909.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

CHARTS

TOO

LARGE

FOR

FILMING

do.	.....	.....	.....
Pittsylvania, Pannill & Patetsburt Turnpike Co.	.....	.....	April
Richmond, Fredericksburg & Potomac R. R. Co.	.....	.....	January
do.	.....	.....	.....

PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11.

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written,

LOAN NO. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN No. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , pavable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 9.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 11.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 1838

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 13.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1838, entitled An Act to repeal in part the fourth section, the Act entitled An Act to amend the several Acts concerning the

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 14.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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K PAGE BLEED THRU

LOAN No. 15.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, .18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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RK PAGE BLEED THRU

LOAN No. 17.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 19.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

DARK P

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

K PAGE BLEED THRU

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

and for other purposes and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th February 1839, entitled, "An Act Concerning the

VALLEY TURNPIKE COMPANY"

and "An Act authorizing Loans for the payment of certain subscriptions and appropriations" passed 8th day of April 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

K PAGE BLEED THRU

LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

DARK PA

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 24.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

K PAGE BLEED THRU

LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoris-

DARK P

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

K PAGE BLEED THRU

LOAN No. 28.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions and Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 29.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

DARK PAG

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

No. RICHMOND, 18

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled An Act authorizing Loans for the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS FERRY TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, executors, administrators or assigns, the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839 entitled "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 36.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, semi-annually, on the first day of January and July, in specie or its equivalent; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of March, 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 37.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the eighth day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appro-

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 38.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 15

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 45.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 48.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN No. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled An Act to increase the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th February 1848. Entitled, An Act to provide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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LOAN NO. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act to amend the Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 54.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 55.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 56.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 59.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 60.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 61.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 62.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 64.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "An Act to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 65.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY, ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the the Treasury of the Commonwealth aforesaid, on the first day of Jan-

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled An Act authorizing loans for the payment of certain Subscriptions and Appropriations.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No,

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 5th day of March, 1849, entitled, "An Act to incorporate the

BLUE RIDGE RAILROAD COMPANY

and for other purposes", the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the Ist day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 92.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1858, entitled, An Act for the relief of certain Internal Improvement Companies and Holders of Debts on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof is irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

for the re-issue of certificates of State Stock due the Bank of Virginia"

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney,

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;" I,
Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

$

J. L. Loan No. 4.

TREASURY OFFICE OF VIRGINIA

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled ,"An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

Loan No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. Loan No. 3.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 5.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. Loan No. 6.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1840, entitled, An Act to amend the several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 1840, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

BANK LOAN.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 19th day of March 1839, entitled, "An Act to provide for further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York.

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

THE AMOUNT OF THE PUBLIC DEBT OF VIRGINIA.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 . . $300,000.00

bearing dates from Nov. 13, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 2888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No. 10	$1,000.00
482	1,000.00
487	1,000.00
488	1,000.00
857	1,000.00
872	500.00
873	500.00
1048	1,000.00
1140	1,000.00
1419	1,000.00
1420	1,000.00
1490	1,000.00
1492	1,000.00
1493	1,000.00
	$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this of —, Eighteen

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BYRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph I of the Decree.

[*Vol. 4, May 5, 1909.*]

[*Cross-examination of Arthur G. Potter on Plaintiff's Exhibit A-1.*]

Mr. Carlisle: That is all. Take Exhibit A-1. This is a 254
schedule of bonds—

The Special Master: What exhibit do you refer to and what page?

Mr. Carlisle: A-1; the beginning.

The Special Master: The very beginning?

Mr. Carlisle: Yes. The first entry there is $161,600, on which there was outstanding on December 31st, 1860, $104,000. I will get you to state whether that $161,000 represents certificates of the same kind as the one you have just been speaking about—the James River Company.

The Witness: Yes, sir.

By Mr. Carlisle:

Q. So the others, the first one, No. 1—you do not know what that amount was?

A. I don't know what? 255

Q. You don't know what the amount of the first was?

A. Yes; $50,000.

Q. Then there were others there which brought the whole amount up to $161,000?

A. Yes, sir.

Q. Do you know whether or not those certificates are now held in the Literary Fund of the State of Virginia?

A. Those individual certificates are not held by the Literary Fund.

Q. You are sure of that, are you? I mean in the Treasurer's office. Perhaps I was mistaken about Literary fund.

A. I don't know whether they are in the Treasurer's office or not.

Q. You never saw them at all I understood you to say?

A. No, sir.

Q. That is all on that, then. On the last page of this summary schedule of bonds of internal improvement companies guaranteed by the Commonwealth of Virginia which were outstanding December 31, 1860—

The Special Master: That is the last page of Exhibit A-1?

A. Mr. Carlisle: Yes; and which were later paid by the State or converted to State bonds, there are quite a number of items there—

Mr. Harrison: What page?

Mr. McClintic: The last page, I think, or at least towards the last page.

Mr. Carlisle: General Anderson has his hand on it, I think. Here is the James River and Kanawha Company, 1823, total $475,475—

Mr. Anderson: The 23rd of March, 1839, is it? 256

Mr. Carlisle: That is the date of the authorizing act.

Mr. McClintic: We did not mean to put that in.

Mr. Carlisle: What do you know about that?

The Special Master: This item is on the last page of Plaintiff's Exhibit A-1.

Mr. McClintic: The last page we have on this exhibit.

The Special Master: I don't find that.

Mr. McClintic: Headed Summary Schedule of Bonds of Internal Improvement Companies Guaranteed.

The Special Master: Let us be sure we are talking about the same thing. That is page 4 of mine.

Mr. McClintic: The pages may have been changed.

The Special Master: We must have them arranged so there will be no confusion. I shall have to ask you, Mr. Potter, to take the exhibits of West Virginia which are in your hands and those in mine and see that they are harmonious. I cannot stop every little while to correct the pages. Will you please attend to that during recess?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. Did you make any investigation of this item that I have just read?

A. We examined the guaranteed bond registers and made a list of the bonds which were funded, cancelled or otherwise disposed of, after January 1, 1861.

Q. After 1861?

A. Yes, sir; those that were disposed of after that date we assumed to be open on that date.

Mr. McClintic: I would like to ask a question if I may be permitted.

The Special Master: Certainly. 257

By Mr. McClintic:

Q. Was not that actually assumed, that $475,000, by the State of Virginia, by the act of March 23rd, 1860?

A. I cannot answer that question.

Q. You made no examination of the acts to see whether it was guaranteed or owed by the State at that time, did you?

The Special Master: Is it your question whether or not they were for the first time assumed?

Mr. McClintic: As an actual obligation of the State, on the 23rd of March, 1860.

The Special Master: For the first time?

Mr. McClintic: Yes. Previous to that they were a guaranteed debt, I understand.

Mr. Carlisle: We say a contingent debt.

The Special Master: The question is whether or not on that date they were assumed for the first time as an absolute liability. That you do not know?

The Witness: I cannot answer that question without referring to my other papers.

By Mr. Carlisle:

Q. Did you look into any of these items shown on the page to which I have referred for the purpose of ascertaining the exact nature of the guarantee of the State to see exactly what the State did?

A. Yes; I searched among the records of the Treasurer's office, and found copies of all these guaranteed bonds except two. That was the 8th and 9th items on this page here covered by my foot note at the bottom of the page.

Q. Were those guarantees of the principal sums or were 258
they guarantees of the interest only, or guarantees of dividends; in what form did you find those guarantees?

A. I cannot say at this time, because I have not the bonds before me. I have no records to show; I don't remember.

Mr. Anderson: You have the records?

The Witness: I have not the records here. We have them, but not here. I don't remember the exact terms of those guarantees.

By Mr. Carlisle:

Q. Did you read the acts of the Legislature under which these guarantees were made?

A. I believe I read them all.

By Mr. McClintic:

Q. Did you read the act of March 23, 1860, in reference to the James River and Kanawha Company?

A. I don't know.

Q. You don't know whether they were actually assumed by the State, or not, before 1861, then?

A. No.

Mr. Carlisle: The treasurer is willing to come over and bring this certificate about which the witness has testified—certificate No. 1.

The Special Master: You say it can be produced?

Mr. Carlisle: Yes; I understand he is willing to produce it.

The Special Master: I understand that all the original sources of information—

Mr. Anderson: Do I understand that you request that now? 259

Mr. Carlisle: Yes; because I want to examine this witness about it.

Mr. Anderson: Now?

Mr. Carlisle: Not this minute.

The Special Master: If you can get it without inconvenience suppose you send out for it.

Mr. Anderson: Do you wish to interrupt the examination to produce it.

Mr. Carlisle: I want him to produce it so as to let the Master see whether it is an obligation of the State of Virginia or a debt due to Virginia.

The Special Master: Let some messenger go out then, and have the treasurer bring it in.

Mr. Carlisle: We have a copy.

The Special Master: If they concede it is a copy you can probably go on then.

Mr. McClintic: On this page we are now considering, in regard to the guaranteed bonds, I find an item of Valley Turnpike Company, I believe it is, fifty-five. Was not that assumed by the State as a direct obligation prior to the 1st of January, 1861?

The Witness: In regard to such, I cannot state.

By Mr. McClintic:

Q. You made no examination to find out?

A. Not that I remember; no, sir.

Q. You have on there, then, one item of $300,000 and one of $200,000 of the Chesapeake & Ohio Canal Company. I refer you to the $200,000 item. Did you make any examination to see whether or not that has been paid by the C. & O. Canal Company?

A. No, sir. 260

Q. Either before or after the 1st of January, 1861?

A. No, sir; the records were incomplete in regard to that issue.

Q. Did you make any investigation afterwards to see whether these are still outstanding debts or not?

A. I did not.

Q. You simply found they were guaranteed and apparently outstanding on the 1st of January, 1861, and stopped there?

A. Yes, sir.

Q. There is another charge there of $100,000 for the Virginia Central Railroad, which was afterwards changed to the C. & O. Did you make any investigation to see whether or not that was paid by the original maker of the paper?

The Special Master: When? Prior to January 1st, 1861, or subsequently?

Mr. McClintic: Whether it was paid at any time by the maker.

The Special Master: Your question is general?

Mr. McClintic: Yes.

By Mr. McClintic:

Q. Did you make any examination to see whether or not that was paid?

A. No; we took the evidence on the bond registers.

Q. You did not attempt to find out whether it had been paid or not?

A. No, sir.

Q. There is another item of $13,900 of the James River & 261
Kanawha Company that stands in the same relation as the other James River and Kanawha Company, does it? In other words, you made no examination to see whether it had been assumed directly by the State, did you?

A. No, sir.

Q. There is an item of $15,000, Alexandria Canal Company. Did you make any examination to see whether it had been paid or not?

A. We made no examination in any of these cases because we did not have access to the books of these companies; we could not tell without access to their books whether the Company had taken up the obligation or not.

Q. Did you try to find out in any case whether they had been taken up or not?

A. Yes; we used every effort to determine from the State archives whether or not there were.

Q. Did you ask the Alexandria Canal Company people whether they had taken it up; did you make any attempt to find out from the company?

The Special Master: Did you make any application to any of the officers of the company?

A. I believe we did, yes sir. We wrote to the General Manager of the Chesapeake & Ohio Canal Company and asked him if the books were in existence, and he said he did not know anything about it.

The Special Master: Will you repeat that?

The Witness: We told him we would like to know if the account books of the canal with reference to the cost, etc., were conveniently at hand. He did not answer that question. He said, "I have none of the old maps and am not prepared to report on the matter."

262

By Mr. McClintic:

Q. Who is the General Manager of the Chesapeake & Ohio Canal Company?

A. G. L. Nicholson.

Q. Where does he reside?

A. At that time 5039 Q Street, Georgetown.

Q. Did you make any attempt to find out whether the $100,000 of the Virginia Central and C. & O. Railroad Company bonds had been disposed of, paid by anybody on the outside?

A. No.

Q. Is not the C. & O. Railroad Company's principal office in the City of Richmond?

A. Oh; the C. & O. Railroad. Yes, I believe it is.

Q. And you made no attempt to find out whether that $100,000 debt had been paid or not?

A. No, sir.

Q. Did you make any attempt to find out from the Alexandria Canal Company whether that $15,000 had been paid or not?

A. No; we did not ask that question.

Q. Why did you include those items guaranteed without attempting to find out whether or not they are still outstanding obligation?

A. Because in the case of the Alexandria Canal Company, it was a bankrupt company, and as long as the State guaranteed the old company they took care of the bonds.

Q. Who told you that?

A. I cannot tell. 263

Q. Was that information satisfactory to you?

A. It was satisfactory at the time, yes, sir.

Q. What were you told by anybody in reference to the Chesapeake & Ohio or Virginia Central $1,000,000?

A. I don't remember.

Mr. Carlisle: The treasurer is here now and if you will allow us to put him on the stand for a question or two—

The Special Master: He had better take the witness stand.

Whereupon

A. W. HARMON

(not sworn, testified as follows):

(Note.—It was agreed by counsel that the witness need not be sworn and that his testimony should be regarded as taken under oath.)

The Special Master: You are the Treasurer of the Commonwealth of Virginia?

The witness: Yes, sir.

By Mr. Carlisle:

Q. I ask you whether you as Treasurer of the State of Virginia have in your possession one or more certificates issued by the James River Company under the act of February 17th, 1820?

A. I have, sir.

Q. The originals?

A. Yes, sir. I have four.

Q. Will you produce them here, and let us use them for the present? We will have copies made for the record.

A. Yes, sir.

Mr. Carlisle: I will read a copy into the record.

The Special Master: Do you wish this to appear as an ex- 264
hibit? You wish to retain the copies?

The Witness: Yes, sir.

Mr. Carlisle: That is my suggestion.

The Special Master: I think we can save time if the witness will hold the original while you read the copy, to see that it is correct.

Mr. Anderson: Do you know these to be correct copies, Mr. Dixey?

Mr. Dixey: Yes; they are correct, even as to the punctuation.

Mr. Carlisle: These are copies of the certificates themselves, and also the endorsements on the back. Will you please look at this.

Mr. Dixey: That endorsement is a foot note.

Mr. Carlisle: Will you please follow the original while I read this.

Mr. Carlisle read as follows:

CERTIFICATE No. 1. SIX PER CENT STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th day of February, 1820, entitled

'An Act to amend an act entitled "An Act for clearing and improving the Navigation of James River," and for uniting the eastern and western waters by the James and Kanawha Rivers,' and by the 13th section of which act the James River Company are authorized and required to borrow money, on the terms, and in the manner therein specified, the James River Company do hereby certify, that there is due from the James River Company unto the President and Directors of the Literary fund the sum of fifty thousand dollars bearing interest at the rate of six per centum per annum from the fifteenth day of July one thousand eight hundred and twenty, being so much money borrowed of the said President & Directors of the Literary fund by the James River Company, the interest on which, at the rate of six per centum per annum, shall be paid, by the James River Company, semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly—which said debt is duly registered in the books of the James River Company, and this certificate thereof transferable only on said books—Certified under the common seal of the James River Company, and signed by John Coalter, the President of the said Company for the time, being and counter signed by Robert Pollard, their clerk.

(Signed) JNO. COALTER, President.

Teste:

(SEAL.) (Signed) ROBERT POLLARD, Clerk.

Registered 1 June, 1823.

J. BROWN, JR., 2d Auditor.

Note.—Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original:
Funded, Nov. 12/73, W. N. Newman.
Stamped in blue ink across the face of the original:
Commonwealth of Virginia. Funded, Nov. 12, 1873, Second Auds. Office.

Endorsed on the original in manuscript:

1821. June 15th. Paid half years interest due 1 January last, paid this day Robert Pollard.

August 24. Paid half years interest due 1 July last—paid this day (Signature dittoed.)

1822. February 16th. Paid half years interest due 1 January last, paid this day (signature dittoed.)

The Special Master: I understand that the defendants offer these exhibits under the 1st paragraph in the decree, and that they will be Defendant's Exhibits A-2, A-3, A-4 and A-5?

Mr. Carlisle: Yes, sir.

The papers referred to were accordingly marked as follows:

Certificate No. 86, Defendant's Exhibit A-3. 267
Certificate No. 87, Defendant's Exhibit A-4.
Certificate No. 88, Defendant's Exhibit A-5.

The exhibits referred to are as follows:

(Defendant's Exhibit A-3.)

CERTIFICATE No. 86.

In lieu of Original Certificate No. 67.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the first day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be

irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from 268
and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esq., the President of the said Company for the time being, and countersigned by James Brown Junior their Clerk, the 5th July, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: p Funded. November 12, 1873. W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

(Defendant's Exhibit A-4.) 269

CERTIFICATE No. 87.

IN LIEU OF ORIGINAL CERTIFICATES No. 61, 62, 63, 64, 65 & 66, OF 1,000 DOLLARS EACH.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled "An act to amend the act, entitled an act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western Waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow

money in the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Six thousand dollars bearing an interest at the rate of Six per centum per annum, from the First day of July one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the prinicipal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally, or by their Attorney. 270

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk. 20th August, 1827.

(Signed) WM. B. GILES, President

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

(Defendant's Exhibit No. A-5.) 271

CERTIFICATE No. 88.

In lieu of Original Certificate No. 76.

STOCK OF THE JAMES RIVER COMPANY.

In pursuance of an act of the General Assembly of the Commonwealth of Virginia, passed the 17th February, 1820, entitled "An

Act to amend the act, entitled An act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," and by one other act passed the 28th February, 1821, entitled "An act to amend the act, entitled An act to amend the act for clearing and improving the Navigation of James River, and for uniting the Eastern and Western waters by the James and Kanawha Rivers," by which acts the James River Company are authorized and required to borrow money on the terms and in the manner therein specified, the James River Company do hereby certify that there is due from the James River Company unto the President & Directors of the Literary Fund the sum of Three thousand dollars bearing an interest at the rate of Six per centum per annum, for the First day of July, one thousand eight hundred and twenty-seven, being so much money borrowed by the James River Company, the interest on which, at the rate of Six per centum per annum, shall be paid by the James River Company semi-annually, on the fifteenth day of July and the fifteenth day of January in each year, and the principal whereof shall be irredeemable for twenty years, from and after the fifteenth day of March, one thousand eight hundred and twenty, and from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly; which 272
said debt is duly registered in the books of the James River Company, and shall be transferable only on said books by the said President & Directors of the Literary Fund personally or by their Attorney.

Certified under the common seal of the James River Company, and signed by William B. Giles Esquire, the President of the said Company for the time being, and countersigned by James Brown Junior their clerk. 20th August, 1827.

(Signed) WM. B. GILES, President.

Teste:

(SEAL.) (Signed) JAMES BROWN, JR., Clerk.

Note: Those portions of this copy, which are underlined, thus, appear on the original in manuscript.

Written in red ink across the face of the original: Funded November 12, 1873, W. N. Newman.

Stamped in blue ink across the face of the original: Commonwealth of Virginia. Funded, November 12, 1873. Second Auds Office.

Mr. McClintic read aloud Exhibits A-3, A-4 and A-5, as hereinbefore set forth, the witness, Treasurer Harman, holding 273
the originals, and comparing them with the copies which were read.

By Mr. Carlisle:

Q. Can you state whether or not the books in your office show that prior to the 15th day of July, 1820, the Literary Fund lent to the James River Company $50,000?

A. The books of my company showed that they lent the Company?

Q. Yes. Would it pass through your office?

A. I have not looked to see. I don't think it would.

Q. Would it probably be shown on your books, or shown on the books of the Literary Fund?

A. It would be shown on the books of the Literary Fund, I think, sir.

Q. Do you know whether it is a fact or not that this certificate dated July, 1820, was issued as evidence of an indebtedness of the company to the State on account of the loan made?

A. Yes; I think these certificates show that.

Q. I will not ask anything about the other certificates because they are dated within a period when we admit that the debt was being created in other ways; so it would cut no figure on this question as to the beginning of the debt?

The Special Master: What do you understand this to mean: "Registered June 1st, 1823. J. Brown, Jr., Second Auditor"?

The Witness: I think the reason of it is that the Second Auditor's office was established in 1823, and after it was es- 274
tablished these matters were all of record in the Second Auditor's office.

Mr. Spooner: I think that will be clear to your Honor when we read the Act of 1823.

Mr. Carlisle: Which recites the loan.

Mr. Sponer: Which explains it.

The Special Master: These may be returned to the treasurer, I understand, the copies remaining on file as exhibits?

Mr. Carlisle: Yes.

The Special Master: Do you desire to cross examine, Mr. Conrad?

Mr. Conrad: No sir.

The Special Master: Do you desire to cross examine, Mr. Attorney General?

Mr. Anderson: No sir.

Whereupon

ARTHUR G. POTTER,

resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. I want to ask one other question on the line I was on when the treasurer came in.

In your total of the public debt of the Commonwealth of Virginia on the 1st of January, 1861—and please state the amount so we will be sure we understand each other cor- 275
rectly.

Mr. Anderson: Page 5?

Mr. McClintic: I ask him to state the amount.

Mr. Anderson: I don't know which page you are speaking about.

Mr. McClintic: I don't know either.

The Witness: $34,707,908.96.

By Mr. McClintic:

Q. Does that include this guaranteed debt?

A. No sir.

Q. The guaranteed debt is in excess of that different amount?

A. In excess of that different amount.

Q. Does that include the amount held by the literary fund of the State of Virginia.

A. It does.

Q. How much do you include of the bonds in the literary fund on the 1st of January, 1861?

A. $1,037,567.33.

Q. How much do you include of the bonds of Virginia in the sinking fund the 1st of January 1861?

A. $1,329,557.20.

Q. And in this literary fund do you include the four certificates which have just been put in evidence?

A. No. 1; 86, 87, and 88, amounting to $665,000.

By Mr. Carlisle:

Q. Did you find any evidence in the public records, the original books or official reports of the officers of the state, anything to show that these bonds which were held in the literary fund and the board of public works on the 1st of January 1861, 275½
had ever been issued to the public and sold?

A. I did not examine them with the idea of finding out whether they had ever been in the hands of the public, no.

Q. You found nothing to indicate whether they had ever been issued by the state and put on the market and sold?

A. I made no examination.

Q. You made no examination to ascertain that?

A. No sir.

Q. That is all on that point.

TESTIMONY OF THOMAS B. DIXCY (Resumed).

499

[*Vol. 5. May 6, 1909. Defendant's Exhibit A-1*]

By Mr. McClintic:

1. I hand you exhibit marked Defendant's Exhibit A-1.

If the court please, we desire to offer in evidence a statement of the debt under the 1st paragraph of the decree which we call defendant's exhibit A-1.

You have a copy of that?

A. I have a copy marked "original."

Q. Will you please look at that and identify that?

A. This is the one made by me.

(The document referred to was accordingly marked by the stenographer Defendant's Exhibit A-1.)

500

By Mr. McClintic:

Q. Was this signed by you on the 1st day of December?

A. It was signed by me on the 1st day of December.

Q. State to the Commissioner what that exhibit contains in a general way.

A. This is an exhibit showing the amount of State bonds or certificates of indebtedness issued on account of various public improvements, itemized, and the total thereof, from March 19, 1823, to January 1st, 1861, showing the number of the loan, the act of the legislature under which the certificate was issued, the rate per cent, the total amount issued, and the disposition of parts of the entire authorized issue from time to time; and the amount of the public debt outstanding on the 1st day of January, 1861, of each individual issue of these bonds or certificates of State debt.

Q. What amount do you report as being outstanding on the 1st day of January, 1861?

A. On page 7, $32,919,863.93.

Q. Does that total contain therein anything on account of the bonds held by the Literary Fund?

A. It does not.

Q. Does it contain anything on account of the bonds held by the Sinking Fund?

A. It does not.

Q. Does it contain anything on account of guaranteed bonds which were made by other parties and guaranteed by the State at the time?

A. It does not.

Q. Have you personally examined each of the items that 501
make up this schedule?

A. I have personally examined each of the items and I made the schedule.

Q. Is this schedule from such an examination?

A. It is correct from the books of original entry of the Commonwealth of Virginia.

Q. Does that total just given by you as of January 1, 1861, contain anything for interest that might have accrued in the year 1860?

A. No, sir; it does not.

Q. Mr. Dixby; did you examine the plaintiff's exhibit A-1, filed here some time since?

A. I have examined it.

Q. I find on the last page thereof certain items of what was called the guaranteed debt or bonds of the Commonwealth of Virginia which were outstanding January 1, 1861, inthe name of the James River & Kanawha Company, three items; one of $475,475; one of $55,000; and one of $13,900. State, if you know, whether they were outstanding on the 1st day of January, 1861.

A. They were not guaranteed bonds. They had been assumed prior to that date by the Commonwealth of Virginia and were actual obligations of the Commonwealth of Virginia.

Q. Are they included in the total given by you of the Virginia debt?

A. Yes; they are.

Q. I find on the same page of plaintiff's exhibit A-1, two items: Chesapeake & Ohio canal, $300,000; the Chesapeake & Ohio Canal Company, $200,000. State, if you know, whether those were outstanding, on January 1st, 1861? 502

A. The item of $200,000 was not outstanding. It had been retired prior to January 1st, 1861. The item of $300,000 appears to be still outstanding.

Q. You mean outstanding at this time?

A. Still outstanding; yes, sir. We are informed that the books containing the record of that were destroyed in the Baltimore fire.

By the Special Master:

Q. Do you mean of the $300,000 item?

A. Yes.

Q. You do not include the $200,000 now?

A. That was retired, had been retired prior to January 1st, 1861.

By Mr. McClintic:

Q. How retired?

A. They had been paid off, taken up by the company.

Q. The $200,000 item had been paid and it was no longer an obligation of anybody?

A. It was not an obligation; no, sir.

Q. On the same exhibit I find "Virginia Central Railroad"——

The Special Master: Does the $300,000 enter into your aggregate?

The Witness: No, sir; it does not. As a State obligation. Their status is still undetermined. There is no principal obligation on the part of the Commonwealth of the State of Virginia for those bonds as yet. 503

By Mr. Anderson:

Q. You mean the Chesapeake & Ohio canal?

A. Yes.

Q. No obligation as guarantor?

A. No; not as yet.

The Special Master: Guarantor of the principal sum?

The Witness: They guaranteed interest and the ultimate payment of the principal, and they have not yet paid the principal.

By Mr. McClintic:

Q. On the same page I find "Virginia Central Railroad", the name of which was afterwards changed to the C. & O. Railroad, $100,000. What has become of that, if you know?

A. In the refunding mortgage of the Chesapeake & Ohio Railroad I believe that obligation was assumed. I was so informed by Mr. Henry T. Wickham, General Solicitor of the Company. It was paid off by the Company.

The Special Master: So that does not exist as a liability against any one?

The Witness: No, sir.

By Mr. McClintic:

Q. On the same page I find "Alexandria Canal Company, $15,000." Tell the Commission what you know about that, as to its existence or non-existence, and if paid, by whom?

A. I am not testifying from exact knowledge now, sir. There is a report in the files of the Circuit Court here in Richmond to the effect that those bonds have been paid. I sent a man to Alexandria and made inquiry there and they said that in the course 504 of the suit (the Mayor and the Auditor of Alexandria told me this) the matter had been transferred to Richmond, and they thought

it was on record there. Inquiry into the records developed that fact in the report of the Commission. They referred to that in the report of the Commission. They referred to that loan as having been paid.

The Special Master: Did it give the date of payment?

The Witness: I have it here in the papers. I haven't it immediately in front of me.

Mr. Conrad: Did you say paid by whom?

The Witness: It was paid not by the State.

By Mr. McClintic:

Q. The first item of the exhibit Plaintiff A-1 was outstanding December 31, 1860, say $104,000, which was apparently a part of an issue of $161,600. Was the sum of $104,000 outstanding December 31, 1860, as a fact?

A. That was not a State obligation.

Q. I understand, but I am asking was that sum, $104,000 was outstanding.

A. Conceding those conditions, there was not $104,000 outstanding. $65,000 of that issue of bonds, or of certificates of indebtedness were held by the Literary Fund.

Mr. Harrison: What do you mean by "those conditions"; what do you refer to?

The Witness: The conditions in the report.

By the Special Master:

Q. What about the balance of $104,000; do you account for that $39,000?

A. The balance of that was another loan altogether. That 505
remaining balance of $39,000 was not James River bonds at all, but bonds issued to the Presidents and Directors of the Bank of Virginia.

Q. Is it an obligation of the State of Virginia?

A. That $39,000 issued to the Bank of Virginia became an obligation on the State of Virginia in 1840.

Q. But the $65,000 you say never has become an obligation?

A. It has not, as shown by the original certificates presented here the other day, amounting to $65,000?

Q. Now in the hands of the Literary Fund?

A. They are not now. They were until 1871.

Q. They were in 1861?

A. They were in 1861, and until 1871.

By Mr. Spooner:

Q. Are those the certificates that were read here the other day?

A. Yes; those are the ones.

By Mr. McClintic:

Q. There were certain coupon bonds, I believe, without referring to the plaintiff's exhibit at the exact point, representing in pounds a certain amount. Did you find that amount as set out on plaintiff's exhibit A-1 correct?

A. I did not find it correct.

The Special Master: What is the particular item?

Mr. McClintic: I do not know where to look for it.

The Special Master: You ought to direct your inquiry specifically to it, because otherwise I cannot trace it.

The Witness: On page 6. 506

The Special Master: You must have the items specified and the pages, because I cannot follow this out without that. You say you think it is on page 6. What is the item?

The Witness: I think it is the third item from the bottom.

Mr. McClintic: It is on the second page of plaintiff's Exhibit A-1, included, I think, in some large items at the bottom of the page.

The Special Master: Well, that items—because it is necessary for me to trace this and it is difficult to do so unless you locate them.

Mr. McClintic: They were issued under the Act of the 29th of March, 1851, the bottom act on page 2 of plaintiff's exhibit No. 1.

The Special Master: That is at the bottom of page 3, the coupon bond?

Mr. McClintic: Page 2, as I have it.

The Special Master: Let us get all your exhibits harmonious with mine.

Mr. McClintic: I made a mistake.

The Special Master: Then it is page 3, the item marked No. 90, coupon bonds $14,947,500. Is that the item you inquire about?

Mr. McClintic: Yes. I will ask the stenographer to strike the other question out.

By Mr. McClintic:

Q. Did you examine the items composing the large item of coupon bonds?

A. I examined them all.

Q. Did you find an item of 375,000 pounds sterling? 507

A. Yes, sir.

Q. Please state to the court what you make that on your exhibit in American dollars.

A. It is shown on page 6 of defendant's Exhibit A-1, the third item from the bottom.

Q. You make it $1,815,204?

A. Yes, sir. I may say in connection with that, that it is shown on the Auditor's books that $5 is the par exchange, and I make it that it should be $4.8665.

Q. On that date?
A. On that date.
Q. And at what value in the plaintiff's exhibit?
A. $5 in the plaintiff's exhibit.
Q. Do you know what difference that would be?
A. $49,000 and odd dollars. I have not the amount immediately before me. It is a little short of $50,000.

By the Special Master:
Q. Have you got your notes so you can refer to them?
A. Yes, sir.
Q. Then put that into your testimony. You must give me the specific amounts on all items like that.
A. The exact amount of the difference?
A. Yes.
A. Between the $1,865,000, which would be the total at $5, and at the proper par of exchange, or $4,8665, is $49,759.50?

Mr. Harrison: Does the difference between yours and Mr. Potter's statement arise out of the difference you took in the matter of exchange? 508
The Witness: It is entirely a matter of exchange. That is to say, it was figured out $5 in the Auditor's books and on your statement.

By the Special Master:
Q. Is your only criticism of the item mentioned as $14,947,500. at the bottom of page 3, this one relating to the question of exchange?
A. I have not the plaintiff's exhibit before me and I cannot testify to that item from memory. Can I have that copy?
(After examination of paper) Will you state the question.

The last question was repeated by the stenographer as above recorded.

Q. (Continuing) That is, is there any other discrepancy between your computation and the computation of Mr. Potter, as appearing in that item?
A. No, sir; there is none.
Q. So there is that difference between the two only?
A. Yes, sir.

By Mr. McClintic:
Q. On what date was that power of exchange made?
A. January 1st, 1861?
Q. The date on which this outstanding account is fixed?
A. Yes, sir; the date of the account.

By Mr. Harrison:

Q. Did you see one of the bonds?

A. No, sir.

Q. You do not know what the bond said on its face as to the rate of exchange? 509

A. No; but it was entered in the Auditor's books at $5, and on your statement at $5. The obligation was not $5 at that date.

The Special Master: At what date was the entry made on the books, if you remember; that is, bearing on the question of exchange?

The Witness: I will have to go to the original books for that.

By Mr. McClintic:

Q. Tell the court, if you know, about an annuity of the James River Company on which the interest had been guaranteed by the State and which was funded before January 1st, 1861.

A. That is shown on this exhibit, on page 3.

Mr. Harrison: On your exhibit?

The Witness: On this exhibit, yes; on page 3. It is the last item under the head of the James River Company, shown in the total column as $350,000 and referred to in note 3 at the end of the statement. The note is as follows:

"The amount of $350,000 here shown was not evidenced by any form of certificate of debt prior to January 1st, 1861, but is the principal amount required to produce annually at 6 per cent interest the sum of $21,000, guaranteed forever to the stockholders of this Company (The James River Company) by the act of March 23rd 1860. It was later actually funded on this basis under the acts of 1871 and 1872, known as the Consol and Peeler acts."

510

The Special Master: When you say no certificate of debt, you mean no certificate of debt for the State of Virginia?

The Witness: Yes. These certificates were drawing 15 per cent and the State at this time assumed this obligation and converted them, under this act of March 23rd, 1860, and issued bonds for $350,000, which funded them.

Mr. McClintic: Please take the defendant's Exhibit B-1.

Mr. Harrison: Are you passing now from your Exhibit A-1?

Mr. McClintic: Yes, sir.

Mr. Harrison: That schedule has been admitted in evidence?

The Special Master: Yes; A-1 has been introduced and admitted in evidence.

[*Vol. 6, May 7, 1909. Cross-examination of T. B. Dixey.*]

By Mr. Harrison:

Q. I understood you to say, Mr. Dixey, that the origin of the debt which you have been engaged in investigating com- 589
menced with——

A. March 19, 1823.

Q. Yes; and on your statement you take as the first debt created by the State of Virginia an issue of bonds which you describe as the James River Company No. 2.

The Special Master: On what page is that?

Mr. Harrison: I am on page 3, about the middle of the page of defendant's schedule.

By Mr. Harrison:

Q. That is correct, is it?

A. Will you repeat that.

Q. I say you begin with a debt which you describe on your schedule as James River Company No. 2, do you not?

A. Loan No. 2 of the James River Company; that is the first debt.

Q. Mr. Potter, in his schedule of the debt, begins with a debt described as James River Company No. 1, does he not?

A. Yes.

Q. The James River debt No. 1, with which Mr. Potter's schedule begins, was created February 17, 1820?

A. Yes, sir.

Q. And the James River debt No. 2, with which you begin, was created under the Act of March 19, 1823? 590

A. February 24th——

Q. February 24, I mean, 1823; that being a difference in time of some three years or more?

The Special Master: Three years and four months.

Mr. McClintic: Mr. Potter took in arrearages back to October 19.

The Special Master: Yes; from that up to March 19, would be about three years and four months.

By Mr. Harrison:

Q. Why did you not begin with the debt described as James River Company No. 1?

A. Because no part of that debt was a debt of the Commonwealth.

Q. What is your authority for that statement?

A. The act of February 17, 1820.

Q. You then base your statement on your construction of the Act of February 17, 1820?

A. My construction, which was submitted to counsel.

Q. It was your own construction confirmed by counsel, or was it counsel's construction to you?

A. They instructed me to exclude any bonds issued under that act.

Q. Now, was there any difference in the way the James River Company's debt No. 1 was treated on the books of the Commonwealth of Virginia as compared with the way the James River Company's debt No. 2 was treated upon her books?

The Special Master: What was the difference in the original entries, if any? 591

The Witness: There was not any difference. There were no entries on the books of the Commonwealth until long after the actual creation of this debt, and then they were lumped together in one entry.

By Mr. Harrison:

Q. My question was—

A. No sir; there was not any difference.

Q. Then, so far as the books of the Commonwealth of Virginia show, the James River debt No. 1 was as much a debt of the Commonwealth as James River debt No. 2?

A. You are confining that question to the books? So far as the books show, that was the case, yes, sir.

By The Special Master:

Q. What was the date of the first entry you found on the books referring to these two items?

A. I would like to refer to my notes.

Q. You had better have your notes handy.

A. I can get that first entry or submit the original record.

Q. The question is what is the date of the first entry on the books that relates to either one or both of these items. I understood they were both included in one entry.

A. They were.

By Mr. Harrison:

Q. Were not the entries on the books of Virginia in regard to James River Company debt No. 2 on the same book with the entries in regard to James River Company debt No. 1? 592

A. The original entry included both.

Q. Was not that book a record of the obligations of the Commonwealth?

A. I would like to qualify that. I do not know that that is a book of the Commonwealth of Virginia at all. It is marked on the back "James River Company."

Q. Is this the book? I hand you now the book of original entry that we are talking about and I will ask you to identify it.

A. (After an examination of book). We were talking about different books. This is the register.

Q. That is a register of the bonds of the Commonwealth, is it not?

A It is a register of sundry acts from the 24th of February, 1823, to the 11th of March, 1844, according to the back of the book.

The Special Master: Have you the book of original entry?

Mr. Harrison: What we are concerned with is what it contains.

The Witness: That is the endorsement on the back of the book.

Mr. Harrison: Now, tell us what it contains.

The Witness: This book contains here a record, not necessarily on the original entry, of certificate No. 1. It may be simply a register of that certificate.

The Special Master: Well, read the entry and put it in the record, so it will show for itself.

The Witness: It says No. I. 593

The Special Master: In the first place, give the heading.

The Witness: There is no heading.

The Special Master: Oh, yes. There is "No.," "Date," "Amount."

By Mr. Harrison:

Q. Let me ask you this question. Did you ever see that book before?

A. Oh, yes; we have gone over it carefully.

Q. Did you use it in your compilation?

A. Yes, sir.

The Special Master: Do you wish this entry in the record?

Mr. Harrison: Yes, sir.

The Special Master: Then let us have it. First give the headings, and then say No.— No. 1; and then date.

The Witness: "Date 1820; 15th July.

"Amount; 50,000.

"To whom issued; President and Directors of the Literary Fund.

"Place of residence, Richmond.

"When transferred. ————

"To whom transferred. ————"

Do you wish me to go further?

The Special Master: No, I think not. Whenever we put any of these entries in we will have as near as we can exact fac similes of the entries.

By Mr. Harrison:

Q. I will ask you to look at page 1 there and read a memorandum note entered there opposite the bonds No. 21 to 30 inclusive of the issue of February 17, 1820. Please read that note. I want to get it in the record.

A. The issue of February 17, 1820. 594

Mr. McClintic: What was that question?

(The question as above recorded was repeated by the stenographer).

By Mr. Harrison:

Q. Do you say that note does not relate to bonds issued under the act of February 17, 1820?

A. Just a second—

The Special Master: Do you want what the books show or the knowledge of the witness independent of the book?

Mr. Harrison: I want what the books show first.

The Witness: I may say that the only certificate issued under the Act of February 17, 1820, was certificate No. I, for $50,000. These bonds which you are alluding to come under the following act.

By Mr. Harrison:

Q. Please read that memorandum for me.

A. (Reading):

"1st May, 1840, certificates 21 to 30, both inclusive, cancelled under the Act provising for a reissue of certificates of State stock due the bank of Virginia, passed 18th March, 1840, and new stock issued therefor. See folio 22. (Part of $40,000.)"

Q. Am I to understand you to say that that was not a reissue under the Act of February 17, 1820? 595

A. It was not a reissue.

Q. On what authority do you make that statement?

A. As a matter of fact it was not a reissue. It was an issue by the State, a funding in 1840 of certain certificates of indebtedness which had been issued by the James River Company in 1822.

Q. Part of the note that I asked you to read refers you to folio 22, does it not?

A. Yes, sir.

Q. When you turn to folio 22 you find the explanation of that do you not?

A. There is a note on folio 22.

Q. Suppose you read that note and let us get it into the record.

A. The note on folio 22 that is referred to on folio 1 is as follows:

"Note. The certificates registered on the opposite page and numbered 1, 2, 3 and 4, amounting to $40,000, are issued in lieu of the following certificates issued by the old James River Company under acts passed 17th February, 1820, and 28th February, 1831, viz.: No. 21 to 55 both inclusive, $1,000 each (see folios 1 and 2); and No. 73 for $5,000 (see folio 3)."

Q. You filed on yesterday a copy of a certificate of stock, of indebtedness of the James River Company, marked certificate No. 86, in lieu of original certificate No. 67, which appears to be an obligation for $61,000, bearing interest at the rate of six per centum per annum from the 1st of July 1827. Did you treat that in your statement as part of the debt?

A. No sir; it is an obligation of the James River Company 596
to the State of Virginia; it is not an obligation of the State of Virginia.

Q. Why do you say that?

A. It says it on its face.

Q. Is that your only reason for saying so?

A. That and the acts that back it up, and the opinion of counsel in the matter.

Q. Yes. The books, however, showing the way in which the Commonwealth of Virginia treats it, do not back you up?

A. No, sir; it says in the books that it was a certificate of the old James River Company.

Q. I know it does; but it is also treated as an obligation of the State of Virginia, is it not?

A. After 1840 these particular certificates referred to here became an obligation of the State of Virginia. In 1840 the state bonds that were issued in place of, in lieu of the old certificates of indebtedness of the James River Company—

Q. Why should they become an obligation of the State of Virginia in 1840 if they were not an obligation of the State when they were issued?

A. I have no idea.

Mr. McClintic: They were reissued under an act of the 597
legislature, were they not?

The Witness: Yes, sir; they were reissued under an act of the Legislature. I do not know why the legislature assumed them at that time. That is what I mean to say.

By Mr. Harrison:

Q. Was not the reissue under the Act of 1840 a reissue of the loan created under the Act of February, 1820?

A. I do not understand it as a reissue at all. I understand it as an original assumption by the State of part of the debt which up to that time had been the debt of the James River Company.

Q. Is the word reissue used?

A. It is; it is used in the title of the Act.

Q. And is it not used on that book of original entry there?

A. It is; yes sir.

Q. Notwithstanding that, however, you do not so understand it?

A. Notwithstanding that, I do not so understand it.

Q. Does any part of the debt described on Mr. Potter's schedule as James River Company No. 1, which is $104,000, appear in your statement of the debt?

A. Yes sir; I think Mr. Potter includes in that statement two issues of bonds, one by the State and one by the James River Company. There were included in that issue 65,000 of the bonds of the James River Company and 39,000 of the bonds of the State issued by the president and Directors of the Bank of Virginia.

By the Special Master:

Q. Is this book here the book of the James River Company? 598

A. It is the register of the second auditor's office.

Q. It is a Commonwealth book, rather than the James River Company book.

A. The record was kept, this record was kept, in the Second Auditor's office. We have not the original book of the James River Company.

Q. This is the record of the State and not the record of the James River Company?

A. This is the record of the State, yes, sir.

By Mr. Harrison:

Q. And it covers the register of all the bonds of the State embraced in the period covered by the book?

The Special Master: And is not confined to the James River Company?

Mr. Harrison: No, not at all.

The Special Master: But other internal improvements?

The Witness: Yes.

Mr. Harrison: When this book was made it was made to include bonds issued under sundry acts from the 24th of February, 1823, to

the 11th of March, 1844, inclusive, and later these James River bonds were inserted.

By the Special Master:

Q. Before you leave this subject, get out the other books, if there are any that show the expenses and disbursements and receipts in connection with this enterprise, so we will have the contemporaneous original history. That is, I suppose there are other books that show disbursements.

A. This is the bond register pure and simple. It is apart from the journals.

Q. But there are books showing disbursements? 599

A. Yes, sir; receipts and disbursements.

By Mr. Harrison:

Q. I understand you to say that of the $104,000 shown by Mr. Potter's schedule of the James River debt No. 1 to be outstanding December 31, 1860, you do take account of $39,000 of it in your statement of the debt. Is that right?

A. Yes; we take account of $39,000 of that $104,000.

Q. Where does that appear in your statement?

A. It appears on defendant's Exhibit A, sheet 2, third item from the top, headed Bank of Virginia March 18, 1840; total issue $100-000. That $40,000 or $39,000 was included in that amount, and one other bond which was cancelled later.

The Special Master: Do you also include the $65,000?

The Witness: No sir.

Mr. Harrison: Why do you not include the $65,000?

The Witness: Because the $65,000 was not a debt of the Commonwealth of Virginia represented by these James River certificates that we presented the other day.

By the Special Master:

Q. Did it at any time go into the indebtedness of the State of Virginia?

A. Those $65,000 never became a part of the debt of the State of Virginia until 1871.

Q. And what happened then?

A. And they were taken up under this general Consul & 600 Peeler Act, the funding act.

Q. By virtue of the Act of the legislature?

A. Yes, sir; the act of 1871.

Q. Were other evidences of indebtedness issued for the purpose of taking them up?

A. At that time, yes, sir.

Q. In 1871?

A. The certificates bore on their face the statement that the funding was done in 1873, but it was under the Act of 1871.

Q. And that, having taken place after 1861, is not included in this statement?

A. No, sir.

Q. Is that the reason?

A. Yes, sir.

By Mr. Harrison.

Q. Then your explanation is that according to your facts, that $65,000 that you exclude as a part of the debt of the State of Virginia prior to 1861, did become a part of the debt of the State of Virginia in 1871?

A. It was assumed by the Commonwealth in 1871.

By the Special Master:

Q. And your theory is that up to that time it was not a part of the indebtedness?

A. Yes, sir.

Q. And for that reason you did not include it?

A. Yes, sir.

Q. Do I state it correctly? 601

A. Yes, sir.

By Mr. Harrison.

Q. The fact is, then, according to your testimony, that the State of Virginia assumed a debt of 1871 for which she had been under no previous liability of obligation?

A. Quite true, sir.

Q. You have treated $39,000 of that indebtedness, called the James River Company No. 1, as part of the debt of Virginia, have you not?

A. More than that: $40,000.

Q. $40,000?

A. Yes, sir.

Q. Well, say $40,000, then—

A. There is a difference of $1,000 there because Mr. Potter takes up one bond of the bank of Virginia and includes that in that issue.

Q. You have treated $40,000 of the $161,000 that constitutes the first debt, known as the James River Company No. 1 as part of the debt of Virginia?

A. Under the act of March 18, 1840. I think it is March 18.

Q. And you treated it as a debt created for the first time on that date?

A. I would like to modify that answer a bit.

Mr. Conrad: Oh, yes; you may modify it as much as you please.

A. (Continuing) The State issued obligations then—and I have said this before, and so I am just repeating—under the 602
Act of March 18, 1840. There were certain obligations of the State issued which replaced the obligations of the James River Company to the extent specified in the Act. It was not a reissue.

By Mr. Harrison.

Q. That statement of yours that it was not a reissue you have already explained?

A. Yes, sir.

Q. You say that notwithstanding the Act of the General Assembly and the Books of Virginia, you treat it as not a reissue.

A. That is true.

Q. And you were acting under the instruction of counsel?

A. Under the opinion of counsel; not under instructions. It was my own opinion as well.

Q. Mr. Dixey, in your investigation of the records in relation to the debt and in the statement you have compiled with respect to it, did you take any account of a hundred shares of the stock of the old James River Company which were donated by Virginia to General Washington under an Act enacted long prior thereto?

A. Of 100 shares of what?

Q. Of the James River Company, that the State of Virginia donated to him?

A. No, sir.

Mr. Anderson: Upon which the state assumed an obligation to pay $3,000 a year forever.

The Witness: Well, the State afterwards assumed an 603
obligation on the dividends of the old James River Stock; but it was not at this period, it was not prior to March 18, 1823.

By Mr. Harrison.

Q. Not prior to it, you mean?

A. Yes, sir.

Q. You mean her assumption of that liability was not prior to 1823?

A. No sir. It was March 23, 1860, that she assumed that guarantee forever.

By the Special Master:

Q. $3,000 per annum?

A. No; I am speaking of the annuity, the assumption of the annuity.

Q. Well, the annuity relating to this stock given to George Washington?

A. I do not recall particularly as to that.

Mr. Anderson: And he gave it to Washington & Lee College, which holds it now?

The Special Master: That was by virtue of an act of 1860?

The Witness: I do not recall as to that individual stock.

The Special Master: Well that is ascertainable.

Mr. Harrison: I want to know whether he had taken any account of that at all.

Mr. McClintic: May I ask if you took any account of it?

Mr. Anderson: Yes sir, we took account of it; and he has got it in there too, but he does not know it. 604

The Witness: It may be in the $350,000 annuity.

Mr. Anderson: Yes, that is where it comes. It is capitalized by the Act of March 23, 1860.

The Special Master: It is in there, but he had not discovered George Washington in connection with?

By Mr. Harrison.

Q. You give us first the aggregate public debt of Virginia, January 1st, 1861, $32,919,863.93. You do not include in that aggregate the debt held by the Literary Fund or the debt held by the Sinking Fund, do you?

A. No, sir.

Q. Mr. Potter's statement of the total amount of the debt does include those two items?

A. Yes, sir.

Q. And it appears to be, with those items included, $34,707, 908. 96.

The Special Master: Is not the six months interest included in that?

Mr. Harrison: No; he does not include any.

The Special Master: I find I have a pencil note, thirty million dollars and something.

Mr. Harrison: No—

The Special Master: Then the item of $34,707,908.96 is simply, the principal sum exclusive of interest?

Mr. Harrison: Exclusive of interest, but including the two debts of the Literary Fund and the Sinking Fund.

The Special Master: And also including the $64,000 in the James River fund?

By Mr. Harrison:

Q. If you deduct the two items of the indebtedness held by the Sinking fund and the Literary Fund from the total shown by Mr. Potter, the aggregate amount of the debt then, ac- 605
cording to this statement, would be $32,340,784.43, or $579,-079,50 less than your statement appears to be.

A. That may be true, and probably it is true.

Q. I state that so as to save time.

A. Yes; I accept that.

Q. In other words, if you eliminate from Mr. Potter's statement of the debt the two sums held by the Literary fund and the sinking fund your statement of the debt exceeds by more than half a million Mr. Potter's statement of the debt?

A. That is true.

Q. Now, can you give me, if you please, the items that enter into and constitute that excess in your statement of the debt over Mr. Potter's?

A. I think I can very closely from memory. The certificates of indebtedness of the James River and Kanawha Company which were assumed by the State, which are shown in Mr. Potter's statement of guaranteed debt, although they had not been converted into State certificates, were outstanding in their old form but has been assumed by the State.

By the Special Master:

Q. You treated them as a direct liability, and he treats them as a guaranteed liability?

A. Yes.

Q. What does that amount to? 606

A. $375,000 odd as I recollect it.

Mr. Hogg: That was by the Act of 1860?

The Witness: Yes. (Referring to memorandum) $533,375. that we add.

By the Special Master:

Q. That leaves in the neighborhood of $400,000?

A. Yes.

Q. What does that consist of?

A. Well, I would reconcile it if your Honor wishes me to do so. We add $95.500 to the amount shown by the accountants for Virginia in addition to the amount I have already stated, being the

principal of the amount required to produce annually at 6 per cent. interest the sum of $21,000 guaranteed forever to the stockholders of the James River Company by the Act of March 23, 1860, and later—in 1871—funded at $350,000. That was the amount necessary to produce $21,000 which had been guaranteed forever on the old Stock, the actual stock of the James River Company. The net amount of that outstanding that had not been acquired by the State was $95,500, which we add to the statement of Virginia, the public debt. We deduct the $65,000 which was under discussion. We deduct the difference between the par of exchange on January 1st, 1861, and 4.8665.

Q. About $49,000?

A. Yes, sir; $49,795.50; the difference between the par of exchange and $5, on 373,000 pounds sterling, coupon bonds issued in that form by the Commonwealth of Virginia for sale abroad.

We also deduct the amounts that Mr. Harrison has already spoken of, held by the sinking fund, the amounts shown by Virginia as held by the sinking fund, $1,329,557.20. And 607
we deduct the amounts shown by the accountants for Virginia as held by the literary fund. That is, $1,037,567.33. That is the amount that they show. Less the $65,000 which we have already deducted and which is included in their amount, making a net of $972,567.33. Our total additions to the figures ($34,703,908.96) are $628,875. Our total deductions are $2,416,920.03; which reconcile the two accounts.

Q. What page of what exhibit do you find that?

A. We have not presented that as an exhibit yet.

Mr. Harrison: I will ask you to furnish on that point—

By the Special Master:

Q. Right on this point, the only discrepancy between the accounts presented by them and the accounts presented by you that can be related to the beginning of the account is the $65,000 item?

A. That is all.

Q. Is that right, Mr. Dixey?

A. As I understand your question, yes.

Q. That is the only item referrable to the beginning of the account?

A. Yes, sir.

Q. In order to harmonize this particular exhibit in which you state the amount of the debt with the account made by Virginia what else would you have to do except to add the $65,000?

A. I do not quite get that.

Q. In order to harmonize your statement of the debt pre- 608

dicated on beginning March 29, 1823, and their statement of the debt beginning with the fiscal year 1820, what have you to do to your account except to add to it $65,000?

A. We have to also add the holdings of the sinking fund and the Literary fund—well, practically all these items that I have read.

Q. No; but in order to harmonize so far as the beginning of the accounts is concerned, all that you have to do would be to add $65,000?

A. That is all, I think, sir.

Q. And as to this exhibit, then, that would be completely harmonized?

A. I think so. That is rather offhand, but that is my impression.

By Mr. Harrison:

Q. Now, as to the difference in the two statements, I will ask you to furnish us, if you please, with the items that enter into and constitute the difference between your statement of the debt and Mr. Potter's. I mean the excess, if you eliminate the two indebtednesses held by the Literary Fund and the Sinking Fund with the special schedule supporting those differences. Can you give us that detail?

A. In other words, the items that I have just read into the record?

Q. Yes.

The Special Master: That would simply require a statement of the items that you have already given. 609

By Mr. Harrison:

Q. We want not only the statements, but the details of the statements, how you arrived at them, and how you finally reached your summary in respect to them?

A. I will furnish you that immediately.

(The witness produced some papers.)

Q. Can you give me a copy of that?

A. Yes sir. Here is one. We have not introduced this yet and they are not marked.

Mr. McClintic: Does that answer your question? Does that give you what you want, or do you want to go into a lot of sub-schedules, do you want to go all through it?

The Witness: We have used their figures.

Mr. Harrison: (After examination of the paper given him by the witness.) This does not seem to be what I asked for. We want sub-schedules, precisely such as we submitted to you six months ago.

The Witness: Of what?

Mr. Harrison: Of the bonds, of all the debts in which this difference occurs, this difference of $549,000.

The Witness: I haven't got them. You have about all we have. You have all we have, practically. We did not prepare such schedules as those. I do not think they were referred to except in one or two instances.

By Mr. Harrison:

Q. Did you not say just now, that you used ours in making up yours?

A. We have taken your statement of bonds as held by the 610
sinking fund and the literary fund and used that in reconciling the difference between the debt as you show it and as we show it. That is what I intended to say.

Q. You say you have not got—

A. We have no such schedules as you made.

Q. Have you got such as you made?

A. We have working papers, yes.

Q. I want to see your working papers; I want to know how you worked up to that difference, I want a detailed statement. We want it for the purpose of testing, of comparing it with our work, the work with which we reached our result.

Mr. Conrad: The Master said the other day that all those working papers should be brought here for the purpose of examination.

The Special Master: As I understand it, there are only three or four items, as the case may be, where the accountants differ on this question of reaching the amount of the indebtedness.

Mr. Harrison: There seem to be about six, I believe.

The Special Master: Well, whatever the number may be; five or six; they are the only items which I apprehend you are interested to inquire about.

Mr. Harrison: That is all.

The Special Master: Now the witness submits here what he calls a reconcilement between the two statements of indebtedness.

Mr. Harrison: That is in total only. 611

The Special Master: I would suggest this, if it is agreeable. We have this statement of reconcilement and I suggest that it be marked Defendant's General Exhibit 1. Then you look at the items and if you are not satisfied with the items he presents, confine your examination to those particular items so as to see whether or not there are any items as to which you will require more details. Mr. Dixey will be able to give, or ought to be able to give, just exactly what he bases his reconcilement figures on. Is that clear?

(The paper referred to was filed and marked Defendant's General Exhibit No. 1.)

The Witness: I do not understand what is not on the statement.

The Special Master: You are not required to understand it at this stage.

The Witness: But I do not know what to admit. We would have to submit all of our papers, and it would be unintelligible to anybody except ourselves.

The Special Master: I do not think you will have a particle of trouble when you get down to the details.

Mr. Harrison: If he satisfies Mr. Potter I will be satisfied.

The Special Master: We will have Defendant's General Exhibit No. 1, which is the statement of reconcilement as to the debt. Now, Brother Harrison, you will take that up and see what you want to know about that. Take the items you want to inquire about.

By Mr. Harrison: 612

Q. I suggested to the witness that I would defer temporarily examining him about those items until I can be informed by Mr. Potter just what specific data he wants.

The Special Master: That is right. For the time being, then, the cross examination as to that point is suspended.

These are not paged, Mr. Dixcy, so I will have them all paged.

[*Vol. 6, May 7, 1909, Cross Examination of T. B. Dixcy.*]

By Mr. Anderson: 681

Q. I just wish to ask you, Mr. Dixcy, whether you included in your statement of the outstanding debt of Virginia on the 31st of December, 1860, bonds issued to George McIntosh or any of them. I think it is $22,000—the McIntosh bonds?

A. Bonds issued by the State of Virginia to George McIntosh?

Q. They were issued to somebody.

A. They have been retired, Major. My recollection is they have been retired.

Q. They have all been retired?

A. That is my recollection of it, but it is right here in the exhibit. There were $25,300 issued, and they were all retired—purchased and cancelled by the Sinking Fund established under the Act of March 26th, 1853.

By the Special Master: 682

Q. Do they enter into your statement ultimately?

A. Not on January 1st. They had been retired previous to that. Their issue is shown here, and their retirement is shown here.

Q. Shown on your schedule?

A. Yes, sir.

Q. It does not make up a part of the debt?

A. It it not a part of the total.

Q. Because up to that time they had been paid?
A. They had been paid and cancelled.

By Mr. Conrad:
Q. They were not paid, in your judgment, by the substitution of other evidences of debts issued by the States?
A. Not those bonds of the State issued to George McIntosh.
Q. They were satisfied, extinguished, wiped out, you think, by payment made?
A. Yes, sir; the books so show.
Mr. Anderson: That is all. I have not traced them down.

By the Special Master:
Q. What is the first entry you find in these books relating to this item of $104,000 of bonds of the Loan No. 1 to the James River, independent of this bond account or bond register?
A. $161,600?
Q. Yes; where do you find the first entry in the books of Virginia that relate to that item?
A. Outside of this bond register? 683
Q. Yes.
A. Outside of the register?
Q. Yes; in the accounts?
A. Well, there are books kept by the second auditor that were opened on May 2nd, 1823. All these entries that had up to that time taken place and were recorded in the original books of the James River Company were transferred in one journal entry on May 2, 1823, to these books that were opened under the act of 1823 by the second auditor, whose office was established by the act of 1823.
Q. Was that simply a duplicate of the preceding entries?
A. Yes; it is not an original entry, in the sense that it is the first relating to this.
Q. Are there any original entries relating to that item showing the disbursement of money by the State of Virginia on account of that $161,000 item?
A. That is the first entry.
Q. Are there any entries on any books showing any disbursement of money, either for interest or principal, on account of that $161,000 item?
A. At any time?
Q. Yes, at any time? If so, what is the first one?
A. I have just got to get the scope of that clearly in my mind before I answer. Will you read that question.

The question was read as follows:
"Q. Are there any entries on any books showing any disburse-

ment of money, either for interest or principal, on account of that $161,000 item?"

A. Why, yes, in part. 684

Q. What is the first entry in relation to it?

A. I will have to look it up. I cannot say, from memory, but I can look it up and show it to you.

Q. What you have just given me is simply a duplication of the original bond entries, practically. This original book you have produced here is a register of the bonds issued. Then when the public works came in, in 1823, the first entry they made on their books was simply to duplicate those entries, so as to have a continuous record of the bonds that may have been issued?

A. That is apparently true; yes, sir.

Q. This No. 1 loan, although named in the bond record—was it or was it not a bond, or was it a certificate of stock issued by the James River Company?

A. It was not a stock certificate as stock is generally understood today. It was a certificate of indebtedness.

Q. Of whom?

A. Why, of the James River Company to the State.

Q. Then the loan indicated as No. 1, $161,000, was evidenced by certificates issued by the James River Company?

A. The President and Directors of the Literary Fund.

Q. And that is all the bond register shows?

A. Yes, sir; and the face of the certificate itself shows that it was registered in 1823, although it had been issued some years previous.

Q. Do any of those certificates connected with the $161,000, import any obligation either on the part of the principal or the 685 interest on the part of the State of Virginia, so far as you have been able to ascertain?

A. Not on the original certificates amounting to $161,000, due. The first time any of that debt was assumed by the State was under the Act of March, 18th, 1840, when the State assumed an obligation of $40,000 of those bonds, but that is aside from the $65,000. The $65,000 had never been assumed by the State. It was still an obligation of the James River Company to the State on January 1, 1861, and it was so held in the Literary Fund until 1871.

Q. Do you find any entries on the books of Virginia showing any payments on account of that $161,000, either the $39,000 or the $65,000, either by way of principal or interest at any time, and if so when is the first entry, and what does it show?

A. They were funded from time to time. I will have to look that up, your Honor. I cannot say indirectly from memory.

Q. Was there any payment of interest?

In the Act of 1820, if I remember it right there is a stipulation

that the State of Virginia shall guarantee the interest, not exceeding $12,000 a year, that is, any deficit of interest. That is it in substance, if I understand it.

A. In the Act, it makes the amount $12,000.

Q. That is a maximum?

A. Yes; but for that $12,000 the State was to receive from the James River Company more of these certificates of 686
indebtedness, so that it was a loan. It was a loan to the company, for which the State received a certificate.

Q. Did the State actually loan anything under those circumstances?

A. Yes; it did, certainly.

Q. When did it make the first loan?

A. That is the point I shall have to look up.

Q. That is what I want to find out? I want the entry.

Mr. Conrad: We can give it to you, sir, as Mr. Lightfoot is familiar with a series of acts beginning with the Act of February, 1817.

The Special Master: But I would like, when Mr. Dixey is able to get it, to have the information, either now or later. Then I want to see the original book myself and see just exactly what it shows. I want to see when that loan first became connected with the accounts of the State of Virginia with reference to disbursement, either for interest or principal.

Mr. Conrad: The Act of February, 1820, made the State liable for those certificates.

The Special Master: Of course we have the acts, but in addition to the acts I want the accounts of the State with that particular loan, so that I can see just exactly what the entries are.

Mr. Anderson: There is other evidence in that connection that we wish to offer.

The Special Master: Yes; this does not preclude you from anything. I simply want to get this information myself. 687
Have you anything by way of re-direct examination, Mr. McClintic?

Mr. McClintic: Yes, sir; I want to ask a question or two.

Mr. Anderson: By the Act of 1820 the James River Company was made the agent of the State.

The Special Master: Of course the acts of the legislature are open to us all, but I want to get, so far as I can, contemporaneous acts of the State in relation to the loan. I want to see just exactly what was done. Are you waiting for Mr. Dixey, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Is he looking up something for you?

Mr. McClintic: He is looking up that item for your Honor.

The Special Master: You need not bother with that now.

The Witness: I can show it to you in a minute or two.

The Special Master: Let your assistant be looking for it. You may re-examine Mr. Dixcy, Mr. McClintic.

Redirect Examination.

By Mr McClintic: 688

Q. Have you seen a letter dated December 19, 1821, written by John Coalter of the Board of Public Works of Virginia, published in the Journal of the House of Delegates, 1821-1822?

A. I have seen that published copy.

Mr. McClintic: We desire to offer in evidence a letter of John Coalter, then President of the James River Company, dated December 19, 1821, and published in the journal of the House of Delegates for the Session of 1821-22, at page 31. I have not the letter here in full, but I have an extract from it. The journal, however, can be reached.

The Special Master: It will be admitted.

By Mr. McClintic:

Q. In that letter it is said:

"It is understood to be admitted by money holders in other states that the funds pledged for the payment of the interest on this loan may be very ample, and their continuance, as well guaranteed by the faith of the State, as though the loan was on behalf of the State, and that the final redemption of the debt may be safely calculated upon; but while these things are not expressly guaranteed by the State, but merely susceptible of demonstration from the Acts of Assembly and other public documents, the loan, though a valuable one to those wishing to make permanent investments, is not so readily convertible in market, as to answer their view. It has, however, been pretty satisfactorily ascertained that a State stock, even at five per cent, would sell for more than 689 par which merely shows to those wishing to make permanent investments, that the stock now offered to the public at five and a half per cent. must be a most valuable stock."

Had you read that letter when you gave the opinion to Mr. Harrison a while ago that you regarded this—

A. I had read a copy.

The Special Master: Do you put in the full letter?

Mr. McClintic: Yes, sir. I have not the full letter here, however.

Mr. Anderson: What date is that?

Mr. McClintic: It is dated December 19, 1821.

The Special Master: Here is the entry found on page 29 of the

book, to be put in as a part of the answer of Mr. Dixey. This applies in *realtion* to the first entry of the books of Virginia, No. 1 loan, $161,000.

The Witness: I produce a book, a book of original entry as I understand it, so far as these entries are concerned, at page 29, September 30, 1823, are found the following entries.

The following is a correct transcript from the page referred to:

"30th September, 1823.

30	Interest on Loans to James River Co. for interest paid to 1 July, 1823, viz.:				690
	July 15 on certife No. 67 from 1 Nov. for to Farmers Bank of Va.	6,000	239.18		
	July 15 on certife. No. 1, 6 Mar. to P. and Directors L. fund for..	5,000	1,500.00		
	" 16 on certife No. 70 (from 1 Dec. 1822) to Catherine Hayes for..	4,000	122.63		
	" on certifie No. 71 from 1 Dec., 1822 to Llowey Hays for....	4,000	122.63		
	" 17 on cert. No. 21 to 55 incluse $100 each and on No. 73 for $5,000 to Bank of Va.	35,000	1,067.53		
	" on cert. No. 11 to 20 incluse. for $1,000 each on No. 72 $5,000 No. 73 $2,200 and 75 $3,300 to Bd. P. Works	40,300	1,145.75		
	" 23 on cert. No. 61 to 66 inclus. for $1,000 each & No. 76 $3,000 to Catherine Gamble	9,000	451.97		
	" 25 on certf. No. 69 (from 27 Dec.) to Mutual assce society &c..	5,000	153.29	Previous entries in this column 634	
	Total on loans prior to 25 Feb.. 1823...			7,800	
				4.902.98	691

(July)				
30 do. 15 On certf. No. 11 to 60 incluse. to Farmers Bk. Virginia	50,000	821.90		
17 On certf. No. 1 to 10 & 61 to 110 for $1,000 each to Bank of Va.	60,000	919.52		
15 On No. 111 to 170 inclusive to Literary Fund	60,000	729.84		
Total on Loans No. 2 after 24 Feb. 1823....			2,471.26	
Whole amount of dividends & Interest				15,798.24
Whole amount of disbursements				88,293.38

By the Special Master:

Q. This is the first entry you find of any kind of the books of the Commonwealth in relation to the disbursement of the $161,000?

A. Yes, sir; the first original entry.

Q. Well, is there any other duplicate entry indicating an original entry in any other place of any disbursement of funds on account of the $161,000 item?

A. The transcripts in the front of the book seem to be copies of the original books of entry of the James River Company.

Q. Do the original books of entry of the James River Com- 692
pany prior to September 30, 1823, contain any record of any disbursements on the part of the State on account of this $161,000 item, so far as you know?

A. I may answer in this way. The Act of 1823 provided for the transcript of all these entries by the Second Auditor's office. It provides that all the receipts and all the disbursements of the James River Company shall be taken up on the books in the Second Auditor's office; they are matters of record merely, copies of transactions that have gone before, and I think the caption refers to the provisions of the Act.

Q. The caption reads as follows:

"Richmond, May 2nd 1823.

"On this day the books and papers of the James River Company were deposited with me by Robert Pollard, Esq., late clerk and treasurer to the said company, in conformity with the directions of an Act of the General Assembly passed the 24th day of February, 1823, entitled 'An act making more effectual provisions to carry into

effect the Act entitled "an act to amend an act entitled an act for clearing and improving the navigation of the James River, and for uniting the eastern and western waters and for other purposes.'"

"JAMES BROWN, JR., *Second Auditor.*"

My question is whether you find any entry on the books of the James River Company or the books of the Commonwealth of Virginia earlier than this one found on page 29, showing any disbursements either for principal or interest on account of this item, $161,000? 693

A. We have never found the books of the James River Company, and this is the first entry on the books of the Commonwealth.

By Mr. Harrison:

Q. Did you look in the Treasurer's office to see if you could find payments on account of the indebtedness prior to December 30, 1823?

A. I do not understand you?

Q. I ask you if you examined the records of the Treasurer to ascertain if you could whether payments had been made through that office on account of the James River Company Debt No. 1, prior to September 30, 1823?

A. Yes; we found no such payments.

Q. You did examine and you found no such payments?

A. We found no such payments.

Q. Does not the Act of 1823 expressly provide that payments of interest on that original loan should be made?

A. Oh, that is a different matter, payments of interest. I did not so understand you. Yes; the State had said that they would pay $12,000, and later $18,000. I think the $18,000 was in the Act of 1823. There have been payments by the Treasurer on account of that interest.

The Special Master: Do the books of the Commonwealth show payments of interest prior to September 30, 1823?

A. On account of that $12,000 pledged, yes.

The Special Master: Then you can produce those entries.

By Mr. McClintic: 694

Q. When did the books of the James River Company start, what was the beginning of them, kept for the Commonwealth?

A. May 2nd, 1823.

The Special Master: What will be the first thing we will take up this morning; shall it be the question as to the results reached by the accountants?

Mr. Anderson: We had best take up these schedules seriatim and submit them.

The Special Master: Very well. What have you to submit with reference to Plaintiff's Exhibit A-1, which relates to the first paragraph in the decree, in the line of a revised schedule, as 820
the result of the work of both accountants, if anything?

Mr. Anderson: Suppose Mr. Potter takes the stand.

The Special Master: Have you any schedule that has been agreed upon by the accountants on both sides? In the first place, has there been any change in attitude in reference to the date?

Mr. Harrison: Virginia starts from the same date that West Virginia starts from.

The Special Master: Enter upon the record that Virginia agrees with West Virginia upon the date when the accountants should begin, which date is—

Mr. Anderson: March 17, 1823.

The Special Master: March 17, 1823. Is that agreed to?

Mr. Dixey: March 19th, it should be.

The Special Master: I want to get into the record what we agree upon.

Mr. Carlisle: I still understand that the accountant on the other side includes in his statement that item of $65,000 which we say is shown to have been a debt before that date.

The Special Master: Let me make this statement. If these accounts begin on March 19, 1823, and that date is agreed upon by counsel on each side, the Master will not consider any item prior to that date. Now, then, with that statement from the Master,
am I to understand that the counsel for Virginia and West 821
Virginia agree that that is the date when the accounts begin?

Mr. Carlisle: That is correct.

Mr. Harrison: Yes, sir.

The Special Master: That settles that. Now, let us have the next point. You are submitting, Brother Harrison, a schedule in lieu of Plaintiff's Exhibit A-1, which is under the first paragraph of the decree?

Mr. Harrison: Yes, sir.

The Special Master: Am I to understand that this schedule, marked Plaintiff's Substitute Exhibit A-1, is to take the place of Plaintiff's Original Exhibit A-1?

Mr. Harrison: Plaintiff's Revised Exhibit, I would say.

The Special Master: I want to get this on the record. I have now before me Plaintiff's Substitute Exhibit A-1.

Mr. Anderson: It is a supplemental statement to the other, really, because it does not go into the details. Therefore, it is supplemental.

Mr. Harrison: It is a revised statement.

The Special Master: Let us see about that for a moment; I want to get this record as short as we can get it. After we get through with what we agree to, I am going to ask what I asked before, but which I suppose they could not do. What I want to get on the record is exactly what we agree to now. Excuse me, but these suggestions go for nothing if they interfere with the views of counsel on either side. There is no occasion for lumbering up this record with any details that are not necessarily involved in an intelligent conclusion on the part of the Master or on the part of the Court. It is conceivable that a large number of details must 822 have been prepared and have been prepared for counsel on both sides, but if you have a lot of records about which there is no controversy, my own view is that there can be an agreement upon figures and we can shorten the record very much. We can get our schedules down to something as concise as possible, and it will be the better for all concerned. So that if you now have a schedule that presents, so far as either of you is concerned, under Paragraph 1 all of the figures you desire to have presented, eliminating details and containing summaries which adequately present the rights of either party, it seems to me the concise schedule you both agree upon is the thing that we ought to have.

Mr. Harrison: Let me state this, subject to correction by Mr. Dixcy or Mr. Potter. The supplemental schedule referred to shows that the total amount of the debt outstanding in the hands of individuals, or, in other words, in the hands of the public, on 1st of January, 1861, was $32,919,863.93; and as to that figure I understand the two accountants are in accord.

The Special Master: You are in accord on that, Mr. Dixcy?

Mr. Dixcy: Yes, sir.

Mr. Carlisle: Of course we do not agree, as I understand it, that there are not items in there which do not belong to the public debt. For instance, the bonds held in the Literary Fund. The figures, however, are correct.

Mr. Harrison: They are not in there.

The Special Master: You will have to be governed very 823 largely by the suggestion of Mr. Dixcy, who is unquestionably familiar with the details. Of course I will not hold you to anything that may be agreed to if you inadvertently make a concession which would turn out to be adverse to your interests. In such a case, I would expect to relieve you from an admission so made; but what we want now is to get down on the record the items upon which we agree, so as to eliminate all possible controversy.

Mr. Harrison: In this Exhibit, Plaintiff's Substitute Exhibit A-1, I think the figures given for the total public debt of the Common-

wealth of Virginia, December 31, 1860, are agreed upon, as follows: $32,919,863.93.

The Special Master: The item thus stated by Mr. Harrison on the part of Virginia we understand to be agreed to by counsel for West Virginia and by the expert on the part of West Virginia?

Mr. Dixey: That is correct.

The Special Master: That item, then, will be reported by the Master as agreed to by the parties.

Mr. Harrison: Now, the point of this agreement relates to three subjects. Virginia shows in her schedule, in addition to the figures agreed to, $1,150,067.33, as held by the Literary Fund; also $1,329,557.20 held by the Sinking Fund; and $146,500.00 held by Board of Public Works; which three items added to the agreed amount of the debt outstanding in the hands of the public, make a total of $35,545,988.46, which Virginia rests upon as constituting the entire public debt on the date mentioned, December 31, 1860.

The Special Master: I want to make this inquiry. Refer- 824
ing to these figures, held by the Literary Fund, $1,150,067.33; held by the Sinking Fund, $1,329,557.20, and held by Board of Public Works, $146,500.00; do Mr. Dixey and counsel for West Virginia concede the figures are correct?

Mr. McClintic: The first item in the Literary Fund, as I understand it, contains the $65,000 which has been referred to.

Mr. Harrison: Yes.

Mr. McClintic: We do not concede that.

The Special Master: Then I will put it this way: Virginia claims that in addition to the $32,919,863.93 there should be added to the public debt the following items: Held by the Literary Fund, $1,150,067.33. As to this item, West Virginia disagrees, first upon the ground that it is not a proper part of the public debt; and, second, upon the ground that the aggregate is too large in any event. So that as to that item there is no agreement, the only disagreement being an item of $65,000 involved in the Literary Fund and claimed by West Virginia to have been contracted prior to the date of the beginning of the debt, and that it has never been a part of the State debt at any time. As to the item of "Held by the Sinking Fund, $1,329,557.20," West Virginia agrees to the accuracy of the amount stated and disagrees upon the question as to whether it is properly included in the public debt. Am I correct in that?

Mr. Carlisle: Yes, sir.

The Special Master: So that as to the amount both parties agree; as to classification, they disagree. The next item, "Held by Board of Public Works, $146,500.00." 825

Mr. McClintic: That is all right.

The Special Master: As to the amount of $146,500, Virginia and

West Virginia both agree; West Virginia contends that it ought not to be included in the public debt. Now, I would like to inquire whether there are any of the computations submitted in the schedules on the part of Virginia and West Virginia under paragraph 1 of the decree that are essential or illuminating upon the question of settling the first controversy as to the $65,000 in the Literary Fund.

Mr. Carlisle: Yes; we have the history of that $65,000 which was offered here before, certificates—

The Special Master: Those figures can be very easily segregated from both of the schedules, I suppose. So we can eliminate them from the other figures. Is there any difficulty about that, Mr. Dixey?

Mr. Dixey: No, sir.

The Special Master: Is there any difficulty about that, Mr. Potter?

Mr. Potter: No, sir.

The Special Master: Are there any items in Paragraph 1 that are essential and material in determining the question as to whether the amount claimed by Virginia, $1,329,557.20, should or should not be included in the public debt? That is, are there any items or details in that account, or is that simply a question of the construction of some legal provision?

Mr. Anderson: That is on the construction of a statute.

The Special Master: It does not involve any details, so 826
long as you agree on the amount. Are there any details contained in the figures given in either schedule that tend to establish or controvert that proposition?

Mr. Harrison: Not at all.

The Special Master: If so, we do not need the schedules for that purpose.

Mr. Anderson: The only question is upon that $65,000, and that is a question of the construction of the statute.

The Special Master: Are there any details in any of the schedules submitted by either party which are material as bearing upon the question as to whether or not the $145,500.00 held by the Board of Public Works is or is not a part of the public debt, so long as you agree upon the amount—

Mr. Anderson: That turns entirely upon the statute, I think.

Mr. Harrison: A question of construction.

Mr. Carlisle: As to all the bonds in the Sinking Fund—

Mr. Anderson: As to all the bonds in the Sinking Fund except $65,000.

The Special Master: That is a question of law.

Mr. Carlisle: It is a question of law as to whether Virginia can owe herself this money.

The Special Master: I do not want anything superfluous in this

record. I want you to have everything in that either of you think has any tendency to establish the contention of either, but, outside of that, it seems to me we have no occasion to lumber the record with anything that is unnecessary. 827

Mr. Carlisle: There is nothing, I think—

The Special Master: Why, then, are there any items in the accounts of either of the schedules presented on the part of Virginia and West Virginia that need to be considered in connection with the public debt except the subject which I am going to call attention to in a moment—the manner in which it was constructed? There are none, are there?

Mr. Harrison: I do not think so.

Mr. Anderson: There is one matter there, contingent liability, we thought should be mentioned.

The Special Master: I do not see it.

Mr. Anderson: It is a supplemental exhibit to Exhibit A-1.

The Special Master: Is that an additional item that you claim is a part of the public debt?

Mr. Anderson: Yes, sir; an additional item.

The Special Master: I am discussing this particular schedule.

Mr. Anderson: I understand.

The Special Master: As to this schedule I now have before me (Plaintiff's Substitute Exhibit A-1), as to this exhibit, there is nothing in the accounts that needs to be considered.

Mr. Anderson: No.

The Special Master: Now, the next question I want to inquire about is whether you agree in the statement of how and in what form the debt was evidenced and by what authority of law, and for what purposes the same was created, and the dates and nature 828 of the bonds or other evidence of said indebtedness. Now, do the accountants agree, having agreed upon the amount?

Mr. Dixey: I know of no differences between us there.

Mr. Carlisle: So far as this is an indebtedness. That question is behind it all.

The Special Master: I understand that. There is nothing conceded as to clasification. It is simply getting results.

Mr. Carlisle: That is all.

Mr. Dixey: We quote the names of the acts, the companies for which the bonds were issued, and Mr. Potter has done the same thing.

The Special Master: Do you agree on that?

Mr. Potter: Yes.

The Special Master: Then I will ask you to have one schedule on that matter. Give us a joint schedule. Is that agreeable?

Mr. Carlisle: We do not want these stricken from the record, but they will not have to be printed.

The Special Master: When we get the case all in, I want to have printed for the convenience of counsel and myself in the argument just exactly what we all think ought to be submitted finally to the Supreme Court of the United States. I want to make that record just as short and just as concise as I can. The shorter we get it, and the more concise it is, the more it will relieve counsel of argument, the more it will relieve me in coming to my conclusions, and the more it will relieve the Supreme Court of the United States. Such a record will be infinitely more satisfactory to 829 the Supreme Court. I am going to make the record, if I can, upon which you argue before the same record that I submit to the Supreme Court. For that reason, where you both agree on a statement of facts, it seems to me it is best to have one schedule rather than two schedules. Still, you need not withdraw anything already submitted. But when we come to print, it seems to me there is no necessity for submitting two schedules which involve the same figures and details. As I said before, when we get around to fixing this record up for printing, I shall request Virginia and West Virginia to select some gentlemen, in whom each have confidence, to take this record and go over it and cut out everything that has not any bearing nor any material weight in connection with the issues. Then the transcript record we have here will be as short as possible. After you have agreed on a great many of these items, there is a great deal of discussion it seems to me that can go out. Of course anything that you want in will go in. Do you get my point, Brother Carlisle?

Mr. Carlisle: Yes, sir.

The Special Master: For that reason, I see no reason why there should not be one joint schedule covering the question as to how and in what form the debt was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness; and if the accountants are not able to submit to me now, so I can have the record show that both parties agree upon the schedules selected, I will leave that. Are you ready now with that, Mr. Dixey?

Mr. Dixey: We have not got a schedule that we can both 830 sign now.

The Special Master: You know what I want?

Mr. Dixey: We have not got it in full. We have all the facts here.

The Special Master: That is only a question of type-writing, then, practically?

Mr. Harrison: It will be necessary to do more than agree on the fact that they are in accord—

The Special Master: Of course it is a matter of quite a good deal of importance to both parties, and as far as I am concerned I do not want anything here that may turn out to be an inadvertence or a misunderstanding; but what I want to do is that when I report an agreement by the parties here, of course I shall report it as a fact; but I do not want to report any agreement between you people, on these important questions, unless I have upon my record the facts showing just what the agreement was. For that reason, it would be much more satisfactory to me to have one schedule. I do not want to print both these schedules; there is no occasion for that. I do not want to print Virginia's schedule and leave out West Virginia's schedule, and I do not want to print West Virginia's schedule and leave out Virginia's schedule. Now, if you both agree on a schedule like that, I want to put that in the record to show that you both agree on it. Do you follow me, Brother Conrad?

Mr. Conrad: If your Honor please, I do not see how it is practicable to produce a composite schedule from these two discordant ones that are before you now. If they differed only in 831
items, it possibly might be practicable; but they do not differ in items. They differ not so much in items as in the plan of classification. The plan of classification adopted by Mr. Potter, for illustration, is that that has been pursued by the State government of Virginia from the beginning. The plan adopted by Mr. Dixcy disapproves of the methods adopted by the State government, is a departure from it.

The Special Master: May I inquire this, Brother Conrad: Do these suggestions that you are now making relate to the question of how and in what form the debt was evidenced?

Mr. Conrad: No, no—

The Special Master: I understand that your experts both agree upon this question (reading from the decree):

"How and in what form the same was evidenced, by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

Mr. Conrad: I do not think there is any disagreement about that.

The Special Master: That is the only one I am making any suggestion about. We will make more progress if we go step by step. My suggestion is this: We will not encumber this record with Mr. Dixcy's statement and Mr. Potter's statement, both of which are the same thing: we will put into the record one schedule as to that

part of the answer to Paragraph 1, and that schedule will be signed by Mr. Dixey and by Mr. Potter, and if the parties agree, we will show on the record that the parties do agree on those 832 facts. That eliminates them from controversy. Now, then, Brother Conrad, as to other features of the controversy, I do not expect Virginia or West Virginia to agree to anything that in any way tends to embarrass the rights of either. I thought I would take this up paragraph by paragraph, and when you reach a place where there is any suggestion of agreement that tends to embarrass the rights of your client, or the other side the same thing, of course as to that there is a disagreement, and as to that I will hear you. Do I make myself clear?

Mr. Conrad: Yes, sir.

The Special Master: So I will put into the record that the schedule submitted with reference to this part of Paragraph 1 that I have been calling attention to, and signed by both accountants, is agreed to by Virginia and West Virginia. Now, except as we have to recur to this Literary Fund, that disposes of Paragraph 1.

Mr. Potter: May I ask a question?

The Special Master: Certainly.

Mr. Potter: Need this joint schedule be in detail or simply as to this total?

The Special Master: Certainly it must be in detail, because here is what the paragraph requires (reading from decree):

"The amount of the public debt of the Commonwealth of Virginia on the 1st day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness." 833

It is impossible to answer that question without the details. As to that, we want the details signed by both of you, and when it comes to me thus signed I shall report that the parties agree upon that part of the Paragraph 1. Is there any objection to that?

Mr. Anderson: No, sir.

Mr. Carlisle: No, sir.

Mr. Anderson: This is supplemental, this is a supplemental statement of Paragraph 1. We think it should be noted in the record.

The Special Master: Let me make this suggestion. Suppose we do this. See how this appeals to you, Brother Anderson. What I am inclined to think I would like to do now is to go through the accounts where you all agree and eliminate those as subjects of controversy. Then we will go back and take up Paragraph 1, so far as you have additional matters to suggest, and so on all the way

through. Of course, when we come to print this case, we can take the testimony that relates to each paragraph and see that it is gathered together, so we will not have to be hunting all over the record to get what we want. It will be some work, of course, to do that, but when we get it done we will have a record that will be worth something.

Mr. Anderson: Your Honor proposes to go over all the schedules?

The Special Master: Yes. Let me get your suggestion.

Mr. Anderson: This can be disposed of in a moment, sir. By the Act of March 8, 1847, the State of Virginia guaranteed the payment of the interest and principal upon $300,000 of bonds 834
of the Chesapeake & Ohio Canal Company. The State guaranteed the payment of the interest without any qualifications. The guarantee of the interest was that the interest should be punctually paid, and the guarantee as to the principal was that it should be ultimately paid. The Chesapeake & Ohio Canal Company is still an existing corporation. It has not been found to be ultimately insolvent, so far as we can ascertain. So it cannot be determined now whether this liability will ever have to be met by the Commonwealth of Virginia.

The Special Master: In other words, this is a contingent liability?

Mr. Anderson: Yes, sir.

The Special Master: Your claim is that it should be included in the public debt?

Mr. Anderson: As an indeterminate and contingent liability?

The Special Master: Now this will be marked Plaintiff's Supplemental Exhibit A-1.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Supplemental Exhibit A-1, the previous paper submitted being marked "Plaintiff's Substitute Exhibit A-1.)

The Special Master: Has this been submitted to the other side for criticism as to amounts?

Mr. Anderson: Yes, sir.

The Special Master: Then I would like to inquire whether the amounts stated in the computation—and this without reference to the propriety or impropriety of their charge—are cor- 835
rectly stated as to amounts.

Mr. Dixey: I think so, yes.

The Special Master: So that, so far as the computations are concerned, in Plaintiff's Supplemental Exhibit A-1, both parties agree that they are correctly stated? They disagree as to whether or not they should be included in the public debt, but they agree that they are correctly stated?

Mr. Anderson: Yes, sir.
Mr. Dixey: I think so.

[*Vol. 7, July 1, 1909.*]

The Special Master: To see whether we can make any more progress now, without wating for the reports from the experts, I will inquire whether either party has any evidence it wants to submit on this item of $65,000? 868

Mr. Carlisle: I think, so far as I know, there is no oral evidence that has been offered about it.

Special Master: Is that your understanding, Brother Anderson?

Mr. Anderson: No, sir, no new evidence. We rely on the statute entirely.

The Special Master: As to the item at $65,000 in the Literary Fund, that is it, is it? 869

Mr. Anderson: Yes, sir—

The Special Master (continuing): Neither party has any additional evidence to submit, both conceding that the rights of the parties are to be determined by the proper legal construction of the statutes involved. Is that right?

Mr. Carlisle: There are several statutes. Yes, sir.

Mr. Harrison: Now, will you get back before you leave the schedules, to Supplemental Schedule A-1?

[*Vol. 7, July 1, 1909.*] 873

The Special Master: In order to get along as far as possible, suppose we take up the paragraphs in their order. Now, as to Paragraph 1, does either side desire to submit anything in addition to the evidence already in, relating to the three items mentioned in the schedule, relating to "Held by the Literary Fund, $1,150,067.33;" "held by the Sinking Fund, $1,329,557.20;" and "held by Board of Public Works, $146,500?" Does either side desire to submit any evidence bearing upon those three propositions under that paragraph, or have you everything in that you want to put in on that?

Mr. Anderson: Virginia does not desire to submit anything.

The Special Master: How about West Virginia?

Mr. Conley: West Virginia does not desire to submit anything.

Mr. Anderson: Except, of course, it is understood that counsel will file a schedule reciting the different acts.

Mr. Carlisle: The acts under which the Literary Fund and the other fund held these bonds?

Mr. Anderson: Yes, sir. 874

The Special Master: Then it is understood that so far as the plaintiff Substitute Schedule A-1 is concerned, the case is closed. Is that agreed to?

Mr. Anderson: Yes, sir.

The Special Master: Now, we have here Plaintiff's Supplemental Exhibit A-1, headed "Public debt of Virginia; undetermined contingent liability." Does either side desire to submit any evidence in relation to that schedule?

Mr. Harrison: We do not.

Mr. Anderson: Except Mr. Potter is prepared to testify as to the accuracy of the figures.

The Special Master: That is agreed to. The accuracy of the figures is agreed to. Has West Virginia anything to submit as to schedule?

Mr. Carlisle: No, sir.

The Special Master: Then, as to Plaintiff's Supplemental Exhibit A-1, the case is closed.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT B-1.

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Estimated—Without Slaves:		
Virginia	748,171 =	66.4789%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph II of the Decree.

[See reference to Area contained in testimony of A. G. Potter under Paragraph 7, page —— of this volume, indented pages 80 and 81.]

[*Vol. 2, February 15, 1909. in Relation to Area.*]

The Special Master: Does any one else desire to be heard on the part of Virginia?

Mr. Anderson: If your Honor please, I can not, perhaps, add anything to the contention that has been made on the part of Virginia in opposition to the application for a continuance. That has already been exhaustively made by my associates. I wish, however, to refer to two matters, which will only occupy a few minutes. One is the statement of Senator Spooner, upon which he based one of his arguments for a continuance, as to any possible objection in this case about the territorial area of the Commonwealth of Virginia and of the State of West Virginia. A report was filed here with reference to the area, which I had not had an opportunity to examine, and which it was finally admitted at the former hearing was a fictitious area. I stated then that we did not rely upon it, and that there would be no controversy upon that question.

I wish now, in furtherance of the suggestion then made, to say to my friend, that Virginia is willing to accept the area furnished by the Department of the United States Government, either the Geological Survey or the Census Bureau.

The Special Master: The Geological Survey would be the 170
natural survey.

Mr. Anderson: The Geological Survey gives, as the area of Virginia, 40,262 square miles, and West Virginia, 24,022 square miles of land, and it is the land only that is assessed.

Mr. Carlisle: That gives both the water and the land?

Mr. Anderson: The water and land, both.

Mr. Carlisle: We think the water and land surface both ought to be included because the water surface is very valuable. Hampton Roads, the big James River and the other navigable streams are very valuable to the State.

The Special Master: You say these figures do include both water and land?

Mr. Carlisle: Yes; so much land and so much water. We want them both.

Mr. Conrad: It says, "the assessed value."

Mr. Anderson: The direction of the decree was that the assessed value should be ascertained, and the area of the territory. I take it it is immaterial whether the area is 40,000 square miles or 42,000 square miles, because I take it there will never be any ascertainment of this debt on the basis of area. It will be on the basis of values.

The Special Master: It is not immaterial to me, because that is one of the things I have got to find—the extent. Let us see right here if we are ready to agree. If you have the figures of both water and land—

Mr. Anderson: We have them both here. 171

The Special Master: If you have them both here and you agree on this public document as being the accurate result, why can we not put right into the record that it is now agreed between both parties that the area is as follows; then give the land area and the water area of Virginia and the same of West Virginia? Those facts then would be eliminated from controversy. That is the extent, and what may be predicated upon land and water, or upon land or water, is a matter to be determined hereafter; but we can get that fact out of the way if you both agree to it.

Mr. Carlisle: Their accountant has stated what he said was the area for a purpose, of course.

The Special Master: If the extent, which of course means area, can go into the record as agreed upon, that eliminates that fact from controversy.

Mr. Anderson: We are willing to agree that the area given at page 8 of Bulletin No. 302, Series F Geography, 53, United States Geological Survey of 1906, is an accurate statement of the area of the two States.

The Special Master: Will you pass that to me?

Mr. Anderson: Yes, sir. Now, we do not concede the water area has anything to do with this question.

Mr. Carlisle: There is no concession about it. You simply state the facts. There is no concession as to what the effect will be.

The Special Master: As long as we are here upon this, I will get this out of the way, Mr. Attorney General. Let me see if I state this so that both parties understand it.

It is agreed, under item 2 of the order, that the extent of Virginia is, land surface, 40,262 square miles; water surface, 2,365 square miles; total area, 42,627 square miles.

Of West Virginia, land surface, 24,022 square miles; water surface, 148 square miles; total area 24,170 square miles. Those are the figures shown by this official report. Are those figures agreed to as being the extent?

Mr. Carlisle: Yes, sir. 172

Mr. Anderson: Yes, sir.

The Special Master: That eliminates the matter of extent from controversy.

Mr. Anderson: We do not agree, on behalf of Virginia, that the water area should be taken into account.

The Special Master: The facts are stated. You will get the benefit of your legal proposition, whatever it may be. Of course that enables me to state very concretely what the facts are. Then what construction may be placed upon those facts is a matter for argument later.

[*Vol. 4. May 5th, 1909.*] 2751/2

[*Cross Examination of Arthur G. Potter on Plaintiff's Exhibit B-1.*]

[By Mr. Carlisle]:

The next clause of the decree is to ascertain the extent and assessed valuation of the territory of Virginia and West Virginia June 30, 1863, and the population thereof, with and without slaves, separately.

Mr. McClintic: In Exhibit B-1, responsive to item 2 of the decreee, you set out the area of Virginia as 48,951 square miles and the area of West Virginia as 45,537 square miles. Do you wish to let that stand as such or do you wish to correct it?

Mr. Harrison: It has already been corrected.

The Witness: I understood that the matter had been adjusted at the previous hearing.

The Special Master: All that relating to that subject matter would practically amount to nothing now because there is an agreement;

although of course it is a proper subject for cross examination. There was a stipulation at the last hearing. Of course it is still open, if you desire to pursue it on cross examination.

Mr. McClintic: I just wanted to ask one question to straighten it out.

The Special Master: Unless there is some real occasion for 276
it, I would not spend any time on it.

Value and population are other elements involved in paragraph 2, population with and without slaves.

By Mr. Carlisle:

Q. You have given the population of these two States, that is the population of what now constitutes Virginia and the population of what now constitutes West Virginia in 1860. Did you get it from the Census.

A. From the volume of the 9th Census of the United States, pages 68 to 72.

Q. And then you add 2.47 for an increase from 1860 to 1863?

A. Not 2.47 per cent, 2.47. In other words, 171 days.

The Special Master: Based on the preceding decade?

The Witness: Yes, sir.

By Mr. Carlisle:

Q. The Census day, under the law was June 1st of each ten years. Did you take that as the date from which you made your calculation of the increase?

A. I stated January 1st, 1861, to June 20th, 1863.

Q. You got the enumeration of the slaves and the enumeration of free persons of color in the same way, did you from the Census?

A. Yes, sir.

Q. You took the Census of 1860 and then you made an ad- 277
dition to it to ascertain the population in June, 1863?

A. Yes, sir.

Q. What method did you adopt to ascertain that fact?

The Special Master: That is, how did you get at your proportion?

A. I took the increase between 1860 and 1870 and applied the ratio to the population of the two States.

By Mr. Carlisle:

. You went back to the previous decennial period and got the average increase?

A. I got the average yearly increase.

Q. The average annual increase?

A. Yes, sir.

Q. And then you took the item that you did take here and applied that to it?

A. Yes.

The Special Master: What did you find the percentage of increase to be for the preceding decade?

The Witness: I had not figured on percentage. I have 20,000 whites, for instance, the increase in Virginia; and one-tenth of that would be 2,000. That is the way in which I arrived at the annual increase.

The Special Master: You did not take the percentage of increase for the decade, you took the concrete figures?

The Witness: I took the concrete figures.

By Mr. Carlisle:

Q. The decree says you shall ascertain this population with and without slaves. When you undertook to exclude slaves 278
have you not omitted all free persons of color in the State of Virginia?

(Consultation between Mr. Carlisle and his associates followed)

By. Mr. Carlisle:

Q. I will ask you this question. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia—

Mr. Conrad: Free persons of color?

Mr. Carlisle: Colored persons. Of course they were free in 1870. They were put down separately in 1860 as free persons of color.

Q. (Continuing) Did you not assume then, when you wanted to ascertain your final result, that there would have been, if slavery had not been abolished, 512,841 slaves in the State; is not that what you assumed?

A. I have not got your question straight.

Mr. Harrison: That is on page 11?

Mr. Carlisle: It is marked page 10 here.

Mr. Anderson: Page 11 of Exhibit B-1.

Mr. Robinson: The first two pages will explain how we got at that. You mean at the bottom of page one?

Mr. Carlisle: I will ask the stenographer to read the question.

The stenographer read as follows:

"Q. You find that there were in 1870, which was after this period, 512,841 free persons of color in Virginia. They were of course free in 1870. They were put down separately in 1860, as free persons of color. Did you not assume then, when you wanted to 279
ascertain your final result, that there would have been, if

slavery had not been abolished, 512,841 slaves in the State. Is not that what you assumed?"

A. I understand that they were put down as free persons of color in 1870.

By. Mr. Carlisle:

Q. Did you find that in the Census?

A. Virginia's total negro population in 1870 was 512,840.

Q. I did not ask you whether they were put down as slaves in 1860. That was simply my statement. What I want to get at is, how did you get at these figures as representing the free colored people in Virginia in 1870—512,841?

The Special Master: That is, how did he reach that result; where did he get that item?

Mr. Carlisle: Yes.

A. I took it from the Census, the 9th Census of the United States.

By Mr. Carlisle:

Q. That is, the Census of 1870?

A. Yes, sir.

Q. Well, then, did you not assume that a certain number of them were slaves in 1860 or 1863? You were to give that with slaves and without slaves. I want to know how you got it?

The Special Master: How did you fix the number of slaves in 1863; just give the method of computation. 280

Mr. Carlisle: That is what I want.

The Special Master: He wants to know how you arrive at your result as to the slaves in 1863, on June 20th. Begin at the foundation and give us your computation. Give us the figures.

The Witness: The number of slaves in 1863?

The Special Master: How did you ascertain the number of slaves June 21, 1863. Give us the method you employed by which you reached the result in your statement?

The Witness: I first established the percentage of slaves and free negroes in 1860 in Virginia and West Virginia. Then I determined the free negro population in 1870.

The Special Master: What figures did you have to start with? You first ascertained the number of slaves in Virginia and West Virginia in 1860. What are those figures? That is what you want, is it not, Brother Carlisle?

Mr. Carlisle: Yes; the detailed steps.

The Special Master: Give us your figures, the detailed computation and the results.

The Witness: Virginia, 1860—472,494 slaves; 55,269 free negroes. West Virginia, 1860: 18,371 slaves; 2,773 free negroes. With that as a basis, I worked out the percentage shown on the schedule, which

was 89.53 per cent. of slaves for Virginia and 10.47 per cent. free negroes.

West Virginia, 86.89 per cent. slaves; 13.11 per cent. free negroes.

By the Special Master: 281

Q. That gave you the proportion of free and slaves, the preportion they bore to each other at that time?

A. Yes, sir.

Q. What was your next step?

A. I took the free negroe population of the two States in 1870, which was 512,841 in Virginia and 17,980 in West Virginia.

Q. Please state that again?

A. Virginia's negro population in 1870 was 512,841, of which 10.47 per cent., or 52,694, would be free negroes if slavery had existed at that time. On the same basis there would have been 2,357 free negroes in West Virginia in 1870, if slavery had existed. I took the total white population, which in 1870 was 712,322, and added to that the percentage of free negroes, determined by the method just mentioned, namely, 53,694, making a total of 766,016 total free population of Virginia. The total white population of West Virginia in 1870 was 424,034, to which I added the number of free negroes, determined by the method just described, 2,357, making a total of 426,391, as the probable total population in 1870. Comparing these two figures, I get the ten years increase at 18,880 in Virginia; and the increase in West Virginia, 68,074; to which I add 2.47.

Q. To what—to the population in 1860?

A. The population of 1860, to determine the population in 1863; making a total of 751,799 in Virginia, and 375,131 in West Virginia.

By Mr. Carlisle: 282

Q. Is that all?

A. That is assuming that the United States Census was made as of December 31, 1860, at the end of the year, taking in the year.

Q. If the United States Census was taken on the 1st of June, as of the 1st of June, 1860, you omitted, when you made the calculation, seven months and ten days, did you not?

A. If it was so taken.

Q. Would not that make a very great difference in the percentage?

A. It would make a very slight difference.

Q. A very slight difference? Would not one per cent. of 400,000 be much more than on 24,000?

A. Yes, sir.

Q. And when it came to make the percentage, would it not make quite a difference, the difference in percentage on a large amount and the percentage on a small amount?

A. Undoubtedly.

Q. Then, if you had taken the Census as of June 1st, 1861, the

population in the State of Virginia would have been much larger than you have shown it, would it not—because you would have to add an increase for a longer time?

A. I don't understand your question.

Q. In other words, have you not omitted from the time during which you have calculated the increase, seven months and some days?

A. If the Census was taken June 1st, I have omitted seven months, yes. 283

Q. If you had added the increase of Virginia's slave population for the seven months, that would have made it considerably larger, would it not?

A. Not necessarily. I cannot tell without figuring out. But West Virginia's proportion might have increased in the same ratio and would not have changed the result.

Mr. Conrad: Did not West Virginia's population increase in a far greater ratio?

Mr. Carlisle: I am examining the witness about it.

By Mr. Carlisle:

Q. If nine years had expired after the Census of 1860, would not the result have been very different if only one year had expired?

A. It would.

Q. The same thing applies, in less degree, does it not to seven months?

The Special Master: On how long a period of time is your percentage of 2.7 predicated?

Mr. Carlisle: The first of January, 1861, to the 20th of June, 1863.

The Witness: Yes.

The Special Master: That is two years—

The Witness: And 171 days.

The Special Master: And if there ought to have been seven months more added, you would have had that much longer time, and the results in which case would have been increased by the amount of the increased percentage.

The Witness: It would have been three years instead what of it was. 284

Mr. Carlisle: It would have been three years and twenty-three days.

Mr. Conrad: But the ratio the same.

Mr. Carlisle: But the interest on one dollar is not as much as the interest on $100 for the same length of time.

The Special Master: That is obvious.

Now, it is understood that the Census was actually taken in June, 1860?

Mr. Carlisle: That is the law.

Mr. Anderson: That is the theory.

The Special Master: Well, as far as we know, then, the United States Census is predicated, as to the population in existence, on the first of June?

Mr. Anderson: Although as a matter of fact the count is made after that.

The Special Master: But the work is supposed to have been done as of that date. Is that the understanding?

Mr. Robinson: Of course our schedule shows, too, that West Virginia was increasing very much more rapidly than Virginia.

The Special Master: That does not affect this proposition at all. What we want to know now is whether we have a common starting point. Is it agreed that the census was taken as of the first of June, 1860?

Mr. Carlisle: All the statistics of the Census.

The Special Master: But what I want to know is whether both sides agree to that.

Mr. Carlisle: That is what the Act says.

Mr. Conrad: But the Act says a great many things not in 285
accordance with the fact.

The Special Master: Then, if you do not agree we understand where we are. If you did agree all the accountant would have to do would be to rearrange his figures; but in the absence of agreeing, the defendants may proceed upon their theory and later I will hear the plaintiffs on their theory.

Mr. Carlisle: If you want a reference to the Act, I will give it to you.

Mr. Conrad: No. The reports furnished us agree substantially with ours.

The Special Master: As we go along, where the difference is so small that Virginia does not think it worth while to contest, I will have the record show that, and we will thereby make progress. When we reach that stage I will see to it that the record shows an agreement upon such items as may be involved in that suggestion.

Mr. Anderson: You would probably not care to press this further if you knew the result?

Mr. Carlisle: I do not know the exact result, but it would make some difference.

Mr. Anderson: Have you made an estimate as to what the result would be, what difference between our percentage and yours if this change was made?

The Witness: Yes, sir.

Mr. Carlisle: The only significance of this inquiry is that one of the alternative methods of ascertaining West Virginia's just
proportion of the ordinary expenses of government is based 286
on the population, and the other is based on the assessed val-

ue of property. Now, West Virginia is charged with a certain percentage, and a difference between the population, in the other method, and it might be important—

Mr. Anderson: Mr. Potter has looked into that and he has made a calculation as to what the difference would be in the two methods, and I think it would save time to ask him about it. We really do not care which you adopt.

The Special Master: If you do not care which is adopted, can we not have that stated in the record, and that will eliminate this controversy?

Mr. Carlisle: No; we could not; because we do not know just now the exact method he adopted.

The Special Master: We will not be able to make any progress in that direction just now, then. If they have no objection, the Attorney General wants to ask a witness what the result would be upon the theory that you suggest?

Mr. Carlisle: We have no objection.

The Special Master: Otherwise of course you could complete your cross examination and he could take up the matter upon redirect. You may ask that question, Mr. Attorney General.

Mr. Spooner: I would like to have the theory stated first.

Mr. Anderson: The theory has been stated by Mr. Carlisle.

The Special Master: Assuming that the computation of 287
population was to go back to June 1st, 1860, instead of December 1st, 1860, it is upon that hypothesis that Mr. Anderson wants the witness to state how it would affect the result.

Mr. Carlisle: That is purely a method of calculation.

The Special Master: That may be true; but he desires to ask him that question, and unless there is objection he may ask him.

Mr. Carlisle: I don't care; let him guess at it. That is all he can do.

Mr. Anderson: I want it to show that my friend is wasting some very heavy artillery on some very small sparrows.

The Witness: I have made a calculation on the basis of West Virginia figures. We assume she started that day. The difference in the population, taking slaves, is .1745 of one per cent., or, practically 17-100ths of one per cent. And the case of Virginia is the same.

Mr. Carlisle: That could not be so, applying the same method to a smaller number, when you compare the two things. When you compare the difference in the percentage, you have put down the percentage shown on your theory now.

The Witness: The difference between your per cent. and our per cent, shown by the schedules is as I have stated, a little over 17-100ths of one per cent.; and figuring it without slaves there is a difference of a little over .23 of one per cent.

Mr. Carlisle: We are not excluding slaves at all in the question put to you: we are including them.

[*Vol. 5, May 6, 1909.*]

[*Direct Examination of Thomas B. Dixcy on Defendant's Exhibit B-1.*]

[The Special Master:] 510

As I understand, defendant's exhibit B-1 is now produced.

Mr. McClintic: Please look at this and see if you identify it.

The Witness: I do identify it as having been made and signed me.

(The paper referred to was marked by the stenographer Defendant's Exhibit B-1.)

Mr. McClintic: West Virginia offers Defendant's Exhibit B-1 as evidence.

By Mr. McClintic:

Q. Please state, Mr. Dixcy, if you made this, or if it was made under your direction (referring to Defendant's Exhibit B-1.)

A. It was made in part by me, yes, and under my direction. That is the original figures. The report itself was made by 511 me.

Q. Please state to the court what it contains, in a general way.

A. It contains four schedules, four statements, the first showing the area of Virginia and West Virginia separately, second, showing the assessed valuation of the real property in Virginia; third, showing the assessed valuation of the real property in West Virginia; fourth, the population of Virginia and West Virginia, with and without slaves separately, computed as of June 1st, 1863; and the average of such population by decades from 1820 to 1860, both dates inclusive.

Q. Are those amounts stated in there under those four schedules correct?

A. They are correct, sir, from the sources of information as noted.

Q. I find on page 6, included certain items as to the censuses of 1820, 1830, 1840, 1850, and 1860. Are those correct, from the sources from which you obtained them?

A. They are.

Q. What sources?

A. They were furnished by S. N. D. North, the Director of the United States Census Bureau, in a letter over his signature.

Q. Does that letter accompany this exhibit?

A. The letter including that schedule, no.

Q. Please explain how you arrived at the other census figures on that page?

A. The table to the top of the page, headed "With Slaves and Without Slaves" were furnished by the United States Census Bureau, so far as relates to the first and third columns. The 512
fourth column and the percentages were computed by me using the basis of computation used by the Census Bureau of the United States in their computation of June 1st, 1863.

Q. You took the date June 1st, 1860, and computed the additional amount from that date?

A. From that date.

Q. Why did you take the date, June 1st, 1860?

A. Because it is the date given in the laws of the United States for the taking of the United States Census.

Q. The valuation of the real estate of Virginia was taken from what sources?

A. As to Alexandria, from the Auditor's report for 1860, and thereafter from the sources noted at the head of each group of county names; the following group from the report of 1861, and then from the land books of 1861, 1862, and 1863, the Virginia counties being taken, almost altogether or very largely, from the land books of 1863.

Q. In those counties which were not taken from the land books of 1863, did you take them from the best and nearest sources available?

A. The nearest source available to that date.

By the Special Master:

Q. What are these land books?

A. They are assessment rolls.

Q. Where did you find them?

A. Down here in the basement of the State Library Building.

Q. For all the counties of Virginia?

A. No; some of them were missing, but most of them were 513
here.

Q. Is that the rule, that all the assessments made throughout the State are made here?

Mr. Anderson: Yes, sir.

Mr. Conrad: Three copies are made. One is sent here.

The Special Master: And this was the duplicate sent here that you had access to?

The Witness: Yes, sir. The series is not unbroken, but approximately so.

The Special Master: And when you did not get the exact date, you got the nearest approximation you could?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Please state what facts bear on the assessment of West Virginia as to the best source of information?

A. They were the same as those in regard to the other counties of Virginia.

[*Vol. 6. May 7, 1909.*]

[*Cross-Examination of Thomas B. Dixcy on Defendant's Exhibit B-1.*]

612

By Mr. Harrison:

Q. Now, I will pass to another subject. In the second item of the second paragraph of the decree, the inquiry was directed to the extent and assessed valuation of the territory of Virginia and West Virginia on June 20, 1863. That is part of the inquiry embraced in the second paragraph, the extent of assessed valuation of the territory. Is there any difference between your statement and Mr. Potter's statment as to the extent of the territory of the two Virginias?

Mr. McClintic: That was agreed on once.

Mr. Harrison: I understand that, but I want to get it in the record.

A. A very material difference.

By Mr. Harrison:

Q. There is, you say, a very material difference?

A. As to the extent of the territory, as we show it and as you show it; yes, there is a very material difference.

The Special Master: You mean a difference in the area?

The Witness: I am quite sure. 613

The Special Master: Be sure that you understand the question.

Mr. Conrad: He testified that there was a very material difference.

Mr. Harrison: Yes, between his statement and Mr. Potter's statement as to the area.

Do you understand the question? 613

The Witness: I am not sure that I do.

By Mr. Harrison:

Q. You understand that Mr. Potter's statement, as originally presented here, more than six months ago, was to be modified, that it was understood it was to be modified and treated as modified in respect to the extent of territory, do you not?

A. I understood that counsel had agreed that the United States

Geological Survey reports or surveys should be accepted.

Q. Then, when I refer to Mr. Potter's statement, I of course refer to it as modified according to the agreement.

A. I had not understood that Mr. Potter's original statement was withdrawn.

Mr. McClintic: He never filed any subsequent statement.

The Witness: Of course if his figures are the same as mine, taken from the same source, although I have never seen any statement prepared by Mr. Potter, I assume the areas would be the same.

The Special Master: Strictly speaking, of course Mr. Potter 614
has not changed his statement, but as a matter of fact, that 614
has been agreed upon, the areas have been agreed upon.

Mr. Harrison: You so understood it?

The Special Master: Yes. I thought the correction had been made.

Mr. McClintic: I never saw the change, if it was made.

Mr. Harrison: I was treating it as if it had been done. It was agreed that it should be done.

The Special Master: That is evidently the way the misapprehension arose.

Mr. Anderson: There is no doubt about it, that that was agreed upon, and there is no difference between us on that point.

By Mr. Harrison:

Q. As to the assessed valuation of the territory, is there any difference between your statement and Mr. Potter's statement?

A. As to the assessed valuation of the territory?

Q. Yes.

A. Yes; there is a small difference in each State.

The Special Master: How much?

The Witness: No. 2 is what I want (referring to exhibit).

The Special Master: Do you want your schedule, your second schedule?

The Witness: No; I want the plaintiff's exhibit. 615

The Special Master: Then it is Plaintiff's Exhibit B-1 that you want?

The Witness: (Referring to Exhibit) There is a difference to this extent. Virginia's Exhibit as to the assessed valuation of Virginia is less than ours by the sum of $129,424.36.

By the Special Master:

Q. What is the cause of that discrepancy?

A. It is difficult to reconcile the sums, because these were copied right out of the books in most cases, and sometimes, where Mr. Potter's figures did not agree with ours, we went back and reckoned, and they made clerical differences.

Q. Can you confine the difference to some particular item?

A. No; it varies from two and three cents to different amounts.

Q. Which is the largest?

A. Well, none of the differences are very much.

By Mr. Harrison:

Q. You have given the difference on the Virginia assessment?

A. Yes, sir.

Q. What is the difference on the West Virginia assessment?

A. It is quite small. The Virginia schedule showed the West Virginia assessment to be $6,352.90 less than the West Virginia schedule showed it to be. 616

Q. Then, if you deduct this $6,352.90 from $129.424.36 you will get $123,071.46 as the real difference?

A. No, sir; I should add the two items together.

Q. Why would you do that?

A. Because they are both against West Virginia. In one case Virginia is understated by Virginia's schedule—

Q. By how much?

A. $129,000.

Q. In round numbers, or that much accurately?

A. The figures are $129,424.30.

Mr. Anderson: If I was in error about that I want you to correct me.

The Special Master: Virginia is understated and West Virginia is overstated?

The Witness: By Virginia, yes sir.

Mr. Harrison: And it would be how much?

The Special Master: $6,352. Give me the exact amount, please.

The Witness: $6,352.90.

The Special Master: What do you gentlemen want to do about that discrepancy? I cannot take the time to examine all these details for you, and I should think the experts ought to get together on that. They ought to go over it and find that discrepancy, I should think.

Mr. Harrison: That is why we are developing these discrepancies.

The Special Master: Certainly. That is perfectly proper. I cannot take time for cross-examination on those details. 617 They must reconcile the two sides, or you must agree, one of two things; either you will agree among yourselves or the experts will get together and agree; then if they cannot agree on some particular instance, if they will submit it to me, I will have to determine it.

By Mr. Harrison:

Q. The second inquiry under the second paragraph of the decree relating to the population of the two Virginias, with and without slaves, separately. Will you please state to what extent your statement of that inquiry differs from Mr. Potter's statement of that?

A. In amount?

Q. Yes. That is what we are getting at.

A. Do you want it with or without slaves?

Q. I want it both ways.

The Special Master: What is this question?

Mr. Harrison: I ask him to state to what extent his statement of the population of the two Virginias differs from Mr. Potter's statement, showing it respectively with and without slaves.

The Special Master: Whether there was any discrepancy there, and if so, how much.

The Witness: Suppose I prepare that during the recess. It will only take a few minutes.

The Special Master: And it will be understood also in reference to that that if there is any discrepancy the accountants can get together, and see if they can reconcile it, and if they do not reconcile it, all they will do then will be to report to me and I will have to decide upon it. 618

[*May 7, 1909.*]

After Recess.

619

THOMAS BIRD DIXCY

resumed the stand for further cross examination.

By Mr. Harrison:

Q. Can you state now specifically the difference, if any there be, between your statement and Mr. Potter's, under paragraph 2 of the decree, of the population with and without slaves in the two Virginias?

A. For Virginia, as computed in the Virginia exhibit, with slaves, 1,220,997; in accordance with West Virginia's Exhibit, 1,221,319, an excess on the Virginia Exhibit of 322.

Q. In other words, Virginia is 322 in excess of the total population over West Virginia's schedule.

A. With slaves.

Q. Now take it without slaves.

A. Without slaves, as computed for Virginia, on Virginia's Exhibit, 751,799. As computed for Virginia on the West Virginia Exhibit, 748,171, an excess on the Virginia exhibit of 3,628.

Q. So that in each case, with slaves and without slaves, the difference is very slight between your statement and Mr. Potter's?

A. It would be a very small percentage of the entire amount; yes sir.

The Special Master: Now, can we agree on that?

Mr. Harrison: I should think so.

The Special Master: It is a small matter.

Mr. Spooner: I do not think the Supreme Court would hear 620
four or five days of argument on that.

The Special Master: But I think it is going to be very gratifying to the court if I can eliminate all controversy that is not substantial.

Mr. Conrad: We might add the difference together, and divide it by two, and equalize them in that way. The difference *in* infinitesimal.

The Special Master: It is not a matter we will spend very much time about here.

Mr. Spooner: Or there.

Mr. Harrison: We will take their statement, if your Honor please.

The Special Master: Then the statement as to the population with and without slaves—

Mr. Harrison: Under paragraph 2 of the decree.

The Special Master: Under paragraph 2, found on defendant's Exhibit B-1, page 6, is accepted by both parties as accurate.

The Witness: I have only testified in regard to Virginia, not with regard to West Virginia yet.

Mr. Harrison: I do not know how that would be. I thought that covered both.

The Witness: No; that was as to Virginia, on the two exhibits.

The Special Master: Is the difference any greater for West Virginia?

The Witness: It would be a slightly greater percentage, yes. It is not large difference.

621

By the Special Master:

Q. What is the difference?

A. On Virginia's Exhibit, the total population of West Virginia, with slaves, is 392,823.

Q. As against 396,333?

A. Yes, on West Virginia's Exhibit; an excess on the West Virginia exhibit of 3,810.

Q. That is rather in your favor than against you, is it not? That is, as far as Virginia is concerned, it increases their proportion rather than decreases it?

A. Without slaves, the population of West Virginia, as shown on the Virginia Exhibit is 375,131, and as shown on the West Virginia Exhibit, 377,289; an excess on the West Virginia exhibit of 2,158.

Q. In each case it is an excess on the part of West Virginia?

Mr. Anderson: We accept the West Virginia exhibit on both, sir.

The Special Master: Then it is agreed on the record that page 6 of the defendant's Exhibit B-1 is accepted as an accurate statement

of the population, both with and without slaves. That is agreed to on both sides.

The Witness: There is still another calculation at the bottom of page ——, an average of the population by decades from 1820 to 1860. They have not accepted that.

The Special Master: What is the significance of that? As long as we agree on the amount which I am to find, I do not know that we are concerned about the method by which the result is 622 reached.

Mr. Spooner: It bears on the expenses, possibly.

Mr. Harrison: I do not know that it has any bearing on any subsequent inquiry.

Mr. Spooner: This is in paragraph 2, as to the extent and value of the territory of Virginia and West Virginia on June 20, 1863, and the population thereof, with and without slaves, separately.

The Special Master: I shall not report any more than that.

Mr. McClintic: We shall ask to file a further statement under the *average* population of that period.

The Special Master: That is a matter I shall hear you about later. Anything either side may desire to have reported by me under my discretionary power, I will hear you both on; but for the time being it will result in less confusion if I simply confine the admissions to the paragraphs themselves. Then what I take up later will be a matter of discretion on my part.

Mr. Conrad: A question will arise under that provision of the construction of the order of the court.

The Special Master: Yes. Of course I have liberty to state any special circumstances that I consider of importance. I certainly am not going to state trivial things.

Mr. Harrison: Right here, for the purposes of paragraph 2, we will agree rather than spend any time in controversy.

The Special Master: Precisely. That covers the whole of 623 paragraph 2. If either party desires any suggestion or report or alternative in connection with paragraph 2, I will hear you on that at the close. Is that agreeable, Mr. McClintic?

Mr. McClintic: Yes, sir.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit B-1*]

Mr. Anderson: I now have in my hand schedule B-1. That has been agreed on. That was accepted at the last meet- 835 ing.

Mr. Harrison: Will you read that second paragraph of the decree?

The Special Master: The second paragraph in the decree calls for the extent and assessed valuation of the territory of Virginia and West Virginia, June 20, 1863, and the population thereof, with

and without slaves, separately. The plaintiffs submit plaintiff's Substitute Exhibit B-1. Has this been submittd to the other side?

Mr. Dixcy: Yes, sir.

The Special Master: And are the computations found in Plaintiff's Substitute Exhibit B-1 agreed to?

Mr. McClintic: I understand that they agree to our statement.

The Special Master: I am merely trying to get the information. Is it a fact that you agree with the accountant on the other side as to the computations appearing in Plaintiff's Substitute Exhibit B-1.

Mr. Dixcy: They agree with us, yes, sir. 836

The Special Master: It does not make any difference which way you put it.

Mr. Carlisle: I would say that the agreement is with our figures.

The Special Master: Well, have you made an agreement? Does that state it? It is absolutely immaterial, so far as the Master is concerned, how these results are reached. The question is, do we agree on that?

Mr. Carlisle: Yes sir.

The Special Master: So that the Master will report that Plaintiff's Substitute Exhibit B-1 is agreed to by both sides. That disposes of that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: We now take up revised Exhibit B-1. 871 relating to matters involved under the second paragraph in the decree.

Mr. Anderson: That is an agreed statement.

The Special Master: The case is closed as to that paragraph. Is that agreed to?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes sir.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

C-1
Page 1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

SUMMARY OF PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

PARAGRAPH III OF DECREE.

Details of which are shown on pages numbered 2 to 6, inclusive, following

Total Claimed by Plaintiff:

Group I Pages 2 & 3	Bridges	$ 3,000.00	
	Railroads	1,316,992.42	
	Turnpikes	1,579,341.81	
	Miscellaneous	1,253,200.10	
			$4,152,534.33
Group II Pages 4, 5 & 6	Bridge Co's	$ 78,412.50	
	Navigation Co's	210,500.00	
	Turnpike Co's	803,555.83	
	Banks	391,800.00	
	Town of Bath	2,500.00	
			1,486,768.33
			$5,639,302.66

Total Conceded by Defendant:

Group I	Bridges	$ 3,000.00	
	Turnpikes	1,149,088.92	
	Miscellaneous	99,200.00	
			1,251,288.92
	Difference		$4,388,013.74

This Difference is Composed of the Following:

Group I	Railroads	$1,316,992.42	
	Turnpikes	430,252.89	
	Miscellaneous	1,154,000.10	
			$2,901,245.41
	and all of Group II		1,486,768.33
			$4,388,013.74

Certified Correct as to Summary and Details.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1823, to December 31st, 1860, Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
			Basis.	Amount.	Basis.	Amount.	Basis	Amount.
	Bridges:							
1	Coal River Bridge	$ 3,000.00		$ 3,000.00		$ 3,000.00		
	Railroads:							
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42			Direct Construction	$1,146,460.42
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00			Mileage 63.16%	170,532.00
	Total	3,057,128.33		$1,316,992.42				$1,316,992.42
	Turnpikes and Roads:							
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52			Mileage 58-1/3%	$ 11,932.52
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%	500.00		
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54			Direct Construction and 82% Mileage	152,130.54
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92			Mileage 42.87%	2,593.92
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65			Direct Construction	7,189.65
13	do. Extension	80,955.28	do.	80,955.28			do.	80,955.28
14	Kanawha River Improvements	59,572.36	do.	59,572.36			do.	59,572.36
15	Kanawha Board—Bonds	60,000.00		60,000.00				60,000.00
16	North Western Turnpike	620,271.38	Direct Construction	(1) 469,148 53	Direct Construction	469,148.53		
17	do. (Maryland Section)	7,882.92	do.	7,882.92			Direct Construction	7,882.92
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
23	Beverly and Fairmont Road	75,384.65		75,384.65		75,384.65		
24	Beverly and Clarksburg Road	2,724.00		12,000.00		12,000.00		
	and Road from Monongalia Co. to Beverly and Clarksburg Road	9,276.00						
	Carried forward	1,656,789.68		$1,241,308.11		$859,050.92		$ 382,257.19

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
		Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
Brought forward	1,656,789.68		$1,241,308.11		$ 859,050.92		$ 382,257.19
Turnpikes and Roads (Continued):							
Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73				10,595.73
Charleston and Weston State Road	4,456.71		4,456.71		4,456.71		
Clarksburg and Point Pleasant State Road	249.00		249.00		249.00		
Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36				19,259.36
Cheat Mountain Turnpike	7,697.88		7,697.88		7,697.88		
Fairmont and Wheeling Road	31,848.85		31,848.85		31,848.85		
Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47		19,976.47		
Huntersville and Parkersburg Road	4,000.00		4,000.00		4,000.00		
Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72		23,168.72		
Ice's Ferry Road	1,358.00		1,358.00		1,358.00		
Kingwood and West Union Turnpike	18,140.61		18,140.61				18,140.61
Kanawha and Logan Road $5,000.00							
Logan Court House and Kanawha State Road 2,407.50							
Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00		8,009.00		
Marlins Bottom and Lewisburg Road	12,615.09		12,615.09		12,615.09		
Middle Fork Road	13,867.34		13,867.34		13,867.34		
Middlebourn to Pennsylvania Road $5,653.00							
and Tyler to Green County Road 1,000.00	6,653.00		6,653.00		6,653.00		
Monroe County to Kentucky Line Road	5,000.00		5,000.00		5,000.00		
Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00		4,500.00		
Morgantown and Beverly Road	2,999.97		2,999.97		2,999.97		
Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.06		1,500.00		
Ohio River and Maryland Road	95,934.37		95,934.37		95,934.37		
South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00		900.00		
Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00		4,200.00		
Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00		3,500.00		
Slavin's Cabin and Summerville Road	16,322.30		16,322.30		16,322.30		
Sistersville and Salem Turnpike	11,326.64		11,326.64		11,326.64		
Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00		4,000.00		
Wyoming Court House to Bluffs Road	5,954.66		5,954.66		5,954.66		
Total	1,994,823.38		$1,579,341.81		$1,149,088.92		$ 430,252.89
Miscellaneous:							
Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00		$ 1,200.00		
Harpers Ferry Raid $255,745.77							
Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59				$ 189,718.59
School Commissioners	830,865.37	Direct Expenditure	830,865.37				830,865.37
Surveys	250,206.56		106,416.14			Direct Expenditure, Mileage and Percentage	106,416.14
Trans-Alleghany Lunatic Asylum	125,000.00		125,000.00		98,000.00		27,000.00
Total	1,396,990.52		$1,253,200.10		$ 99,200.00		$1,154,000.10

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph III of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00	.....	$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50	.....	4,612.50
59	Elk River Bridge Company	6,000.00	.....	6,000.00
60	Fairmont and Palatine Bridge Company	12,000.00	.....	12,000.00
61	Guyandotte Bridge Company	12,000.00	.....	12,000.00
62	Morgantown Bridge Company	24,800.00	.....	24,800.00
63	North Branch Bridge Company	3,000.00	.....	3,000.00
64	South Branch Bridge Company	4,200.00	.....	4,200.00
65	Virginia and Maryland Bridge Company	10,000.00	.....	10,000.00
	Total	$ 78,412.50	.....	$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00	.....	$ 96,000.00
67	Guyandotte Navigation Company	106,800.00	.....	106,800.00
68	Monongalia Navigation Company	2,660.00	.....	2,660.00
69	Tug Fork Navigation Company	5,040.00	.....	5,040.00
	Total	$210,500.00	.....	$210,500.00
	Turnpike Companies.			
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	Mileage. 92.46%	$ 15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.60	97.62%	43,920.80
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,159.24	21.36%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	8,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16.2-3%	800.00
79	North Frederick Turnpike Company	11,325.00	11.68%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46	.....	3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00	.....	7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00	.....	31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41	.....	27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25	.....	5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35	.....	4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13	.....	9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00	.....	12,000.00
89	Clear Fork Road Company	600.00	.....	600.00
	Carried forward,	$255,895.44	.....	$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,895.44		$204,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company.	4,120.11	.....	4,120.11
91	Dunkard Creek Turnpike Company.....	6,000.00	.....	6,000.00
92	East River and Princeton Turnpike Company.....	4,800.00	.....	4,800.00
93	Fish Creek Turnpike Company.....	6,000.00	.....	6,000.00
94	Franklin and Circleville Turnpike Company.....	2,175.00	.....	2,175.00
95	Gilmer and Braxton Turnpike Company.....	6,699.80	.....	6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company.....	29,974.80	.....	29,974.80
97	Gnatty Creek and West Union Turnpike Company.....	5,700.55	.....	5,700.55
98	Grave Creek and Pennsylvania Line Turnpike Company.	1,800.00	.....	1,800.00
99	Hampshire and Morgan Turnpike Company.....	6,510.00	.....	6,510.00
100	Hardy and Randolph Turnpike Company.....	7,134.78	.....	7,134.78
101	Harrisville Turnpike Company.....	6,000.00	.....	6,000.00
102	Hedgesville and Potomac Turnpike Company.....	5,400.00	.....	5,400.00
103	Holliday Cove Turnpike Company.....	4,733.33	.....	4,733.33
103A	Holliday Cove and Wellsburg Turnpike Company.....	5,916.67	.....	5,916.67
104	Holliday Cove and New Cumberland Turnpike Company.	2,400.00	.....	2,400.00
105	Kingwood and West Union Turnpike Company.....	8,769.48	.....	8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company....	5,847.84	.....	5,847.84
107	Letart Falls and West Columbia Turnpike Company....	2,350.00	.....	2,350.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company.	4,950.00	.....	4,950.00
109	Logan, Raleigh and Monroe Turnpike Company.....	7,321.24	.....	7,321.24
110	Marshall and Ohio Turnpike Company.....	11,943.75	.....	11,943.75
111	Martinsburg and Potomac Turnpike Company.....	15,290.00	.....	15,290.00
112	Middleway and Gerardstown Turnpike Company.....	11,943.75	.....	11,943.75
113	Moorefield and North Branch Turnpike Company.....	28,137.75	.....	28,137.75
114	Moorefield and Alleghany Turnpike Company.....	8,779.78	.....	8,779.78
115	Morgantown and Bridgeport Turnpike Company.....	10,687.40	.....	10,687.40
116	New Creek and Hardy Turnpike Company.....	5,431.24	.....	5,431.24
117	New Manchester Turnpike Company.....	2,000.00	.....	2,000.00
118	Newark Turnpike Company.....	3,000.00	.....	3,000.00
119	North River Turnpike Company.....	5,400.00	.....	5,400.00
120	Pattersons Creek Valley Turnpike Company	9,900.00	.....	9,900.00
121	Parkersburg and Elizabethtown Turnpike Company.....	4,800.00	.....	4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company.....	4,078.45	.....	4,078.45
123	Potomac Turnpike Company.....	2,489.70	.....	2,489.70
124	Raleigh and Boone Graded Road Company.....	1,800.00	.....	1,800.00
125	Ravenswood and Reedy Creek Turnpike Company.....	8,999.99	.....	8,999.99
126	Red and Blue Sulphur Springs Turnpike Company.....	8,856.66	.....	8,856.66
	Carried forward,	$534,037.51	.....	$482,837.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward.	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company.....	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company.....	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company.....	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company.....	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company.....	18,575.00	.....	18,575.00
132	Shinston Turnpike Company.....	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company.....	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company.....	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company....	10,104.00	.....	10,104.00
137	Walnut Gap Road Company.....	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company.....	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company.....	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company.....	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company.....	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company.....	5,538.21	.....	5,538.21
143	West Union Turnpike Company.....	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company.....	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company....	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company.	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company.....	5,130.65	.....	5,130.65
	Total.....	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank.....	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling.....	341,800.00	.....	341,800.00
	Total.....	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

Other Evidence and Proceedings Relating to Paragraph III of the Decree.

[*Vol 1. November 16, 1908.*]

TESTIMONY ON BEHALF OF COMPLAINANT. 57

under

Paragraph 3 of the Decree.

ARTHUR G. POTTER,
testified as follows:

By Mr. Anderson:

Q. Mr. Potter, state whether this paper, marked, "Expenditures in West Virginia. Article III. (Part 1, Interstate Improvements)," has been prepared responsive to the third paragraph of the decree?

A. Yes, sir.

Q. What is that a statement of?

A. The first part of it is a statement of expenditures for what we call interstate roads, or interstate internal improvement enterprises, covering internal improvements starting in the present State of Virginia and ending in the State of West Virginia—the expenditures in West Virginia.

Q. The first part is a statement of expenditures in West Virginia, on account of what?

A. Interstate improvements.

Q. And the second part?

A. Expenditures in the State of West Virginia entirely for improvements within her counties.

Q. Please state how those expenditures were made up, and from what sources?

A. From the printed records of the Board of Public Works, verified by the register kept by the Second Auditor.

Q. Are you prepared to state whether those statements are correct, so far as shown by those records?

A. To the best of my knowledge and belief, they are all cor- 58
rect.

Q. As to all the items which they contain?

A. Yes, sir.

Q. Those statements, as I understand you, are made up from authentic public records of the State of Virginia?

A. They are.

Q. Have you verified those statements?

A. Yes, sir, personally.

Q. Are you prepared to say those statements are correct?

A. They are, to the best of my knowledge and belief.

Mr. Anderson: I offer those papers in evidence.

(The papers referred to, entitled respectively "Expenditures in West Virginia, Article III. (Part 1, Interstate Improvements)" and "Expenditures in West Virginia. Article III. (Part 2, direct.)" are filed herewith, marked, respectively, "Plaintiff's Exhibit C-1—Part 1," and "Plaintiff's Exhibit C-1—Part 2.")

The Special Master: Now, what is your next?

Mr. Anderson: I understood Mr. Spooner desired to ask a question of Mr. Potter.

The Special Master: Very well.

Mr. Spooner: I want to ask Mr. Potter where schedule 15 A, which is cited here as being attached, is?

The Special Master: 15-A is Plaintiff's Exhibit C-1, you are enquiring about now, Senator. 59

Mr. Spooner: Yes; "Expenses of Harper's Ferry Raid, summary of detail analysis." I would like to see that statement.

A. Do you want to know where the details are found? What was the question please?

Mr. Spooner: I want schedule 15-A, which is said to be attached, but which is not, so far as I can see.

A. You will find it here, Senator (indicating).

By Mr. Spooner:

Q. Did you charge the expenses of the trial and the hanging of John Brown, in this?

A. I can't say. I don't think so.

Q. Why should you not? Was not that money expended in West Virginia?

[*Vol. 4, May 5, 1909. Cross Examination of Arthur G. Potter.*]

I will turn this schedule over to Mr. McClintic, because he 288 is more familiar with the facts than I am.

By Mr. McClintic:

Q. Under schedule C-1, third section of the decree, these percentages marked thereon are made by whom?

A. I have not got the schedule to which you refer.

The Special Master: The entries made in red ink, plaintiff's exhibit C-1. It relates to the third item of the decree.

A. (Continuing) The percentages in red were made by—

Mr. Anderson: Wait until we get it.

The Special Master: The question is who made the computations that resulted in the percentages. Is not that it?

Mr. McClintic: Yes, sir.

The Special Master: Did you make them?

The Witness: I made them, and my assistant, Mr. John B. Lightfoot, Jr., assisted by the regular members of my staff.

Mr. McClintic: On what basis did you make them?

Mr. Anderson: What page is this?

Mr. McClintic: The first page. Take them in their order and go right along. I suppose you made them on some basis, the same basis or on a separate basis.

The Witness: Each one on a separate basis.

By Mr. McClintic:

Q. Did you make them all on mileage or some on a mileage basis and others on some other basis?

A. Some on mileage and some on direct expenses which were located—

Q. State generally how you made them; on what basis?

A. On the basis of mileage. 289

Q. State the general principles?

A. On the basis of mileage in some cases where no other method was available; but on a basis of the direct expenditures of the counties where such information was available.

Q. How did you ascertain the mileage when you did base it on mileage?

A. From the board of public works report from maps which we scaled and in some cases from post route maps, which maps we used in some cases; and also railroad maps and railroad guides.

Q. As to those maps, where did you get the maps from which you scaled them?

A. From the office of the Corporation Commission.

Q. What did you know as to the correctness of those maps?

A. Nothing except what the map bore on its face, that it purported to be the map of a certain road or railroad or what not?

Q. When you use the word map, explain the character of the map in a general way.

A. We had a number of maps made by the engineers of the State, showing the routes of the different turnpikes, which we found with the Corporation Commission, and they were hand made maps.

Q. And that is the character of the maps you always used?

A. Not always; we referred to a United States post route 290
map in one case.

Q. Only in one case?

A. I mean we had one map there which we referred to occasionally, sometimes to assist in locating these roads, and sometimes used independently. I have the explanation of the various ones that we have used on that basis.

Mr. Conrad: I suppose your Honor knows what the witness means by the Corporation Commission.

The Special Master: It is the Commission that has control of enterprises of that character?

Mr. Conrad: Yes, sir.

Mr. Moon: It is the successor to the board of public works?

The Special Master: I understand. It is the bureau where all those records will be.

Mr. Anderson: Yes. All the records of the Board of Public Works were turned over to the State Corporation Commission.

By Mr. McClintic:

Q. When you did not take maps, but took direct reports, what reports do you refer to?

A. Proceedings of the board of public works.

Q. What do you mean by proceedings of the board of public works, in that sense?

A. They are published volumes of the proceedings.

Q. On what were those based?

A. The reports of the engineers who built the roads. 291

Q. The engineer in charge of the particular road?

A. Or the State engineer in charge of all roads in the State.

Q. What did those reports show as to the location of the roads?

A. I cannot say offhand. In some cases they gave the town from which they started, the length of road built between certain points, and land marks; for instance, ridges of mountains, bodies of water, rivers, creeks, etc.

Q. And gave distances?

A. Gave distances in some instances, yes.

Q. Mr. Potter, where you took the basis of mileage, for instance, did you assume that each mile of road then cost exactly the same amount?

A. Not in all cases.

Q. When did you not assume it?

A. When we could determine that some part of the road had been macadamized, the cost of macadamizing was usually stated separately.

The Special Master: In the case of a turnpike?

The Witness: Yes.

By Mr. McClintic:

Q. If you did not know where that macadam was, would you divide that on a mileage basis, then?

A. Yes, sir.

Q. Did you make any difference in this mileage basis as to whether a road crossed a mountain, or whether it required excavation or anything of that character? 292

A. No, sir.

The Special Master: That is, you took the mileage without reference to the character of the country through which it went?

The Witness: Exactly.

By Mr. McClintic:

Q. Were bridges and culverts and things of that kind always charged extra or shown where they existed?

A. If they were identified in any way on the records we so treated them. I imagine there were many small bridges which did not show up separately as bridge constuction which we included possibly upon the mileage basis.

Q. The fact that a road crossed the Allegheny Mountains did not enter into the computation one way or the other on a mileage basis, did it?

A. It would depend on where the State line was.

Q. Supposing that was the State line—

The Special Master: The point is, was the character of the country where they crossed the Mountains taken into account?

Mr. Harrison: He said no.

The Special Master: That is your point, is it not?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. You charge this under what you might term two heads, one called interstate improvements, and the other direct.

The Special Master: Where do you find that?

Mr. McClintic: On the first page. That is the general statement, in Exhibit C-1. 293

The Witness: The "direct" begins at page 4.

Mr. McClintic: I am at page 1 now. I was speaking of the front page. Under the first head, in general what classes do you include?

The Witness: Only roads which were built partly in both states—roads and other improvements.

Mr. Harrison: What do you mean by the first head?

Mr. McClintic: I just named that; first, interstate improvements, and, second, "direct."

Mr. Harrison: Direct begins on the fourth page.

The Special Master: It is the title of the Exhibit that you refer to?

Mr. McClintic: Yes.

The Special Master: "Part 1; interstate improvements. Part 2, direct." Now, what you want to know is what he included under interstate improvements?

Mr. McClintic: Yes. What did you include under the second one?

The Witness: Expenditures made exclusively in the counties which now form West Virginia.

The Special Master: Are they separated in your report, these two classes of improvements, direct and interstate?

The Witness: Yes, sir; there is a separate total for the two.

The Special Master: Oh, a separate total.

By Mr. McClintic:

Q. Did you make any distinction between roads built directly by the state (using the word direct in the sense of direct appropriation), and those in which they bought stock in a 294 company?

A. I did not.

Q. So this includes as a direct charge all those in which the State of Virginia simply owned stock in the company or built the road, does it not?

A. Yes, sir.

The Special Master: You mean stock in whole or in part?

Mr. McClintic: In either case.

The Special Master: Both?

Mr. McClintic: Either owned the whole or part of the stock. I ask him whether he included that as a direct charge.

Mr. Conrad: In some cases they owned three fifths of the stock. In other cases the road was built by the Commonwealth. In the case of the northwestern turnpike it was built exclusively by the Commonwealth. In other cases the Commonwealth by purchase or subscription to the stock, owned three fifths.

The Special Master: Yes; but do these items include just what the State paid out on account of its three-fifths subscription?

Mr. Anderson: Both.

Mr. McClintic: Let me ask a question and we will find out.

Mr. Conrad: There is some misapprehension as to your Honor's inquiry. I understand your Honor's inquiry to be addressed to the fact as to whether this report showed in two parts the 295 money appropriated by the State, where it exclusively built a road.

The Special Master: Yes.

Mr. Conrad: And also where it subscribed to three fifths of the stock?

The Special Master: Yes.

Mr. Conrad: It had nothing to do with private subscriptions to the other two fifths. That has nothing to do with this case.

The Special Master: Where the State was the owner of three-fifths and private individuals the owners of two-fifths, this covers, as I understand it, the amount the State expended for its three-fifths.

Mr. McClintic: It did not necessarily own three fifths. Sometimes it would be two fifths, or other sums.

The Special Master: I understand; but whatever it might own. I mean. This schedule shows what the state did expend for, what it did own?—

Mr. Carlisle: And charges what the state paid for its stock as a direct expenditure by the State, for their stock in West Virginia.

Mr. Anderson: It includes all expenditures made by Virginia in works of internal improvements in West Virginia, whether those works of internal improvements were owned wholly by the State or partly by the State.

Mr. McClintic: That is a contention by Mr. Anderson which we do not agree to.

The Special Master: Of course it is only important for me now to get the position taken by each party to the controversy. The total cost may be seen here, all that is here is the cost to the State of Virginia. So we know what the item means. 296

Mr. Carlisle: Of the stock?

The Special Master: Yes; of the stock. Whether that is a proper item to be charged is another matter.

Mr. McClintic: Take the Berkeley and Hampshire turnpike. Is that a joint stock company or a private corporation?

The Witness: I don't know.

Mr. Conrad: Your summary statement does not show that?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you know as to any of these companies, whether joint stock companies, or private corporations?

A. We made no inquiry into that, as to the form of the Company itself.

Q. Were not the books so kept that they showed an account with each company?

A. Yes, sir.

Q. Did you examine those books?

A. We did.

Q. Why did you not state the facts on your exhibit, then?

A. We did.

Q. You did not state whether it is a company or a direct appropriation. Is not that the fact—that appeared on the books?

A. I think it appeared on the books under the head of Berkeley & Hampshire Company, and we have simply the 297
Berkeley and Hampshire turnpike.

Q. Did it say whether the State made a direct appropriation or took stock?

A. Yes, sir.

Q. You do not show that on your schedule, do you?

A. We simply state the amount of money expended by the State in the interest of that road, by stock or by direct appropriation.

The Special Master: You did not differentiate between the two?

The Witness: No, sir.

By Mr. McClintic:

Q. You make no distinction between stock and direct appropriation?

A. No, sir.

Q. Take the second one on the list, the Berryville & Charleston turnpike. You have charged there the total cost of the road, $27,692.71, and charged 68 per cent in West Virginia?

A. Yes, sir.

Q. There is an item there, $7,236.97. Do you know what that was paid for?

A. I only know it appeared on the Commonwealth ledger and in the auditor of public account's report of 1858.

Q. You never looked back to see what it was paid for?

A. I cannot say that we did not; I think probably we did; but I do not remember that particular item.

Q. Did you make any examination of that particular road 298
as to whether there were certain stock charges and certain direct charges in relation to it?

A. No, sir.

Q. Just left it as it was?

A. Just as the previous one.

Q. The third item on the first page is the Covington & Ohio Railroad, now the Chesapeake & Ohio Railroad line. In settling the amount for the Allegheny tunnel ($284,873.18) please state the basis.

A. I have not the information with me to answer that question. I can give it roughly by saying we took the total length of the tunnel from a copy of the profile and established the State line and measured the distance from the entrance of the tunnel to the State line, on both sides, and used that to obtain the percentage which we used in dividing the total cost of the tunnel, which was stated separately in the books of the Covington & Ohio Railroad

under sections 19 and 20—that is, the total cost, sections 19 and 20, including the cost of the tunnel, were under one account. We applied it to that amount and divided it on that basis.

Q. Sections 19 and 20 included a lot more distance than the tunnel, did they not—a lot more distance?

A. They did.

Q. Did you take into account on that tunnel only sections 19 and 20 as a whole, and divide that?

A. Yes; 19 and 20 as a whole.

Q. How much of Section 19 was in the present limits of Virginia; or do you know that?

A. I cannot say from the information before me. I have the information with my other papers.

Q. Did you take into consideration in any way the long 299
cut that was made on the Virginia side before the West Virginia side was reached?

A. No, sir.

Q. You say that these measurements were made. Who made the measurements?

A. They were made from the profiles.

Mr. Carlisle: Who made them?

The Witness: I think I made it personally.

By Mr. McClintic:

Q. Where did you get the profiles?

A. I think Mr. John B. Lightfoot, Jr., got it from the Chesapeake & Ohio Railroad, and had a copy of that made. We got the copy from them, and had a copy made.

Q. Did you take into consideration in any way the approaches; that is, the cuts on the West Virginia side, in making any charge?

A. Not if I remember correctly.

Q. How long a space did Sections 19 and 20 cover in distance?

A. I have not that information before me.

Q. In making up these charges, what did you use, what book, on the Covington & Ohio?

A. The journal, ledger and cash book, I think.

Q. The journal and cash book of what?

A. Of the Covington & Ohio Railroad; and also the board 300
of public works ledgers, A and B, with the journals.

Q. Were separate books kept of the Covington and Ohio? I am speaking of the whole railroad?

A. Yes; I have not the reference to those particular books, but I believe I am correct in saying that there was a separate set of books kept.

Q. Did you make up all the figures that make that $1,212,354.85?

A. I cannot say I made them up individually. They were made up by my force.

Q. Are you prepared to say that that is a correct charge from those books?

A. I believe it is.

Q. You know it is?

A. I believe it is.

Q. That is your best judgment?

A. Yes, sir.

Q. Did you analyze each and every account that appeared in those books?

A. They were analyzed by my force. I did not do the work individually.

Mr. Moon: It was done under your supervision?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You say it was done under your supervision. What do you mean?

A. I mean one of the men who assisted me did the work, 301
did the mathematical part of the work. I laid out the plan and he followed it, and I looked over his work after he had finished it. The mathematical accuracy of it was tested by another man.

Q. At what point did you get into it?

A. I laid out the plan and instructed them what to do, what to include and what to exclude and how to make the divisions, and how to put the figures together.

Mr. Anderson: You were here all the while?

The Witness: I was here all the while.

By Mr. McClintic:

Q. How much of this $1,212,000 is a direct charge and how much did you estimate or apply by estimation?

A. All of sertions 21 to 39, eastern division; and all of the western division, $906,817.20.

Q. Is that a direct charge?

A. That is a direct charge, all west of the Allegheny tunnel; 32.4 per cent of the total surveying and location expense on a mileage basis, making $20,664.47, and 12-23rds of the total cost of Sections 19 and 20, including the total.

The Special Master: The first two items are the result of computation and the others of direct charge?

The Witness: No; in the order in which I gave them, the first one is direct.

The Special Master: The second is a direct charge?

The Witness: Yes, sir:

By Mr. McClintic:

Q. In these roads which you charge along there in red ink 302
a certain percentage, can you tell where you charge that percentage by mileage and which by other means?

A. Yes, sir. The Berkeley and Hampshire turnpike was on a mileage basis; the Berryville and Charleston was on a mileage basis; the Covington & Ohio I have just explained; The Cross Roads and Summit Point turnpike was on a mileage basis. The Franklin and Monterey was on a mileage basis. There is a charge there of $861,305.91—

Q. Referring to the $861,305.91, please tell the Commissioner when you entered these charges, what was your stopping point?

A. A draft in that particular case for payment—

Q. That was not the question. When did you stop making charges?

The Special Master: Up to what date did you make this computation?

A. All obligations, payments up to December 31, 1861, and as many obligations as we could determine had been entered into but not actually paid for work actually done prior to December 31, 1860, which were paid in the following year—1861.

By Mr. McClintic:

Q. Are we to understanud you to say that you stopped all charges as of December 31, 1860, or 1861? You said 1861.

A. I mean 1860, with the exception of such other items as I explained.

(Informal discussion followed in regard to the taking of recess.)

The Special Master: You will remember that the treasurer, when he took the stand was not sworn. I suppose there is no objection to his statement being taken as if it were taken under 303
oath.

Mr. Conrad: There is no objection to that.

Mr. Carlisle: That is the understanding.

By Mr. McClintic:

Q. On page 2 there is a road called the Mountain Lake and Sulphur Springs turnpike. On what basis did you divide it?

A. On the basis of mileage.

Q. How did you arrive at the mileage in that particular case?

A. The distance was estimated from the map of post roads in the State of Virginia and in West Virginia, authorized by the Postmaster General in 1904, according to scale. In other words, we scaled the map.

Q. What was the beginning of the road?

A. I cannot tell. It ran through Giles and Monroe Counties. I don't know just where it started or ended.

Q. Please find out for me the beginning and end of that road and give me that information after dinner or some other time?

A. Very well, sir.

The Special Master: You had better be prepared to produce all the original memoranda you used in reaching your results.

By Mr. McClintic:

Q. Take the Giles, Fayette and Kanawha. Was that divided on a mileage basis? I want to run over these rapidly to see whether we are on the same basis or not. That is on page 1. 304

A. On a mileage basis.

Q. How about the Hardy & Winchester?

A. On a mileage basis.

Q. How many miles did you make that road?

A. By Crozet's, 70 miles.

Q. Did you make any further examination to see whether that was correct as to mileage or not?

A. I have not that information before me.

Q. You don't know?

A. At the present time I cannot say.

Q. The Huntersville and Warm Springs road?

A. On a mileage basis.

Q. That first charge of $1,000 in 1833—was that spent on that road?

A. The notation on my schedule shows it was money advanced Peter Scales, an engineer, for his account and expenses in laying out the road.

Q. The Martinsburg and Winchester. Is that divided on a mileage basis also?

A. On a mileage basis. yes, sir.

Q. The Morgan and Frederick?

A. On a mileage basis.

Q. The Northwestern turnpike; how is that divided?

A. On a mileage basis as to the cost of laying out the road, the cost of surveys and locations; but all of the cost of macadamizing was charged direct to West Virginia, with the exception of five miles, as shown by comparison. 305

Q. You say 92.8 per cent of total loan, $308,000. What do you mean by that debt?

A. The State raised loans, amounting, if I remember rightly to $320,000, of which we charged 92.8 per cent. on a mileage basis to West Virginia.

Q. What books did you get that from?

A. The amount of the loan?

Q. No; how it was divided.

A. The total length, see Crozet's report. Other distances, see proceedings of the Board of public works, Volume 7, page 77.

Q. Were there any original books kept on that, separate from the general books?

A. Yes.

Q. Did you analyze these accounts and get this amount from those books?

A. We analyzed the accounts from those books; but it was not possible to locate them entirely to our satisfaction. So I adopted this method.

Q. You took the percentage method rather than take the direct books in that case?

A. Yes.

Q. And part of that road went through the State of Maryland, did it not?

A. It did.

Q. Was any charge made by you for anything on that ac- 306
count?

A. We made no distinction. We included the item of the cost of the road through that section of Maryland.

The Special Master: I did not hear that answer.

The Witness: We included the cost of the road through that small section of Maryland.

The Special Master: That made a part of your total?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Who built that part through Maryland?

A. The Northwestern turnpike company, incorporated under the laws of Maryland.

Q. Under the laws of Maryland?

A. I believe so.

Q. What interest, if any, did Virginia have in that company?

A. I don't know that, except if my memory serves me, the manager or the engineer of the road was the president of the Northwestern turnpike in Maryland.

Q. Did Virginia own any stock in it?

A. I don't know.

Q. You don't know?

A. I don't remember.

Mr. Spooner: Your memorandum will show, will it not?

The Witness: I think it will.

The Special Master: What is the length of the road in Maryland?

The Witness: I think it is about eight miles.

Mr. McClintic: Eight or ten or twelve miles. 307

Mr. Spooner: I would like to make a suggestion. This witness is an expert. He knew he was to be cross examined, and yet I think he has answered a great many questions by saying that he has not the information before him, and a great many questions by saying that the memoranda are not here. I think he ought to bring whatever memoranda he had, from which he compiled these reports, in order that he may, if it is important and desirable, make swift reference to them and be able to answer the questions.

The Special Master: There is no question about that. I have suggested to Mr. Potter, and also I will suggest to Mr. Dixey, that they must both be prepared with all of the original sources of information upon which they have relied for the purpose of getting up these accounts; because counsel on either side are entitled on cross examination to know just the method used in reaching the result, and they have a right to see the original books and memoranda.

Mr. Spooner: Mr. Dixey informs us that that is the rule with accountants and that he will be prepared in that way.

Mr. Harrison: In justice to Mr. Potter I would state that it has been six months since he finished his accounts.

The Witness: We cannot possibly bring all the books from which we took this information.

The Special Master: Of course my suggestion is subject to that qualification—whatever you have that is movable and you can bring here. 308

Mr. Spooner: Your own notes.

The Special Master: Your own memoranda and notes, yes. If there are any books or records of such a character that they cannot be brought in here, if we need them, we will adjourn and go to see them; but in the meantime you will please have your notes here. so that the gentlemen on the other side can in cross examination criticize them as they like. And please bring all the sources of original information that are available. If you have time during the intermission—I do not ask you to do it now, but if you do have time—I would like you to take these exhibits and page them so we will have everything harmonious, and so when we refer to a page of an exhibit we will know just which one it is.

(Thereupon, at 1 o'clock a recess was taken until 2 o'clock P. M.)

AFTER RECESS.

The Special Master: You may proceed. 309

ARTHUR G. POTTER,

resumed the stand for further Cross Examination.

By Mr. McClintic:

Q. Mr. Potter, did you take into account on the Northwestern road the tolls paid in prior to the War?—I mean prior to the 1st of January, 1861?

A. As credits?

Q. As credits or otherwise.

A. We did not take them into account.

Q. Did you take in none of them, in any way or shape?

A. We took a note of them. We have them summarized in our papers, but we did not allow them as a credit on this account.

The Special Master: That is, you are inquiring into the proportion of the tolls paid into the Treasury of Virginia.

Mr. McClintic: Yes, sir; on a road wholly owned by the State.

By Mr. McClintic:

Q. How much was the amount you have, Mr. Potter?

A. My account on page 38 of the Northwestern ledger shows, for toll gates, $152,679.26 received as tolls. I don't know that all that was turned over to the State, but that is the account in the ledger.

Q. You neither gave credit for that here nor anywhere else?

A. No sir. 310

Q. Or any proportion thereof?

A. No, sir.

Q. Now, Prices Turnpike and Cumberland Gap Road, page 3. Was that divided on a mileage basis?

A. Yes, sir.

Q. You have no percentage put down there. Do you mean that is the part that was given to West Virginia on a mileage basis?

A. Yes; I have the percentage in another schedule. I don't recall why it was not put in that schedule, but it was on a basis of 91.3 per cent. Virginia, and 8.7 per cent. West Virginia.

Mr. Harrison: What item is that?

A. Price's Turnpike and Cumberland Gap Road.

Q. This amount you have here is what?

A. That is 8.7 per cent, I think, of the total. The total is not

shown there. It is just divided. The extensions are made to the two divisions.

Q. Is the next, the Raleigh and Grayson, divided by mileage?

A. No; from the report of the president of the board of public works of the 12th of October, 1852, Document 18, Volume 17, the date of the report, the Section of the road in Raleigh county was reported at 10 miles—excuse me; I am mistaken about that. I would like to have that stricken from the record. I read my note wrong. That is on a mileage basis.

Q. Did not those same reports show where each dollar of 311
that road was, or practically all of it?

A. I don't think so. We have relied upon the board of public works account, on page 14 of Ledger B, for the total expenses of the road, and divided it on that basis, the mileage basis.

Q. In the case of the Raleigh and Wythe line, you have charged $400 in 1862, $2,200 in 1861, and $200 in 1862. Please explain those.

A. The items in 1861 and 1862 are for contracts made and for work done prior to December 31, 1860.

Q. Who paid them?

A. The board of public works. The record is in the board of public works Ledger B, page 269, from the board of public works' funds, by the treasurer.

Q. By what government was the 1862 payment made, for instance?

A. The Virginia government.

Q. What government in Virginia was it, the one that recognized the United States of America, or the one that did not recognize the United Stated of America?

Mr. Harrison: I suppose you refer to the Richmond goverment?

A. Yes, sir.

Mr. Conrad: All governments of Virginia recognized the United States of America.

Mr. McClintic: Did it give allegiance to the United States of America?

The Special Master: Probably as far as was compatible with the circumstances?

By Mr. McClintic:

Q. Now, the Staunton and Parkersburg turnpike, page 3. 312
Were there any tolls on that road?

A. I believe there were tolls received from that road.

Q. Was any credit given for those anywhere?

A. No sir; no credit.

Q. Where did you get the items in reference to the Staunton and Parkersburg?

A. The Board of public works ledgers A. and B.

Q. Did you divide that on a mileage basis also?

A. No; we divided the construction items, macadamizing and engineering expenses, on the basis of 74.83 per cent. to West Virginia, and debited West Virginia with the bridges and direct construction items in West Virginia.

Q. Did not those books show where most of this construction was? Most of the expenditures were by counties.

A. I don't remember that it did; no.

Mr. Spooner: Does not your memorandum show? Have you not a memorandum to show that?

The Special Master: See what your notes show in that regard.

Mr. Spooner: That is what I am asking, whether he has any notes that show.

Mr. Harrison: What was the question?

The Special Master: Whether the books do not show where the money was expended, that is, what locality.

Mr. Harrison: What part of the road?

The Special Master: Yes, I suppose that is it.

A. My notes do not indicate that the books show with sufficient accuracy to be depended upon. 313

By Mr. McClintic:

Q. They indicate that it showed the expenditures?

A. Yes, by sections.

Q. You knew in which counties the sections were, did you not?

A. Not with absolutely certainty.

Q. Do you know that the books do not show with accuracy?

A. I do not. I can't say positively at this time. The books are on file in the second auditor's office.

Q. Did you examine those books yourself or through an assistant?

A. I directed the work in examining. Some of the work I examined myself.

Q. You simply do not know, then, beyond what was told you?

A. Yes; I satisfied myself that it was not safe to take the divisions to be found in those books.

Mr. Spooner: But you want to satisfy us and the court.

A. That is all I can say.

Mr. Spooner: You cannot do it?

A. That is all I can say in order to satisfy you.

Mr. Conrad: You are too hard to satisfy.

Mr. Spooner: You ought to have the data.

By Mr. McClintic:

Q. If the books showed the sections and the county why was not that sufficient? 314

A. I testified that we could not locate the sections with absolute certainty within those counties.

Q. It was quite as satisfactory to locate it in that way, was it not, as guessing on the mileage or guessing where the work was done in that 234 miles that the road covered or thereabouts?

A. I think it was a safe basis to divide the construction and the mileage as we have done it *no* other roads and then divide such direct expenses as we could definitely locate.

Q. Was it not a much better method to take direct construction where you were able to?

A. I don't know that there was any direct construction in this case.

Q. Were there not direct books kept on that subject matter all alone to themselves?

A. Yes, sir.

Q. Did not those books show by reports continuous and often, the process of construction and the amount of cost?

A. I don't recall that we found any reports showing the cost at different periods, or the process of construction at different periods.

Q. So you did not make a sufficient examination of those books to remember those facts, did you?

A. I would not go so far as to say that. I made a pretty thorough examination, or had it made under my direction, and as I said before I satisfied myself that the basis we used was the 315 most accurate.

Q. This was a road 234 miles long, was it not?

A. Yes, sir.

Q. From Staunton, Virginia, to Parkersburg, West Virginia on the Ohio River?

A. Yes, sir.

Q. Of which you say 74.83 per cent was in West Virginia.

A. Yes, sir.

Q. Was not that as capable of being differentiated on the books kept as in the case of the Covington and Ohio Railroad?

A. No; it was not. The Covington and Ohio Railroad Books were kept in a much more thorough manner, if I recall them properly. This road was divided into three divisions, the western division, and middle and the eastern.

Q. How much was in each division?

A. We have fifty eight miles and 72 chains in Virginia, and 17 miles and 8 chains in West Virginia, but I have not the figures right here as to the length in the different divisions, except that of the eastern division, which was 75 miles long, 58 miles lay in Virginia and 17 miles in West Virginia.

Q. Then all the balance except the eastern division were wholly in West Virginia, were they not?

A. The western divison and the middle division were both in West Virginia.

Q. The books were so kept as to show accurately the amounts that went to each of those, were they not?

A. I don't recall just—

By Mr. Spooner.

Q. Is it not your business to know?

A. It was at the time, but it has been some six or seven 316 months since I saw those books.

Q. But you must have memoranda from which you can testify?

A. We didn't copy the books.

Q. If you directed it, you ought to know upon what basis you directed it?

A. I simply had to rely upon my judgment at that time, which was that this was the most equitable division of the expenses.

Q. That is for court, not for you.

Mr. Harrison: You are asking him for the foundation of his statement.

Mr. Spooner: We are asking him for the facts.

By Mr. McClintic:

Q. You say these books were not so well kept as the Covington & Ohio books. What was the difference in the bookkeeping between the two?

A. I mean to say the items were not capable of the same analysis as were the items of the Covington and Ohio, by divisions, because we had a profile of the Covington and Ohio Road which guided us. We had no maps of the Staunton & Parkersburg, if I remember right.

Q. How did you arrive at the mileage, then?

A. From reports.

Q. What reports?

A. The survey of the principal engineer, Crozet's field book, 317 1838 and 1839.

Q. Did that State the amount of mileage in Virginia and the amount in West Virginia?

A. That located the distance from Staunton to the top of the Alleghany Mountains, as 58 miles and 72 chains.

Q. Were there not maps filed with those books, or of that road, showing the whole distance?

A. There may have been. I don't recall that we found a complete map or complete maps showing the entire route.

Q. Did you give credit for the tolls on that road anywhere?

A. No, sir.

Q. How much did they amount to?

A. I can't say offhand. I can look it up. It is somewhere in my papers, but I do not know that I can find it. I may not have it in summarized form. It may have been included in the receipts from the various internal improvement companies, which we did not summarize, but which we threw into a total with all other details.

By Special Master:

Q. You are not able to find that now?

A. No sir; I am not able to find it at present. I could find it if I were allowed the time.

By Mr. McClintic:

Q. The next road is the road from Skedmore Fork to South Branch of Potomac. Was that divided on a mileage basis?

A. Yes.

Q. The next road, Strasburg to Capon Turnpike. Do you 318
assert that any part of that road is in Virginia?

A. We figured that 16 per cent of the distance lies in West Virginia.

Q. Where did you find the report of the Strasburg and Capon Turnpike, Mr. Potter?

A. We traced the road through Shenandoah, at Frederick and Hampshire counties, from the Board of Public Works document 17, year 1857, page 215, which shows the road through Shenandoah, Frederick and Hampshire counties, 12½ miles. The distance has been scaled from the United States post route map of 1904 as 2 miles in West Virginia and 10½ miles in Virginia.

Q. Did the report state that part of it was in Hampshire county?

A. I don't recall.

The Special Master: Is there a map of the State, giving these various towns and these public enterprises, that I could have here to look at?

Mr. McClintic: The gentleman here can furnish it, no doubt.

The Special Master: Hampshire county is Greek to me. It might just as well be located in Florida.

Mr. Anderson: We have a very good map, your Honor.

The Special Master: If you have a map of that kind, I would like to have it to follow this along as you proceed. The testimony would be more intelligible to me.

By Mr. McClintic:

Q. Did you find it actually was constructed to Capon from 319
any evidence that you could see in the case?

The Special Master: Constructed to Capon?

Mr. McClintic: Yes.

A. Well, evidently we did find some evidence that it was constructed. I don't recall that particular road.

Q. Are you only testifying from the results of what you once had in your mind?

A. I cannot possibly carry all the details of this tremendous case in my mind, especially after the lapse of six months since I saw the papers.

By the Special Master:

Q. Have you anything on your notes to indicate the sources of your original information on this item?

A. I have just read the reference to the Board of Public Works.

Q. You have nothing else that refreshes your recollection on that point in your notes?

A. No, sir.

By Mr. McClintic:

Q. The next item is the Winchester & Potomac Railroad Company, of which you charge West Virginia with $168,750. What are those charges made for, say the one in 1834, $50,000?

A. I can't say. All I know is that the amount was charged to that account on the Board of Public Works ledger as a payment to the Winchester & Potomac Railroad.

By the Special Master:

Q. In a lump sum?

A. In a lump sum. I don't know whether it was by sub- 320
scription to stock or payment for construction.

By Mr. Spooner:

Q. Does not your memorandum show?

A. It does not.

By Mr. McClintic:

Q. Did you make no further investigation of an item for a railroad like that than just the Board of public Works ledger, that so much was charged to it?

A. No; we considered that good evidence that payment had been made.

Q. If the Board of Public Works had loaned Governor Johnson of Clarksburg $100,000, and you found it on there charged to Governor Johnson, would you simply put it on this account without looking further?

A. No; we would have looked further to see whether there was any recovery on that loan.

Q. Did you look in this case, to see what these charges were for, whether they were gifts, stocks, loans or what?

A. We determined that they were payments in some form, either for stock or for subscription to the road for construction purposes. There were certain loans which were made and later recovered, which we have eliminated from the account.

Q. In this case?

A. In respect to this road.

Q. Which part of this $270,000 is for stock and which part is for loans, if you know?

A. I don't know.

Q. Have you any means of finding out, from your notes 321
or otherwise?

A. Not from the notes. I can find out from the books of the 2nd Auditor's Office.

Q. What amounts were loaned and afterwards repaid, which you just spoke of?

A. In 1835, the first $10,000, the loan was made in 1835 and paid in 1836. The next loan was $30,000, made in 1835, and paid back the same year to the Board of Public Works by the Winchester & Potomac Railroad. The next loan was in 1836, and repaid the same year.

Q. Then you cannot tell whether any part of this $270,000 was a loan, a stock subscription or a direct appropriation?

A. I can say definitely that it was not a loan.

Q. No part of it was a loan?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you make an examination of the books of Virginia in reference to income paid from that Winchester & Potomac Road to the State, if any?

A. I have it among my other papers. We analyzed all of the receipts.

Q. What receipts did you get from the Winchester & Potomac Road?

A. I can't tell you. They are not brought into these state-
ments. We have them in another form among our original 322
papers, but not having taken them into our statements, we did not summarize them.

Q. When was the Winchester & Potomac Road incorporated, if you remember?

A. I have no notes on that point.

Q. Did you look at the books of Virginia, following the period of 1861, as to what Virginia did with that part of that road?

A. I did not.

Q. You have no knowledge of anything occurring subsequent to 1861, then?

A. No, sir.

Q. Did you examine the books of Virginia as to an Act of the legislature providing for a surrender of anything from this road by the payment of an annuity?

A. I don't recall such an act.

Mr. Conrad: You refer to the act of 1866 or 1867?

Mr. McClintic: I am not referring to the Act of 1866 or 1867 in that matter. He said he knew nothing about those, so I did not go into that.

By Mr. McClintic:

Did you find any Act in 1846, or did you look for any Act, or see any payment made by this Road to the State of Virginia?

A. The Commonwealth or the Board of Public Works?

Q. I cannot tell you myself, except the payment of the money.

Mr. Harrison: Did you ask whether that was a payment under the Act of 1846?

Mr. McClintic: A payment of $50,000 by an annuity. 323

The Special Master: Paid by the Railroad to the State.

Mr. McClintic: Yes, sir.

A. I don't find such a receipt in the year 1846, either in the Board of Public Works or on the Commonwealth books.

By Mr. McClintic:

Q. You do not find any sum paid by the Winchester & Potomac road to the State in those years, 1846 to 1861, inclusive, or any one of them?

A. I have only examined one year.

Q. You do not find any in 1846.

A. No, sir; not in 1846.

Q. We will not take time to go into each year after that if you do not remember anything about it. The Hillsboro and Harpers Ferry road, page 4. Was that divided on the mileage basis?

A. On a mileage basis; yes.

Q. And the same as to the Harrisonburg and Hardy road?

A. Yes; on a mileage basis, as near as we could get at it.

Q. You have charged the sum of $428,063.86 on account of James River and Kanawha interest, as you term it?

A. Yes.

Q. You have charged there bonds to Kanawha Board, in 1860, $100,000. What was that; I mean as to a loan, or buying stock, or direct appropriation, or what?

A. It was an issue of bonds under the Act of March 23, 1860. I believe the Act shows the manner in which the $100,000 was to be paid to the Kanawha Board.

Q. Do you call that a loan or a direct appropriation or 324
what do you put it under? Under what head in that line?

A. I don't recall.

Q. What was the James River & Kanawha Company? I mean, was it a corporation or what was it?

A. I don't know the exact status of it.

Q. Do you know whether it was or was not a corporation?

A. I think it was a corporation; yes. It issued stocks.

Q. Then you know it was, do you not?

A. Yes; it was a corporation in some form.

Q. Was not that $100,000 loaned to the James River and Kanawha Company?

A. I don't remember.

Q. Was it delivered to the James River & Kanawha Company?

A. I didn't see the receipt, but I saw the evidence of the issue of the bonds in the bond registers to the James River & Kanawha Company. We did not go to the transfer books to see if the bonds were actually turned over to them.

Q. Did you see any other evidences than the bond register?

A. I don't recall that we did, except the Acts.

Q. You saw the Acts authorizing the issue?

A. Yes, sir.

Q. Do you know the James River & Kanawha Company got $100,000 worth of bonds?

A. I can't state positively. 325

Q. You found the bonds were issued?

A. Yes; the bonds were issued. I can't state positively that they got the bonds.

Q. You simply charge them because the bond register showed that they were issued?

A. They were charged to the Kanawha Board of the James River & Kanawha.

Q. Did you look further to see whether there were any evidences that the Kanawha Board got them? What was the Kanawha Board?

A. I can't recall the history of that. We have it in another form. I believe, in Mr. Lightfoot's report, the full details which we compiled, but it is rather a complicated organization, this old James River proposition, and I would not undertake to give the history of it offhand.

Mr. Conrad: There were two or three distinct companies in succession. The James River Company was the first one.

Mr. McClintic: The James River entered into it too. It is not worth while to mix this.

Mr. Conrad: It is not mixing it. I say there were three or four companies consecutively growing out of the original company.

The Special Master: Each the successor of the other?

Mr. Conrad: Yes.

Mr. Carlisle: There were several successors, were there not?

Mr Conrad: Yes; three or four, I think, one right after the other.

By Mr. McClintic:

Q. You know nothing about this except that there were 326
certain bonds shown by the bond register issued to the James River & Kanawha Company for the Kanawha Board?

A. In a general way I satisfied myself at that time that it was a proper charge. Further than that I cannot testify at this time.

Q. Have you anything to refresh your memory so that you could testify on that $100,000 item directly?

A. I think so.

Q. I think you said you did not know whether these bonds were delivered to the James River & Kanawha Company?

A. No; I don't know.

Q. Or to the Kanawha Board?

The Special Master: He said he did not find any receipt from the company on the files.

By Mr. McClintic:

Q. When were they issued, Mr. Potter, if you will allow me to ask you a question while you are looking?

A. I don't know the exact date of the bonds. They were issued under that Act of March 23, 1860.

Q. Were they issued before December 31, 1860?

A. They must have been, I think, to come into my account. I would say offhand, yes, they were. Of course I have no proof of that just yet.

Q. You can look that up at your leisure, Mr. Potter. We will not take further time with that. You have charged on account of this James River & Kanawha interest, as you term it, in addition to the $100,000, some $431,000, I believe it is, in round figures, other charges. What did Virginia do with reference to that money in connection with the James River & Kanawha Company? 327

A. What did she do with it?

Q. What settlement was made with the James River and Kanawha Company by Virginia with reference to it.

Mr. Harrison: Are you referring to the $428,000 of interest?

Mr. McClintic: About $438,000.

Mr. Harrison: Those several items, you mean?

Mr. McClintic: Yes.

A. I don't know any settlement that was made by Virginia with West Virginia for that.

Q. I did not say West Virginia. I said between the James River & Kanawha Company and Virginia.

A. No; I don't know any settlement that was made between them.

Q. Did not Virginia take stock for that whole sum?

Mr. Harrison: Do you mean $91,666?

Mr. McClintic: The $91,000, the $107,000 and the $84,000; all those items.

The Special Master: Aggregating $424,063?

Mr. McClintic: Well, less the $100,000.

The Special Master: All the items included in that except the $100,000?

Mr. McClintic: Yes, it amounted to about $438,000. Somewhere along there.

A. I can't say at this time whether she took stock in payment for that or not.

By Mr. McClintic:

Q. Did you not refer to the Act of March 23, 1860, awhile ago?

A. I believe we did; yes.

Q. Did not that Act provide that she should take stock for 328
all that indebtedness?

A. I don't recall.

Q. Were separate books kept by the James River Company?

A. I believe they were, up to about 1836. In 1836, I believe, the James River books were closed.

Q. Did you look at the books along in 1832, 1833, 1834 and 1835, to see whether or not stock was taken for these early payments?

A. Well, we made an analysis of the books, both receipts and disbursements.

Q. What stock did Virginia have in the James River & Kanawha Company?

A. I have no record.

Q. You made no examination of that?

A. I have no record in summarized form of the stock she held at that time, at the end of this period, or at any time. We only have a record of the various amounts paid to the James River interest, and the amount she received from them, out of which we picked these items that were chargeable to West Virginia.

Q. Did not Virginia have stock for all the amounts owed her by the James River Company by 1860?

A. I think she did. I am not sure of that.

Q. Except this $100,000 to the Kanawha Board. I do not think she had any stock for that. Did not the James River & Kanawha Company pay Virginia in stock for all the money loaned?

A. I can't state positively that she did, because I have 329 not made a computation to ascertain that particular point. The object of our investigation was to find out how much Virginia paid to the James River interest.

Q. If the money was paid by the James River Company, even if it was paid in the form of stock, would you have looked to see any gross credits of that kind?

A. If it was paid back in stock, there would not necessarily be any gross credit.

Q. Would not the accounts be closed on the books?

The Special Master: Well, were they?

A. I can't say that they were.

By Mr. McClintic:

Q. Did you look to see?

A. Naturally we examined all of the entries pertaining to the James River items throughout the period, and that would come under the scope of that examination.

Q. You left that part out of your report if you found it, then, did you?

A. Our accounts here do not comprehend that point at all; do not comprehend the items received from the James River.

Q. I realize that, but I ask you if you found the other and left it out?

A. Yes; I think I can safely say that we did. We found everything in regard to the James River.

Q. When the debt was paid by the delivery of the stock of the Company to the State, why did you leave that out?

A. It is my impression that these items we have here were 330 not covered by payments of stock to the State.

Q. Do you know they were not?

A. I cannot state positively that such was not the case at this time, but naturally, having put them in, I think I am safe in saying that they were not. That was my opinion of it, at least, when I made these accounts.

Q. I am not asking your opinion. Is that your knowledge?

A. It is my best judgment that it was the case.

Q. I differentiate between your judgment and your knowledge. Do you know it or do you not know it?

A. I can't say that I positively know it, but I believe it is true.

Q. That these items were not paid by stock?

A. Were not covered by payments of stock.

Q. None of these items?

A. No.

Q. Now take the next page, page 5, I reckon you call it. It is not paged in this memorandum I have.

A. It is page 1 of the second division of this schedule.

The Special Master: I shall have these accounts all paged in their regular consecutive order, for reference in the examination.

By Mr. McClintic:

Q. There is charged there the Alleghany Mountain turnpike, for which you charge $1,074. Do you know that that 331
road is wholly within the State of West Virginia?

A. I believe that it is.

Q. On what do you base your belief?

A. Well, I was assisted in locating these roads by a native Virginian, who traveled more or less, Mr. Lightfoot, and I relied considerably upon his advice in the matter.

Q. Where did the road begin and where did it end?

A. I have not that record in convenient form.

The Special Master: What county was it in?

Mr. McClintic: It was in Highland, Page and Pocahontas Counties, West Virginia, as a matter of fact, your Honor.

The Witness: We also relied on Crozet's report.

By Mr. McClintic:

Q. What did the Acts say about this road, if you remember?

A. I don't remember.

Q. The next item you have charged is the Trans-Alleghany Lunatic Asylum at Weston, $125,000. Where did you get that sum of $125,000 from?

A. From the reports of the Auditor of Public Accounts, 1858, 1859 and 1860.

Q. What do they show?

A. Those payments of $125,000.

Q. To whom?

A. To the Trans-Alleghany Lunatic Asylum.

Q. To differentiate again, what do you mean by the Trans-Alleghany Lunatic Asylum in that connection?

A. What do I mean?

Q. Who got the money? 332

A. I couldn't say.

Q. You looked no further than the published reports on that item?

A. No further than that, except with regard to the last item of $50,000 we had to refer to the ledger.

Q. What did the ledger show with reference to that?

A. The ledger showed $50,000 charged to the Trans-Alleghany lunatic asylum at Weston.

Q. Why did you have to refer to the ledger for one item and not the other?

A. Because we did not know from the published report of 1861 whether it came in the period between October 1st and December 31st, or after the 1st of January.

Q. You were in West Virginia, were you not?

A. I was.

Q. You looked at certain auditor's reports there, did you not?

A. Yes, sir.

Q. Did you not see on the auditor's report of the restored government an item by which they recovered into the Treasury $27,000 of that sum?

A. I don't recall such an item; no.

The Special Master: You mean into the Treasury of Virginia?

Mr. McClintic: Yes, sir; the restored government, the real State of Virginia.

The Special Master: The Pierpont government?

Mr. McClintic: Yes.

Mr. Conrad: The Government at Wheeling.

The Special Master: Are they identical?

Mr. McClintic: Yes; when you speak of one you mean the same thing, the restored Government or the Pierpont Government. It had a little trouble getting to Richmond, but it got there sooner or later. 333

The Special Master: It was ambulatory.

Mr. Anderson: There was a race for that money, was there not?

Mr. McClintic: No; Virginia got it.

By Mr. McClintic:

Q. The next item is the Abbs Valley & Tug Road. Do you know that that road is wholly in West Virginia?

A. I have not the information regarding these roads in this division in convenient form for reference. As we found the appropriations, we made a note as to where the roads ran, and that was not tabulated in such form as to make convenient reference at this time. If it is necessary to have it, I can have it later.

Mr. Spooner. You could not have had time enough to make an exhaustive accounting here, could you?

A. We thought we had devoted sufficient time. We did not anticipate these questions.

By Mr. McClintic:

Q. I find charged there, below, the Brandonville, Kingwood and Evansville state road. Have you anything on your accounts to show whether that was a stock company or a direct state appropriation?

A. No, sir; I think, however, it was a direct state appropriation, because the money was paid through the auditor of public accounts, or the evidence of the payment is in his reports.

Q. Do you know? 334

A. I do not, positively.

Q. Further down there somewhere—I have a memorandum on the outside that it is page 3 of the second section—is the Clarksburg and Buchanan road. Do you know whether that was a stock company or a direct appropriation?

A. I do not.

Q. You charge on the same page the Coal River Bridge Company. Was that a company or a direct appropriation?

A. I can't say.

Q. That charge is $3,000. You charge on the same page the Coal River Navigation Company. For what were those appropriations, $96,000 total, made, stock or direct appropriation or loans or gifts?

A. I can't say.

Q. You made no differentiation?

A. If they were charged to the account of the internal improvement, on the Board of Public Works, we accepted them as payments.

Q. The State of Virginia has filed here a great number of acts—that is, a memorandum of acts. That act says that was for stock. Did you look at that compendium of acts, at all?

A. I did not compile that.

Q. You had nothing to do with the filing of those acts and know nothing about them?

A. No, sir.

Q. You do not know whether this is a company or a direct charge?

A. No, sir.

Q. All you know is that some book showed so much money 335 charged?

A. So much money charged.

Q. Was that an official report or a book?

A. It is the ledgers A and B of the Board of Public Works.

The Special Master: A manuscript book?

A. Yes, sir.

By Mr. McClintic:

Q. There are a number of these bridge companies, the Buckhannon Bridge Company and others, marked on here as companies. Does the same information apply to those?

A. Yes, sir; we followed the names used in the books that we had for reference, that we have referred to.

Q. You charge here Gauley bridge, $1,419.45.

Mr. Anderson: What page is that on?

Mr. McClintic: It is page 4 of the second section.

By Mr. McClintic:

Q. You also charge Gauley bridge under the James River and Kanawha Company. Are both charges correct, or why are the two charges made?

A. I believe the bridge was destroyed and rebuilt, and they were charged in different places. One is on the James River account, and later on, among the Board of Public Works accounts.

Q. Did not the bridge belong to the James River and Kanawha Company?

The Special Master: Which was that; Gauley bridge?

Mr. McClintic: Gauley Bridge. 336

A. I don't know.

Q. When you charged it under the James River and Kanawha Company, did it not belong to it?

A. I think very probably it did.

Q. Was not that the first charge?

A. I think it was, but I have not the date of that charge, so I can't state positively.

Q. You charge on the same page, 4, Bank of Fairmount, $50,000. What is that?

A. I believe it was a purchase of the bank stock by the literary fund.

Q. How did you happen to know this was stock and the other things which accompanied it were only direct appropriations? How did you happen to differentiate between the two?

A. The State was not exactly building banks and it was building roads.

Q. Well, were they building roads in some cases where there were companies, or were they building navigation companies?

A. Making appropriations and buying stock of these various companies, the same as they bought this stock.

By Mr. Carlisle:

Q. You say they bought stock in that bank?

A. I believe they did; yes.

Q. And you have charged it in your account as a direct expenditure of money in West Virginia?

A. Yes, sir; because we could not determine what became of the stock. 337

By the Special Master:

Q. Where was the bank located?

A. In Fairmont, West Virginia.

Q. You say you could not determine what became of the stock?

A. Yes; the record is not clear as to what became of the stock.

Q. Is that the criterion?

Mr. Spooner: Does that make any difference in the nature of the original transaction?

By Mr. McClintic:

Q. Did the record show what became of the stock of the various other companies?

The Special Master: What is Fairmont; a town in West Virginia?

Mr. McClintic: It is a town in Marion County, up in northwestern West Virginia.

Q. You charged below there $106,800 to the Guayandotte Navigation Company. What was that; a stock transaction, or a direct appropriation or a loan?

A. I don't think it was a loan. I think it was a direct appropriation. It may have been a purchase of stock.

Q. Did not the books show whether the appropriation was for purchase of stock, or for loans?

A. Yes; but we did not make any distinctions between the various classes of payments to improvement companies, etc.

The Special Master: That is, you made no distinction in your account whether the investment was direct or indirect? 338

A. No, sir.

Mr. Spooner: Whether the money was expended in the construction of a railroad or the purchase of stock in a corporation.

The Special Master: Yes; that is what I mean by direct and indirect. What you are getting at now is the basis on which this account is made up?

Mr. Carlisle: Yes, sir.

The Special Master: Whether it is satisfactory or otherwise is to be determined later.

By Mr. McClintic:

Q. On page 6 there is the Kingwood and West Union turnpike. Do you know whether that was a corporation or a direct appropriation?

A. I do not.

Q. On the bottom of that page 6 is Lewisburg Law Library. You charge $4,150. Why did you charge that?

A. I believe it was an appropriation made by the State for the purchase of books for that library in 1836, if my recollection serves me.

Q. Do you regard that as a direct expenditure in the State of West Virginia?

The Special Master: Where is that located in West Virginia?

Mr. McClintic: The library was for the Supreme Court of Virginia. It was a Supreme Court on wheels.

Mr. Conrad: Oh, no.

The Special Master: I mean where is it located geographically? 339

Mr. Conrad: In Greenbrier county, West Virginia. It was an improvement for the legal mind of West Virginia.

Mr. McClintic: I suppose you will charge up direct to us the time the court stayed over there and said they were giving us instruction?

Mr. Harrison: If that is of any account, we expect to do it.

By Mr. McClintic:

Q. On page 7 you have charged $7,000, the Louisa Fork of the Sandy River road. Please tell us what that is?

A. The road?

The Special Master: Do you mean where the road is located?

Mr. McClintic: Yes.

A. I would think from that description that it was on the Louisa Fork of the Sandy River.

Q. Where is the Louisa Fork of the Sandy River?

A. I can't tell you.

Q. Is it not wholly within the States of Kentucky and Virginia?

A. I don't know at this time. I have satisfied myself that at that time that it lay within West Virginia.

Q. Were you as well satisfied of all the other items as you were of that?

A. I think I can say I was.

Q. Were you as well satisfied of that as you were of all the other items?

A. I think so.

Q. You charge there a road called the Morgan County road 340 from Bath to St. John's River, $2,500. Where did you get that information?

A. I don't recall at this time.

Q. Did that appear in that form or shape in any way on any book?

A. It appeared in the Board of Public Works ledgers A and B, page 108 and page 239.

Q. Does the record show that money went to that purpose by that record?

A. The record shows that; yes.

The Special Master: Do I understand there is an entry that indicates an expenditure for that purpose?

A. Yes, sir.

By Mr. McClintic:

Q. Does not an Act of the legislature show a loan of $2,500 to the town of Bath?

A. I don't know. There is such an item in your accounts, and I thought that probably that offset this, but I don't recall having seen the loan to the town of Bath. It may be there.

Q. Does not the act of the legislature authorize the loan to the town of Bath; or did you ever look at the Act?

A. I did not look at the Act with regard to that.

Q. Did not the ledger and journal of the Internal Improvement Fund show that the town of Bath got the $2,500?

A. I don't recall.

Q. You simply don't know?

A. I don't recall at this time that it did; no.

Q. You charge there next, Mr. Potter, the Monongalia Nav- 341
igation Company, $8,180. When do you charge the first item?

A. In 1822.

Q. How much?

A. $5,520.

Q. Is that an appropriation made for the purpose of buying stock or a direct appropriation; or do you know?

A. I don't know.

The Special Master: I understand that to be true of all the items that he cannot differentiate;—that is, with the information he has before him now. That is correct, is it?

A. Yes, sir.

By Mr. McClintic:

Q. On the top of the next page I find an item of Moorefield and Alleghany turnpike, $8,779.78. I also find an act filed by counsel for Virginia here, that that stock in that road was totally given to the county of Hardy in 1858. Were you aware of that fact when you put that item in?

A. I was not.

The Special Master: The county of Hardy?

Mr. McClintic: Yes, sir.

The Special Master: Which State is that in?

Mr. McClintic: West Virginia. The Act which they filed here shows that it was given to the county.

By Mr. McClintic: 342

Q. On the next page there is an item, Northwestern Bank of Wheeling, $450,000. Please state what that is?

A. I cannot state. The record is not complete, as to whether it was for stock, but I believe it was for stock.

Q. You mean bank stock bought by the State of Virginia?

A. Yes, sir.

The Special Examiner: In what respect is the record incomplete in that regard?

The Witness: I made no description of these items. I merely took them from the books under the drawings. The account said Northwestern bank. I entered that under that heading, the total item, knowing that that bank was in West Virginia.

By the Special Master:

Q. There was nothing on the book you saw that indicated exactly what the money was for?

A. If we had checked back to the journal we could have told about that.

Q. But did you check back to the journal?

A. Not in all cases.

Q. But I mean in this specific instance?

A. I don't remember.

By Mr. Carlisle:

Q. Did you or not find upon the books that prior to the 1st of January, 1861, the Commonwealth of Virginia had sold a large amount of that stock and received the money for it?

A. I do not recall that circumstance. 343

Q. You cannot answer as to that?

A. No, sir.

By Mr. McClintic:

Q. You have an item on there, the last item, $24,908.67 in that account.

Mr. Spooner: If he had it, would it have made any difference in his account?

The Witness: Probably I would have put it in.

Mr. Spooner: Probably is rather indefinite. You have not put in a great many similar things. Why would you have put it in?

The Witness: If the State had sold its holdings in the Northwestern Bank, I would have allowed that credit. That is the theory on which these accounts are constructed, that any disposition for which money was received would work a reduction.

Mr. Spooner: If the books showed that they did sell that stock for so much money, was it a proper examination of the books that you made, if you say you do not know it?

The Witness: I think I would have given it if it was there.

The Special Master: What you intended to give was the balance that stood against the investment in 1861, was it?

The Witness: January 1st, 1861; yes, sir.

The Special Master: That is, your intention was to give the investment as it stood at that time, and you so gave it?

Mr. Spooner: That was not what the order called for; it was moneys expended in West Virginia.

Mr. Conrad: Suppose your accounts that have been offered in evidence here show the fact that you do give credit for that very sale of stock, would that affect the final result you have reached? I say, if the accounts you have rendered here, that have been put in evidence, do show the fact of the sale of this stock, and that you have given credit for the proceeds of that sale? 344

Mr. Spooner; Our accounts?

Mr. Conrad: Yes.

Mr. Spooner: We have not put them in evidence.

Mr. Conrad: You gave them to us and we assume from that that you are intending to put them in evidence. I am not talking about his accounts, but your accounts.

The Special Master: If his accounts show that the stock was sold and credit given, the question is whether you do not get the same result.

Mr. Conrad: Yes. He has simply forgotten it.

The Witness: I cannot say positively about that item.

By the Special Master:

Q. If your accounts show it, and Virginia is given credit for it, of course it is the same thing as if it was in this item. Of course it is not very material whether it appears right here or some other place.

Mr. McClintic: Does your account anywhere show any credit of that kind?

The Witness: Not that I recollect. 345

By Mr. McClintic:

Q. You do not think that your account shows anywhere any credit of that kind?

A. I don't think it does.

Q. Did you not take the original investment that you found from the books and charge West Virginia with that amount?

A. I cannot state positively, but that was the basis on which that was entered there.

Q. I started to ask you when I was interrupted whether as to the item of $24,908.67, which you marked "Not on annual report 1839". Virginia paid a cent of that?

A. If you will allow me to refer to the receipts I think I can answer that.

Q. Certainly.

The Special Master: That is, does that represent an actual investment?

A. (Referring to memorandum) I do not find the record among my papers. I have it somewhere, but I cannot answer that question now.

Mr. McClintic: You do not know what that "Not on annual report" means?

A. I think it had something to do—no, I do not know.

By the Special Master:

Q. Have you got all your notes here?

A. I had them here.

Q. But you are not able to put your fingers on that point?

A. They are very voluminous and I cannot turn to that. 346

Mr. McClintic: I wish you would look that up and tell me.

The Special Master: I was going to say, if there are any of these items you want to have him look up in his notes, we had better not take time to do it now; but he can make a note of everything of that kind and look it up between now and tomorrow morning. We will not wait for those things unless it disturbs the continuity of the cross examination to go ahead with something else.

Mr. McClintic: No, sir; it will not disturb me.

By Mr. McClintic:

Q. On page 11 you charge a road called the South Branch and Kitterman's to Hardy County. Is that road wholly in West Virginia?

A. I believe it is.

Q. Do you know that it is?

A. I would not have put it in there if I had not been pretty sure of it.

Q. Your judgment was that it should be put in there, was it?

A. It certainly was.

The Special Master: What county do you contend it is in?

Mr. McClintic: It is in Harrison county, Virginia.

Mr. Conrad: There is no such county in Virginia.

Mr. McClintic: I mean Rockingham County; I was thinking of Harrisonburg. It is in Hardy County, West Virginia, and Rockingham, Virginia. It is better known as Brock's Gap. 347

Mr. Anderson: That is another road. That is not Brock's Gap.

The Special Master: Do you remember how you ascertain that

fact when you made your statement about that road and its location; that is, from whom or from what you got your information?

The Witness: We had several maps there, and one map that we received from the library in Washington. We located these various roads and charged them up accordingly. I did not make an index showing the locations of the direct West Virginia charges, but made an index of those crossing the line. But I do not think there would be any question about these roads located in West Virginia, I did not think so, and so we did not prepare that index.

The Special Master: And it is impossible for you now to put your finger on the original memorandum from which you reached that result?

The Witness: Yes.

Mr. McClintic: Dd not that road have the proper title of the South Branch of the Potomac to Brock's Gap and Rockingham county?

Mr. Anderson: There is such a road as that.

The Witness: I think that is the road; but somewhere in the report we found a record of Kitterman's and located it in West Virginia.

Mr. McClintic: On page 13 I find the Williamsport Turnpike, $5,130.65. Are you aware of the acts of Virginia filed here which give the stock in that road to Wood County?

The Witness: No, sir. 348

Mr. Anderson: What is the date there?

Mr. McClintic: 1858, I think, but I would not be positive.

Mr. Harrison: To whom does the act give it?

Mr. McClintic: To Wood County.

By Mr. McClintic:

Q. To go back to one question on the first page of the whole account, do you know, in the case of the Berryville and Charleston turnpike, whether or not that road was sold under a deed of trust given by the company?

A. I do not.

Mr. Anderson: It was.

Mr. McClintic: I will ask Mr. Potter.

The Witness: I don't know.

By Mr. McClintic:

Q. You do not know anything about what the books showed as to charges?

A. I do not.

Q. Did the books make any difference between the last charge of $7,236.97 and the other charges?

A. I cannot say at this time.

Mr. Spooner: A trust given by the corporation?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Were the items taken from the same book thereunder?

A. No; the item in 1858 was taken from the Commonwealth ledger.

Q. Did you look at the journal of the Commonwealth to 349
see what that charge was for?

A. I think probably we did not. I don't remember.

Q. On page 15 you have a charge there called sundry expenses, $339.91. On what theory did you charge those to West Virginia?

A. Journal B, page 532. In the first place, we find them entered in the annual reports of the board of public works, and we located the expense as in some particular county. There were many others which we located in Virginia counties which we left out. Such as we could locate in West Virginia counties were charged.

The Special Master: What was the nature of the expenses?

The Witness: In connection with the inspection of road by the board and things of that kind.

By Mr. McClintic:

Q. Did you not charge under the head of 4-D a whole lot of items for inspections as ordinary expenses of the State Government?

A. Such inspections as we could not locate within particular counties, we charged up as ordinary expenses; but all items that we could locate we charged direct. These items may not have been ordinary expenses in one sense; if they were applied to the inspection of a particular road which we could locate, I think it was quite reasonable to charge it.

Mr. Spooner: How many different kinds of ordinary expenses have you been governed by in distributing these items?

The Witness: I think my previous answer explains that. 350

Mr. McClintic: And these items which you put into ordinary expenses and charged as such, did you exclude all the items for Virginia counties?

The Witness: All direct charges. Items we could locate the same as these, we did so charge, and excluded them from the ordinary expenses of the board of public works.

The Special Master: That is, where the expenses appeared to be localized by the books, you left them out, and where they were general in their character, you made the charge of ordinary expense?

The Witness: Yes, sir.

The Special Master: The only distinction between the two being on the books. You saw where some of them went, but you could not see where the others went, and therefore made a general charge?

The Witness: Yes, sir.

Mr. Conrad: Governor Wise's salary was an ordinary expense, but when he went to Charlestown to command the troops at the John Brown raid, that, too, was just such an expense.

Mr. McClintic: We thought the hanging of John Brown on West Virginia soil was a permanent improvement to West Virginia.

Mr. Conrad: It was. Jefferson County to-day is the finest 351
county in West Virginia.

The Special Master: I suppose that might raise the question as to whether I have a right to localize it or spread it generally over the whole country.

By Mr. McClintic:

Q. We find on the same page a charge of interest on the bonds of the city of Wheeling of $30,627.45, and you give credit for $15,115.64. On what theory of State expenditure did you charge that to West Virginia?

A. On the direct instructions of that paragraph of the decree which says "All moneys expended within the counties of West Virginia."

Q. Was money paid on bonds given by a municipality of West Virginia, which the State had guaranteed, money spent within West Virginia?

A. It was spent for that purpose, yes. Wheeling was in West Virginia.

Q. Yes; Wheeling is in West Virginia, and Wheeling is a solvent municpality, is it not, or was it not?

A. It was.

Q. Was and is, as a matter of fact?

Mr. Anderson: I don't know whether it was or not.

Q. (Continuing) Yes; it was and is. Did you look to see whether that same money had ever been repaid to Virginia?

A. I did not look beyond 1860.

Q. You did not follow the books to see whether items of 352
that kind owned by an independent municipality had ever been repaid to the State or not?

A. Not after 1860.

Q. You were satisfied to make a charge and then not look to see whether it was paid afterwards or not?

A. I don't think it was paid, because it would have appeared on the auditor of public accounts' ledger, if it had been, and I did not notice it there.

Q. If you had looked don't you think you would have found it was paid?

A. I don't know.

Q. It was no part of a State expenditure, but as a matter of fact,

the sum with interest was paid to the State of Virginia in 1867, and the State of Virginia took it and accepted it.

Mr. Conrad: What part of the State of Virginia?

The Special Master: He has not taken into account any of those since 1860.

Mr. McClintic: We took the position, that it was his duty to see if that account had ever been paid.

The Special Master: That is open to you to show.

Mr. Harrison: If that is your theory you can put it in your evidence to show it.

Mr. McClintic: The evidence can be had from your own books.

Mr. Harrison: Well, let it go in.

Mr. McClintic: Why did you charge to us the Harpers' Ferry Raid, $174,684.79; upon what theory did you charge that?

The Witness: Primarily— 353

Mr. Harrison: State what it is for first.

The Witness: Claims for subsistence, quartermaster's stores, pay of soldiers, damages, medical department, and miscellaneous items incident to the maintenance of certain troops in Harpers Ferry, which is in West Virginia.

By Mr. McClintic:

Q. Why did you charge it, that is the question I asked?

A. Because it was an expenditure in West Virginia and I had an opinion of the counsel of Virginia.

Q. That is what I expected; I suppose that was the reason you did it.

The Special Master: That is, he was so instructed.

Mr. McClintic: Yes; I have no doubt that is the fact.

Mr. Conrad: I suppose that was proper.

The Special Master: I do not understand that they criticised the propriety of instructing him, although it may be that they do contest the propriety of the item.

Mr. Spooner: I do not criticise the propriety of his obeying the instruction.

Mr. Carlisle: But we claim that the instruction was erroneous.

Mr. Spooner: We want to be heard briefly on the propriety of the instruction.

The Special Master: That will come up later.

By Mr. McClintic:

Q. There is another item, "payment to West Virginia counties for school purposes, $863,278.26," at the bottom of page 15. Why did you charge that to this account? 354

A. Because they were payments to West Virginia counties, as shown by the following schedules.

Q. Did you charge that of your own volition, or was it by instruction?

A. I don't remember of referring that matter to counsel; I think it was of my own volition.

Mr. Harrison: Say whether or not these charges, whether made by instruction or not, met with your approval?

The Witness: This Harpers' Ferry raid did meet my approval. This certainly did, because I think the original charge originated with me. It was the intention to make the charge.

Mr. McClintic: Do you think it makes much difference whether it met with his approval?

Mr. Harrison: It might; we will see later on.

The Special Master: You want it for what it is worth, anyway?

Mr. McClintic: Counsel approved these directions.

The Special Master: I understand that both counsel and auditor concurred in their propriety.

By Mr. McClintic:

Q. Mr. Potter, did you take any account in your statements anywhere of the dividends paid by any of the banks in West Virginia to the government of Virginia—banks such as the Northwestern?

A. They are not included in these charges.

Q. Anywhere; in any account?

A. In none of our schedules are they included.

Q. Are what you might term the bonus stocks, what the statute terms bonus stocks, some sort of a license, included in any of your accounts? 355

The Special Master: What is that? I don't understand that.

Mr. McClintic: What the statute of Virginia termed a bonus stock which is really a license to do business, as I understand. Were they included in any of your accounts?

The Witness: Not that I know of.

The Special Master: What were those licenses issued by the State of Virginia?

Mr. McClintic: The State of Virginia exacted some sort of a toll from the banks for doing business in some shape, in the shape of a bonus of stock or license in some form. I cannot exactly state what it was now.

The Special Master: In other words, they required some special consideration from them for the exercise of their franchises?

Mr. McClintic: Yes, sir.

The Witness: Do you want the information about the Mountain Lake turnpike that you asked me before lunch to give you?

Mr. McClintic: Yes, sir.

The Witness: The first information we got about that was from an ordinary map, which showed a small lake near Walker's Moun-

tain, and we pursued the research further, and found that there was a town called Mountain Lake, or there is a town called Mountain Lake, in Giles County, and going further, to the old 356
nine section map, a copy of which is in the land office at Richmond, it shows a turnpike from this little lake, which we have decided is the Mountain Lake referred to, across the mountain to Salt Sulphur Springs, in Monroe County.

By Mr. McClintic:

Q. What distances, respectively?

A. The distance is 20 miles; and the post route map was scaled, and as near as we can get it on a map of that kind we estimate that it is ten miles in each State.

Q. Does the act show where that road was to begin and end?

A. I have no recollection in regard to the act authorizing it.

Q. How do you know where it began and where it ended?

A. I have just explained to you the theory on which we decided where it began and where it ended.,

Q. Your theory was that you found two things by that name and jumped to that conclusion?

A. I don't think we jumped to that conclusion. It was a place called Mountain Lake.

Q. A place called Mountain Lake, in Giles County?

A. Yes.

Q. And a place called Salt Sulphur Springs in Monroe County?

A. Yes ,sir.

Q. And you decided the road went between those two points?

A. There is a road between those two points, and we decided that was the road referred to. 357

Q. Do you know that that money was expended on that road, or that any money was expended on that road?

A. I cannot state positively it was.

Q. You found no report showing that it was, did you?

A. Not that I recall.

Q. You wished also to ask me something about Covington and Ohio, sections 19 and 20?

A. Yes, sir; sections 19 and 20. I asked you the distance, I believe.

A. The distance was 3,650 feet from the beginning of section 19 to the entrance of the tunnel; and it was 2,234 feet from the entrance of the tunnel on the Virginia side to the State line. It was 2,241 feet from the State line to the end of the tunnel, and it was 2,375 feet from there to section 21, section 20 lying somewhere between those two poles. We are told by H. C. Whitcomb, formerly assistant chief engineer—

Mr. Anderson: Chief engineer.

A. (Continuing) Chief engineer of the Chesapeake & Ohio Railroad, that the West Virginia end of this tunnel was bricked, on account of the character of the soil through which the tunnel was driven. That end of the tunnel is longer, by about 200 feet, than the Virginia end of the tunnel. The West Virginia approach is about 1,300 feet shorter than the Virginia approach; but the character of the land is more precipitous at the West Virginia end than at the Virginia end, and consequently there are greater cuts at the Virginia end, and we allow the additional expense of 358
bricking that West Virginia end, to offset the greater length of the approach on the West Virginia side, which is as near an estimate as we could make.

By Mr. McClintic:

Q. That was the statement of Major Whitcomb that you are basing that on?

A. Only with respect to the bricking. The other information we obtained from this profile.

The Special Master: What is that—the profile (indicating)?

Mr. Anderson: Yes, sir.

Mr. Harrison: This is a copy of the original profile?

Mr. Conrad: Show it to the judge.

(The profile referred to is examined by the Special Master and explained by the witness to the Special Master.)

Mr. McClintic: I want to ask you one other question on that $863,000. Where did that fund come from?

Mr. Harrison: Do you mean the school fund?

Mr. McClintic: Yes.

The Witness: We obtained our information from journals A, B and C of the Literary Fund.

By Mr. McClintic:

Q. Where did the money come from; where did the literary fund get it?

A. I don't know; I think it was received from the general funds. 359

Q. From taxation, or in what way?

A. I believe the literary fund received the capitation tax, and certain interest on investments.

Q. Do you know how much money it received during that period in which that $863,000 was being charged, from capitations?

A. No, sir.

Q. Do you know how much it received from investments?

A. No, sir.

Q. Did you make any effort to find out those things?

A. I did not consider it necessary for the purpose of this —

Q. Just answer yes or no.

A. No, sir.

Q. You do know, though, that part of it came from capitations, and part of it from investments?

A. That is my recollection, and I believe I am right.

Q. Did any come from any other source?

A. The State may have appropriated certain sums to the literary fund during that period. I do not recall.

By Mr. Carlisle:

Q. I see from this statement that you charged $863,000 and some dollars directly to West Virginia on account of money expended there for educational purposes. That is correct, is it?

A. That is correct.

Q. When you come over to the ordinary expenses of the 360
State government of Virginia, the whole State under another clause of that decree, you charge the money expended by the State of Virginia for education purposes within the limits of what is now the State as ordinary expenses, do you not?

A. No; all the expenses through the literary fund were eliminated.

Q. Well, the University of Virginia and the Military School and some other things is all you have taken there.

A. Well, general educational institutions, colleges and things like that, yes; but not for the education boards, the boards in the various counties.

Q. What distinction do you make between those two?

A. These same payments were made to the counties of Virginia and we excluded those. Payments similar to those were made to Virginia counties.

Q. What I am trying to get at is this. The expenditures for educational purposes in Virginia belonged to the ordinary expenses of the State; why did not expenditures for education purposes for West Virginia belong to the ordinary expenses of the State?

A. We did not take all money for educational purposes in Virginia into the ordinary expenses of the government.

Q. You took some of it?

A. But all moneys paid direct to the counties were excluded from this account?

Q. In Virginia? 361

A. In Virginia.

Mr. Conrad: All universities you refer to belonged to the State of Virginia.

Mr. Carlisle: I understand that; but the point I wanted information on was this. If that money expended here for a similar purpose, that is for educational purposes, belonged to the ordinary expenses, why did not money expended in West Virginia for educational purposes also belong to ordinary expenses, so we would be charged not directly with the whole amount of $863,000, but our just share of it, as a part of the ordinary expenses of the State of Virginia?

The Special Master: Let us see if we understand what the witness has tried to do. I understand the witness has stated that items of this character, applicable to Virginia, do not enter into the accounts as a part of the ordinary expenses that are charged?

The Witness: That is correct.

The Special Master: So that while they are put in here as items disbursed in West Virginia, items of similar character do not appear in the ordinary expenses account, and none of these items occur in the charge that makes up the ordinary expense.

Mr. Harrison: That answers his question.

Mr. Carlisle: In other words, any money expended by the State of Virginia for common schools, we will say, inside of the territory now constituting the State of Virginia was not charged in this account either as ordinary expenses or otherwise. Is that what you mean to say?

The Witness: Yes, sir.

The Special Master: That is what I understood him to say. 362

[*Vol. 5, May 6, 1909. Cross Examination of A. G. Potter.*]

Mr. McClintic: There are sundry matters that I asked you to look up and be able to testify about this morning. Are you in a position now to answer in regard to any of those?

The Witness: I am in a position to reply regarding the road from South Branch.

The Special Master: What exhibit does that relate to?

Mr. McClintic: 3, I think.

The Witness: C-1.

The Special Master: And what page?

The Witness: Page 15 of the new paging. South Branch and Kitterman's, $1,400.

The Special Master: South Branch and Kitterman's?

The Witness: South Branch and Kitterman's to Hardy County.

The Special Master: The question was whether that was all in West Virginia?

The Witness: Yes, sir. 391

The Special Master: What have you found?

The Witness (apparently reading): Journal B, page 753, shows $1,400 to William Seymour for road from South Branch to Brocks Gap, under the Act of the 7th of February, 1850, Chapter 95, section 6. This is posted to his account in Ledger A, page 140, and transferred to Ledger B, page 265, in 1862. The $1,400 is then transferred by Journal D, page 181, 1865, to the account headed "Road from the South Fork of the South Branch of the Potomac near Breaks, by way of Kitterman's, to the Moorefield North Branch Turnpike in Hardy County at Petersburg." Petersburg is in Hardy County, west of the South Branch of the South Fork of the Potomac. I should say it is in Grant County, West Virginia, split off from Hardy.

Mr. Anderson: That shows both termini to be in West Virginia?

The Witness: Yes, sir.

Mr. McClintic: That is dated when?

The Witness: The last entry is made in 1865, transferring it to the account under this head.

The Special Master: Have you any other items which you were asked to look up, which you can now testify to?

The Witness: No, sir.

By Mr. McClintic:

Q. What was the reason for transferring those in 1865, so far as the books would show you anything?

A. I cannot say what the reason was.

Q. As a matter of fact, is not the road of the South Fork of the South Branch of the Potomac River to Petersburg and Hardy County entitled to a charge of $900 loan, and is not that a 392 wholly different road from the one you are speaking of?

A. I do not think it is, because the entry starts with an act of 1850, under the name of South Branch to Brock's Gap, and was later transferred to this other name.

Q. When we know that Brock's Gap is in Rockingham County and the South Branch is in Hardy and Pendleton Counties, would you not suppose the entry made when the road was built would be better than the one made fifteen years afterwards?

A. I don't know; I am sure I don't know whether it would or not. We would have to know more about the facts, and the facts beyond what I have stated here are not ascertainable from the books.

Q. Well, it is ascertainable from the books that when the road was started and when they knew what was doing they had it in one place, and then fifteen years afterwards it was changed to another place?

The Special Master: That is, there is an inconsistency?

The Witness: Yes; the entry indicates that.

Mr. Conrad: The road may have been built to extend much further than it actually did extend, and as it was constructed, it was between two points, the eastern point of which may have been further than provided for in the charter.

Mr. McClintic: What evidence have you of that? Are you testifying?

Mr. Conrad: No; I am not testifying; I am explaining an 393
obvious solution of the matter. Here is a record of West Virginia which shows the terminus of that road to be within that State.

Mr. McClintic: Where is the record and when was it made. This road connects at Brock's Gap.

The Witness: This is from the Board of Public Works. I merely said that this information was taken from the Board of Public Works ledger.

Mr. McClintic: Of what State?

The Witness: The State of Virginia.

The Special Master: Have you any information except what you get from the books?

The Witness: No, sir.

Mr. Conrad: Will you please give me the last date you read.

The Special Master: If that is to be supplemented by oral testimony that will come from another source, evidently. Is there anything further on that?

Mr. McClintic: No, sir.

[*Vol. 5. May 6, 1909.*]

JOHN B. LIGHTFOOT, JR.

was called as witness for the plaintiff, and being first duly 408
sworn, testified as follows:

By Mr. Anderson:

Q. What is your profession or occupation, Mr. Lightfoot?

A. I am a lawyer.

Q. How long have you practiced law?

A. Nearly five years.

Q. Please state to his Honor your connection, if any, during the last year or eighteen months, with any investigation or accounts which have been had in connection with this case?

A. When the expert accountant for the State of Virginia came to Richmond I was employed through the Attorney General to assist him by such means and methods as circumstances at various times might require, largely in connection with collecting and securing for their use the various documents of the State, as we might

find them at different places. When Mr. Potter, the accountant, came and brought with him his force of assistants, from the time that they arrived until they left I was with them constantly, connected with their work of accounting. I am not personally an accountant, so that my connection with the accounting work has been only that of an assistant under the direction of Mr. Potter. Incidentally to the existing work with him at the request of the Attorney General, I made an independent investigation into the expenditures within the boundaries of West Virginia, under the clause of the decree referring to that matter. It was not
my intention at the time to make anything more than a 409
memorandum for the use of counsel so far as it might be needed. However, the report was made the nature of an account, because that was the only way in which I could make it out so that it would serve its best purpose; but the report does not purport to be and is not the report of an expert accountant. It is my observation and my conclusion from the figures which I found in the published reports of the Board of Public Works, the published reports of the auditor and second auditor in the documents of the House of Delegates and in such original books of entry as the Board of Public Works, of the Auditor's office and of the second Auditor's office, and of the various internal improvement companies as I found occasion to examine. That report I have here.

Q. From your examination did you make up a statement or a report as to the expenditures within the counties now constituting West Virginia, and if so, what period was covered by that report?

A. I covered the period between 1820 and December 31, 1860.

Q. Have you a copy of that report?

A. I have one before me.

Mr. Anderson: A copy of this, if your Honor please, was left by me at the office of the Attorney General of West Virginia on the 7th of October last, and he acknowledged it afterwards to me.

Mr. McClintic: Yes, sir; we have a copy.

By Mr. Anderson:

Q. From what source did you get the figures or statement 410
of fact made in that report, Mr. Lightfoot?

A. The statement of facts and figures shown there were obtained from the published reports of the Board of Public Works, as contained in the separate volumes of the reports of the Board of Public Works, and also as contained in the documents of the House of Delegates; also the reports of the Second Auditor; also the original manuscript journal of the Board of Public Works; also from original maps of internal improvement companies; also from the reports

of C. Crozet, Chief Engineer, under the Board of Public Works, and from the original books of entry in the Second Auditor's office and in charge of the corporation commission which deal with internal improvement matters.

By Mr. Spooner:

Q. Does this differ from Mr. Potter's report?

A. To a slight extent; yes, sir.

Q. Will you point out the difference?

Mr. Anderson: The differences will be pointed out as we go along.

The Special Master: Do you want to use the whole report or only such parts of it as relate to discrepancies between it and the report of Mr. Potter?

Mr. Anderson: We will file the whole report.

Mr. Conrad: We put it in, in large part, because it does differ from Mr. Potter's statement, to show two independent lines of inquiry.

The Special Master: Have you a duplicate of it, so that I can follow along with it?

Mr. Harrison: You will be furnished with a duplicate, 411 your Honor.

The Special Master: In order to follow it intelligently, I must have a copy as we go along.

Mr. McClintic: What page do you begin with?

Mr. Anderson: The report is not paged, but we begin on page 4.

By Mr. Anderson:

Q. Mr. Lightfoot, was your report prepared before Mr. Potter's was completed, or afterwards?

A. My report was prepared before Mr. Potter's was completed, according to my memory. This is dated June 4th. I corrected this report.

Q. Was it revised?

A. This report was revised subsequent to the time it was originally presented; yes, sir.

Mr. Spooner: You say you corrected that report. Just finish that answer.

A. I don't understand.

Mr. Harrison: What did you say about subsequently correcting the report?

A. The report as first put in was subsequently revised as to a number of points which developed later, that needed revising.

Mr. Conrad: Revised by you?

A. By me, personally.

Mr. Harrison: And handed to me?

A. Yes, sir.

The Special Master: What have we here; the complete 412
revision?

A. Yes, sir.

Mr. Anderson: Yes, sir; that is his revised report. As will be seen by counsel and by Master, Mr. Lightfoot has adopted a somewhat different arrangement from that adopted by Mr. Potter.

By Mr. Anderson:

Q. From page 4 to 6 you have a statement of expenditures by the Commonwealth of Virginia within the boundaries of West Virginia for internal improvements, lunatic asylums, banks, law library, and miscellaneous items, since any part of the debt existing January 1st, 1861, was contracted, and the first statement you have here is a statement the caption of which is "Expended through the Board of Public Works. Joint stock and State turnpikes lying wholly within West Virginia." The first item is the Abbs Valley and Tug Road. Do you remember whether that was a joint stock company?

A. I do not. I took no note of the different internal improvement companies to which subscriptions were made for the joint stock or to which payments were direct by resolution or authority of the special act. I only took note of the fact that the money was spent.

Q. Is that road wholly within West Virginia?

A. This road is wholly within West Virginia, according to my report.

Q. You have the item $4,450, as expended by the Commonwealth on that road?

A. Yes, sir.

Q. Is that a correct interest? 413

A. It is.

Q. Then the Beverly and Fairmount road, $75,384.65. Does that road lie wholly in West Virginia?

A. It does.

Mr. McClintic: That is admitted.

By Mr. Anderson:

Q. And the original records show that the State expended that amount?

A. Yes, sir.

Q. Is that true as to all the items in this account on pages four and five of your report? I ask this in order to save time.

A. It is, to the best of my knowledge.

By the Special Master:

Q. In what respect do those items differ from the report made by Mr. Potter?

A. I have not made a minute examination, Mr. Littlefield.

Mr. Anderson: He has not classified them in exactly the same way.

The Witness: To get the exact difference in each item.

The Special Master: Then you would have to make a very careful analysis to get at the differences in details?

A. Yes, sir.

The Special Master: You need not bother to do it now, that is, as far as I am concerned. I did not know but you had it right at hand.

A. I think the items on pages four and five are the same in this and in his.

Mr. Carlisle: As to amounts? 414

A. As to amounts.

The Special Master: You mean the subject matter and the amounts expended?

A. Yes, sir.

Mr. Anderson: Yes, sir; we have Mr. Potter's statement here, and they agree as to that.

By Mr. Anderson:

Q. On page 6 you have a statement of the expenditures upon turnpikes and State roads lying partly in Virginia and partly in West Virginia. The first is the Berkeley and Hampshire Road, upon which, according to your statement, the total expenditure by the Commonwealth was $16,572, of which you ascertained that $13,655.33 was expended in West Virginia, or 82.4 per cent of the total expenditure. How did you ascertain those figures? These are what we may call now interstate roads.

The Special Master: That is identical with the item in Mr. Potter's report.

Mr. Harrison: That is right, sir. There is no difference there.

A. With respect to the road to which you refer, the Berkeley and Hampshire, I secured the 82.4 per cent chargeable to West Virginia, as follows. By the Act of March 1, 1851, page 103, the road is shown to run from Martinsburg in Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County to some point on the Northwestern Turnipke at or near French's Tavern. The Board of Public Works printed report, Volume 17, part 2, page 289, 415 stated the length of that road to be 45½ miles. The Board of Public Works printed report for 1858, at page 23, states that all of it has been finished. By scaling the maps, the length of this road in Virginia is found to be eight miles, and the length in West Virginia 35 and one-half miles. In Crozet's report of 1848—

Mr. Anderson: Crozet was the State Engineer.

A. The distance from Martinsburg to Bloomery Gap is stated to be 29 and one quarter miles. Bloomery Gap is taken to be one and a quarter miles west of Frederick and Hampshire line. By figuring the percentages from those calculations, I arrived at 82.4 per cent total distance in West Virginia. Therefore, 82.4 per cent of the total expenditures was charged to West Virginia.

Q. Does your report contain memoranda showing how you arrived at that result?

A. The report does.

Q. The report itself?

A. Yes, in this instance. In some instances, of course, it does not.

Mr. Spooner: Does that differ from Mr. Potter's statement?

Mr. Anderson: No, sir.

The Special Master: Do you care, gentlemen, to go over these items where there is no discrepancy?

Mr. Anderson: No, sir.

The Special Master: Unless some question is raised about 416
them on the other side?

Mr. Anderson: No, sir; I do not.

The Special Master: Unless there is some question made about these items, where he agrees with Mr. Potter, there is no occasion to spend time on them.

By Mr. Anderson:

Q. Did you ascertain the facts as stated on this page 6 as to these expenditures, aggregating $829,072.09, upon turnpikes and state roads lying partly in Virginia and partly in West Virginia, from the original records and reports of the Commonwealth to which you have referred?

A. Yes, sir.

Q. And maps?

A. Yes, sir.

Q. Now as to bridge companies—bridge companies solely in West Virginia. You find the total expense bill was $81,412.50 upon those bridges, and they are enumerated and described on page 7 of your report?

A. Yes, sir.

Q. Are the facts and figures stated in that account ascertained by you in the same way as you mentioned with respect to turnpikes and roads?

A. Yes, sir.

Q. Now, expenditures upon navigation companies—Coal River Navigation Company, Guyandotte Navigation Company, Monongalia Navigation Company and Tug Fork Navigation Company are found

on the same page, page 7, and the aggregate, according to that account, is $216,020. Were those expenditures traced and ascertained by you and determined in the same way as the 417
others?

A. Yes, sir.

Mr. Spooner: General, do they differ from Mr. Potter's?

Mr. Anderson: No, sir; they agree exactly.

By Mr. Anderson:

Q. Then you have a statement of money expended directly from the State Treasury on turnpikes and State roads lying wholly in West Virginia between those periods, amounting to $77,586.13.

The Special Master: The copy I have here shows $77,886.13.

The Witness: I think, General Anderson, the copy you have is not one of the revised copies.

Mr. Anderson: It is not. This is one of the first copies furnished.

The Witness: I think that was a copy which was made from one of the originals and not corrected. I have the corrected sheets here, however. You can follow them.

Mr. Anderson: My copy, which was a revised copy, I gave to his Honor.

Mr. Spooner: Have you another copy which you can spare?

The Witness: I have not, Mr. Spooner. I only had three revised copies.

The Special Master: Is there any discrepancy between that list and Mr. Potter's figures, Mr. Anderson?

Mr. Anderson: No, sir.

By Mr. Anderson:

Q. Then the next account, on page 9, is with reference to turnpikes and State roads lying partly in Virginia and partly 418
in West Virginia. What figures have you for that, Mr. Lightfoot?

A. Exclusive of the Kanawha Turnpike road and extension of same, and the Kanawha River and Board, the total is $6,080.50.

Q. Lying partly in Virginia and partly in West Virginia?

A. Expended directly from the State treasury.

Q. Including that, how much is it?

A. Including the Kanawha Turnpike road and extension of same, and the Kanawha River and Board—they are not shown as added there.

The Special Master: The addition would be $424,612.00, as I have it here. Is that right?

A. That is right.

The Special Master: Is there any discrepancy in those items, Mr. Harrison?

Mr. Harrison: There is a slight discrepancy.

The Special Master: In what item?

Mr. Harrison: In the Skidmore Fork item.

The Special Master: How much?

Mr. Harrison: Mr. Potter gives his opinion there as 50 per cent., and Mr. Lightfoot at 58 per cent. There is a difference of $80.

The Special Master: Upon which do you rely?

By Mr. Anderson:

Q. How did you get yours, Mr. Lightfoot? You find 58 per cent. and Mr. Potter 50 per cent. of the road is in West Virginia.

The Special Master: Which computation do you rest upon? 419

Mr. Harrison: We rest upon Mr. Potter's.

The Special Master: Then you do not need to spend any time in going into this detail.

By Mr. Anderson:

Q. On page 10 you have a statement of the expenditures by the Commonwealth of Virginia in West Virginia on railroads, and the first item embraces the Winchester & Potomac, 62.5 per cent. in West Virginia, $168,750. How did you get at that, Mr. Lightfoot?

A. Let me find the reference to that, Major.

The Special Master: Is there any discrepancy in that item?

Mr. Harrison: No, sir.

Mr. McClintic: It is a wonderful coincidence, your Honor, that both of them get at the same percentage on both of those things.

The Special Master: I suppose it is assumed they have proceeded upon an accurate hypothesis, and therefore they must come out together. Is there any discrepancy in any of the items on page 10, Mr. Anderson?

Mr. Anderson: There is, in the Covington & Ohio.

The Special Master.: There is no discrepancy between the items with relation to the two railroads?

Mr. Anderson: There is not as to the Winchester and Potomac. The measurement is just the same.

By Mr. Anderson: 420

Q. Now, you find there were $1,158,214.49 expended by Virginia in the Covington & Ohio Railroad.

The Special Master: That is not the way I have it here. I have it $1,187,149.09.

A. The correction in that sheet would show what Mr. Littlefield has.

Mr. Anderson: What is the amount?

A. $1,187,149.09 to be accurate.

The Special Master: Does that agree with Mr. Potter?

Mr. Harrison: No, sir; there is a difference.

The Special Master: Larger or smaller?

Mr. Harrison: Mr. Potter's is smaller.

The Special Master: Upon which do you rely?

Mr. Harrison: Mr. Potter's. There is $25,000 difference.

The Special Master: Then you need not spend any time on this item, need you?

Mr. Harrison: No, sir.

The Witness: I would like to state that the difference comes in because Mr. Potter has worked his out upon a scientific theory of accounting. I was not able to follow the—

Mr. Carlisle: How did you know?

A. I was associated with Mr. Potter for seven and a half months. We consulted over this matter very largely. I assisted him to a large extent, and he assisted me to a larger. Consequently what Mr. Potter has there I am very familiar with, and what I have Mr. Potter is very familiar with. As I wanted to make an independent investigation and could not follow Mr. Potter's theoretical working out of accounts, I had to take my own practical ideas, and I consequently lost $25,000 by it. It is worth that much to get an accountant. 421

By the Special Master:

Q. In other words, Mr. Potter's figures are the figures of an expert and yours are the figures of a lawyer?

A. That is correct, sir.

Q. And they rely on the figures of the experts?

A. Yes, sir.

The Special Master: That disposes of that item, then, so far as this branch of examination goes. Of course I do not mean to shut you off, Mr. Anderson, on any of these except I want to get the issues, and make it as short as we can.

Mr. Anderson: Yes, sir.

By Mr. Anderson:

Q. The miscellaneous expenditures, I believe, agree. I wish to direct your attention to the amount expended by Virginia in banks in West Virginia, $500,000.

The Special Master: What page do you find that on?

Mr. Anderson: That is on page 10.

Q. How do you get at that, Mr. Lightfoot? Some question has been raised about that.

By the Special Master:

Q. Does that differ from Mr. Potter's statement?

A. There is a difference there; yes, sir.

Q. What is it; how much? 422

A. I think there is a difference of $50,000.

Q. Is yours larger or smaller?

A. Mine is larger, if I recollect correctly.

The Special Master: On which computation do you rely, on that item?

Mr. Harrison: Upon Mr. Potter's figures. He is the expert.

Mr. McClintic: They are both the same, $500,000.

The Witness: I thought Mr. Potter's was different. I did not remember.

The Special Master: Mr. Potter gets the same result in another way.

Mr. Harrison: Substantially; that is it.

By Mr. Anderson:

Q. How did you get at the figures you have, $500,000? I have not been able to compare it, and I do not remember what Mr. Potter has.

A. I made up that statement from an examination, first of the documents of the House of Delegates, 1839-40, document 52, on banks situated in West Virginia. The statement there shows $450,000, held as follows: Northwestern Bank, in the name of the Commonwealth, $400,000; in the name of the Literary Fund, $50,000. In addition to the above, the Auditor's statement for the year ending September 30, 1861, Documents 61-2, document 7, page 12, shows 1,000 shares in the name of the Literary Fund in the bank of Fairmont, $50,000; making a total of $500,000. The expenditure of that $400,000 is shown in detail in the ledger in the auditor's office marked "1856-61," at page 55. The figures there shown make 423 up the $400,000. The item of $50,000, mentioned second, is shown in the documents 1861-2, document 7, page 17. The third item, in the same document, 7, page 12.

Q. Those items make the $500,000?

A. Yes, sir.

Q. And that agrees with Mr. Potter?

A. Yes, sir.

Q. I have not found Mr. Potter's estimate. Now, the amount expended on account of the Harper's Ferry raid, as it is called?

A. There is a slight difference there, I think.

The Special Master: He is a little more than $2,000 less than Mr. Potter.

Mr. Harrison: About $2,000 less.

The Special Master: Which do you rely upon?

Mr. Harrison: We rely upon Mr. Potter:

The Special Master: Is it a fact that wherever discrepancies occur between the reports of Mr. Potter and Mr. Lightfoot, the plaintiff relies upon Mr. Potter?

Mr. Anderson: Yes; we rely upon Mr. Potter.

The Special Master: Then what occasion have you for taking the time with Mr. Lightfoot, under the circumstances, unless he is possessed of some information as to the original sources that is not possessed by Mr. Potter?

Mr. Harrison: It shows the result of an independent investigation, and we are introducing it for the purpose of corroborating the statements filed by Mr. Potter.

The Special Master: If they do not happen to agree, they 424
do not corroborate.

Mr. Harrison: As far as they do not agree, they do not corroborate; but so far as they do agree, and so far as the report shows the sources from which the information was derived, they are corroborative.

The Special Master: Very well.

By Mr. Anderson:

Q. Do you remember what you excluded that Mr. Potter included in his statement of the Harper's Ferry expenses?

A. I couldn't say, from memory, where we differed as to items.

The Special Master: That, of course, would be disclosed by a comparison, but there is no occasion to take up time for that if I may rely upon Mr. Potter's report as the authentic report. That is, I will not have any occasion to examine it for that purpose.

By Mr. Anderson:

Q. You make the total expenditures in West Virginia, Mr. Lightfoot, as shown by the last two pages of your report, $5,770,677.48.

The Special Master: That is on page 10?

A. No, sir; page 11, the summarized report. They show the same figures, however. Page 11 is merely a summary of the foregoing.

The Special Master: Yes; I have it.

By Mr. Anderson:

Q. The items aggregating that amount were determined by you in the same manner in which you have taken the details as to a
number of items about which you have testified? 425

A. Yes, sir.

Q. And it is supported by the record and accounts in the public offices of the Commonwealth?

A. They were.

Mr. Anderson: We now offer that report.

The Special Master: Do you wish this all to go in, Mr. Anderson?

Mr. Anderson: Yes, sir; we want the statement to go in.

The Special Master: Just what you have called attention to in the examination?

Mr. Anderson: No, sir; the whole of it.

The Special Master: On page 12 there is a statement of the variance between these figures and those by J. M. Bennett in the report of the Virginia Debt Commission to Governor Jacob, August 9, 1871. Do we have any occasion for that?

Mr. Conrad: It is very important. Then it was the Auditor of Virginia who made the reports on which we rely. He afterwards returned to his home in West Virginia, at the close of the war, and was employed there to make a report by the Governor of West Virginia.

The Special Master: Well, this will become material, I suppose, so far as it tends to show what the actual conditions were; but the mere fact that a discrepancy existed between one accountant and another, of itself, standing alone, would not be very illuminating.

Mr. Conrad: The curious result was disclosed that the re- 426
port made by him under the auspices of West Virginia differed materially and essentially from the report made by him five years before, as Auditor of Virginia.

The Special Master: This has some tendency to affect the integrity or reliability of his reports.

Mr. Carlisle: Yes, both as an officer of old Virginia and as auditor of West Virginia.

Mr. Conrad: He was not the auditor of West Virginia.

Mr. Carlisle: He had been the auditor of Virginia.

Mr. Conrad: He had been the auditor of Virginia, but he never was the auditor of West Virginia.

Mr. Carlisle: Do you think the report in West Virginia was not correct?

Mr. Conrad: I know it was not correct.

Mr. Carlisle: Then what makes you think that the report by the same man in old Virginia was correct?

Mr. Anderson: It was just a compilation of figures.

The Special Master: That will come later.

Mr. Conrad: I will answer that later, or try to do it.

The Special Master: Then, as I understand, you offer the whole of this, Mr. Anderson?

Mr. Anderson: Yes, sir.

The Special Master: What shall we mark this? It relates to all of the various subjects, does it not?

Mr. Anderson: No, sir; it only relates to Article C-2.

The Special Master: Then it will be marked "Plaintiff's Exhibit C-2."

(The paper referred to is filed herewith, marked "Plain- 427
tiff's Exhibit C-2.")

Cross Examination.

By Mr. Carlisle:

Q. I understand you to say you are not an expert accountant, Mr. Lightfoot?

A. You are correct, sir.

Q. But an attorney at law.

A. Yes, sir.

Q. You were employed as an attorney in the case, were you?

A. No, sir.

Q. You were employed as an ottorney in the case, were you?

A. I was not employed as an attorney in the case.

Q. In what capacity were you employed?

A. I was employed in the broadest capacity that could be devised. It was to do anything which might assist the accountants in this matter, either in a legal way or in the matter of accounting, so far as my abilities went.

Q. In a subordinate capacity?

A. Yes, sir.

Q. Well, as a subordinate, did you make, as you said a while ago, an independent examination of these things?

A. That is correct, sir.

Q. Not subject to the supervision or control in any way of Mr. Potter?

A. Not at all, sir.

Q. Did you consult with him from time to time while you were making the account? 428

A. Very frequently.

Q. What was the character of those consultations? What were they about, in a general way?

A. Let me illustrate. We will take the Covington & Ohio Railroad. When the accountants came to making up their report on the Covington & Ohio Railroad, we found that it involved largely a history of events and of the work of the Board of Public works—not of the Board of Public Works, but of the Commissioners who built that railroad. That tooks us through a large number of volumes of the report of the Board of Public Works and of the documents of the House of Delegates. We had to find the scheme under which the engineers built that road. We had to find the history of the various proposed routes, and the authority for the one which they

finally adopted, and the cost of surveys on various routes, the division which the engineers made between Covington and the western end of the road, so as to divide the expenditures properly between Virginia and West Virginia. The conferences with Mr. Potter on that subject were of great assistance to me, and I do not hesitate to say the conferences with me were of great assistance to Mr. Potter. That is merely an illustration of the way we worked together.

Q. That is one instance?

A. Yes, sir.

Q. I asked you for your general course while you were there acting as a subordinate to Mr. Potter, as I understood you to say you were.

A. Yes, sir. 429

Q. Did you not co-operate with Mr. Potter all the way through this investigation?

A. All the way through; yes, sir.

Q. So that it was not, as you said, an independent investigation on your part?

A. It was independent in this sense, that the report which I have here I made up from notes which I myself took during the work with Mr. Potter.

Q. I understand that. Then you submitted them to Mr. Potter, did you not?

A. No, sir.

Q. You did not?

A. I did not.

Q. When you came to revise them, where did you get your information for your revision?

A. I got my information from the same sources.

Q. Did you go back to the original sources again?

A. Absolutely; yes, sir.

Q. Sources that were original with you?

A. Yes, sir.

Q. Did Mr. Potter ever have that report?

A. Yes, sir; he made a copy of it.

Q. Did he have it before he made his report?

A. As to that I can't state positively. I think he did.

Q. Then, as I understand you, there are some differences between the amounts found by you and the amounts found by Mr. Potter? 430

A. In some instances; yes, sir.

Q. A few instances? About how many?

A. Probably not over three or four.

Q. Then, as I understand you, an independent investigation made by a gentleman who is not an expert accountant at all, of all these

numerous accounts, agrees, except in three or four instances, with the investigation made by an expert accountant?

A. That is correct, as to the expenditures within the counties comprising the State of West Virginia. You understand, Senator, this report does not go beyond that item.

Q. Then if Mr. Potter is an expert accountant, you are one also, are you not?

A. If I am as close to Mr. Potter's results as this, I think I might say I am.

Q. You are almost as good an expert accountant as he is?

A. I should think so.

Q. Mr. Lightfoot, did you consult Mr. Potter at any time during this investigation as to what should and what should not be included in his accounts?

A. In his accounts?

Q. Yes.

A. I think I had better answer that question generally by saying that possibly there is no question which arose in connection with these accounts in toto that was not discussed between Mr. Potter and myself.

Q. If, for instance, Mr. Potter had charged certain items 431 under the head of ordinary expenses, if he had to charge certain others as moneys expended in West Virginia, then he had to credit West Virginia with certain moneys which had been paid into the public treasury by the counties now composing that State. Did you advise Mr. Potter as to what he should include in any one of these accounts, and what he should exclude from any one of these accounts, as a lawyer, as an attorney? You were there in that capacity as I understand you?

A. No, sir; I was not there in the capacity of an attorney to advise Mr. Potter.

Q. Well, you were not an accountant, you say?

A. No, sir.

Q. In what capacity were you acting?

A. I was there in the capacity of a subordinate, to assist in any way I might.

Q. A subordinate accountant, or a subordinate—

A. If you will pardon me, let me be understood.

Q. I do not want to confuse you. I want to get the facts. That is all.

A. It is a fact that I want clearly stated. I would not like my position to be misunderstood. It was clearly understood, when I was assigned to this work, that while my legal opinion might be valuable, it was not to be final. In fact, it was not to be taken in

important matters at all, without reference to a regularly employed counsel.

Q. I did not ask you whether your opinion was final or not. 432
I simply asked you if you did or did not consult with him and advise him?

A. As I have stated, I undoubtedly did, and I gave my opinion in numerous instances.

Q. Did he follow your opinion?

A. That I couldn't tell you.

Q. You can look at his account and see. Does your account differ from his as to the classification of any of those matters about which you gave him advice?

A. I would not attempt to answer, it covers such a multitude of detail.

Q. You consulted him a great many times, did you not?

A. Numerous times. In fact, we were working together. He would sit at this end of this desk, and I would sit at the other end, frequently.

Q. There are only three or four differences, as you have already stated, between your account and the account of the expert?

A. I think that is all, sir.

Q. Are they on figures or on classification of the accounts?

A. As to the main differences—well, what do you mean by classification?

Q. I mean whether a particular item should be charged as an ordinary expense or should be charged as a direct payment to West Virginia, or should be credited to West Virginia as a payment by her counties into the public treasury. You know the division of each county, under the decree of the Court.

A. Yes. The discrepancy of the Covington & Ohio Rail- 433
road—

Q. I am not asking for any particular thing.

A. I can best illustrate it in that way.

Mr. McClintic: We do not want an illustration. We want facts.

By Mr. Carlisle:

Q. Well, go on.

A. The discrepancy in the case of the Covington & Ohio Railroad, which, according to my memory, covers about $25,000 loss in the difference between Mr. Potter's method of dividing the administrative expenses and my method of dividing the same, is one instance. There is a discrepancy in the Northwestern turnpike accounts, which, according to the best of my memory, is for the same reason—probably that and the Staunton and Parkersburg.

Q. You see, Mr. Lightfoot, I am not asking you anything on that

subject. I am asking you whether you and Mr. Potter differed at any time with respect to the classification of the accounts; that is, to which account a particular item should go.

Mr. Anderson: About any matter in this account or the other account?

Mr. Carlisle: All the accounts. I want to know in other words, if his account and Mr. Potter's account agree as to the classification of the items, and if so, how that came about?

A. They do. 434

Q. How did that come about? You are not an expert accountant, and he is. How did this agreement between you and him come about?

A. Because, so far as I see, there is only one possible classification—that is, into turnpikes wholly within the State of West Virginia, turnpikes partly—

M. Lightfoot, I am very unfortunate in not being able to make myself understood.

The Special Master: The question simply is, Mr. Lightfoot, inasmuch as you and Mr. Potter did agree on the classification, how does it happen you did agree?

Mr. Harrison: But there is no item in this statement except money spent wholly or partly in West Virginia.

The Special Master: Then it may be one great classification. There are various items.

Mr. Carlisle: There are three different material accounts.

The Special Master: The simple question now is how they came to agree on the classification between themselves. That is the only question asked now.

Mr. Carlisle: That is my question.

By Mr. Carlisle:

Q. There are three accounts there which I have already enumerated, and your report and Mr. Potter's report, if I understand it, agree substantially on the items contained in those classifications. I do not mean as to amounts now. You agree that this item should go into this account, and another one into another account, under the decree of the Court. How did you happen to agree on this classification—not on amounts. I am not talking about 435 amounts at all.

A. I understand you. May I ask you again, Senator, to explain the meaning of classification?

Q. I will state it again. I can state it from the decree.

Q. Would you take my report and illustrate?

A. That is not necessary at all. I don't know what your report is on that subject. The decree directs the Master to ascertain three

things which affect the accounts between these two states. The first is that West Virginia shall be credited with all the money which the counties now composing that state, paid into the Treasury of the State of Virginia during the time this debt was being created?

A. May I interrupt you? My report takes no account whatever of that.

Q. What does your report relate to?

A. Only expenditures within the Commonwealth.

Q. Leave that out, then. There are two other accounts. The decree, then, directs the Master to ascertain and report West Virginia's just proportion of the ordinary expenses for the State of Virginia, which of course requires him to ascertain what the ordinary expenses of Virginia amounted to during that period.

A. May I interrupt there?

Q. Yes.

A. My report takes no account whatsoever of that.

The Special Master: His report, Mr. Carlisle, is only made under paragraph 3, plaintiff's exhibit C, which relates simply to expenditures made by the Commonwealth of Virginia, as I understand it. I may be wrong about this, but as I understand it Mr. 436
Lightfoot's report is confined entirely to that particular item.

Mr. Harrison: Absolutely.

The Special Master; And up to date he has not testified about any other item? The report submitted covers only that particular item, and does not go any further.

Mr. Carlisle: Then on that item, we will confine ourselves to the report. I thought his report covered the whole thing.

The Special Master: I had that impression in the beginning, but I find it is confined to that paragraph.

By Mr. Carlisle:

Q. I understand, then, Mr. Lightfoot, that this report refers to expenditures made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia since any part of the debt was contracted. That is the only one, as I understand now, that you investigated.

A. That is correct.

Q. Does your report agree with Mr. Potter's report under that item of the decree?

A. It does not.

Q. In what respects does it differ?

A. There is a discrepancy probably amounting to nearly $50,000. 437

Q. I did not ask for dollars and cents. I have expressly excluded that. Do you agree as to the items you have charged

under that against West Virginia? Did you agree upon the subject matters that should go in there?

A. Practically, I think we did. I know of no instance in which we did not.

Q. You consulted about that, did you not?

A. Undoubtedly, yes.

Q. Did or did you not advise him on that subject, as to what he should put in?

A. In specific instances, I have no doubt that I did.

Q. Did he take your advice?

A. I couldn't tell you, Senator.

Q. His report will show you that?

A. I have no doubt he did.

Q. He put them in?

A. I have no doubt of it.

Q. Now, there is an item in there of eight hundred and some odd thousand dollars for school expenditures in the counties of West Virginia, Did you consult with him about that?

A. Yes, sir; as to that item. Let me find that item. It is added in ink at the end of my report.

Q. After you had made your report?

A. After I had made my report. It is to indicate, and is a fact, that as to that item, I made no personal investigation. I took Mr. Potter's figure entirely, in order to complete the nature of my report.

Q. So you had no consultation about that item, you mean to say, before Mr. Potter included it in his report? 438

A. Before what date?

Q. Before he included it in his report. You took that item from Mr. Potter's figures?

A. Entirely so; yes, sir.

Q. Previous to the time when you took it from his figures, you had no consultation about it, as I understand it?

A. Yes; we had. We had worked together on compiling those figures of his report. I had not included it in mine. I had no notes on the subject.

Q. I misunderstood you. I thought you said you did not investigate that subject at all.

A. Not for the purpose of my report. I made no notes for my own purposes on that item.

Q. Do you know why you had not included that in your report, when you took up the specification of the decree, to ascertain what money had been expended by the State of Virginia in the counties composing the State of West Virginia?

A. Yes, sir; I can explain that, I think. The original idea of this report was to furnish to the attorney general or the counsel

some idea as to the expenditures for the physical internal improvements. It was intended primarily to cover the turnpike companies, the bridge and navigation companies and the railroads.

Q. That is what is covered by the decree.

A. I was not instructed to do that by the attorney general, but I got it up on my own idea, and later when the report was completed and handed in, I found that Mr. Potter had in- 439
cluded the school commissions in his report.

Q. You put it on the bottom of yours?

A. I put it on the bottom of mine, to make a full figure.

Q. Mr. Lightfoot, in apportioning the amounts which were expended on turnpikes, roads, bridges and navigation companies, which you had to do, you say, by ascertaining the percentage of the work in the one State or in the other?

A. Yes, sir.

Q. Did you and Mr. Potter collaborate on that together?

A. A great deal; yes, sir.

Q. Who made the measurements on the maps?

A. Why, we both made them.

Q. Did Mr. Potter or any one of his assistants go over all those measurements, so far as you know?

A. So far as I know, Mr. Potter or one of his assistants personally went over all of them.

Q. Did Mr. Potter or any of his assistants, so far as you know, go through the books to see whether your amounts were right or not?

A. No, sir; they did not check my amounts. They checked their own.

Q. So that the amounts which are reported there by Mr. Potter are the amounts found by you?

A. Undoubtedly.

Q. Not by him?

A. No, sir.

Q. Not by any of his assistants? 440

A. That is correct sir.

Q. Do they disagree from Mr. Potter's in any way?

A. They do not, except in the one or two instances mentioned.

Q. Do you know how that disagreement came about?

A. May I state that now?

Q. Yes, sir.

A. Referring back to this Covington & Ohio matter—

The Special Master. You do not need to go over that again, Mr. Carlisle:

The Witness: Then I can't explain how it came about

The Special Master: You need not explain that one instance again, because you have already explained it twice. If there are

any other instances, you may explain them. You do not care to have him go over that again, Mr. Carlisle?

Mr. Carlisle: Oh, no, sir.

The witness: I understood you to ask me the question, and it would require repetition.

By Mr. Carlisle:

Q. What other instance have you beside the Covington & Ohio?

A. The Staunton and Parkersburg and the Northwestern Turnpike are the only two I recall right now.

Q. How did that disagreement come about?

A. From the different methods we used in getting at it.

Q. In getting at the amount? 441

A. Yes, sir.

Q. I understood you just now to say that neither Mr. Potter nor his assistants investigated the amounts at all; that they took your figures on the amounts?

The Special Master: You did not get the whole of his answer, Mr. Carlisle; I noticed particularly in answer to that question that he said they did not examine as to his items, but did examine as to their own.

Mr. Carlisle: That is one of your items?

A. Let me make that answer a little more clear. I said that neither Mr. Potter or his assistants checked my amounts in order to ascertain if they were correct. They themselves made up independently their amounts and checked those.

Mr. Carlisle: I misunderstood you entirely?

A. Yes, sir.

The Special Master: I thought you did. That is substantially what he said before.

Mr. Carlisle: My question to the witness was whether they had investigated the amounts, and he said no, as I understood him.

A. We compared them, of course, to see if we had arrived at the same conclusions.

By Mr. Carlisle:

Q. Yes; I understand that. Now, you were asked about this celebrated John Brown raid. Did you investigate that account?

A. Yes, sir.

Q. How did you come to investigate that account, when 442 you say you started in to ascertain only the amounts expended for improvements in West Virginia? Did you think that was an improvement?

A. I investigated that at the special request of the attorney general.

Q. That was beyond the scope of your investigation, as I under-

stood it, at the start? That was beyond the scope of your report?

A. No, sir. It was beyond the scope of my report as I had personally intended to make one.

Q. If you started out as you said a while ago to investigate the accounts of money expended in West Virginia for internal improvements, et cetera, would not the John Brown raid expenditure be outside the scope of that investigation?

A. As to internal improvements?

Q. Yes, sir.

A. It would be outside of the scope of my report. Physical improvements, was the idea of my report.

Q. Why did you suppose that was an expenditure to be charged to the counties composing the State of West Virginia?

A. Because so far as—

Q. As a lawyer, now, why did you suppose that expenditure was an expenditure chargeable alone to the counties composing the State of West Virginia?

A. So far as my judgment went in the items included they were expenditures within the counties of West Virginia.

Q. I suppose you included the idea that they were expended 443
for the benefit of the counties of West Virginia?

A. You suppose I included that idea?

Mr. Anderson: The decree does not take account of beneficial expenditures in West Virginia.

Mr. Carlisle: Money expended for the benefit of West Virginia exclusively.

Mr. Conrad: Not at all.

Mr. Carlisle: We differ about that. A great deal of money was expended in West Virginia during this period for various purposes, but it was for the common benefit.

Mr. Conrad: I think the tunnel through the Blue Ridge Mountains, which is entirely in the State of Virginia, was as much for the benefit of the counties of West Virginia as of Virginia.

Mr. Spooner: You do not see any connection between that and the John Brown raid, do you?

Mr. Conrad: The parallel, Senator, is that the body politic is like the human being. The food put in the mouth goes for the nutrition of the whole body, and not for the mouth alone.

Mr. Carlisle: Suppose the body politic had three heads, the restored government, the government at Richmond and the West Virginia government.

The Special Master: That is a sort of an aggravated Siamese twins illustration. You may proceed with the examination.

Mr. Carlisle: I want to see what the account is for, what 444
the items of the expenditure were made for.

Mr. Harrison: Which account?

Mr. Carlisle: I want to see whether it includes anything for the trial of John Brown, the sheriff's fees for hanging, or whatever was in there.

A. My notes, so far as this report has it on that subject is:

"The above is obtained from the reports of the Auditing Board of March 15, 1860, and January 1, 1861, as published in Senate Documents 1859-60, document 62 and Senate Documents extra session 1861, document 2."

By Mr. Carlisle:

Q. Do they give the items?

A. They give all the items.

Q. You haven't them?

A. I haven't them here; no sir. I picked out such items as I thought in my own judgment were proper.

Q. That is what I want to get at. Will you state to the Master what character of items you included?

A. I find a further note:

"The basis of charges to West Virginia are for expenditures at Harper's Ferry and Charlestown, but expenditures for arms, ordinance, blankets, overcoats, and transportation are not included in the above."

Q. The trial of John Brown, though, and the expense of it, are included there?

A. No; I am very sure the trial was not included in the report.

Q. You spoke of Harper's Ferry and Charlestown. That is where he was tried and executed. What expenses at 445 Charlestown are included?

A. I can't tell you without having that report here. There are in that report the data and vouchers for everything that they paid.

Q. Could you get those details some time to-day?

Mr. Conrad: We can get them in fifteen minutes. They are in Senate Documents 1859-60.

A. It is very possible I have them here in my notes.

Mr. Carlisle: I do not care so much about the details, because the whole trial, as a matter of history, is in the record.

The Special Master: He thinks he has the details here.

Mr. Carlisle: What was it at Charlestown?

Mr. Anderson: The charge was for the support of 1,500 troops for a month or two. I don't remember the time.

Mr. Carlisle: At Charlestown?

Mr. Anderson: Chiefly at Charlestown. The money was expended in West Virginia.

The Special Master: Do you find the items, Mr. Lightfoot?

A. No, sir; I do not find them.

Mr. Carlisle: I am through with the witness.

Mr. McClintic: I would like to ask one or two questions on the road matter.

By Mr. McClintic:

Q. You charge the Back Creek Valley road, and Mr. Potter does not charge it. Which is correct in that instance?

A. If you expect me to answer that question, I will say 446
I am.

Q. Where is the Back Creek Valley Road; in West Virginia?

A. Just a moment, sir. I will give you some information on that.

The Special Master: On what page do you find that?

Mr. McClintic: It is on page 6.

Mr. Conrad: It is partly in Hampshire and Frederick counties, but the bulk of it is in Hampshire county.

A. With reference to the Back Creek Valley road, I find this note:

"Virginia 58 per cent, $661.20; West Virginia, 42 per cent, $478,80; total expenditures, $1,140.00. Act of March 8th, 1856, page 134. Road to run from the Northwest Turnpike near Lockhart's Tavern, in Frederick county, up Back Creek Valley to Capon Springs in Hampshire County. See Act of March 29, 1860, page 302, for States subscription. The 'nine section' map shows this road beginning about ½ mile west of Lockhart's Gap and running to Capon Springs. By scaling that I find the total distance to be 16¾ miles; in Frederick county, 9¾ miles; in Hardy county, 7 miles."

By Mr. McClintic:

Q. Is that Hardy or Hampshire?

A. It should be Hampshire. That is evidently a mistake.

Q. You charge there the Abbs Valley and Tug road wholly in West Virginia, on page 4. Do you know Abbs is in Tazewell County, Virginia? 447

A. Yes, Abbs Valley is in Tazewell County.

Q. Where they had the celebrated Indian massacre and various and sundry other historical episodes?

A. I don't personally recollect it, but I have no doubt that is true.

Q. Do you say that is all in West Virginia or partly in West Virginia, that Abbs Valley and Tug road?

A. I have it wholly in West Virginia.

Q. Is that your best judgment?

A. That is my best judgment.

Q. On page 8 you have the Allegheny mountain turnpike wholly in West Virginia. What have you in relation to that?

A. What is your next one, sir?

Q. The Allegheny mountain turnpike?

A. As to the Abbs Valley, I have no notes here which would assist. I have references. I think as to the Allegheny Mountain turnpike I have a specific note, however. (After examination.) No; I have no specific note here as to that. I have only the references.

Q. As a matter of fact, do you not remember that the Acts calls for Pendleton and Pocahontas Counties?

A. I can't say that I recall the Act.

Q. And look further for it when you look for it, and see if that part of Pendleton County was not afterwards made into Highland County?

A. That may probably be true, sir.

Q. Those are the facts in the case. 448

Mr. Anderson: What was the date of it?

Mr. McClintic: I do not recall the date.

A. My report will show the date of the expenditure, not of the Act. Mr. Taylor's report would show the date of the Act.

By Mr. McClintic:

Q. You have the Louisa Fork of Sandy River road?

A. Yes, sir.

Q. Where is that?

A. What page are you referring to now?

The Special Master: It is page 8, $1,000.

A. I have no note on the location of that road. I have only references to the expenditures, but those references are doubtless the ones from which I obtained this information. I will refer back to it.

Mr. McClintic: That is all.

The Special Master: Have you anything to ask on re-direct?

Mr. Conrad: There is just one question I want to ask, referring to Mr. Carlisle's examination.

Re-Direct Examination.

By Mr. Conrad:

Q. You refer to your report there as an independent inquiry of your own. I would ask you if there is any fact or figure stated in your report which was acquired by you by adoption from Mr. Potter or from any other source, or whether you derived it from original investigation of your own?

A. I derived it from original investigation of my own, with the single exception of this payment for schools in West Virginia, which I have already stated. 449

Q. Yes. Having derived all the facts and figures by original investigation of your own, I would ask whether your application of those facts and figures in any respect was derived by you from Mr. Potter's scheme, or whether it was an original device of your own.

A. So far as I have any recollection at all, it is entirely an original device of my own.

The Special Master: That is, you acted on your own initiative?

A. Yes, sir; entirely so.

By Mr. Conrad:

Q. You adopted nothing in either the ascertainment of facts and figures of the application of them. Is that your answer?

A. Yes, sir.

[*Vol. 5. May 6, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: I will now present exhibit marked Defendant's Exhibit C-1. If the Court pleases, in Defendant's Exhibit C-1. we do not wish to present it in the exact form in which it 513
is here. I desire to make some changes in it and have the stenographer take the changes down.

On page 2, item for Brandonville, Kingwood & Evansville Road, $10,595.73; the item for the Clarksburg and Buchanan Road, $19,259.36; and the item for the Kingwood and West Union Turnpike company, $18,140.61, we desire to eliminate from 514
this report. With the permission of the other side, I will state the reasons.

Those three roads or turnpike companies were incorporated under the laws of Virginia, and after they had been incorporated and virtually built by these stock companies, the State appropriated those three sums, which I believe are correct in amount, for certain work, I believe, for macadamizing those three roads, which I believe, belonged to these private corporations; and we wish to reserve the question for argument as to whether there is any liability on us for those items.

Mr. Harrison: What do you mean by saying the State appropriated those three sums, and what do you refer to as the evidence of that appropriation?

Mr. McClintic: The evidence appears from the acts which appropriated that amount of money, which was expended on the roads belonging to a private company in the State of Virginia, as in the nature of a gift to those three companies. I do not think there is any doubt about the facts. It is a question of argument.

The Special Master: The only question is whether under the law

and the decree it is an item to be properly taken into consideration in this connection.

Mr. McClintic: Yes; that is right.

Again on page 4, of that exhibit, there is charged to the Trans-Allegheny Lunatic Asylum at Weston, $125,000. We desire to ask that that be changed from $125,000 to $98,000 on the exhibit, and later, perhaps, to show by evidence that while that sum of money, $125,000, was drawn from the Treasury of the State of Virginia prior to the 1st day of January, 1861, that $27,000 of 515
that sum was in the hands of the Treasurer of the Board of Directors of the Trans-Allegheny Lunatic Asylum, and had been expended; but was still the property of the State of Virginia; and in the summer of 1861 the restored government, which, as we claim, for all necessary purposes was the State of Virginia, took that money from the hands of the treasurer and used it for its own purposes, and the same was not expended on the building for which it was originally appropriated by Virginia. In other words, $98,000 instead of $125,000 was spent.

Mr. Anderson: It was expended in West Virginia, but it was expended in a different way.

Mr. McClintic: Yes; it was spent to have that ordinance passed and for other necessary things that were needed at that time.

With those changes, we desire to offer this exhibit Defendant's Exhibit C-1 in evidence.

(The exhibit was marked accordingly.)

Mr. McClintic: Please state if you made this exhibit?

The Witness: I prepared and made this exhibit.

The Special Master: Can you state in this connection the acts of the legislature upon which you rely in connection with the three things you have struck out, so that it will be in the record in that connection.

Mr. McClintic: With the kind permission of the other side, I will use the index of the other side and find out for your Honor in a moment.

Mr. McClintic: The Clarksburg and Buchanan Road—

Mr. Harrison: What page have you? 516

Mr. McClintic: I am on page 6 of Taylor's report. The Clarksburg and Buckhannon Road was incorporated March 9, 1848. Acts, page 219. In 1853, Acts of 1853, page 70, the moneys expended on the road were appropriated, or the Board of Public Works was authorized to borrow and spend that sum.

The Kingwood & West Union Turnpike Company was incorporates in 1848, Acts, page 216, and this other expenditure was authorized in 1853, Acts, page 11. I do not find in this exhibit the

Brandonville and the other one. It might be under some other name, but I do not see it.

The Special Master: You can supply that later, then?

Mr. McClintic: Yes, I can supply it later.

The Special Master: And when you get it, I will have the stenographer put it in the notes in its place. It will be a great convenience to me in looking this thing over later, to have everything grouped together.

(The information referred to is as follows):

By Mr. McClintic:

Q. State, Mr. Dixcy, whether this exhibit includes all the 517
expenditures by direct appropriation made for roads in the West Virginia counties, the counties now forming West Virginia, and if any are omitted, if you know, why were they omitted?

A. It includes all the direct expenditures under appropriations for roads made by the Commonwealth of Virginia in the territory now constituting the State of West Virginia between March 19, 1823, and January 21, 1861.

Q. State about the expenditure on page 2, of the Moorefield & Allegheny Turnpike Company for building the stem to Petersburg. $4,500. Was there any other expenditure by that company, or on that road, either?

A. In addition?

Q. In addition to the sum of $4,500 for the stem up to Petersburg.

A. That is shown as the expense of building the stem to Peterburg.

Q. That was a direct appropriation, was it not?

A. Yes, sir; a direct appropriation.

Q. For a particular purpose.

A For that particular purpose, it is shown.

Q. Was that an incorporated company or a direct appropriation, the Moorefield & Alleghent Company proper?

A. That was a direct appropriation.

Q. I mean the Moorefield & Allegheny Turnpike Company proper. Was that an incorporated company?

A. The Moorefield & Allegheny Turnpike Company was an incorporated company.

Q. Is the value of that included in any exhibit made by you? 518

A. Yes; in under 7.

Q. I will examine you then under 7 in reference to it.

Mr. Harrison: What was the last question that related to 7?

Mr. McClintic: This Moorefield & Alleghent turnpike company. It is an incorporated company, except a certain sum, $4,500, ap-

propriated to build what the State termed a stem to Petersburg; that is, a branch from the main stem.

Mr. Harrison: And he does not show on this schedule the expense of the stem to Petersburg?

Mr. McClintic: He only shows the expense of the stem to Petersburg.

Mr. Harrison: The $4,500.

Mr. McClintic: Yes.

Mr. Harrison: It does not show, then—

Mr. McClintic: It does not show what you might term the main construction of the line?

Mr. Harrison: That is shown somewhere else?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On page 3 of this exhibit there is shown the Abbs Valley and Tug road.

A. Yes, sir.

Q. State as to what percentage charged to West Virginia 519 what the percentage is on the exhibit you have?

A. As lithographed, it was 9.91. It has been changed on the original here and on the Master's copy, and I think on most of the copies, to 90.10. It was an error in typewriting which was corrected in reading back the proof.

Q. That road has been testified to as being wholly in West Virginia. What did your examination show as to that road?

A. It showed that something over 90 per cent., 90.10 per cent., was in West Virginia; the balance in Virginia.

Q. What county, if you remember? Tazewell County, if you will allow me.

A. I don't remember; no.

Q. As a matter of fact it is Tazewell County.

Mr. Anderson: The ten per cent. is in Tazewell County?

By Mr. McClintic:

Q. The next item following that is the Allegheny Mountain Turnpike. State if you know whether that is in both States or not?

A. 55.55 per cent. in mileage, as we measured it, is in West Virginia.

Q. Do you know the counties that is in?

A. I don't recall them; no, sir.

Q. In the next item, the Berryville and Charlestown Turnpike, for which is charged the sum of $4,221.56 against West Virginia, out of $7,236.07, please explain to the Court the history of that road, if you remember it, as to how that charge came about?

A. That road was originally incorporated and the State 520
subscribed to the stock of it. Later it had to buy in the road for the amount that is charged there, $7,236.97, to protect its interests in the property.

Q. How was it sold, if you know, by any report or exhibit?

A. How do you mean?

Q. I mean who sold the road when the State had to buy it in? Was it a mortgage sale, a deed of trust sale, or what?

A. It was sold under a deed of trust.

Mr. Anderson: Which road is that?

Mr. McClintic: The Berryville and Charlestown.

By Mr. McClintic:

Q. By whom was the deed of trust executed, if you know?

A. I don't remember.

The Special Master: It was sold for that sum?

A. $7,236.97.

Mr. Conrad: What year was that?

A. It was sold in 1858—the purchase was made in 1858.

Mr. Anderson: The State bought it in?

A. Yes; bought it in.

By Mr. McClintic:

Q. On the same page, 3, is the Northwestern Turnpike road, in which the total expenditure was $620,271.38, with which you charge the West Virginia $573,994.39. Please explain to the Master how that account was made up, what books were kept in relation to it, etc.?

A. Well, the account included the items stated in the note 521
on the road. It says:

"Includes tolls, &c., expended on the road, amounting to $173,670.39. The charge to Wythe, Virginia, excludes items which the construction books show as expended in the present State of Virginia, and include those which were expended in West Virginia, and a proportion on a mileage basis of items which were not designated in the construction books of the internal improvement fund as directly chargeable to either present State. These latter amounts are divided on the basis of the length of the whole road, 92.94 per cent. in West Virginia, the length of the Eastern Section, 61.05 per cent. in West Virginia, and the charge on 86 miles of the road west of Winchester, 80.03 per cent. being in West Virginia."

And the entire charge to West Virginia of those items on the basis above stated was $573,994.39.

Q. For the purpose of clearness, was credit given to West Virginia anywhere in this account for her proportion of those tolls—not on this exhibit, but on any other exhibit in this account, was credit given to her for her proportion of those tolls?

A. Are these tolls included in the cost?

A. Yes.

Q. I will have to look it up, Mr. McClintic, in the exhibit on which it appears.

By the Special Master:

Q. Your charge to West Virginia is almost $150,000 more than theirs?

A. That is accounted for very largely by these tolls that 522
were included in the road.

Q. Your idea is that they are not included as a credit in your item?

A. They were not included as a credit here. They are a charge here, but I do not want to state the amount of the credit on another schedule when it will be of record and I can state it exactly.

Q. They give the tolls as $162,679.26. Your statement is $173,670.39. Is that intended to be the same item, do you think?

A. We are not able to identify it exactly. There are a number of these accounts that we do not identify exactly.

Q. That is, that you are not quite certain whether when they state the tolls as $162,679.26, they are endeavoring to state the item you give as $173,670.39?

A. Yes. I don't know where the difference is exactly.

Mr. Conrad: Our statements take no account of tolls at all, either way.

The Special Master: Let me make this inquiry right here. Do I understand counsel for West Virginia to concede that this charge of $573,994.39 is correct?

Mr. McClintic: It is correct if the credit which we ask for in another place is correct.

The Special Master: I am asking about this entry here. Is this entry as it stands here correct?

Mr. McClintic: Yes; it is a correct item. 523

The Special Master: The other item will have to stand by itself, as to whether it is allowed or disallowed. So far as this item is concerned, I may take it as a concession on your part that it is correct?

Mr. McClintic: That is what the books show, as being the amount that went into the construction of the road. We took every dollar and every cent that went in. Your Honor will find several of these items are larger than was attempted to be charged by Virginia, because we had to take our own findings in the books.

The Special Master: Of course when I reach a question like that I am quite anxious to know just how counsel feel about it.

Mr. McClintic: We were very sorry to alarm you, but it could not change the facts. That was the position we had to take in that matter.

The Special Master: So far as your contentions are concerned, that would not disturb me any.

Mr. Hogg: There is a corresponding reduction by tolls.

The Special Master: That is another item, but *quoad* this point here, that is conceded to be correct.

By Mr. McClintic:

Q. On page 4, Mr. Dixcy, there is a road marked "South Branch of Potomac River to Brock's Gap, in Rockingham County, charging West Virginia with $411.80. State what you know of that division?

A. 29.41 per cent. was charged to West Virginia on a mile- 524
age basis. That is to say, 29.41 per cent. of the road lay in West Virginia.

Q. Did you make a personal examination in that case, or was that information furnished you by your assistants?

A. I didn't scale any of these roads.

Q. Who did scale them?

A. Mr. Clifford E. Scoville, my Chief of Staff.

Q. I wanted to ask you the general question a while ago, and I was interrupted. How were all these percentatges arrived at in reference to this class of roads?

A. By scaling the maps, by actual measurements, and from the engineer's reports.

Q. All the sources of information of that character that you could get?

A. All the sources of information that were available.

Q. The next item is the Staunton and Parkersburg Road. Please explain to the Master the sources of the charges made therein, of $288,807.56.

A. The whole charge of $388,936.97, includes tolls and the interest earned, amounting to $26,272.55 expended on the road; charge to West Virginia excludes items which the construction books of the road and the books of the internal improvement fund designate as chargeable to the present State of Virginia. It includes items which are designated as having been expended in West Virginia, and a proportion on a mileage basis of expenditures not designated 525
as chargeable directly to either present state. Such expenditures are divided on a basis of the total mileage of the eastern division, 40.48 per cent. being in West Virginia, and on the basis of the total length of the road, 73.40 per cent. being in West Virginia; and on the above basis there was charged to West Virginia, $288.807.56.

Q. To go back just a moment, on page 2 of this exhibit I find charge to the road for the Middle-Bourne & Pennsylvania road, $6,252. What total, if any, has the plaintiff filed that road under, if you know?

The Special Master: And on what page of their exhibit is it found?

A. I would have to see the exhibit.

Mr. McClintic: On their exhibit, if I have got the same road—I am not sure that I am correct. I want to see if they meant, on page 16 of Exhibit C-1 for the plaintiff, that that was the same road called Tyler County to Green County State road?

Mr. Harrison: Has he answered your last question? That is to say, what corresponding road our exhibit showed?

Mr. McClintic: That is what I am trying to see, whether he knew it or not.

Mr. Harrison: He has not answered yet.

A. I have no exhibit before me, and I could not identify it in that way. I would not be able to identify it as that road.

Q. You have on page 2 a road called the Morgantown to Beverly road, $12.000. Do you know whether there is any 526
road of that title in plaintiff's Exhibit No. C-1?

A. There is in the plaintiff's exhibit a road, and there seems to be some confusion between that road and what we term the Morgan and Beverly road, right above in our exhibit.

Q. Is there anything that corresponds, either in amount or name, with the one called the Morgantown to Beverly road on their exhibit, if you know?

A. I don't recall now find such a road. I looked for it and could not find it.

By the Special Master:

Q. Did you find the data from which you made this statement in the books of original entry?

A. Yes; the names given here are those of the Acts and are also reported in the books of original entry. Of course *were* their terms were different, we frequently could not identify just what property they were referring to; and that would be true of them in our case.

Q. Did you intend your designations here to be duplicates of the titles of the accounts that you found in the books of original entry?

A. Not always duplicates. We intended them to designate very specifically the road that was referred to.

Q. Why should they not be duplicates of the entries? If the name of the road is entered on the book, why should it not be carried forwards in the account?

A. They are practically so, to all intents and purposes. 527
They are very little changed?

By Mr. McClintic:

Q. Mr. Dixey, if you have the dates when the amounts we ap-

propriated and paid to the Trans-Alleghany Lunatic Asylum at Weston, I wish you would give them.

A. I did not get your question, Mr. McClintic.

Q. I want the dates when the amounts were paid for the Trans-Alleghany Lunatic Asylum at Weston—the month and the year, if you have it.

A. Then we will have to get the original papers.

Q. Is it in these papers here?

A. I haven't it her, Mr. McClintic.

Q. I mean is it in this box here?

A. Yes, sir.

Q. Let your assistant get it for you. Have you found the amount?

A. Yes; the dates of the payments to the Trans-Alleghany Lunatic Asylum were in 1858.

Q. Will you give the month, in the latter case, at least?

A. In 1858, $8,000; in 1859, $17,000; in the fiscal year 1860, $50,000; and in December, 1860, $50,000 more.

Q. That is all I wanted, the last date.

A. Making a total of $125,000.

Q. The last payment was made in December?

A. In December, 1860.

Q. Will you look at plaintiff's Exhibit C-1, Mr. Dixey, I want to ask some questions in relation to it. 528

A. Yes, sir.

Q. I find on page 3, I believe it is, of plaintiff's Exhibit C-1 Winchester and Potomac Railroad, which apparently charges to West Virginia $168,750. Please state to the court what those four charges there are for, if you know, amounting to $270,000?

A. $150,000 of that amount was a loan, and the balance, $120,000, was stock.

Q. Was the last item in 1838 a loan?

A. The last item in 1838 was a loan.

The Special Master: That is $150,000?

A. $1500,00.

By Mr. McClintic:

Q. What do you mean when you say $120,000 was stock?

A. It was stock owned by the State in the Winchester and Potomac Railroad?

Q. Was the Winchester & Potomac Railroad Company a corporation under the laws of Virginia?

A. Yes, it was a corporation.

Q. A corporation under the laws of Virginia?

A. Yes.

Q. And the State purchased—
A. $120,000 worth of stock.

By the Special Master:
Q. And the balance of the $270,000, is accounted for by the loan of $150,000?
A. $150,000; yes, sir.
Q. Which of these items were payments on account of the stock?
A. The first three.
Q. Those were installments paid on account of stock? 529
A. Yes, sir.
Q. And the other was a loan?
A. Yes, sir.
Q. What became of the loan? Is it still outstanding?
A. No; the loan was converted into an annuity.

By Mr. McClintic:
Q. Go ahead, Mr. Dixey, and state the facts which appear from the record of Virginia in reference to that railroad, if you have them.
A. Well, the State—
Q. Do you desire this memorandum you made?
A. I would like it; yes sir.
Mr. McClintic: Here is a memorandum which he gave to me, if your Honor please.
Mr. Harrison: He can refresh his memory by looking at it, but we do not expect him to read the manuscript.
Mr. McClintic: No; I do not expect him to read it, but I expect him to refresh his memory as to dates and amounts, and things like that. This has all been done by manuscript.
The Special Master: The distinction in getting the result is not very profound.
Mr. McClintic: Not in a case of this kind, especially.
The Special Master: Mr. Harrison is perfectly correct 530 from a technical standpoint.
Mr. Spooner: He should not be allowed, perhaps to adopt as his testimony a memorandum, but he can read it.
The Special Master: I guess this witness is on to the method by which he can reach the result all right.
A. The Winchester & Potomac railroad was incorporated by the Act of April 8th, 1831, at a capital of $300,000 par value of $25 per share, a railroad from Winchester to some convenient point on the Potomac River at or near Harpers Ferry. Appropriations by the State: Under act of March 14, 1832, $75,000, the Act of January 31, 1833, $45,000, making a total of $120,000. That was paid as a stock subscription.

By the Special Master:

Q. Were these three sums that are stated in plaintiff's Exhibit C-1, installments paid from those two appropriations?

A. Yes, sir.

Q. They are the sums covered by the appropriation?

A. Yes; $120,000. By the Act of February 13, 1838, a loan to the Company was made, of $150,000, making up that sum of $270,000. Then by the act of March 25, 1843, the capital stock was increased to $481,220, the whole amount to be taken by the State, the increase not to exceed the amount due the State for the loan, with interest on July 1, 1843, said increase to be reconverted into a debt whenever the company failed to pay a dividend of 3 per cent on the whole of the State stock, provided that such dividend did not exceed 6 per cent on the debt so converted, under the 531
Act. No dividend was received by the State, nor were there received any dividends, either before or after this Act. The companies paid only the interest on the loan of $150,000 in the years 1839 and 1840. By the Act of February 24, 1846, the State accepted an annuity of $5,000 in lieu of the interest in the debt and dividends on the stock, the collection of the debt to be postponed so long as the payment of the annuity was continued.

By Mr. McClintic:

Q. How long was that annuity paid?

A. The annuity was paid in each year from 1848 to 1860, inclusive, a total of $65,000, and the last annuity was received on July 27th 1861, and was for the one due November 1, 1861.

Q. Subsequent to the 1st of January 1861, what was done with this matter by the State of Virginia, as shown by her books or her acts of the Legislature?

A. With the stock?

Q. Yes.

The Special Master: The annuity.

A. The stock was surrendered .

The Special Master: Surrendered by whom?

A. Just a minute.

By Mr. McClintic:

Q. Had not the stock been commuted into an annuity?

A. Yes. I might just as well go ahead with this memorandum I have made on it. On February 22, 1868, the State of Virginia passed an act providing that the sum of $83,333.33, which was 532
the principal sum owing, which seems to have been arrived at as the principal of the $5,000 annuity for one year at 6 per cent, together with all interest thereon, should be paid into the State

treasury on or before January 1, 1868, such payment to be made in any bonds of the State at their par value, and upon such payment being made, the claim of the State against the Company shall be lifted and discharged, under this Act, there was paid into the treasury the following stocks. As to that the record is not entirely clear.

By Mr. McClintic:

Q. Mr. Dixey, let me interrupt you. Is not that date, February 22, which you called 1868, a mistake?

A. Well, it is 1868 here. I cannot give the date from memory.

Q. We will call it up again in another way.

Mr. Spooner: What was the date?

Mr. McClintic: 1866.

A. Under this Act there were paid into the Treasury the following, apparently: Old registered bonds, $45,000, and new registered bonds, representing the funded interest of $66,130.90, making $111,130.90, upon whichthere was due in accrued interest $7,387.22, making a total of $118,518.12. The principal of the annuity was $83,333.33, and the interest on the same would have been $35,184.79. There were 4,800 shares of stock, at a value of $120,000.

Q. State if you found anything else on the books of Virginia in relation to this?

A. This memorandum was made before we made further discoveries. The stock was actually surrendered, and it shows on the books it was surendered in connection with this annuity in consideration for the anuity, and it was wiped off. 533

By the Special Master:

Q. Was all the stock converted into an annuity?

A. Yes, sir; that $120,000 owned by the State.

Q. The amount of the State's original purchase was subsequently converted into an annuity?

A. Yes, sir.

Q. That is the annuity you have been speaking of?

A. That is the annuity that is spoken of.

By Mr. McClintic:

Q. Does the Act show that the annuity was in the place of the loan as well as the stock?

A. Of the loan and the stock; yes, sir.

The Special Master: Then the loan and the stock were both merged in the annuity?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. There was interest paid on that $150,000 for two years, I believe. Was that 6 per cent interest?

A. Yes, sir.

Q. Then, Mr. Dixey, so far as this charge is concerned of $168,750, being 62½ per cent. of the $270,000, that is a charge for something which Virginia has entirely disposed of herself?

A. Prior to this date; yes, sir. She had disposed of her 534 interest in it altogether.

Q. And all the proceeds from that disposal of that interest went to the State of Virginia?

A. Yes; West Virginia got no benefit from it, so far as we find in the record.

By the Special Master:

Q. That is, West Virginia did not get anything from the proceeds of the transaction?

A. No, sir.

Q. Mr. Dixey, to what extent does the aggregate of these items you have in defendant's Exhibit C-1 differ from the similar aggregate in plaintiff's Exhibit C-1?

A. I cannot say. We have not been able to reconcile them . They cover different periods of time. Do you mean as a total?

Q. Yes.

A. They include in their items a great list of charges against West Virginia that we do not include at all. That is, they include stock companies in their exhibit that we do not include in our C-1 at all, so that a reconciliation of the account would really be the substitution of one account for the other.

By Mr. Harrison:

Q. Do you include in those items anywhere any of the items you are speaking of?

A. I believe they will be presented for consideration sometimes.

Q. I am asking you the question, do you include them?

A. Not in this exhibit. 535

Q. I understand that, but I ask you if you include them anywhere.

A. The stock of the Company?

Q. Yes.

A. I have told you we do include them, but not in this exhibit.

Q. When you say Exhibit C includes a great many items that you do not include at all, you do not mean to say you do not include them somewhere else?

A. I was talking of this exhibit.

The Special Master: What I wanted to get, as near as I could, was a concrete statement of the points of difference. Of course where there are no differences I have no worry. Where there are, then I have.

Mr. McClintic: All the stocks which they include in their No. 3, we eliminate from our No. 3.

By the Special Master:

Q. That takes care of all that class of items. Then as to the *quoad* other items do you disagree?

A. Yes, sir; frequently.

Q. If without any difficulty you can have a memorandum of the places where you disagree, I could have before me just where the elements of disagreement are.

A. Have you their schedule?

Q. Yes. 536

A. I can mark it.

Q. I wish you would do that—either that or make a separate statement.

A. Well, it would be very complicated and very long.

Q. Very well; you take their schedule.

A. And it is hard to reconcile it in any way that is intelligible, because there are so very many, many items of difference.

Q. But I have got to have this in the end, you know, so that I can have it in some concrete way, and see the points of difference. Then I will get the contentions of both parties upon those points.

A. Do you want the amounts or the difference?

Q. Give me the items and the amounts, yes, if you can do so without too much trouble. This is simply for my convenience later. When I come to state the accounts, I want to see what there is that is not disputed. Then I will take the disputes, and take care of them.

The hearing is now adjourned until to-morrow morning at 10 o'clock.

(The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

[*Vol. 6.*]

[May 7, 1909.]

THOMAS BIRD DIXCY,
resumed the stand for further direct examination.

By Mr. McClintic:

Q. When we closed yesterday, Mr. Dixcy, we were discuss- 537
ing Defendant's Exhibit C-1. Please state to the Commissioner whether you made up the details of that report, or only the totals thereof; and if you did not make the details, who did make them for you.

A. The report as to totals was examined and verified by me, The details going to make up those totals were not made by me. The details statements were made by Mr. Clifford E. Scoville.

Q. Mr. Scoville, I believe you said, was your chief of staff, or employe?

A. Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

[Mr. McClintic]: 577

There is another matter which we desire to bring up, regarding *the Covington & Ohio Railroad*, what is now the Chesapeake and Ohio Railroad. We desire to offer (and also of which we will have typewritten copies made and filed for the benefit of your Honor and counsel) the Act of March 1st, 1866, of the State of West Virginia (page 127), incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1866, (page 317) of the State of Virginia incorporating the Covington & Ohio Railroad Company; the Act of February 26, 1867, (page 102) of the State of West Virginia in relation to the same; also the act of Virginia of March 1st, 1867, relating to the same matter.

I thought I had an additional memorandum, but I cannot put my finger on it at this moment. Anyhow, also an Act of the two States afterwards ratifying a contract made and containing 578
a copy of a contract made between the Virginia Central Railroad Company and Commissioners appointed by the State of Virginia and the State of West Virginia in relation to the Covington & Ohio Railroad Company and the Virginia Central Railroad Company.

Mr. Conrad: Have you a copy of that in your hand?

Mr. McClintic: I had a memorandum of it a moment ago. Yes, here it is. The contract is dated on the 31st day of August, 1868.

The Special Master: Does not that refer to the Act?

Mr. McClintic: It recites the previous Acts; but there was a sub-

sequent Act of the State. The Act of the Legislature of West Virginia was passed January 26, 1870, ratifying that, and the State of Virginia passed an Act ratifying it.

Mr. Anderson: What was the date of the Act in regard to the Chesapeake & Ohio Railroad?

Mr. McClintic: I think that was the Act of 1867.

Mr. Anderson: They were concurrent Acts of the two States?

Mr. McClintic: Yes, sir; I have called attention to the fact that the Acts are practically the same—and the same ratifying the contract.

The Special Master: You mean they were practically contemporaneous?

Mr. McClintic: Yes, sir.

The Special Master: That will be admitted, then, so it will show on the record 579

Mr. Anderson: We object to it as irrelevant, to any account or—

The Special Master: In the absence of looking at the Acts, it may appear that all legislation subsequent to 1863 is objected to on the ground that it is irrelevant. I will admit it *de bene* because it is impossible for me to pass on it now.

By Mr. McClintic:

Q. Are you familiar with the details of the account of the Covington & Ohio Railroad; or was that made up by Mr. Scoville?

A. The details of that were prepared by Mr. Scoville.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

The Special Master: Now take up your next schedule 623

By Mr. Harrison:

Q. The third paragraph of the decree directs an inquiry as to all expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted. Your statement filed as Defendant's Exhibit C-1 is responsive to that inquiry, is it not? I think it was C-1.

Q. It was prepared for the information of counsel.

The Special Master: Yes; it is Defendant's Exhibit C-1.

By Mr. Harrison:

Q. It was prepared for the information of counsel under that inquiry?

A. I may say that Major Conrad and yourself objected to my offering anything responsive to the decree. I am simply avoiding that.

Mr. Conrad: Not at all. You are an accountant employed for that purpose.

By Mr. Harrison:

Q. You did not offer it. It has been offered by counsel for you.

A. It was prepared in accordance with the decree.

Q. The date from which you started the computation, as 624 you have explained heretofore, was March 19, 1823?

A. Yes, sir.

Q. Will you please state the difference in the result ascertained by your statement under that paragraph 3, and the result ascertained by Mr. Potter under the same paragraph?

A. You mean state it in dollars and cents?

Q. In dollars and cents. The result, I say.

The Special Master: You mean by that the difference in the total?

Mr. Harrison: The total; the difference in the result.

The Special Master: The difference between the aggregates found on your schedule and the aggregate found on the schedule presented by the plaintiff?

Mr. Harrison: That is right.

The Special Master: Let me see if I have it right. The aggregate in the Plaintiff's schedule, found on page 19, is $3,147,547.

Mr. McClintic: No, sir; that is the second part. The schedule is made in two parts.

Mr. Harrison: There are two parts. You will have to add the two.

Mr. McClintic: On page 3 of the Exhibit you will find $2,674,401.-04. You add those two together to make the total of theirs. If my addition is correct, it makes $5,821,949.01.

The Special Master: Without running back, I assumed that one schedule included them both.

A. In accordance with Virginia's exhibit the total is $5,821,949.01. The total in accordance with West Virginia's exhibit is $1,455,196.12. The difference is an excess on the Virginia ex- 625 hibit of $4,366,752.89.

Mr. McClintic: I call your attention to the fact, Mr. Dixey, that $25,000 was withdrawn from the West Virginia Exhibit, which would make that much further reduction and greater difference.

A. It should be added to that.

The Special Master: That would increase the difference.

Mr. McClintic: Yes; it would increase the difference $25,000.

The Special Master: He has stated it near enough for all practical purposes.

Mr. Harrison: There are possibly other items.

Mr. McClintic: Yes; there were three other items I had forgotten.

Mr. Conrad: Some roads.

Mr. McClintic: Yes; three roads.

Mr. Harrison: I prefer to take the statements as they are.

A. Well, on the statements as they are, it is as I have stated.

Mr. Harrison: In other words, according to the schedules prepared by yourself and Mr. Potter, respectively—

The Special Master: Before any change was made.

Mr. Harrison: Before any suggested changes were made in the West Virginia schedule, the Virginia exhibit shows that $4,366,752.89 was expended by Virginia in the territory now constituting the State of West Virginia in excess of the amount shown by your schedule. 626

A. Not before any suggested changes were made, Mr. Harrison: It was suggested when the schedules were originally submitted to Attorney General Anderson that counsel reserved the right to amend them either by elimination or division.

Mr. Anderson: That was stated to me in writing.

A. In writing; yes, sir.

Mr. Harrison: When I said suggested changes, I meant suggested here.

The Special Master: Mr. Harrison meant the schedules presented here.

Mr. Harrison: I am talking about schedules presented here.

A. Before any changes were actually made in them, that was the difference.

The Special Master: The changes will show for themselves. A further inquiry will develop the other facts.

By Mr. Harrison:

Q. In your statement of money expended in the territory of West Virginia, do you include amounts invested by Virginia in the stock of joint stock companies?

A. I do not.

Q. Which constructed works of internal improvement in the State?

A. I do not.

Q. Why not?

A. Under instructions from counsel. 627

Q. If the State spent, through the medium of a purchase of $500,000 worth of stock, to illustrate, $500,000 in the construction of a road, would not that be money expended in West Virginia?

A. Not by the State.

The Special Master: What was your question, Mr. Harrison? If

the State spent that amount of money in the stock of the corporation that built the road?

Mr. Harrison: That built the road—if that would not be an expenditure by the State of $500,000 in the construction of that road, as much so as if it had been spent—

The Special Master: Directly?

Mr. Harrison: Directly.

By Mr. Harrison:

Q. You say you think not.

A. Not by the State. That is my interpretation.

The Special Master: He stated the account on the other hypothesis.

Mr. Harrison: Yes.

By Mr. Harrison:

Q. Then your account of moneys expended by the State in the construction of works of internal improvement in the State of West Virginia through the medium of her purchase of stock in joint stock companies, is excluded from your computation?

A. All subscriptions to the capital stock of stock companies are excluded from this account.

Q. You show on page 4 of your schedule C-1 total expenditures on account of appropriations for turnpikes and roads 628
lying wholly within the territory now constituting the State of West Virginia, of $425,418.35. That I understand takes no account of any other expenditure by the State of Virginia through stock subscriptions to joint stock companies that built the road?

A. It is direct expenditures under appropriations.

Q. Now, have you carried into any schedule the amounts invested by the State in stock subscriptions to works of internal improvement?

A. Yes, sir.

Q. Under what schedule?

A. It is shown on our schedule No. 7, defendant's Exhibit G-1.

Q. So then on the threshold your statement of the account under paragraph 3 of the decree differs from Mr. Potter's in that you have not included moneys expended through the medium of subscriptions to the stock of joint stock companies?

A. That is essentially different.

By the Special Master:

Q. Does that account for the whole discrepancy?

A. No, sir; there are other variations, but that is the major part of it, by far.

Q. This I imagine could be reconciled by conference between the accountants?

A. Well, it takes in this matter of the beginning of the debt. It could not be done by a conference.

Q. Of course we understand that. 629

Mr. Anderson: There is very little of it?

A. There is very little of it, but I mean it could not be reconciled absolutely.

The Special Master: It would be reconciled in the sense of being agreed upon as to the items that were expended, and then disclosing those about which no agreement can be had?

A. Yes, sir.

By Mr. Harrison:

Q. I understand the difference, as you have just stated to the Master, growing out of the method of stating this account, in that you have excluded and Mr. Potter has included subscriptions to joint stock companies, constitutes the major difference between you in your statement under that paragraph of the decree?

A. That is true; yes, sir.

Q. Of course that difference applies in your recapitulation on page 4 of your statement to the second item, namely, total expenditures on account of appropriations to interstate roads. That same difference enters into that statement?

A. Interstate roads?

Q. I call them interstate.

A. Yes; I understand what you mean, sir. I am just locating the items.

Q. Look at your recapitulation.

A. Yes; I am looking at it. I want to identify it absolutely. Well, all that difference is not located there, not located in that item. 630

Q. I did not say all the difference was.

A. There is a difference there.

Q. But I say that difference enters into that.

A. Oh, yes.

Q. Now, you show $900,577.77 as the total expenditures on account of appropriations for turnpikes and roads lying in the two States?

A. Yes, sir.

Q. And the same difference enters into that computation as entered into the first item?

A. Yes, sir.

Q. Of course there may be other differences?

A. Yes, sir; that is true.

Q. But your answer holds good as to that, that it is the major difference.

A. Yes, sir.

Q. The third item in your recapitulation, page 4, shows $129,200

as the total expenditures on account of additional appropriations for purposes within the territory now constituting the State of West Virginia. Of what items is that $129,200 made up? I simply want to get it on the record?

A. There are three items shown on that same page. Shall I state them?

Q. Yes.

A. Coal River Bridge, $3,000, Coal River improvements, $1,200, Trans-Alleghany Lunatic Asylum, at Weston, for building, $125,000, as shown on the page. 631

Q. Making a total of $129,200?

A. Yes, sir.

Q. And the aggregate of those three items gives $1,455,196.12, which you report as the total amount of money expended by the Commonwealth of Virginia in the territory now constituting the State of West Virginia?

A. That is right; yes, sir.

Q. Now, as illustrating the method in which the two accounts were stated, I will call your attention to an item on your statement, page 2, of the Moorefield and Allegheny Turnpike Company, wherein you include an item of $4,500 for building that turnpike, or building what is called the stemp to Petersburg, in West Virginia. That is correct, is it not?

A. Yes, sir.

Q. If you will look at Mr. Potter's Exhibit C-1, on page 12, under that same item, Moorefield and Allegheny Turnpike, you will find that gives the total amount expended on that turnpike in the State of West Virginia at $13,279.78, made up of two items, one of $4,500, which you have on your statement, and the other of $8,779.78.

A. That is correct.

Q. Now, please state how that $8,779.78 is shown to have been expended by Mr. Potter's statement?

A. As shown to have been expended in 1850, $3,090; in 1851, $4,748.79; in 1852, $565.99; in 1853, $375.

Q. Those, then, are the several appropriations for stock in that turnpike?

A. It does not say that they are, in Mr. Potter's statement. 632

Q. Is it a fact?

The Special Master: Do you know whether they are or not?

A. I think they are; yes, sir.

By Mr. Harrison:

Q. Where do you show those aggregate sums?

The Special Master: In Schedule 7.

A. I will refer to Schedule 7.

Mr. McClintic: He does not show that anywhere in the construction account.

Mr. Harrison: Let us see if he does not.

Mr. McClintic: At least, if he did, it was against my direction.

A. We show on page 4 of Exhibit 7—

The Special Master: No; Defendant's Exhibit G-1.

A. G-1; yes, sir. I beg your pardon.

By Mr. Harrison:

Q. On what page?

A. On page 4.

Q. You have there Moorefield & Allegheny Turnpike Company, $8,779.78?

A. Yes; as the amount paid by the Commonwealth.

Q. That is precisely the same amount shown on Mr. Potter's statement under that item, is it not?

A. That is correct; yes, sir.

Q. So that you carry that into your item 7 as a stock subscription?

A. A stock subscription. 633

Q. To the stock of that company?

A. To the stock of that company.

Q. Paid for by the Commonwealth?

A. Paid for by the Commonwealth.

Q. So that when you say Mr. Potter's statement does not show that, you do not mean to say that is not true, whether it shows it or not?

A. No; I mean to say it does not show it as a stock subscription.

The Special Master: What he meant was that the statement does not show on its face that it was for stock?

A. Yes, sir; I did not mean to controvert the item at all. I mean to say it did not show, to me, that it was a stock subscription.

The Special Master: Mr. Harrison simply uses it as an illustration of the difference between the two statements?

Mr. Harrison: That is my object, to show the difference.

By Mr. Harrison:

Q. On what theory of stating the accounts can you illustrate other differences between the two statements? You have accounted for the larger difference in this method of proving stock subscriptions?

A. The account in some items includes items prior to the period we have stated.

Q. That might be, but—

By the Special Master: 634

Q. Right on that point, does the account submitted by the plaintiff include some items prior to March 19, 1823?

A. Yes, sir.

Q. If you were to harmonize your account with that submitted by the plaintiff, what else would you have to do except to add such items as appear in that account of yours, so far as this exhibit is concerned?

A. There are some deductions from the plaintiff's exhibit for items added after January 1, 1861, and—

Q. I am referring now to *quoad* the beginning of the account. If you wanted to harmonize your account with the account submitted by the plaintiff, what else would you have to do with the exhibit now under discussion than to add the sums that appear by the report of the plaintiff's accountant to have been expended prior to March 19, 1823? That is, what other computations would it involve, if any, except the mere addition?

A. There are numbers, your Honor. We differ in a great many instances as to the amount that has been charged to West Virginia under 3. There are differences in scaling the mileage.

Q. That is not the question I am asking. The question I am asking you is this, Mr. Dixey. The plaintiff's account begins on October 1, 1819. Your account begins March 19, 1823. Now, as to the items that may appear in the plaintiff's account during that period, if you had occasion to accommodate your account to theirs, or to harmonize with them, what else would you have to do as 635 a matter of mathematical computation other than to add the accounts thus omitted to yours—anything in connection with this exhibit?

A. Well, there is nothing that occurs to me, but I don't want to commit myself absolutely on that. I don't know; but there is nothing that occurs to me.

Q. So far as you are at present advised, you would not have to do anything except to make that addition?

A. I think that would be all.

By Mr. Harrison:

Q. In order to see what further differences there are between you, you say Virginia's account contains items up to 1861 that yours does not contain?

A. Yes, sir.

Q. Do you show on your statement anything expended by Virginia for the Letart Falls & West Columbia Turnpike?

A. Under what schedule?

The Special Master: This particular schedule.

Mr. Harrison: Under 3.

The Special Master: Either in Defendant's Exhibit C-1 or Defendant's Exhibit G-1, which are the two exhibits including expenditures of this character.

A. What page is that on, Mr. Harrison?

Q. On your exhibit?

A. No; on the plaintiff's exhibit.

Q. On ours it is page 11.

The Special Master: Mr. Harrison is referring to page 11 of the Plaintiff's Exhibit.

636

By Mr. Harrison:

Q. Yes; our exhibit. If you will look at page 11 of plaintiff's Exhibit C-1 you will find that $2,950 is charged there for money expended by the Commonwealth of Virginia in West Virginia for the construction of the Letart Falls and West Columbia Turnpike. Does your statement include any or all of that item?

The Special Master: What statement do you refer to, Mr. Harrison; Defendant's Exhibit C?

Mr. Harrison: I mean the corresponding statement.

The Special Master: Or do you refer to defendant's Exhibit G, or both?

Mr. Harrison: Exhibit C.

The Special Master: Whether that includes it?

Mr. Harrison: Yes; that is the one that deals with paragraph 3 of the decree.

A. That is a stock company, and no stock companies are included in this statement.

By Mr. Harrison:

Q. None are included there?

A. No, sir.

Q. Look at your Exhibit 7 and see if you have an account of any others there? Exhibit G-1 I believe it is.

The Special Master: It refers to paragraph 7.

A. We show the—

Q. How much do you show?

A. Letart Falls and West Columbia Turnpike Company, 637 amount paid by the Commonwealth, $2,350.

Q. Then you have excluded from your statement there $600, have you not?

A. Yes, sir.

Q. Shown by Mr. Potter?

A. Yes, sir; there is that difference of $600.

Q. Why did you do that?

A. That is shown in 1861 on Mr. Potter's statement. We did not include items of expenditure in 1861.

Q. Why did you not do it? It was an obligation contracted before 1861, was it not?

A. I will simply say, in regard to that, we did not include them by the instruction of counsel.

The Special Master: As I understand it, their statement stops right short on January 1, 1861?

Mr. Hogg: On the subject of expenditures.

The Special Master: Nothing appears up to that date to have been expended in connection with the particular item where it would not be disclosed by your item, whether it was expended afterwards or whether there was any prior obligation by virtue of which the expenditure was made?

A. That is true.

The Special Master: You are not reporting the liabilities. You are reporting the actual expenditures up to that time. Am I correct in that statement?

A. Yes, sir.

The Special Master: That is what you wanted, Mr. Harrison?

A. Yes, sir; that is right. Counsel for West Virginia say they stop short with 1861, so far as expenditures were con- 638
cerned.

By Mr. Harrison:

Q. Do they go beyond 1861 in the matter of other transactions; do you know?

A. Our accounting stops at January 1, 1861.

Q. Both as to expenditures and everything else?

A. On all acounts, so far as the accounts are concerned.

A. Well, as far as any charges and disbursements direct and receipts are concerned, it stops in 1861.

Mr. Anderson: Except as to the statement you have sent for?

By the Special Master:

Q. As far as the charges and credits go which are predicated upon actual cash transactions, they stop on January 1, 1861?

A. No, sir.

Q. On both sides of the account?

A. Yes, sir.

Mr. Harrison: Did you include all payments made up to that date?

The Special Master: Do you mean by receipts?

Mr. Harrison: Yes, sir.

A. We included all in one account or the other—no; let me modify that. We excluded a large number of claims. They are all included in our general balance that we have offered here.

Mr. Anderson: Have you gotten that yet? 639

A. It had not arrived when I last heard, Major It will not take long to prepare it when it does come.

By Mr. Harrison:

Q. I want to know if this was a part of your theory upon which your accounting has been constructed. If I correctly understand your testimony that has gone before, it sometimes occurred, where all payments had been made prior to 1861, that you excluded them because it appeared that in subsequent years, in the 60's or 70's, there has been some change or sale of the road, or stock, or what not. You therefore excluded the investments that had been made and paid before 1861 because of some subsequent change. Is that true?

A. I don't get just exactly the force of that, Mr. Harrison.

Q. Take some road. I cannot think of the name of it, but it has frequently occurred here that you have referred to the fact that a road had been sold after the War, or given to a county, a present made of it to the county. Therefore you took no account of what the State expended.

Mr. McClintic: Those were before the War, Mr. Harrison.

Mr. Harrison: Well, whether it was before the War or since the War.

The Special Master: Have you not in mind the Covington railroad?

Mr. Harrison: That is one.

The Special Master: That is the only one I had in mind as 640
to which they raised that question.

Mr. Harrison: There was a million or more dollars involved in the Covington & Ohio transaction?

The Special Master: Yes; that is true. That is the only item I have in mind as to which they raised a question of that character?

A. So far as actual records, actual cash receipts and disbursements, our accounting closed on January 1, 1861, or rather, at the close of business December 31, 1860. Where there were questions that affected the value of the property or West Virginia's interest in it at that time, affected by later evidence, we included these and showed them on the schedule.

Q. Now, look on your schedule C-1, page 3, at the Franklin and Monterey Turnpike. Do you see that?

The Special Master: The Franklin & Monterey Road. Is that what you mean?

Mr. Harrison: Yes, sir; that is what it is called.

The Special Master: There are so many light variations of these names, that we want to get them exact.

By Mr. Harrison:

Q. Bearing that item in mind, will you say whether or not you take account there of a draft for $305.91 given by the State of Virginia in payment of a subscription to stock of that company on the 1st of October, 1855? It may have been a direct payment. I do

not know whether it was a stock subscription or not. I want to know if you took account of that draft?

A. Personally, I have no knowledge of that. 641

Q. You have no knowledge of that at all?

A. Personally, no sir.

The Special Master: Where is that item on your exhibit?

Mr. Harrison: Exhibit C-1, page 1, and our exhibit includes that draft, which was given October 1, 1855, and paid in 1861. I just simply want to present that.

A. What was the amount?

Q. $305.91. About that you know nothing?

A. No; not of my personal knowledge. I have a note here that I did not make personal.

Q. I only want what you know personally about it. Mr. Dixey, would you have any difficulty in ascertaining, in conjunction with Mr. Potter, the difference between your two statements, growing out of obligations contracted before 1861, but paid after 1861?

A. I think not.

Q. You would not have any difficulty in that?

A. No.

Q. It would not be a very material item?

A. There are only a comparatively few items.

Q. They would possibly be comparatively few, but would it constitute some of the difference?

A. Yes, sir.

Q. I understand you to say that some differences may exist in your two statements growing out of the mileage allowed for the improvements in the respective States?

A. Yes, sir.

The Special Master: That is, the manner in which the division of the item was made, predicated upon the mileage.

Mr. Harrison: Well, I think the division was made in the 642 same way, on a percentage division, was it not?

A. Frequently. Not altogether.

The Special Master: But the percentage upon which the result was reached. They may have adopted different lengths in their computations. That is what you have in your mind, is it not?

Mr. Harrison: Yes, sir. You would not have any difficulty in harmonizing that, between you and Mr. Potter, would you?

A. In a great many cases both were scaled to maps, and it was largely a matter of individuality. They were both doubtless done carefully, and it is the difference between one man's judgment and another man's judgment. I think those could be reconciled.

By the Special Master:

Q. You had the same original sources of information?

A. Yes, sir; we did have.

Q. And two experts together ought to be able to reach a result.

A. I think there will be no difficulty about reconciling those percentages.

By Mr. Harrison:

Q. The difference might have depended, as you say, upon the judgment exercised by the man who did the scaling, and by the care with which he performed that work, but you think they could be readily ascertained and reconciled?

A. I think there would be no difficulty. There might be a 643
little give and take on each side.

Q. The differences, then, between your statements, which are so widely different in their results, grow out of the methods in which you stated the accounts respectively, as you have detailed?

A. Yes, sir.

Q. Are there any more discrepancies in actual figures?

A. Yes, sir.

The Special Master: That is, the details are negligible, but in the differences there is a great bulk of it that comes from the accounts stated?

A. That is right.

By Mr. Harrison:

Q. Mr. Dixcy, Mr. Potter includes in his statement C-1, showing moneys expended in West Virginia, the moneys expended for the construction of the Covington & Ohio Railroad?

A. Yes, sir.

Q. That is a very large item?

A. Yes, it is.

Q. It runs over a million dollars?

A. Yes. We do not include that.

Q. You have not included that anywhere?

A. No, sir.

Q. You said you did not include that, on the instructions of counsel?

A. That is right.

Q. There is another considerable item that will help to 644
make up the difference, the Winchester and Potomac Railroad, which Mr. Potter includes, amounting to $168,758.

A. That was excluded. We excluded that.

Q. You have excluded that entirely from your accounts?

A. Yes, sir.

The Special Master: In all the schedules?

Mr. Harrison: In all of them.

Mr. McClintic: Mr. Dixcy testified to that yesterday. That was one that Virginia dealt with herself before the War, or just after the War, and got paid for it.

By Mr. Harrison:

Q. You excluded that upon the instructions of counsel?

A. Yes, sir.

Mr. Anderson: That is their theory.

Mr. Spooner: It is not very much of a theory.

Mr. Harrison: Yes; it is altogether a theory.

Mr. McClintic: We think it is a demonstrated fact.

Mr. Conrad: I was counsel for that road a long time, and I have derived a great deal of information about it.

The Special Master: Do I understand it is the contention of the defense that the counsel was sold with the road?

Mr. Conrad: He has been badly sold on these statements that he has learned here.

Mr. McClintic: They are in your Virginia books. We have to take them, right or wrong.

Mr. Harrison: I just want to know the facts from this witness, that he knows no facts in connection with that, but included it under the instructions of counsel. 645

The Special Master: I understand him to so testify.

The Witness: I said it was excluded under the instructions of counsel. That is true; but we are in possession of facts in connection with it.

By Mr. Harrison:

Q. When you say "we," whom do you mean?

A. I mean we have it in our papers. I am not personally familiar with it at all.

Q. Has anything of that sort come in? I don't remember it. I am in the dark.

Mr. McClintic: Which road is that?

Mr. Harrison: The Winchester and Potomac, he is talking about. He says they are in possession of papers.

Mr. McClintic: Mr. Dixey testified to certain facts in connection with it, from a memorandum which his staff had made in relation to it, on yesterday.

Mr. Harrison: You call those facts?

The Special Master: The circumstances under which the road was disposed of, according to the contention of the defendants. That is what you mean, Mr. McClintic?

Mr. McClintic: Yes, sir. The Winchester and Potomac is still in existence, leased to the Baltimore & Ohio Railroad, but the Baltimore & Ohio Railroad got it in 1866 or or 1867.

Mr. Anderson: The Baltimore & Ohio was the lessee of it for a great many years.

Mr. McClintic: I think it is the lessee yet.

Mr. Anderson: Yes; but it owns a majority of the stock. 646

Mr. Conrad: It was the lessee for sixteen years without any authority from the Legislature of Virginia to lease or to hold it.

Mr. Harrison: Do I understand, Mr. McClintic, that your contention is that Virginia disposed of the road or gave it away, or did something, in 1867?

Mr. McClintic: Prior to that time, in 1846 or 1847—I cannot state the exact date—she passed an act commuting this stock and loan into an annuity, which was paid for a series of years, and then she sold the annuity. In the first place, we deny that we are responsible for loans made by Virginia to any municipality, incorporation or individual. We do not call that money spent in West Virginia, if that individual happened to live in West Virginia.

The Special Master: In the next place, you contend the loan has been subsequently paid?

Mr. McClintic: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. We have filed here Defendant's Exhibit C-1. Please state, if you know, the charges made therein, of your own knowledge, or items entered, would be better, perhaps? 697

A. (Mr. Scoville) I do know as regards each and every item appearing on the schedule. That schedule I find charged— 698

The Special Master: On what page?

Q. (Continuing) On page 2.

"Brandonville, Kingwood and Evansville Road, $10,595.73." Please state the character of that charge and what it was for, and if there is any other thing in relation to that road, please state it.

A. The road was originally incorporated as a stock company in 1837, and in the following year the State made an appropriation for subscriptions to the stock. In 1847 and in 1857 additional appropriations were made.

Q. Were those additional appropriations for stock purposes?

A. They were for stock purposes, amounting in all to $18,000.

Q. What sum of money was paid out on that road for stock, if you have it there, and what for direct appropriation for work done?

A. The amount paid by direct appropriation—

By the Special Master:

Q. What do you mean by that, direct construction?

A. Direct construction on the road, as shown by the books, was $10,595.73.

Q. Was the State at that time a stockholder in the road?

A. The State was at that time a stockholder to the amount shown on the books; as to the amount paid on the stock subscriptions, it was $2,193.46.

Mr. Spooner: You mean by the State? 699

The Witness: Paid by the State on their subscriptions.

The Special Master: Is that the total amount that appears to have been paid by the State on its subscription?

The Witness: Yes, sir.

By Mr. McClintic:

Q. Right at that point, what do the books show as to these stock subscriptions, as to there being other stockholders?

A. It does show that there were other stockholders.

Q. Do the books show whether these subscriptions for stock were paid by calls from directors of the Company, or in what way?

A. I think it can be said that in every case where the appropriation was made for the purchase of stock of any improvement company the payments by the State on account of that subscriptions were to be paid *pari passu* with the payments of individual stockholders.

Q. Now, take the next item below that, the Clarksville and Buchannan Road. Was that a road incorporated?

A. It was an incorporated company.

Q. And did the State spend some money thereon in addition to the stock it purchased?

A. It did.

Q. An amount stated on this exhibit?

A. The amount expended for other purposes than stock was $19,259.36, which was on account of an appropriation of $20,000 for macadamizing the road.

Q. I will next go to the item, "Kingwood and West Union Turnpike Company. What was the condition as to that, as 700
to its being an incorporated company, and the State also making a direct construction appropriation?

A. The Kingwood and West Union Turnpike Company was an incorporated company, and the State subscribed to its stock and also appropriated as a direct expenditure on the road $18,140.61.

The Special Master: Expended also, as well as appropriated?

The Witness: Expended that amount. It appropriated more than that sum, but that was actually expended.

Mr. Harrison: How much by direct appropriation and how much by stock?

The Special Master: $18,140.61 was the total direct expenditure, as I understood it.

The Witness: That is correct.

The Special Master: He had not stated the amount of stock.

Mr. Harrison: I thought he stated them separately.

The Special Master: No; he did not.

The Witness: The total amount paid on the stock subscription was $8,769.48.

By Mr. McClintic:

Q. How much was subscribed by the State?

A. $12,000

Q. On page 2, you have a road called the "Morgantown to Beverly Road, $12,000. Can you reconcile that charge with any charges made on Plaintiff's exhibit C-1?

A. Yes, sir.

Q. Please do so.

The total expenditure of $12,000 which we include under the title of Morgantown to Beverly road on West Virginia's exhibit is shown in two amounts on Plaintiff's Exhibit C-1,$2,724.

The Special Master: At what page? 701

The Witness: On page 5. Under Beverly and Clarksburg road; it is the fourth item from the bottom of the page.

The Special Master: What other item is that connected with?

The Witness: And an item on page 7, amounting to $9,276, under Monongalia County to Beverly and Clarksburg Road. That is the fifth amount extended into the total column, counting from the bottom of the page.

The Special Master: That seems to be page 11?

The Witness: I should have given the number as 11.

The Special Master: And those two make $12,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. You also have an item, page 2, Middlebourne & Pennsylvania Road, $6,252. Can you reconcile that with any charges made by Mr. Potter?

A. I cannot, no, sir.

The Special Master: Are not these items items that the two accountants could take up and reconcile?

Mr. McClintic: There is some confusion of the names of the companies.

The Special Master: They can do better sitting down and discussing it between themselves, probably.

By Mr. McClintic:

Q. On page 3 there is an item, South Fork of South Branch 702
of Potomac River to Petersburg and Hardy County Road; and on page 4 is the South Branch of Potomac River to Brock's

Gap and Rockingham County road. Could you give an explanation of those two roads?

A. Yes, sir. The first road that you have referred to, on page 3 of our exhibit, South Branch of South Fork of Potomac River to Petersburg in Hardy County, on which there was expended $900, is wholly within the territory now constituting the State of West Virginia. The other item, South Branch of Potomac River, page 4, to Brock's Gap in Rockingham County, on which the total expenditure was $1,400, is in West Virginia, on a mileage basis, 29.41 per cent. I might say that is the full amount of the appropriation, and it is charged to the roads for which it was appropriated. Originally it was given to commissioners to be expended on these roads, and charged to the accounts of these commissioners, and carried that way on the books of the internal improvement fund for a number of years. Then, some time prior to 1861—between 1850 and 1860—they closed the accounts of those commissioners and opened new accounts under the titles of these roads, and in doing that they charged the $1,400 appropriation and expenditure to the road under that title "South Fork of South Branch of Potomac River to Petersburg in Hardy County" and the $900 to the other road. So that at the present time, on the books of the internal improvement fund, the $1,400 shows as expended on the south fork of South Branch of Potomac River to Petersburg in Hardy County Road: whereas it should show, as charged to the road through Brock's Gap, as shown on page 4 of our exhibit.

The Special Master: In transferring the items they got 703 them transposed?

The Witness: Yes, sir.

Mr. Anderson: The road was through Brock's Gap to what point?

The Witness: South Branch of Potomac River to Brock's Gap in Rockingham County.

Mr. Anderson: Part of it would be in West Virginia?

The Witness: Yes, sir.

The Special Master: And this report you have made is in accordance with the original entries and does not follow it after the transposition here made.

The Witness: That is it exactly.

By Mr. McClintic:

Q. On page 3, the Abbs Valley and Tug Road, $4,450; is that partly in Virginia and partly in West Virginia?

A. Yes, sir. Abbs Valley is in Tazewell County, in the present State of Virginia.

Q. This charge made by you here is the correct charge in your opinion?

A. It is.

Q. You made this division yourself, did you?

A. I made this division personally, yes, based on a mileage basis.

Q. The next item is Allegheny Mountain Turnpike, which has been wholly charged by Mr. Potter's account to West Virginia. Please state what you know about that?

A. I will have to refer to papers to get the location of the 704 beginning of that road.

(Continuing after reference to papers.) In the year 1834, there was an appropriation made to construct a road from Pendleton County to Pocahontas County. Both counties at that time were in the present State of West Virginia. The route laid out for that road is as follows. On the route of the road located from Stanton to Parkersburg, from Heevner's Store in the County of Pendleton, to Greenbrier river in the County of Pocahontas. From an inquiry which was made as to where Heevner's Store was located, we found that it was in that part of Pendleton County which in 1847 became Highland County, Virginia; so that the road is partly in both of the present States.

Mr. Anderson: If it is the same Heevner's Store that I know about it is now called Hightown.

Mr. McClintic: Yes, that is it.

Mr. Harrison: How long is that road?

The Witness: The reports of Volume 7 of the Board of Public Works gives the length of that road as 17 miles, 68 chains; and we were informed by individuals that reside along the road that it was eight miles in the present Highland County, Virginia.

By Mr. McClintic:

Q. On page 4, there is a charge, Trans-Allegheny Lunatic Asylum at Weston, $125,000. Did you examine some books I brought here a few days ago, from West Virginia, called the books of the restored government?

A. Those books were examined under my direction.

Q. Did you find anything as to the sum of $27,000 being 705 repaid into the treasury of the State?

A. The journal of the restored state of Virginia shows that $27,000 was paid into the Treasury of that State.

(Continuing after referring to book.) The $27,000 which has been referred to, and was deposited, according to the journal of the restored State, on July 22nd, 1861, one half in the Northwestern Bank at Wheeling, and one half in the Merchants' and Mechanics' Bank at Wheeling.

Mr. McClintic: On that same point, at this moment, I want to introduce as evidence the Auditor's report.

The Special Master: You had better have him read the entries that appear.

Mr. McClintic: Yes, we will have him do that.

The Special Master: The entries read as follows, appearing on page 4, under date of July 22, 1861. This is Wheeling, Virginia?

Mr. McClintic: Yes, Wheeling, Virginia, then.

The Special Master; Under the head of Wheeling, Virginia, July 22, 1861, appear the following entries.

The Witness: (Reading)

"Northwestern Bank at Wheeling.

"To certificate, John List, No. 7, Weston Asylum, $13,500."

The next entry reads as follows:

"Merchants and Mechanics Bank, Wheeling.

"To certificate, John List, Weston Lunatic Asylum, $13,500."

Both of those amounts are shown as deposited in the account kept in the ledger with those two banks. 706

By the Special Master:

Q. They are charged in the account for the two banks, and each bank is debited on that same date with the sum of $13,000?

A. That is correct.

Q. In the ledger account?

A. In the ledger account.

Mr. McClintic: I desire to introduce the auditor's report, Wheeling, October 1st, 1861, signed by the then Auditor of Virginia, Samuel Crane, in which appeared the following items: (Reading)

"From the Lunatic Asylum, West of the Allegheny Mountains, $27,000."

That is under the head of receipts. The whole report I desire to offer, but that is the only item I have.

The Special Master: That is the only item in the book to which you propose to refer?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Referring to plaintiff's Exhibit C-1, I find charged on page 1 thereof, Covington & Ohio Railroad, total, $1,212,354.85. Have you made any investigation of the amount expended on the Covington & Ohio Railroad by the State of Virginia?

A. Yes, sir.

Q. Please take the statement handed you. Was that made by you?

A. (After examination.) Yes, sir; this was made by me personally.

Q. Please state the total amount that you believe should 707
be charged to the amounts expended, if the court should decide that any amount was proper.

The Special Master: You mean by that, I suppose, what he finds by his investigation that the books show?

Mr. McClintic: Yes, sir. What he believes to be correct from his examination.

A. After analyzing each account appearing in the construction books of the Covington & Ohio Railroad as closely as the records and entries would allow, and applying all expenditures which these construction books show were for money expended in what is now the present State of West Virginia, and dividing on a mileage basis only such items as could not be applied direct, I have arrived at a charge against West Virginia of $1,146,462.52.

Q. And do you in that statement charge the whole Western Division to West Virginia?

A. Yes, sir.

Q. Beginning at what section and going west, do you charge all to West Virginia?

The Special Master: Is that an item that the two experts can reconcile in all probability? I am referring to the details.

Mr. Anderson: I think they ought to be able to do it.

Mr. Harrison: I think they can; I don't think there is any doubt about it.

Mr. McClintic: It is about between $65,000 and $75,000, 708
there is a difference of that much between them.

The Special Master: If they are unable to agree on any detail, cannot they give me the concrete facts in connection with the detail, so I can pass upon it?

Mr. McClintic: I think so.

The Special Master: If they can, that would save us a lot of time.

Mr. Harrison: Before you go on, I think it would be well for the witness to answer the last question, that is, as to what section he began with.

The Special Master: Well, you will have access to his memoranda.

The last question was repeated by the stenographer, as follows:

"Q. Beginning at what section and going west do you charge all to West Virginia?"

The Witness: I do not see it now, but we have it without doubt.

Mr. Harrison: You are not able to give it now?

The Witness: No, sir.

By Mr. McClintic:

Q. Did you make any examination of what appears, after the State of West Virginia was formed, on the books of West Virginia as to any sales made by the State of Virginia of its stock in the Blue Ridge Road, or any of those items?

A. Yes, sir; I did.

Q. What, if you know, was paid the State of Virginia by the Virginia Central or the Chesapeake & Ohio Railroad for the Blue Ridge Road?

Mr. Anderson: That is wholly in Virginia. I do not see 709 what it has to do with this inquiry.

Mr. McClintic: It has a good deal to do with the inquiry on our theory of the Covington & Ohio Railroad.

The Special Master: I will hear it *de bene*. Of course I cannot pass upon the force of it until I have all the facts before me. I will let it go in *de bene*.

Mr. Anderson: We merely enter an objection to it as irrelevant.

Mr. McClintic: I take it that all testimony is allowed on that theory. We have not objected many times for that reason.

The Special Master: Yes.

The Witness: The present State of Virginia received in 1870 from the Blue Ridge Railroad, $625.348.08 in State bonds and accrued interest on the State bonds.

By Mr. McClintic:

Q. From whom?

A. From the Chesapeake & Ohio Railroad Company.

Q. State, if you know, whether the State of Virginia was relieved of any guarantees on bonds of the Virginia Central Railroad by the Chesapeake & Ohio Railroad or the Virginia Central Railroad; and, if so, please state the amount?

A. The State of Virginia was relieved of the guarantee of bonds of the Virginia Central Railroad, amounting to $100,000; and it was relieved by the Chesapeake & Ohio Railroad Company, taking up those bonds.

Q. State, if you know, the par value at least of the stock of 710 the Virginia Central Railroad Company owned by the State of Virginia on the 1st of January 1861.

Mr. Anderson: We object to that. He does not know the value.

Mr. McClintic: I am simply asking for the par value.

Mr. Anderson: All right, if it is the par value.

A. I can't state what the par value was. I can only state that the State of Virginia had paid up to the 1st of January, 1861, $1,927,382.57 for stock in the Virginia Central Railroad. She had

paid that much on her subscriptions to the stock of the Virginia Central Railroad Company.

Q. What, if anything, did the Virginia Central Railroad owe the State at that time, if you know?

A. The railroad company owed the state $90,000 that had been loaned.

Q. Returning to Exhibit Plaintiff C-1, and referring to page 3, there is a road charged as the Strasburg and Capon Turnpike. Please explain, if you know, whether that road, or any part of it, is in the State of West Virginia?

A. The Strasburg and Capon Turnpike Company was incorporated in the year 1856. The route of the road was from Strasburg in the Shenendoah County and the present State of Virginia, to some point on the Winchester and Moorefield Road, at or near Hoff's gate. There was no report filed by that company which gave the exact location of the road. To get into the present State of West Virginia the road would have had to have gone over the Great 711
North Mountain, and on the maps which we had access to there is no such road shown. The road was to go from Strasburg in Shenendoah County, to some point at or near Hoff's Gate on the Winchester Road, and there is a road on the maps which I consulted, running from Strasburg to this Winchester and Moorefield Road, which would make this road entirely in the present State of Virginia.

The Special Master: You took it to be that road?

The Witness: Yes. I do not think the road went to Capon, which is in Hampshire County, and the present State of West Virginia, because the road to Capon from the Moorefield and Winchester Road was built by the latter road.

By Mr. Harrison:

Q. In that connection, did you examine the Board of Public Works Report, 1857, page 215?

A. I made no particular note of that. I made no note of information gotten from that report.

Q. You have no recollection on that subject?

A. No, sir.

Q. You have no memoranda showing it?

A. No, sir.

By Mr. McClintic:

Q. On the same page, Mr. Scoville, appears the Winchester and Potomac Railroad, charging West Virginia $168,750 (referring to

plaintiff's Exhibit C-1), and dividing it into four items. Please explain those items as to stock or loan or their character or 712
nature.

The Special Master: Is that page 3 at the bottom of the page?

Mr. McClintic: Yes, sir.

A. The first three items, aggregating $120,000 were paid by the State on account of its subscription to the stock of the Winchester and Potomac Railroad Company.

The item of $150,000 was loaned to the company.

In 1846 the Commonwealth of Virginia passed an act accepting in lieu of dividends on stock and interest on the loan, an annuity of $5,000. That annuity was paid in every year up to and including the year 1860. The ledger account, which carries the subscription of $120,000, to the stock, was closed on the books of the internal improvement fund with the explanation that the stock had been surrendered for the annuity.

After 1861, I think in 1866, the State of Virginia passed an act agreeing to accept stock or bonds of the State of Virginia in settlement of the principal of that annuity, and the State of Virginia did establish the principal of $83,333.33, which was the principal sum producing $5,000 annually at six per cent; the State accepted State bonds of Virginia for the $83,000 odd as principal, and the unpaid annuity up to the time of the settlement, amounting in all to $118,000.

Mr. Anderson: To satisfy the State bonds?

The Witness: Yes.

Mr. Anderson: That is bonds of the old State?

The Witness: Bonds of the old State. 713

By Mr. McClintic:

Q. Were there any notes, so far as you know, given to the State of Virginia for that loan, or how was it evidenced as a loan, if you remember?

A. The only evidence that I have seen is an entry of it on the original books kept by the second auditor, which shows the money as being received. Just what was given for it I do not know.

Q. So, the State's interest in that consisted of $120,000 worth of stock and $150,000 worth of loans?

A. Yes, sir.

Q. And it was settled, as you say?

A. Yes, sir.

Q. On page 4, I find the item, James River and Kanawha interest. Please tell the court what you know about an item there of $100,000 charge, called bonds to Kanawha Board, in 1860?

A. Under an Act passed by Virginia on March 23, 1860, the State

agreed to loan to the James River and Kanawha Company for the use of the Kanawha Board, which had been established to carry on the improvements of the Kanawha River, $200,000 in State bonds. I did not find that the $200,000 or $100,000, as shown on plaintiff's exhibit, had been turned over to the James River and Kanawha Company prior to January 1st, 1861.

Q. How much did you find had been turned over, if any sum, to the Kanawha Board?

A. $60,000.

Q. That was bonds of the State of Virginia under the Act 714
of March 23, 1860?

A. Yes, sir, as a loan to the James River and Kanawha—

By the Special Master:

Q. What date was the $60,000 of bonds turned over?

A. I haven't the exact date, but it was prior to January 1st, 1861.

Q. It was during the year 1860?

A. During the year 1860.

By Mr. McClintic:

Q. That was only a loan to the James River and Kanawha Company, was it not?

A. Only a loan.

Q. The plaintiff has charged under that head something over $300,000; for Kanawha River, $91,666.72; extension of Kanawha Turnpike, $87,285.36; 82 per cent Kanawha turnpike, $144,772.86; Gauley Bridge, $1,167.68. Those were, if payments at all, only payments by the Company, were they not, for the purpose of construction or something?

A. Those payments, without attempting to say whether the amounts there are correct or not, were on account of the improvements of the James River Canal proposition made by the State, improvements carried on by the State, and expenditures made by the State. But under an act passed in 1832 the State surrendered its interest in the improvements, on the James River Canal to the newly incorporated James River and Kanawha Company for stock in that company. So that these payments are not charges against West Virginia as direct expenditures, but became during the
period under examination investments in the stock of the 715
James River and Kanawha Company.

Q. By the State of Virginia?

A. By the State of Virginia.

The Special Master: First they were investments, and afterwards converted into stock?

The Witness: Yes.

By Mr. McClintic:

Q. Were these particular investments made before 1832; were they not made long after 1832?

A. I can't say as to that; but I think they were made before 1832. They expended large sums before 1832.

Q. But were those large sums expended out yonder in West Virginia before 1832?

A. A very small proportion of the large sums were expended in West Virginia.

Q. Before 1832, was anything expended in West Virginia?

A. Yes, sir; they commenced.

Q. In West Virginia?

A. Yes, they commenced on the Kanawha Road before 1832.

Q. Have you investigated these particular charges here made and just read, as to the date when they were expended, and time, and so forth?

A. Yes, sir; I have.

Q. Have you the working papers that show them?

A. Yes, sir; I have.

Q. Could you get them immediately or later? 716

A. (After searching among papers.) 2I have them here.

Q. Please state, if you know, when those sums were expended, or such of them as were expended, as far as your papers show?

A. I cannot testify as to when it was expended without further papers. I find I have not the papers here which give the dates.

Q. Sometime later I wish you would make me a statement to that effect, and if we have opportunity we will show it.

Mr. Harrison: Do you know when the Act incorporating the James River and Kanawha Company became operative? It was passed in 1832, was it not?

The Witness: It became operative in June, 1835.

Mr. Anderson: That is, the Company was organized then?

The Witness: Yes, the Company was organized then.

By Mr. McClintic:

Q. On page 11, I believe it is, of Plaintiff's Exhibit C-1 (Defendant's Exhibit G-1), I find the item of $2,500 in 1847, charged on the Plaintiff's Exhibit, Morgan County road, from Bath to St. John's River, $2,500. Do you know anything about that?

A. That money was loaned to the trustees.

The Special Master: What is that item?

Mr. McClintic: Page 11, Exhibit Plaintiff's C-1; Morgan County road from Bath to St. John's River. It is a similar loan to the town of Bath to the one shown in our Exhibit G-1. I wanted to prove the fact by Mr. Scoville.

The Witness: The money was loaned to the trustees of the town of Bath, and had not been paid back into the Treasury 717
of the State prior to January 1st, 1861, and on that date stood as a loan against the trustees of the town of Bath.

Mr. Harrison: It was for the purpose of building that road, was it not?

The Witness: I don't know what the purpose was. I know it was a loan to the trustees of the town of Bath.

Mr. Harrison: Did not the record disclose any purpose at all?

The Special Master: What page is that found on in your exhibit G-1?

Mr. McClintic: It is noted on page 2, and then it is noted somewhere else later on.

The Special Master: Yes, I find it.

Mr. McClintic: Also on page 9. It is noted again on page 9.

By Mr. McClintic:

Q. On page 11 of Exhibit C-1, Louisa Fork of the Sandy River Road, $1,000. Did you find any such road in your examination?

A. I did not find any such road in the whole State of Virginia. I did find that that road was in the present State of Kentucky.

Mr. Harrison: How did you find that; what source of information did you have?

The Witness: I don't think I mean the present State of Kentucky; I would like to withdraw that answer and consult the papers here.

Mr. Anderson: There is a Louisa Fork and a Levisa 718
Fork. The Levisa Fork is in Buchanan County, Virginia.

Mr. McClintic: The same fork depends a good deal on map. Sometimes it is "Louisa," and sometimes it is "Levisa."

Mr. Mollohan: When was that made?

The Witness: The appropriation was made in 1823. That road runs through Buchanan, Russell and Tazewell Counties, all in the present State of Virginia, being in the southwestern part of the State.

Mr. Harrison: What is the terminal point?

The Witness: This road was made in connection with a road built by the State of Kentucky, and the entire road, including what was built by Kentucky in Virginia, was intended to run from Mt. Sterling, in Kentucky, by way of Prestonburg, in the direction of Tazewell Court House, to intersect the main western road leading from Richmond to Abingdon. The Commissioners who had charge of the building of that road were directed to construct the road from the latter point, that is the road leading from Richmond to Abing-

don, thence up the Louisa Fork of the Big Sandy River, through the most practical route, through the rich lands of the Clinch River.

By Mr. Harrison:

Q. What act was that?

A. January 15, 1826.

Q. Have you got the page of the act?

A. Yes, sir; page 81.

By Mr. McClintic:

Q. On page 19, Mr. Scoville, I find charged the balance of 719
interest on bonds of the City of Wheeling, $15,115.64. State, if you know, whether that item was paid to the State of Virginia, and if so when?

A. That item was paid to the State of Virginia in the year 1867, with interest, which amounted to about $6,000, as shown by the books in the Auditor's office, the auditor of public accounts.

(Informal discussion followed, about the question of holding a night session, at the conclusion of which, at 5:40 o'clock P. M., a recess was taken until 8 o'clock P. M.)

783

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville.*]

The Special Master: Of course I have no objection to proceeding in this way, but as long as that understanding is practically entered into I think you will make more satisfactory progress by letting them in the first instance undertake to weed it out. With that exception are you through, Brother McClintic, with this witness?

Mr. McClintic: Just one moment. (Continuing after consultation among counsel.) I want to prove in some form, so as to get it into the record, the amount of tolls or dividends, dividends, I should say, paid in by these stock companies to Virginia prior to January 1, 1861. I mean all the road companies, the navigation companies, the bridge companies and things that paid dividends.

The Special Master: Have you a schedule?

Mr. McClintic: I haven't it prepared in such a way as to put it in as such.

The Special Master: Then why do you not have your experts prepare it in the interim?

Mr. McClintic: That can be put in, then, without going over in detail the items with this witness?

The Special Master: How is that?

Mr. McClintic: I say I can have the experts, Mr. Dixey and 784
Mr. Scoville, make a statement of that by roads and compa-

nies, showing the companies that did pay dividends, and a statement that all others did not pay dividends. There are only a few that did pay dividends.

The Special Master: Of course, when we suspend, we shall have to suspend for the purpose of having another hearing, because there are reports that have to be made by these experts. Brother McClintic, you may have prepared your statement, and as soon as you get it prepared submit it to the other side, so they will be prepared to criticise it if they have occasion to do so.

Mr. McClintic: I do not now think of anything that I want to ask at this time. There are some things we will have to go into when we get this in.

Mr. Spooner: I would like to put one or two questions upon a matter concerning which you testified. I would like a little fuller information referring to these corporations, to the construction of turnpikes, and bridges, and the like, navigation companies, and all that. I understood you to say that in no case—I mean those that are set forth in these schedules—did Virginia subscribe for more than three-fifths of the capital stock, and in some cases two-fifths, and in other cases two-fifths.

The Special Master: And in some cases one-fifth.

Mr. Spooner: Some cases one-fifth.

The Witness: I do not think I made that statement.

The Special Master: Mr. Dixey made that statement.

785

By Mr. Spooner:

Q. Well, two-fifths or three-fifths. Did you testify, or did I incorrectly understand you, that in no instance did the State of Virginia own all of the outstanding stock in any of those corporations?

A. I do not recall any instance where the State of Virginia did own the entire outstanding capital stock.

Q. Where the State owned two-fifths, were there majority stockholders owning the other three-fifths?

A. There were.

Q. And where the State owned three-fifths, there were minority stockholders owning the other two-fifths?

A. There were.

Q. Did you testify, or did you mean to be understood as testifying, that Virginia, in either case, made no payments upon the stock subscriptions until the other stockholders had made payments on their stock subscriptions?

A. I intended to convey just that impression.

Q. Was that by statutory provision?

A. It was. It was provided in the Acts making the appropriations. It was the general rule and custom.

By the Special Master:

Q. That is, the payments were made upon call upon all the stockholders?

A. Yes, sir.

Q. The State paying in the same proportion that the private stockholders paid?

A. Yes, sir.

Q. And Virginia did not pay until the private stockholders had paid; is that what you stated?

Mr. Conrad: No, he did not state that. He is not a lawyer, 786
and he misunderstands it. As the Master suggests, it was simply a call.

Mr. Spooner: I understand—

Mr. Conrad: I know you understand, but he will do himself an injustice.

The Special Master: The question now is, whether the payment of the private subscribers was antecedent to the payment by the State.

The Witness: If the payments were made according to law, they were not antecedent. They were *pari passu* with the private subscriptions.

Cross Examination.

By Mr. Conrad:

Q. You have been examined upon this Auditor's report of Auditor Crane. We will offer it in evidence at the proper time. Now, as you have been examined on it, I want to ask you what you found in the course of your examination, what you found out about this report of Auditor Crane, made November 25, 1862.

Mr. Harrison. What auditor?

Mr. Conrad: Auditor of Public Accounts of the restored Government of Virginia.

Mr. Mollohan: The State of Virginia. There is no restored in it.

Mr. Conrad: I will read this. (Reading):

"It has about $400,000 worth of stock in the Northwestern bank at Wheeling standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the 787
name of the Literary Fund. The State has $50,000 of stock or loans in the name of the Literary Fund in the bank at Fairmont, and from $50,000 to $70,000 in the Exchange bank at Weston, making about $500,000 in all. She is also a stockholder in the improvements of the Kanawha River, how much the Auditor does not know. The State is the owner of several important turnpike roads in the northwestern part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use the

stock before and pending the settlement with the old State: Some legislation, therefore, upon the subject will be necessary."

Did you have occasion to look into this item of $500,000 made up of these stocks referred to in this report?

A. Yes, sir; that has been covered.

Q. You have covered it with the amount of $500,000?

The Special Master: Covered in what?

The Witness: In the testimony that I have given this evening.

By Mr. Conrad:

Q. To this amount of $500,000?

A. As to the Northwestern Bank, $450,000 par value, all of which is not paid in cash. As to the Fairmont Bank, $50,000 paid in cash.

Q. I am referring to what the auditor says—

Mr. McClintic: That is the auditor of Virginia reporting to Virginia, is it not? 788

Mr. Conrad: To gratify you, I will assent to that statement.

By Mr. Conrad:

Q. I ask you if you have any further explanation to make of that.

The Special Master: Does the testimony you have given in connection with that cover all you have to say about that?

A. Yes, sir.

Mr. Conrad: We will at the proper time ask to offer this report in evidence. That is all I have to ask you, sir.

(The witness under examination, Mr. Scoville, was accordingly excused from the witness stand.)

Mr. Conrad: There is another statement contained in another auditor's report, which, if the Court will permit me, as it is very brief, I would like to read. This is a very noble aspiration.

(Reading):

"If, however, we succeed in making a new State, new expenses will be necessary."

All this will be necessary! 789

"When all this has been completed and the red line put down, the citizens of the new state will be one of the happiest people upon the Globe. No large State debt to pay; no oppressor's hand upon them; the tree of liberty to shade them; the flag of the Union to

cheer them, and the providence of God to bless. Who would not rejoice to dwell in such a state?"

[*Vol. 7. May 6, 1909.*] 734

MR. CLIFFORD E. SCOVILLE
resumed the stand for further direct examination.

By Mr. McClintic:

Q. Mr. Scoville, please tell the court about the two items for Gauley Bridge, charged one under the James River and the other a direct charge to Gauley Bridge in Defendant's Exhibit C-1, as to whether or no those were both James River expenditures or not, and whether or not the State got stock for it.

A. The first item is on page 4 of Plaintiff's Exhibit C-1, 735 under James River & Kanawha interests. The item reads "Gauley Bridge, $1,167.68." I have not been able to find where Mr. Potter obtained that figure, but I presume it came from the analysis of some account in the James River expenditures.

Mr. Mollohan: Did you find the date?

A. Mr. Potter gives a reference here—"J. R. Journal," meaning James River Journal, "B page 464," but that item does not show on page 464 as an item in itself.

Mr. Harrison: I will say to the witness, in explanation, that that reference was not intended to include Gauley Bridge. It applies to the items above Gauley Bridge, and you were misled by it. It is a typographical error.

The Witness: It is bracketed all the way down.

Mr. Harrison: Yes; it is bracketed all the way down, but the bracket ought to have stopped before it included the Gauley Bridge item.

The Witness: The second charge on account of the Gauley Bridge is on page 8 of the Plaintiff's Exhibit C-1, and amounts to $1,419.45. The third item extended into the total column from the bottom. That amount was extended under an act passed in 1837, and was paid to Joseph Blair and William Shields. The date of the act is March 6, 1837, page 291, and is for the balance due for construction of bridge over Gauley River. That is not a direct charge against West Virginia, but is an additional amount paid on account of James River improvements, for which the State received stock under an act passed in 1832.

Mr. Harrison: You mean it was a stock subscription and 736 not a direct expenditure?

The Witness: Yes, sir; practically that.

By the Special Master:

Q. The money was paid to these two men of whom you speak, who did the work on the bridge?

A. Yes, sir.

Q. But for the disbursement the State received stock?

A. Yes, sir.

Mr. Spooner: But was it a stock subscription?

A. Not primarily. It was a part of the James River improvements built by the State, but all of those improvements were turned over to the James River & Kanawha Company for stock in that company. So in that way it becomes a part of the cost of the stock which was received by the State.

By Mr. McClintic:

Q. Mr. Scoville, there was charged on page 13 the Northwestern Bank of Wheeling, $450,000. Please explain to the court—

The Special Master: Is that the same bank to which this certificate relates which you have just put in?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Please explain to the court how much of that sum of $450,000 was paid in money by the State.

A. Of the total stock, amounting in par value to $450,000, there was paid in cash by the State $425,091.33. The balance due on the State total subscription, amounting to $450,000, was paid by dividends on the stock which had been subscribed for by the State, which accrued before the subscription was fully paid for, and from those dividends, which amounted to exactly $33,000, there 737
was a deduction of an interest charge against the State, which left the net amount left them on dividends $24,908.67.

The Special Master: Which made up the balance of the $450,000?

The Witness: Yes, sir.

By Mr. McClintic:

Q. State to the court how many branches that bank had, if you know, and where they were situated?

A. The Northwestern Bank of Virginia was authorized to establish a great many branches that it never did establish. From reports which can be found in the documents of the House of Delegates of Virginia, we found that the following branches were actually established: One at Wellsburg, one at Parkersburg, and one at Jeffersonville, in Tazewell county, in the present State of Virginia.

Q. State next the sale of a part of the stock of the Northwestern Bank prior to January 1, 1861.

A. In the year 1857 the Commonwealth sold 1,082 shares of Northwestern Bank stock for $113,671.42, and turned the proceeds of that sale over to the Sinking Fund. That transaction is shown in the books of the Commonwealth—the original books.

Q. State what other stock, if any, the State of Virginia acquired in that Bank, and how?

A. We referred, first, to stock in that Northwestern Bank, amounting to a par value of $454,000. That is the total amount of stock which the State of Virginia purchased in that bank. $400,000 of that was purchased through what was known as the Commonwealth or General Fund, and $50,000 was purchased through the Literary Fund. 738

Q. Was there any bonus stock given to the State in that bank?

A. Yes, sir.

Mr. Conrad: I wish you would explain what you mean by bonus stock.

Mr. McClintic: It is a franchise stock. Both Mr. Potter and Mr. Dixey explained it.

Mr. Spooner: Do you mean payment for the franchise?

Mr. McClintic: Yes; the franchise tax you might say, as I understand it.

Mr. Conrad: Do you mean it was stock in addition to the entire stock of the corporation?

Mr. McClintic: The State exacted from the corporation so many shares of stock for nothing.

Mr. Conrad: Of its authorized capital stock, the State required that so much should be turned back to it for the stock.

The Special Master: That is, in addition to the stock subscribed and paid for?

Mr. McClintic: Yes, sir.

The Special Master: So that in a sense the State would have stock on its hands without having rendered any compensation therefor except as it was credited to the franchise and the price of the franchise of the bank.

By Mr. McClintic:

Q. How many shares of stock were there in this case?

A. There were 326 shares, of the par value of $100 each, amounting to $32,600. 739

By Mr. Conrad:

Q. Do you find it called bonus stock in any Act of Assembly?

A. Yes, sir; I am quite sure it was invariably referred to as bonus stock.

Q. In the Acts of Assembly?

A. Yes, sir; I am positive of that fact.

By Mr. McClintic:

Q. On page 2 of plaintiff's exhibit C-1, and on page 3 of defendant's exhibit C-1, is the Northwestern Turnpike Road. You made a thorough examination of those books yourself, I believe?

A. I did; yes, sir.

Q. Please explain the facts in relation to that charge, stating how much money was paid, how you arrived at it, and the tolls and other questions connected with it.

A. The Northwestern Turnpike Road was built entirely by the State, and separate construction books were kept of the expenditures. From those books we analyzed the various accounts of the expenditures, and applied as far as possible all expenditures which could be applied directly to either the present State of Virginia or West Virginia, and items which the books did not clearly record the localities on, we divided on a mileage basis, and on that plan we arrived at a charge against West Virginia of $573,994.39, and that amount includes tolls and I think small amounts of other income.

Q. What page of defendant's exhibit C-1 do you find that? 740

A. Page 3. It includes tolls and other income amounting to $173,670.39, the total amount of which went back into the road, was expended on the road.

Q. Have you given credit to West Virginia for her mileage proportion of those tolls?

A. Yes, sir.

Q. On exhibit F-1?

A. Yes, sir.

Q. Please look at page 4 of the same exhibit, C-1, of the defendant.

By Mr. Harrison:

Q. Before you do that, if it does not interrupt you, I would like to ask him a question, to explain it a little more fully. You have included in that charge tolls and other charges, you say?

A. Tolls and other income.

Q. I should have said other receipts, amounting to $173,000?

A. Yes, sir.

Q. Now, can you state without any special delay whether the corresponding exhibit filed by the plaintiff and prepared by Mr. Potter includes tolls and those other items of credit you speak of?

A. I cannot state, Mr. Harrison, but if I am not mistaken, it has

been testified by Mr. Potter that the tolls were not taken into account either way.

Q. He shows a charge against West Virginia under that item of $426,053, as against $573,994.39, and I simply wanted 741
to develop the fact that the difference is accounted for by the fact that Mr. Potter took no account of tolls and the other credits that have been included there.

A. That does account very largely for the difference. The difference between Mr. Potter's statement and our statement on that road is $153,920.22; but on our defendant's exhibit F-1, we take credit for $171,194.10 for a proportionate toll on a mileage basis, so that the difference after allowing for those tolls is $2,726.12.

Q. Eliminating the tolls, then, the only difference between yourself and Mr. Potter is some two thousand and odd dollars?

A. Yes, sir.

Q. Which you spoke of, which is classified under the head of other credits, or at least described by you among other credits.

By Mr. McClintic:

Q. In the $151,000 you included both the tolls and the other credits?

A. Oh, yes.

The Special Master: So that there is really a discrepancy of a little over $2,000?

Mr. McClintic: Yes.

The Special Master: That is one of the matters they will have to reconcile.

By Mr. Harrison:

Q. You say the tolls coming in from the operation of the road were extended along with any other operating fund for 742
the maintenance of the road?

A. And other purposes; expended on the road; yes, sir.

Mr. Harrison: That is all I want to ask.

The Special Master: I suppose they were expended for maintenance and operating expenses, were they not?

Mr. Harrison: I take it they were.

By the Special Master:

Q. Did I understand they were for new construction or simply operating and maintenance expenses? What is the fact about that, Mr. Scoville?

A. They were for both. In other words, I don't think it would be possible to say just how those tolls were applied, what was the exact application of that money; but it went back into the road,

and at the time it did go back, they were under construction expenses as well as operating expenses.

Q. At the time it went back, they were constructing the road then?

A. Yes, sir.

Q. They were constructing additional road?

A. Oh, yes; and they were also operating a part of it.

Mr. McClintic: The road was several hundred miles long, your Honor.

The Special Master: Yes; I did not know what the fact might be. I do not know that it is of any significance, anyway.

743

By Mr. Harrison:

Q. You say it would be impossible for you to tell for just what purposes the money derived as tolls was applied?

A. I don't think it would be possible.

By Mr. McClintic:

Q. On page 4, the Staunton & Parkersburg Road. Please explain in a general way about that. That is defendant's exhibit C-1, page 4.

A. The Staunton & Parkersburg Road was also built wholly by the State, and construction books were kept, in which the expenses on account of that road were recorded and the accounts appearing in those books were closely and carefully analyzed and treated exactly the same as the Northwestern Turnpike accounts were treated.

The Special Master: The Northwestern Turnpike Road was also built wholly by the State?

A. Yes, sir.

By Mr. McClintic:

Q. Have you there, Mr. Scoville, plaintiff's exhibit D-1?

A. Yes, sir.

Mr. Harrison: I would like to ask Mr. Scoville a question. Right there, if Mr. McClintic will allow me?

Mr. McClintic: Certainly.

By Mr. Harrison:

Q. You show as a charge against West Virginia under the Staunton & Parkersburg Road item, $288,807.56, do you not?

A. Yes, sir. 743½

Q. Turning to the plaintiff's corresponding exhibit dealing with that item, on page 3, plaintiff's exhibit C-1, the amount charged against West Virginia is shown to be $284,232.64?

A. Yes, sir.

Q. Or within about $4,000 of the amount shown by you?

A. Yes, sir; but in connection with that Staunton & Parkersburg charge on our exhibit, we also take credit on our exhibit F-1, which covers receipts for $18,952.90 for West Virginia's proportion of tolls on a mileage basis; so that after applying that, it makes the difference considerably larger.

By the Special Master:

Q. It makes your sum smaller instead of larger?

A. Yes, sir.

Q. That is, if you struck a balance?

A. Yes, sir.

By Mr. Harrison:

Q. Taking a credit for tolls?

A. Yes, sir.

Q. Were the tolls handled in that case as they were in the Northwestern Turnpike Company case?

A. Just exactly the same.

The Special Master: The money went on to the road for its maintenance and operation and construction?

A. Yes, sir.

Mr. Spooner: It was self-supporting to that extent.

836

[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit C-1.*]

[The Special Master]:

The next is Paragraph 3 (reading from the decree):

"All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

Mr. Anderson: I now submit this exhibit, marked C-1.

(The exhibit referred to was filed with the stenographer, and marked "Plaintiff's Revised Exhibit C-1.)

Mr. Harrison: We submit what we call Plaintiff's Revised Exhibit C-1.

The Special Master: I am not at all particular about the language, but I think we had better have consistent language throughout. I am willing to call them all revised schedules or substitute

schedules. My own notion was that we might substitute these for the others, but if you prefer the other method, Brother Harrison, very well. 837

Mr. Harrison: No, not at all—

The Special Master: The Plaintiffs submit Plaintiff's Substitute Schedule C-1. I will say that of course when we come to make up this record there will not be any occasion for showing that several schedules in reference to the same subject have been submitted. There is no occasion for the record disclosing how we reach the agreement, where we do agree. This is the Plaintiff's Substitute Schedule C-1. Now, am I to understand that the computations appearing on that schedule as to amount are agreed to by Virginia and West Virginia?

Mr. McClintic: I understand not.

Mr. Carlisle: There is a statement there which shows, I think—

Mr. Harrison: Substitute Schedule C-1 that you hold in your hand shows in complete detail the points of disagreement, both as to amounts and as to classification.

Mr. Carlisle: And as to everything else except what is enumerated as disagreement, there is an agreement.

Mr. Harrison: I would not make it as broad as that.

The Special Master: Let us make it just as it is. We will not have anything the result of inadvertence or misunderstanding if we can help it.

Mr. Dixey: There are some adjustments yet that have not been entirely agreed to. There are some differences in figures that appear when we go to check up the statements. I think the differences can be reconciled, but as I understand it, they are not yet all reconciled. 838

The Special Master: Then, why do we not have these reconciled before we agree on it? If it is probable that the experts on both sides will later, at some time, be able to submit to us a complete schedule of agreement under this paragraph, would it not seem to you, Mr. Carlisle, that we had better suspend this until then?

Mr. Carlisle: Yes, sir.

The Special Master: How does that strike you, Brother Anderson?

Mr. Anderson: Our information was that there was an agreement as to amounts. Of course there is not an agreement as to the classification—

Mr. Dixey: I think it could be adjusted in a few hours.

The Special Master: Very well. Then, suppose we suspend on this for the present in the hope that the experts may be able to agree on the items?

Mr. Harrison: We were not aware of any disagreement ourselves.

The Special Master: Well, I will ask Mr. Dixey and Mr. Potter to

get together at the intermission and see if they can reconcile that, and if they cannot during that time, we will see if further time will be needed.

The Special Master: We now come to Plaintiff's Revised Exhibit C-1. 874

Mr. Harrison: That is suspended. That is still open.

The Special Master: You have not any evidence, so far as you know, if the experts agree on the figures, that you wish to put in; you have not any additional evidence? 875

Mr. Harrison: No, sir.

965

[*Vol. 7. July 2, 1909. Plaintiff's Substitute Exhibit C-1.*]

Mr. Anderson: C-1 we had better put in first, I reckon. That has been modified somewhat. We wish to substitute this for the one filed. We will withdraw the other and put this in (indicating).

Mr. McClintic: We do not want any withdrawals.

The Special Master: No; they are all in. Plaintiff's Substitute C-2. Am I correct in my understanding that all the computations that appear on this schedule are agreed to as being correct in amount (referring to Substitute Exhibit C-1).

Mr. Dixey: Not all the computations, because that includes certain amounts which the plaintiffs charged to West Virginia. 966

The Special Master: What I want to know is this: whether the items are correctly stated as to amounts.

Mr. Dixey: As to the totals, yes; not that proportion chargeable to West Virginia.

Mr. Carlisle: You agree upon the aggregates, but you do not agree upon the proportions.

Mr. Dixey: That is it.

The Special Master: What are the items as to which you disagree about the proportions?

Mr. Dixey: There are a great number. They are all in this schedule and marked here (indicating).

Mr. Anderson: What schedules?

Mr. Dixey: This is C. All the items that are marked in this last column, defendant's Exhibit G-1, and there are a great number of them; there are 138 items on the schedule. I believe we agree as to this amount in the total column. There is no agreement as to the amounts in the right hand column marked "amounts chargeable to West Virginia."

Mr. Harrison: You do agree upon the percentage?

Mr. Dixey: On the percentage of the property in West Virginia; not the percentage as a charge.

Mr. Anderson: You object to the classification.

Mr. Dixey: We do not agree about that at all, as to amounts, because we have not verified it.

The Special Master: This is under Paragraph 3, page 4. 967
Let me take one item. Here is the total, under the No. 1, Abbs Valley and Tug Road. This schedule shows the part of the improvement in West Virginia to be 90.1 per cent. Now, what I want to know is whether that percentage is agreed upon.

Mr. Dixey: We agree to that item in its entirety, because that is on our Exhibit C-1. It is only those that are on our Exhibit G that we do not agree to.

The Special Master: The third item, Berkeley & Hampshire turnpike, part of improvement in West Virginia, 42.96 per cent. Is that percentage agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: The total there is $16,572. Is that agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: Then comes the amount chargeable to West Virginia, $15,322.47. Is that agreed upon?

Mr Dixey: No, sir. We do not agree on that.

Mr. Harrison: In what respect do you not agree?

Mr. Dixey: We do not agree that there is a charge there of any amount. That still has to be determined.

Mr. Harrison: That is not for the accountants to determine.

The Special Master: Let me find out right here where we are. Your contention is that it is not chargeable at all, but if chargeable, would it not be 92.46 per cent. of that amount?

Mr. Dixey: I don't know; it depends on what basis the charge is made upon. Is is true that 92.46 per cent. of that 968
property in mileage lies in West Virginia; but whether that would be a proper charge or not I would not say.

The Special Master: That is for me to say.

Mr. McClintic: And if you charge to us that sum, what is the stock worth; that is the question for you to decide.

The Special Master: You must all bear in mind that when I come to pass upon this I shall pass upon it as it appears in the record. When I take this item here to illustrate, the total, $16,572, you agree upon that, and then it is said that that percentage of that item is in West Virginia. Well, if I charge it on the basis of percentage, I will charge West Virginia with $15,322. I do not say now, of course, what I would do. But I understand that you agree on those figures. But you do not agree that it is chargeable on that basis.

Mr. Dixey: We agree that that percentage of the physical mileage is in West Virginia.

The Special Master: Then the question comes up whether that is a proper way to estimate that charge.

Mr. Carlisle: In the bill of Virginia against West Virginia and in this case there is a charge that West Virginia received from the State of Virginia under the Acts of 1863 certain stocks, and a claim is made for stocks that are worth millions of dollars. They also claim in that bill that West Virginia is chargeable for all the money that was expended in paying for those stocks.

The Special Master: I understand your position is that that is a duplicate charge?

Mr. McClintic: And your Honor has to decide under which 969
one of these charges these things have to be met. The accountants cannot settle that question.

Mr. Harrison: That is what I said.

Mr. Anderson: We do not propose to anticipate the argument, but my friend entirely misstates the fact about it.

The Special Master: But you are not embarrassed by that; that will not affect you at all.

Mr. Carlisle: I did not make any argument; I just stated the situation.

The Special Master: I am glad to have counsel make any suggestions; but there is not a single thing that counsel states, a single suggestion, that will have the slighest weight with me in reaching my conclusions. I am going to wait for the argument before I begin to make up my mind at all. Of course, I do not mean to say that I do not like to have suggestions from counsel; but anything that is said now will not influence me one way or the other in making up my mind.

Mr. Anderson: I want to say that they either have to stand on the Wheeling ordinance, or not stand on it.

Mr. Carlisle: So do you.

The Special Master: You are both either on or off.

Mr. Anderson: Under the Wheeling ordinance West Virginia is to be charged with all the expenses made in the territory constituting the new State.

The Special Master: The only thing I am interested in now is this. In the first place, to get this schedule so I will know what it
means. There are some of these items as to which Mr. Potter 970
claimed a certain sum was expended in West Virginia on the basis of a certain mileage, and Mr. Dixey claimed another sum on the basis of another mileage. If they have reconciled the thing so that they agree on their mileage and total amounts, and agree on the percentage that would follow, that is all I want to know.

Mr. Harrison: That is true.

The Special Master: Now, what weight I will give to that is another question.

Mr. McClintic: It is a small matter, but referring to item 16 on the next page—

The Special Master: Just a moment. Do you get the significance of my suggestion?

Mr. Carlisle: Certainly.

Mr. McClintic: We do not agree to that seventeen per cent. there, in item 16, Mountain Lake and Sulphur Springs turnpike.

The Special Master: Let me make inquiry right now. Here are under the first heading 22 items. Am I correct in my understanding that the amounts stated in the column under the heading, "Part of improvements in West Virginia," are agreed upon by both sides as being accurately stated?

Mr. McClintic: Except item 16.

The Special Master: Except item 16. Am I correct in understanding that in Plaintiff's Revised Exhibit C-1, or substitute Exhibit C-1, on pages 4, 5 and 6, including 22 items, that the parties are in agreement on all of the sums appearing in the column, "part of improvement in West Virginia," except item No. 16. Do I state that correctly? Mark that down in the record. 971

Mr. Potter: Do you want to summarize the first division of this? If you do, on page 8 is the total.

The Special Master: I guess I am right where I want to be. I will get your suggestions as I go along. I am going to clean this schedule up in its logical order, and when we agree to anything we will settle that. Am I stating that right?

Mr. McClintic: As I understand it you agree on column 1—

Mr. Anderson: I haven't got it before me.

The Special Master: Just answer my questions. Do the parties agree on all the claims mentioned in the column headed, "Part of improvement in West Virginia," except as to item 16?

Mr. McClintic: I think so.

Mr. Harrison: Let us see what the disagreement is about that.

The Special Master: I will attend to that. You cannot make any progress unless you proceed logically.

Mr. McClintic: Now, take the next claim.

Mr. Harrison: 16, you say, is not agreed on?

The Special Master: One moment. Do the parties agree on the sum stated in the column marked "Part of the improvement in West Virginia," with the exception of item 16?

Mr. McClintic: I understand so, yes.

The Special Master: Very well. Mark that down, that the parties do so agree. 972

Mr. Conley: We are not agreeing that we owe it.

The Special Master: No, that is not implied at all.

Mr. Conley: But the record does not show that.

The Special Master: Have the record show that the Master inquires whether they agree on the amounts stated.

Mr. Conley: How easy it would be for the Court, not understanding what is going on here, to understand from the record that we agree that that is a proper charge.

The Special Master: Well, let me state it in the record again, that there is no agreement that has yet been made, or intended to be made, that will be intended to bind or will bind—and this is the fourth or fifth time I have stated this—either party as to their classification or as to whether they are or are not a proper subject of credit. The agreement only goes so far as to fix the amount. A record might be so construed that there would be some misunderstanding, and you are perfectly right, Mr. Attorney General, to have it distinctly understood that no agreement that has been made or that will be made in connection with any of these items in any of these schedules binds either party as to their classification, or as to whether they are or are not a proper subject of credit. That will be distinctly understood, and I think is now clear upon the record.

Mr. Conley: You stated that broadly on yesterday; that was my understanding also, but I wanted it to appear so clearly on the record that there would not possibly be any doubt about it.

Mr. Anderson: That was stated a half a dozen times.

The Special Master: Well, it does not hurt to have it stated 973
again. Now, as to item 16.

Mr. McClintic: I took the deposition of a witness on that question, and we claim it should be 16-2/3 per cent. instead of 17.39 per cent.

Mr. Harrison: Do you not agree, Mr. Dixey, with Mr. Potter on that?

Mr. Dixey: No, sir.

The Special Master: It is either 17.39 or—what is the other figure?

Mr. McClintic: It is either 17.39 or 16-2/3 per cent.

The Special Master: There is a difference, then, of about one per cent. Do you want to waste any time on that?

Mr. Anderson: No.

Mr. McClintic: It is merely a matter of proof by my witness. I can prove that by my witness.

The Special Master: Well, shall I put in 16-2/3 instead of 17.39?

Mr. Harrison: We have been acceding and conceding—

The Special Master: You do not have to accede to anything. The question is, will Virginia agree to that being 16-2/3?

Mr. Anderson: Yes, sir; we will.

The Special Master: Let that go into the record that way, then.

Mr. Anderson: That would be less than $48.

The Special Master: On page 6 I notice, "Revised figures, June 30, 1909, construction charged to West Virginia, page 5, $465,732.11," and other pages there, there being six totals in all. 974

Mr. Dixey: That all relates back, if you will look at the preceding page, to the Northwestern turnpike.

The Special Master: The computations are agreed to, are they?

Mr. Dixey: As I understand it, they are, yes, sir.

The Special Master: Now, take up page 7. Do those summaries also result from the previous computations?

Mr. Dixey: Yes, sir.

The Special Master: Then they are agreed to. Now, let us take up page 8.

Mr. Harrison: That is part of what you have already been considering.

The Special Master: Page 8 is?

Mr. Harrison: Yes.

The Special Master: Some of the items already considered?

Mr. Harrison: No, that is a continuation.

The Special Master: Very well. Let me take those. Beginning on page 8, and running to 15—

Mr. McClintic: Page 8 ends the first division.

The Special Master: Oh, yes. Now, page 8, those are the figures, the computations, appearing in the three columns, "Part of improvement in West Virginia," the total, and "Amount chargeable to West Virginia;" and the amounts agreed upon as correctly stated.

Mr. Anderson: There is a change in the total, but that is made in another place. 975

The Special Master: Where there is an error in computation, that can be fixed. Are those amounts agreed upon?

Mr. Dixey: Yes, sir.

The Special Master: They are agreed upon, and let it be so marked in the record. Now, beginning at page 9 and running to page 15, the amounts of various items that appear on those pages; are the amounts of the various items as appearing on those pages agreed to?

Mr. Dixey: 8 to 15, inclusive, all with the exception of the last item, marked 112 Trans-Alleghany Lunatic Asylum, are agreed to.

The Special Master: Where is the item?

Mr. Dixey: 112, the last item, Trans-Alleghany Lunatic Asylum.

The Special Master: We can take care of that. All of the items on page 9 to page 15, under the column of "Amount chargeable to West Virginia," it is agreed that the amounts are correctly stated;

the parties still agree. Now, as to 112, Trans-Alleghany Lunatic Asylum, $125,000, is it or not agreed that that is the correct amount, without respect to whether it is chargeable or not?

Mr. Carlisle: There is $27,000 difference there.

The Special Master: There is $27,000 difference there. What gives rise to that difference?

Mr. Dixey: The $27,000 that was returned from the Lunatic Asylum to the State.

The Special Master: Am I to understand that you agree 976
that in the first instance there was $125,000 appropriated for that purpose?

Mr. Dixey: Yes, sir.

The Special Master: And was it turned over to the Lunatic Asylum Fund?

Mr. Dixey: Yes, sir.

The Special Master: Then afterwards, your contention is that that was returned to the State?

Mr. Dixey: Yes, sir.

The Special Master: And therefore the $125.000 should be stated as minus $27,000?

Mr. Dixey: Yes, sir.

The Special Master: What do you say to that, Mr. Attorney General?

Mr. Anderson: Our friends are mistaken as to the facts. The facts are these. The $27,000 was paid to the Northwestern Lunatic Asylum and turned over to the Board of Directors. A military raid was made from Wheeling and that was taken from the Northwestern Lunatic Asylum. They were afraid the Confederates would get hold of it, and so that money was taken to Wheeling, and every dollar of it was expended on the Northwestern Lunatic Asylum in West Virginia.

The Special Master: What do you say to that, Brother McClintic?

Mr. McClintic: That is absolutely wrong. The money was paid into the treasury in the summer of 1861 and spent by the restored Government of Virginia for the purposes of government, spent by Virginia, by the State of Virginia.

The Special Master: Is not this the item as to which you produced some books here at the last hearing showing the $27,000
accounted for in some way? 977

Mr. McClintic: Yes.

The Special Master: Well, is there anybody that can supplement that in any way?

Mr. Harrison: Yes, sir. The books show that that money was put back into the treasury of the Lunatic Asylum.

The Special Master: If that is so, the books will show it. Have you any evidence in addition to the books, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Have you any evidence, any testimony, Brother Harrison, that you can submit to me, in addition to the books already in?

Mr. Harrison: That book is in.

The Special Master: Well, have either of you anything supplemental to that?

Mr. Harrison: No, sir.

Mr. McClintic: No, sir.

The Special Master: Then there is no reason why these two experts cannot say to me what the books show. You stated $125,000 on the assumption that all went in, and they undertake to account for it in this way. Now, what I want these experts to do is to get together and show me what the books show as to this item. If they cannot get together, I will get an expert of my own to dig it out. It is not worth while to discuss that any longer. Now, what about this last, this page 16, Literary Fund Disbursements?

Mr. McClintic: That is a schedule of a total that is already 978 in.

The Special Master: Are those amounts correctly stated? I understand that that is agreed upon.

Mr. McClintic: Yes, sir.

[*Vol. 7. July 2, 1909. Relating to Winchester and Potomac R. R.*]

The Special Master: Defendant's Revised Exhibit C-1.

Mr. Carlisle: This is page 8, left-hand column. I will simply state we do not agree to that, of course. It is not part of the account. The item of the Winchester & Potomac Railroad, I have item No. 25. Mr. Potter has inserted this on his account:

"Excluded by defendants because it is stated that the loan of $150,000"—

The Special Master: Excuse me; the statement that Mr. Potter makes as to the reasons as given by the defendant is all well enough from his point of view, but it does not foreclose the defendant.

Mr. Carlisle: Here is another statement (reading):

"The Second Auditor pursued a course in dealing with these two items on his book not contemplated in the act authorizing the annuity, the result of which made it appear that the State had surrendered $270,000 for $83,333.33. The State intended to post-

pone the collection of the loan of $150,000 while and only so 998
long as the annuity was promptly paid by the company. and no reference is made in the act as to the disposition of the stock amounting to $120,000."

The Special Master: As to those items, I shall reach a conclusion that is predicated on the evidence in the case. Mr. Potter's conclusion will not have the slightest effect on the Master at all. There is no particular harm in his stating what his contention is, and whether Mr. Potter's conclusions are correct or not depends on what the acts of the Legislature and the record evidence in this case shows; and while the Master has not any objection to the suggestion of Mr. Potter, it will weigh nothing with the Master in reaching his conclusions. I will hear you all on that before I make my finding.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT D-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No.				
1	Tobacco Receipts (1)			$ 353,123.96
2	Constitutional Conventions			258,906.28
3	Slaves transported and executed			311,168.35
4	Boundary Lines			16,704.78
5	Maps (Commonweatlh)	$16,628.04		
	Maps (Board of Public Works)	11,446.48		
				28,074.52
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)			80,661.94
7	International Exchanges			2,836.19
8	Overpayment of Treasury Notes			50.00
9	Printing Treasury Notes			375.74
10	Loss account of Counterfeit Money			190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)			151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)			25,000.00
13	Improvements, Public Square (See page 11 for details)			1,456.91
	Improvements, Capitol Square (See page 12 for details)			12,278.47
14	Fugitive Slave Expense	$ 701.00		
	Reward, Additional	1,500.00		
				2,201.00
	Carried forward			$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward		$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)		13,947.48
16	Calling out Militia at Wheeling in 1836		1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)		25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company		500.00
19	Eastern and Western Asylums (See pages 15-22 for details):		
	New Buildings, etc.	$336,845.56	
	Support	7,450.01	
			344,295.57
20	Gun House at Alexandria		900.00
21	Cannon House, Surry County		110.00
22	Gun House for Richmond Artillery		1,079.09
23	Sundry B. P. W. Expenses		36,728.50
24	Interest:		
	Interest on Public Debt	$18,324,044.50	
	Interest on Treasury Notes	133,527.34	
	Interest on Temporary Loans	107,844.57	
	Interest on Old Military Debt of 1814 and prior	9,331.43	
			18,574,747.84
			$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for		655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.		
	Net Difference		$19,586,526.89

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	996,340	85.9789%	West Virginia	162,479	14.0211%
1830 and 1840	"	1,024,871	83.6218%	" "	200,731	16.3782%
1840 and 1850	"	1,067,304	80.2045%	" "	263,425	19.7955%
1850 and 1860	"	1,169,489	77.5014%	" "	339,501	22.4986%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia, $ 472,162.49	14.0211%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia, 875,349.31	16.3782%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia, 1,722,296.38	19.7955%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia, 4,585,586.62	22.4986%
Total		$37,794,211.18		$30,138,816.38		$ 7,655,394.80	

"The Average Total Population" *excluding slaves* is treated in the same manner as above, producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	559,399	79.3334%	West Virginia,	145,725	20.6666%
1830 and 1840	"	583,579	76.1625%	" "	182,650	23.8375%
1840 and 1850	"	626,041	71.9611%	" "	243,931	28.0389%
1850 and 1860	"	707,228	68.8438%	" "	320,065	31.1562%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830,	Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia, $ 695,950.63	20.6666%
October 1st, 1830-September 30th, 1840,	Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia, 1,274,019.08	23.8375%
October 1st, 1840-September 30th, 1850,	Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia, 2,439,508.77	28.0389%
October 1st, 1850-December 31st, 1860,	Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia, 6,350,148.62	31.1562%
Total		$37,794,211.18		$27,034,584.08		$10,759,627.10	

Total charge to West Virginia on basis of Average Total Population *including slaves* ..... $ 7,655,394.80

Total charge to West Virginia on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXON,
For the Defendant.

PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

		Virginia.			*West Virginia.*	
1820	928,558			136,808		
1830	1,034,481			176,924		
10 years' Increase	105,923			40,116		
1022/3652 of Increase	29,642			11,226		
Add—1820	928,558			136,808		
1823		958,200			148,034	
1830		1,034,481			176,924	
		2)1,992.681			2)324,958	
		996,340	85.9789%		162.479	14.0211%
1830		1,034,481			176,924	
1840		1,015,260			224,537	
		2)2,049,741			2)401.461	
		1.024,871	83.6218%		200.731	16.3782%
1840		1,015,260			224,537	
1850		1.119,348			302,313	
		2)2,134.608			2)526,850	
		1.067,304	80.2045%		263.425	19.7955%
1850		1,119,348			302.313	
1860		1,219,630			376,688	
		2)2.338.978			2)679,001	
		1.169.489	77.5014%		339.501	22.4986%

TOTAL POPULATION EXCLUDING SLAVES.

		Virginia.			*West Virginia.*	
1820	518,529			121,689		
1830	582,397			159,251		
10 years' Increase	63,868			37,562		
1022/3652 of Increase	17,873			10,511		
Add—1820	518,529			121,689		
1823		536,402			132,200	
1830		582,397			159,251	
		2)1,118,799			2)291,451	
		559,399	79.3334%		145.725	20.6666%
1830		582,397			159,251	
1840		584,761			206,049	
		2)1,167,158			2)365,300	
		583.579	76.1625%		182.650	23.8375%
1840		584,761			206,049	
1850		667,320			281,813	
		2)1,252,081			2)487.862	
		626,041	71.9611%		243.931	28.0389%
1850		667,320			281,813	
1860		747,136			358,317	
		2)1.414,456			2)640,130	
		707.228	68.8438%		320.065	31.1562%

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73 3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,251	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1838, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 9, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	488.66	
			21,321.96

An Act of March 20th, 1847, page 230, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00
	Carried forward		$58,570.94

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D-1
Page 6

Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 16, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorthorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ.		
Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building.		
Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$103,370.94

D-1
Page 7

Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,341 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 2,341.00	
" 1857	1,000.00	
		3,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,800.00	
do March 14th, 1850	6,000.00	
do June 5th, 1852	2,000.00	
do March 13th, 1854 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1838....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

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No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entitled:

"An Act amending and reducing into one the several Acts concerning the reorganization of the Lexington Arsenal and the establishment therewith of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly ..... $ 4,500.00

An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845 ..... 1,000.00

An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848..... 4,500.00

An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.

Payments were made as follows:

Year 1850	$11,500.00	
" 1851	29,500.00	
		41,000.00

An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 8th, 1850 (above). Payment was made in 1852..... 5,000.00

An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852..... 30,000.00

Carried forward ..... $ 86,000.00

D-1
Page 9

Brought forward		$ 85,000.00
An Act of March 1st, 1854, page 31, Chapter 12, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1856, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 103, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

No. 12.

D-1
Page 10

UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapter 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said institution."

No. 13.

D-1
Page 11

IMPROVEMENTS PUBLIC SQUARE, $1,456.91.

This amount covers sundry expenditures for the improvement of the Square, for work done at the Capitol, for laying water pipes, and for items of $75, being quarterly allowance to the superintendent of the Capitol Square in 1826 and 1827. While the books do not show the exact nature of the improvements, they were charged to "Public Improvements" account on the books of the Commonwealth.

No. 13.

D-1
Page 12

IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:	
1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.69
1838—For water system in Capitol and Governor's house	2,285.70
1851—New gas system	1,024.14
1851— do	890.94
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,250.00
Total	$12,278.47

D-1
Page 13

No. 15.

PENITENTIARY.

An Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

An Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $2,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 797.44	
"	1834	8,169.42	
"	"	150.00	
"	1835	27.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98
An Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837			3,000.00
A general appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840			1,600.50
Total			$13,947.48

No. 17. D-1
Page 14

MEDICAL COLLEGE OF VIRGINIA, $25,000.00

This amount was paid under an Act of March 1st, 1860, page 104, Chapter 8, as follows:

"Act appropriating $30,000.00 to the Medical College of Virginia for enlarging the hospital or infirmary, for extending the College buildings, and for improvement and extension of the College museum."

The Medical College of Virginia succeeded the old Richmond Medical College, and was incorporated in 1860 under the above style.

D-1
Page 15

No. 19.

LUNATIC HOSPITALS.

EASTERN ASYLUM, WILLIASMBURG.....	$138,280.19
WESTERN ASYLUM, STAUNTON.....	211,015.38
	$344,295.57

EASTERN ASYLUM AT WILLIAMSBURG, ESTABLISHED UNDER ACT OF JANUARY 1st, 1787:

An Act of March 5th, 1824, page 93, Chapter 90, authorized the Directors of the Hospital to contract for the erection of an additional brick building, containing convalescent apartment for females, not to exceed $5,000.

Payments were made as follows:

Year	1824	$ 2,500.00	
"	1825	2,500.00	
			$5,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $6,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1833 ..... 6,000.00

An Act of March 12th, 1834, page 27 Chapter 19, authorized the Directors of the Hospital to draw upon the Treasury for money to finish their buildings authorized by the Act of March 1st, 1833, the amount not to exceed $9,000. Payment was made in 1834..... 9,000.00

An Act of March 12th, 1835, page 17, Chapter 17, appropriated $2,660.00 necessary for completion of buildings. Payment was made in 1835 ..... 2,660.00

An Act of March 31st, 1837, page 18, Chapter 19, appropriated $1,000 for purchase of land near hospital, a neat 2-horse carriage and a pair of horses, and such other articles as recommended. Payment was made in 1837 ..... 1,000.00

An Act covering general appropriations for the year 1837 authorized payment of an amount of $658.88 for buildings. Payment was made in 1837..... 658.88

An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1839... 12,000.00

An Act of April 3rd, 1838, page 34, Chapter 21, authorised payment of amount not to exceed $5,000 for enclosures and buildings. Payment was made in 1839 ..... 5,000.00

Carried forward $41,318.88

D-1
Page 16

Brought forward	$41,318.33

An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.

Payments were made as follows:

Year	1842	$ 6,000.00
"	1844	4,000.00
		10,000.00

An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844.... 2,000.00

An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844 ..... 5,000.00

An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly 25,000.00

An Act of January 13th, 1849, page 15, Chapter 12, authorized payment of $6,286 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849..... 6,286.00

An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850..... 11,500.00

An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $551 for purchase of the "Six Chimney" lot; $1,339 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.

Payments were made as follows:

Year	1853	$ 2,500.00
"	1854	4,500.00
		7,000.00

Carried forward	$108,084.33

D-1
Page 17

Brought forward		$108,084.88
An Act of March 1st, 1854, page 29, Chapter 39, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00. Payments were made as follows:		
Year 1854	$ 3,750.00	
" 1855	6,000.00	
" 1856	8,000.00	
		17,750.00
An Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856		7,500.00
		$133,334.88
Less—Credit—Building Account		54.69
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account		$133,280.19

D-1
Page 18

WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.		
Payments were made as follows:		
Year 1825	$ 5,000.00	
" 1826	5,000.00	
		$10,000.00
An Act of February 24th, 1827, page 9, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.		
Payments were made as follows:		
Year 1827	$6,000.00	
" 1827	6,000.00	
		12,000.00
An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830.....		5,000.00
Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22).....		$ 27,000.00
An Act of March 1st, 1838, page 22, Chapter 21, authorizing payment of an amount not to exceed $6,000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833.....		6,000.00
Carried forward		$33,000.00

D-1
Page 19

Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834.....	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835.....	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835.....	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

D-1
Page 20

	Brought forward	$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837		1,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1838		5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....		12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839		5,000.00
An Act of March 8th, 1842, page 16, Chapter 18, authorized that an amount of $9,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....		9,060.44
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $8,000 on the ratification of the contract and execution of the bond required; $8,000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.		
Payments were made as follows:		
Year 1842	$ 8,000.00	
" 1843	8,000.00	
" 1844	8,000.00	
		24,000.00
	Carried forward	109,260.44

D-1
Page 21

Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $8,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $3,000.00 was made in 1844		3,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846.....		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 13th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the puurchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

D-1
Page 22

Brought forward			$180,260.44
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.			
Payments were made as follows:			
Year 1854		$ 7,500.00	
" 1855		7,500.00	
" "		5,000.00	
" 1856		1,800.00	
" "		2,000.00	
" "		5,038.00	
" 1857		5,350.00	
			34,188.00
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857			1,000.00
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858			3,685.00
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.			
Payments were made as follows:			
Year 1858		$ 2,500.00	
" 1859		7,500.00	
			10,000.00
An Act of March 17th, 1860, page 81, Chapter 5, authorized appropriation of $13,000.00 for erection of laundry. Payment was made in 1860.....			12,931.95
Amount for support in 1835			7,450.01
			$249,515.38
Less:			
Buildings. (See page 18.)		$27,000.00	
Amounts for furniture already included by defendant:			
Under Act of February 12th, 1844.	$ 3,000.00		
Under Act of January 15th, 1849.	8,500.00	11,500.00	
			38,500.00
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....			$211,015.38

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

Def. Ex. D-2.
Page 1

DEFENDANT'S EXHIBIT D-2

COMMONWEALTH OF VIRGINIA—LITERARY FUND.

TOTAL AMOUNT OF THE FUND SHOWING CASH ON HAND AND INVESTMENTS, AT COST.

	Mch. 19, 1823	Jan. 1, 1861.
Cash,	$ 94,021.42	$ 23,985.13
Bank of Virginia stock,	192,013.45	146,832.57
Farmers' Bank of Virginia stock,	109,492.75	102,305.75
Northwestern Bank of Virginia stock,	.....	50,000.00
Bank of the Valley stock,	.....	10,134.00
Fairmont Bank stock,	.....	50,000 00
United States Bank stock,	96,400.00	.....
Richmond Academy stock,	.....	400.00
James River Company stock, the annuity on which was assumed by the Commonwealth in accordance with act passed March 23, 1860.	52,095.00	96,950.00
(1) University of Virginia, loan No. 1,	40,000.00	40,000.00
(1) " " " 2,	20,000.00	20,000.00
(1) " " " 3,	29,100.00	29,100.00
(1) " " " 4,	30,900.00	30,900.00
(1) " " " 5,	.....	40,000.00
(1) " " " 6,	.....	5,000.00
(1) " " " 7,	.....	15,000.00
(1) Emory and Henry College loan,	.....	18,000.00
Washington College loan,	4,000.00	2,000.00
Loans to individuals,	80,000.00	.....
(1) The Faculty of the Medical Department of the Hampden-Sidney College at Richmond. Amount invested in land and buildings,	.....	25,000.00
(2) Medical College in the Valley of Virginia: Amount invested in property (at Winchester),	.....	6,400.00
(2) Davis's book on criminal law, copyright purchased,	.....	12,000.00
(3) John Preston, State Treasurer, balance due,	58,441.07	58,392.40
(3) Preston Smith,	649.45	649.45
United States 6% stock,	13,000.00	.....
James River Company bonds,	50,000.00	65,960.00
Virginia 6% military bonds,	20,964.40	24,039.17
" 7% " "	349,000.00	319,000.00
Virginia 5% internal improvement bonds,	.....	155,750.00
Virginia 6% internal improvement bonds,	.....	803,395.23
Bond of the Auditor of Public Accounts for amount paid into Commonwealth fund in accordance with act passed March 18, 1856,	.....	50,562.55
Total,	$1,240,077.54	$2,201,756.40

(1) Suspended debts.
(2) Unproductive.
(3) Considered lost.

STATEMENT "A"

COMMONWEALTH OF VIRGINIA.

TRANSACTIONS OF THE LITERARY FUND, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

TOTAL FUND, MARCH 19, 1823, PER STATEMENT "A,".....		$1,240,077.54
ADDITIONS TO THE FUND:—		
CASH:—		
FROM THE COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA—Schedule No. 1, ...	$ 114,395.46	
FROM THE COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA—Schedule No. 2, ...	401,972.14	
DIVIDENDS AND INTEREST ON INVESTMENTS OF THE FUND—Schedule No. 3, ...	1,059,695.03	
FROM OTHER FUNDS OF THE COMMONWEALTH OF VIRGINIA—Schedule No. 4, ..	3,109,839.88	
UNITED STATES WAR CLAIMS, LESS COMMISSIONS PAID, ...	182,441.48	
PROFIT ON UNITED STATES STOCK.....	818.18	
TOTAL ADDITIONS, ...		$4,869,162.17
		$6,109,239.71
DEDUCTIONS FROM THE FUND:—		
CASH:—		
FOR ACCOUNT OF THE PRIMARY SCHOOLS:—		
Paid from income from investments, ...	$2,400,331.11	
Paid from Capitation Tax, ...	655,908.73	$3,056,239.84
UNIVERSITY OF VIRGINIA, (at Charlottesville), ...		613,000.00
INSTITUTE FOR THE DEAF, DUMB AND BLIND, (at Staunton), ...		40,821.02
VIRGINIA MILITARY INSTITUTE—support,		28,500.00
MARGARET ACADEMY, (Accomac County), ..		1,500.00
SALARIES AND EXPENSES OF THE BOARD Schedule No. 5, ...		85,322.45
PREMIUM PAID ON CITY OF RICHMOND STOCK		420.00
TOTAL CASH DISBURSEMENTS, ...		$3,825,803.31
LOSSES:—		
AMOUNT WRITTEN OFF FOR THE REDUCTION IN PAR VALUE OF THE BANK OF VIRGINIA STOCK FROM $100. to $70. PER SHARE. 2121 SHARES, ...	$63,630.00	
LOSS ON UNITED STATES BANK STOCK:—COST—$96,400. SOLD FOR $78,350, ...	18,050.00	
TOTAL LOSSES, ...	$81,680.00	
TOTAL DEDUCTIONS, ...		$3,907,483.31
TOTAL FUND, JANUARY 1, 1861, PER STATEMENT "A,".....		$2,201,756.40

STATEMENT "B."

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,059.46
Escheats, less refunds and expenses, ...	4,603.57
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,736.61
Sales of runaway slaves and free negroes, less refunds, ...	2,005.82
Total, ...	$114,395.46

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.98
Escheats, less refunds and expenses, ...	51,400.55
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.98
Sales of runaway slaves and free negroes, less refunds, ...	14,514.40
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,389.13
Net income, ...	7,814.05
Total, ...	$401,972.14

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

INCOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Dividends on bank stock:—		
Bank of Virginia,		$ 424,309.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
Dividends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
Dividends on Richmond Academy stock,		440.88
Dividends on United States Bank stock,		11,350.00
Interest on loans to and dividends on stock of City of Richmond,		16,531.71
Interest on United States 6% stock,		3,200.40
Interest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
Interest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
Total,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—		
Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617.19
INTERNAL IMPROVEMENT FUND:—		
Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1835, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222.69
Total receipts from other funds,		$3,109,839.88

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries	251.31	
Total,		$77,830.24
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,492.21
Total salaries and Expenses,		$85,322.45

STATEMENT "B".

Schedule No. 5.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",		$ 94,021.42
RECEIPTS:—		
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,395.46
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03
From other funds of the Commonwealth of Virginia:—		
Statement "B", Schedule No. 4,	$3,109,839.88	
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00	
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer,	48.67	3,139,888.55
United States war claims, less commissions paid		182,441.48
Profit on United States stock		818.18
Investments converted into cash:—		
United States 6% stock redeemed,	$ 13,000.00	
Farmers' Bank of Virginia stock sold,	9,762.00	
United States Bank stock,	78,350.00	
Loans to individuals, repaid to Literary Fund	80,000.00	
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00
Total Cash Receipts,		5,082,322.84
		$5,176,344.26

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
University of Virginia, (at Charlottesville),		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton),		40,821.02
Virginia Military Institute—support,		28,500.00
Margaret Academy, (Accomac County),		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5,		85,322.45
Premium paid on City of Richmond stock,		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock,	$ 2,575.00	
Virginia revolutionary 6% bonds,	3,074.77	
James River Company stock,	44,855.00	
Bank of Virginia stock,	18,449.12	
University of Virginia, loan No. 5,	40,000.00	
" " " loans No. 6 and No. 7,	20,000.00	
Virginia Internal Improvement 5% bonds,	155,750.00	
" " " 6% bonds,	803,395.33	
James River Company bonds, issued under act passed February 17, 1820,	15,960.00	
Richmond Academy stock,	400.00	
Northwestern Bank of Virginia stock,	50,000.00	
Bank of Valley stock,	10,134.00	
Loan to Emory and Henry College,	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings,	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856,	50,582.55	
Davis's Book on Criminal Law, copyright purchased,	12,000.00	
Fairmont Bank stock,	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester,	6,400.00	1,326,555.77
Total Cash Disbursements,		$5,152,359.03
Cash in Fund, January 1, 1861, per Statement "A",		23,985.13
		$5,176,344.26

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY,
For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

STATEMENT "C".

(Concluded.)

Other Evidence and Proceedings Relating to Paragraph IV of the Decree.

After Recess.

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH IV OF THE DECREE.

ARTHUR G. POTTER,
testified as follows:

By Mr. Anderson:

Q. Mr. Potter, please take that statement marked "Plaintiff's Exhibit D-1—

The Special Master: Does this relate to paragraph 4?

Mr. Anderson: Paragraph 4; yes, sir.

By Mr. Anderson:

Q. Please examine that statement and state what it is a statement of, what it embraces, and state your knowledge in regard to the items which make up that statement, as well as to the correctness of the figures and the facts mentioned in it.

A. The schedule is the statement of the ordinary expenses of Government—

The Special Master: Of Virginia? 62

A. Of the State of Virginia between 1820 and 1860, both inclusive. It contains information which I took from the public reports of the Auditor of Public Accounts for the State of Virginia. The totals were taken off by myself personally and verified by my assistants, and I believe it to be correct.

By Mr. Anderson:

Q. You say the totals were taken off by yourself personally?

A. By myself personally and were verified by figures taken by my assistants.

The Special Master: Have you computed the proportions as required by Paragraph IV?

Mr. Anderson: Yes. sir; that is responsive to paragraph IV. It shows the proportions with and without slaves.

By Mr. Spooner.

Q. Does that embrace the items?

A. It embraces a summary statement of the items, not the individual details. That gives the total of the various classifications, without the items that make them up.

Mr. Anderson: I wish to say to the Master and to counsel that that statement embraces items embodied in a large number of subsidiary statements, one or two hundred pages, with which I do not think it is necessaary to encumber the record at present.

The Special Master: Do I understand that you offer the details from which this summary was compiled?

Mr. Anderson: Yes, sir.

The Special Master: And it is admitted *de bene,* and to be 63
turned over to the other side, receipted for by them, and to be used by them as the other details are to be used in connection with item I?

Mr. Anderson: Yes, sir.

The Special Master: We will mark that right now, Plaintiff's Exhibit D 2, if that contains all the details, so that we will have it identified, offered and admitted.

Mr. Spooner: Is that the one you are offering in evidence?

Mr. Anderson: Yes, sir. I do not wish it to go into the record unless you desire it.

Mr. Spooner: All we want is to have it where we can get at it. The question as to what is an ordinary and what is an extraordinary expense is a question of law, and we want to see what the statement contains.

The Special Master: I want this to go into the record and be identified. Then I will turn it over to counsel for West Virginia, and take their receipt for it. This is marked, "Plaintiff's Exhibit D 2." When you give me your receipt for the other papers, you can include this in it. All questions as to the ordinary or extraordinary character of the expenditures can be raised later.

Mr. Spooner: That is the reason it will be necessary for us to examine them.

By Mr. Anderson:

Q. Please state your knowledge as to the correctness of the statements embodied in this exhibit, Plaintiff's Exhibit D No. 1, in general and in detail, and to what extent you have verified 64
that record from the public records of the Commonwealth.

A. We have relied almost exclusively on the published reports of the Auditor of Public Accounts, in so far as that portion is concerned that applies to the expenses of government for the Commonwealth disbursed by the Treasury. Included there are two statements, one of the Board of Public Works and one of the literary fund, for miscellaneous expenses. Those were taken, in the case of the Board of Public Works, from the published reports, verified by the Second Auditor's ledger. In the case of the Literary Fund, they were taken directly from the Literary Fund ledgers and journals, verified by myself and my assistants conjointly, and I believe them to be correct.

By Mr. Spooner.

Q. If I understand you, that statement is based upon public records. You stated you had based it almost exclusively upon published reports?

A. Public printed records in the proceedings of the Board of Public Works.

Q. That leaves a margin—"almost exclusively." What is the rest of it?

A. That portion of it relating to the Literary Fund, which we took from the ledgers and journals of the Literary Funds, and not from published reports.

By the Special Master:

Q. But with that exception they are based upon the published reports?

A. Yes, sir. 65

By Mr. Anderson:

Q. You believe them to be correctly deduced from those records?

A. Yes, sir.

Mr. Anderson: I will ask to have these papers filed.

(The papers referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Ordinary Expenses of Government. Article IV," are filed herewith, marked, respectively, "Plaintiff's Exhibit D 1" and "Plaintiff's Exhibit D 2.")

Mr. Anderson: That is all we desire to introduce in response to the fourth paragraph of the decree. Do our brethren on the other side desire to ask any questions?

Mr. Spooner: Not at this time.

Mr. Anderson: I understand you do not intend to estop yourself from future cross examination. We will pass to the next one.

This relates to the general subject, and is an alternative statement, really under the same general direction.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter.*]

[By Mr. Carlisle]:

Q. We will take Exhibit 4, Schedule 1.

The Special Master: The way the exhibits are numbered, as I have them on my desk here, is "Plaintiff's Exhibit A-1, B-1, C-1, and so on.

Mr. McClintic: This is Article 4 of the ordinary expenses.

The Special Master: What is the exhibit? 223

Mr. McClintic: D-1, as we know it.

The Special Master: As a matter of convenience in tracing out the record, we had better have these exhibits referred to by the name they bear in the record. Then we can trace the record without any difficulty. Plaintiff's Exhibit D-1 is the one you have in mind now?

Mr. McClintic: Yes, sir.

The Special Master: What page do you refer to, Mr. McClintic?

Mr. McClintic: The fourth page of Schedule 1, in the upper right hand corner.

Mr. Carlisle: The first entry in this is "General Assembly," $4,130,064.55.

Mr. Anderson: What page is that, Mr. Carlisle?

Mr. Carlisle: On the very first page.

The Special Master: It is really the third page of Schedule 1. It is the third page in the chronological order.

By Mr. Carlisle:

Q. How did you ascertain that amount, $4,130,064.55?

A. By taking the forty items under that heading, in the forty annual statements in the auditor of public accounts.

Q. When you say the forty items, you mean the forty totals?

A. The forty totals.

By the Special Master:

Q. Beginning with what year?

A. The fiscal year 1820. 224

Q. And running up to 1861?

A. To January 1, 1861.

Q. This aggregate here is the result of forty aggregates?

A. Yes; taking the annual statements for those forty years.

Q. The aggregates given in the annual statements make this amount?

A. Yes.

By Mr. Carlisle:

Q. Then you did not go back to the books of original entry in any year, did you?

A. No, sir.

Q. To see whether the published statement as to the account of expenses on that account was correct or was not correct?

A. I did not compare them.

The Special Master: That is, you mean whether the aggregate for any particular year would agree with the totals added up?

Mr. Carlisle: Yes, I ask him whether he went back in any single year and examined the original books to see what was included under this head of expenditures on account of the general assembly?

A. No, sir; I did not.

By Mr. Carlisle:

Q. So all you did on that subject was that you found certain figures in the annual report?

A. Yes, sir. 225

Q. Whether those totals included things which were not properly expenditures on account of the General Assembly, you do not know?

A. I have not verified it; no, sir.

Q. Now, one or two others. I will not take up time by going into each item. Take "Officers of the Government, "$3,595,102.14. What have you to say about that?

A. The same statements are true regarding that.

Q. The same statements as to that?

A. Yes, sir.

Q. You do not know what items compose these totals which you took from the books?

A. No, sir.

Q. No, "Criminal charges?" $1,750,732.11.

A. The same is true as to that?

Q. You do not know what items compose it, do you?

A. I have not gone back to the original records to verify the statements.

Q. You do not know whether anything was or was not included in that which did not belong there properly? In other words, you have no information except what you saw on the official printed reports?

A. No, sir.

Q. Do you think that is a proper way to ascertain the expenditures of the State for the purpose of litigation? I ask you now as a public accountant.

A. As we had a balanced cash statement—

Q. Can't you answer the question? I will put it this way. If you were employed by the State of New York to ascertain 226 the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you would find in the printed reports of the officials?

The Special Master: With reference to direct answers, I will make this suggestion. I think it is quite proper for the witness, perhaps, to make his answer as direct as he can; but at the same time, if the witness desires to do so, he has a perfect right to add, by way of explanation, anything he likes. The regular and ordinary way is to get the direct answer, and then if he has occasion to make any explanation, he can make it at the same time, if he likes.

Mr. Spooner: The best way is the usual way. If the question is susceptible of a direct answer, it should be given.

Mr. Harrison: He has a right to answer the question in his own way, though.

The Special Master: Certainly.

Mr. Carlisle: Provided he answers it.

The Special Master: I simply make that suggestion to the witness. Witnesses all have that trouble. They are quite likely to make the explanation before they answer the question. The better way is to answer the question and then make such explanation as they think they ought to make.

Mr. Carlisle: The witness can make his statement in his own way after he has answered the question, but he must answer the question.

The Special Master: I have just had a week's experience in regard to that matter. 227

(The question was read, as follows):

"Q. If you were employed by the State of New York to ascertain the total expenditures of that State for a period of years for different purposes, would you or would you not go to the original books to ascertain it, or would you take what you find in the printed reports of the officials?"

A. I don't think I can answer that question directly, because it would depend on what the particular purposes were.

By Mr. Carlisle:

Q. You know what the purposes were here?

A. Various purposes, you say.

Q. You had the decree of the Supreme Court before you, did you not?

A. Yes, sir.

Q. That showed you for what purpose the examination was made, did it not?

A. Yes, sir.

Q. You were to ascertain certain things?

A. Yes, sir.

Q. As specified distinctly in that decree?

A. Yes, sir.

Q. Of course you knew you were to be a witness, and were to come on the stand and testify. Do you think it was a proper thing just simply to take the printed reports, without verifying the items contained in the totals as shown in those reports?

A. I do.

Q. Why? 228

A. Because they were the published reports of the State. They were made for submission to the General Assembly and other officials. They were made by a competent auditing authority in the State, and I believe they furnished a very good record.

Q. You thought you could tell from the totals stated in the official reports whether they did or did not include the things which are separated distinctly in this decree? For instance, you might find in some total—we will take the general assembly—something which, if you had gone back to the books of original entry, did not properly belong in that account, but belonged in some other account—public improvements, educational purposes, or something of that sort. You relied, then, upon the judgment of the officials alone, and not upon your own investigation?

A. Yes, sir.

Q. So you did not distribute any of these accounts in any way, as required by this decree, unless the officers of the State had distributed them in that way in their reports?

A. No, sir.

Q. Is that the fact?

A. Yes, sir: that is the fact.

The Special Master: That is, he assumed, without further investigation, that the aggregates made by the officers were accurate?

Mr. Carlisle: Yes.

The Special Master: That is what it comes down to. He proceeded upon that assumption.

Mr. Carlisle: That is substantially what he says; yes, sir. 229

By the Special Master:

Q. Is that true of all the items you have in schedule 1?

A. Yes, sir.

The Special Master: I asked that simply to save time.

Mr. Carlisle: That saves time; yes, sir.

The Special Master: So that all these are of the same character and proceed on the same assumption.

Mr. Harrison: It is schedule 1, item 4, in Exhibit D-1.

The Special Master: Schedule 1 in Plaintiff's Exhibit D-1?

Mr. Harrison: Yes, sir.

The Special Master: Schedule 1 ends, as I understand it, on what is called the second page, and the aggregate is $21,209,952.03. Am I right about that?

A. Yes, sir.

The Special Master: So that you proceeded on the same assumption with reference to all the items making up that aggregate that you did in connection with the General Assembly, in the items about which you have testified?

A. Yes, sir.

The Special Master: That cleans up that schedule.

By Mr. Carlisle:

Q. On Schedule 9 of D-1—

The Special Master: I think, for convenience of reference, I will have all these schedules paged, so that we can refer to the pages in the schedule. Then we can trace it out without any 230
difficulty. Schedule 9 is on the last page of Plaintiff's Exhibit D-1, as I have it. Am I right about that? That is the schedule you are inquiring about, Mr. Carlisle?

Mr. Carlisle: D-1.

The Special Master: It is on the last page of Plaintiff's Exhibit D-1?

Mr. Carlisle: Yes, sir; the last page.

The Special Master: I will ask Mr. Potter to page his schedules, in all these schedules we have here, so that we can make reference by pages as well as by schedule, and we will not have any difficulty in tracing them out later on, when we have occasion to examine the facts.

By Mr. Carlisle:

Q. On that page you include in your account, as a part of the ordinary expense of the State of Virginia during the period which you were directed to investigate, the sum of $20,606,229.24, for interest paid on the public debt. From that you deduct certain credits, which reduces the amount of that item to $18,024,358.62. What did

you find about that in the books, in what books, and where did you get it?

The Special Master: That is, on what books of original entry did he find these entries?

Mr. Carlisle: Yes; what official books. I ask the general question.

The Special Master: Either books or reports?

Mr. Carlisle: Yes.

A. All items of interest on the public debt paid by the board 231
of public works, I took from the board of public works original books.

By the Special Master:

Q. You mean you found it entered there as a charge of interest?

A. As a charge of interest, yes, sir.

By Mr. Carlisle:

Q. That is, the $5,834,000?

A. Yes; those first two items.

Q. Now, the next one?

A. Third item I got from the reports of the auditor of public accounts, and did not refer to the original books.

Q. What was that bank debt? Did you investigate it to see what it was?

A. It was an issue of bonds for the purpose of a subscription to the Northwestern Bank of Wheeling and the Exchange Bank of Norfolk, if I remember rightly. I can tell you the amount of it.

Q. Did you find that on the books of the Board of Public Works?

A. No; not that account. That was paid by the treasurer of the Commonwealth, entered through the books of the auditor of public accounts.

Q. Out of what we call the Commonwealth fund?

A. Yes, sir.

Q. The next one is interest on the public debt, C. & O. Canal, paid by the treasurer of the Commonwealth, $270,479.25. Where did you get that?

A. From the published reports of the Auditor of Public Ac- 232
counts, Commonwealth books.

Q. I will get you to state to the Master whether that was a direct indebtedness upon the part of the State of Virginia, if you examined that question, or whether it was only in the form of a contingent liability, guaranteed?

A. Just a moment. I will have to examine that.

The Special Master: Do you mean whether the State paid it as guarantor, or as principal?

Mr. Carlisle: Yes; we say the State paid it as guarantor, and the Company owed the State the money.

The Special Master: Your inquiry is intended to disclose what the fact is?

Mr. Carlisle: Yes.

The Special Master: Whether the Commonwealth paid it as a guarantor, or whether it paid it as a part of its principal debt;—its own indebtedness?

Mr. Carlisle: Yes; that is what I want to get at.

A. I believe the State issued the bonds, $250,000.

By Mr. Carlisle:

Q. You say you believe. Did you examine the question?

A. Yes, sir.

Q. Did you find it to be a fact that the State issued the bonds?

A. I did.

Q. Have you a memorandum to show when the State issued the bonds? 233

A. They were authorized by Act of February 20, 1833.

Q. Authorized?

A. And issued under that Act.

Q. Now, I want to ask a question on that very point. When you found an act of the legislature authorizing the expenditure of money for a certain purpose, did you trace it up to see whether they actually did expend it or not? In other words, I will put it in this way, to make it shorter. Did you not, when you saw an act authorizing the expenditure of a sum of money, just assume that it had been expended, and charge it?

A. No, sir.

Q. You did not go to the books?

A. We started at the other end. We took the expenditure and worked back to the Act authorizing it. We did not go to the Act first, and find out what was authorized, and then find out what was spent under it.

By the Special Master:

Q. You mean you found the charge on the books and then traced it back to see what legal authority there was for the expenditure, and therefore landed on the Act in that way?

A. Yes, sir.

By Mr. Carlisle:

Q. Did you examine all those acts?

A. I can't say we examined all of them.

Q. You did not personally examine the acts?

A. No.

Q. Or your assistants under your direction? 234

A. But we did not take the acts of the assembly and go through them. We referred to the acts when it was necessary to get authority for a payment.

Q. "Interest on public debt paid by the sinking fund," December 21, 1860, of $11,762,509.04. Where did you get that item?

A. From the sinking fund original books.

Q. Can you state what date that was paid or a part of it was paid? Just state generally what that debt was, what it was created for, if you know?

A. Well, that was the interest paid—I can't answer that question without reference to my original papers.

The Special Master: You mean, Mr. Carlisle, the purposes for which this public debt was created? Is that what you want him to state?

Mr. Carlisle: Yes; I want to know whether he can state what it was for.

By Mr. Carlisle:

Q. "Interest on the James River and Kanawha guaranteed bonds, paid by the treasurer of the Commonwealth," $617,542.62. Did you examine the books of original entry for that?

A. No sir; we took that from the published reports. I would like to qualify my statements to this extent, that between October 1st and December 31, 1860, it was necessary to refer to the books of original entry in the commonwealth accounts. Otherwise we depended on the published reports, for that was the division of the year.

Q. The first of the year was September?

A. Yes, sir; the year ended on September 30, 1861. We 235 had to examine the books from the first of October, 1860, to December 31, 1860, to get the amount applicable to that year.

Q. That is, just one year you went to the original books?

A. Yes, sir.

Q. That is, a part of one year?

A. Yes, sir.

By the Special Master:

Q. That brought you up to the 1st day of January 1861?

A. Yes, sir.

By Mr. Carlisle:

Q. I understand from that that in cases where you took the

official printed report as the basis of your entries in the report, you took them by the fiscal years?

A. Yes, sir.

Q. Which began on the 1st day of October in each year?

A. Yes, sir.

Q. So any figures which you got from the official reports for the year 1820, we will say, went back to the 1st of October, 1819, did they not?

A. I think there was a change in date of the fiscal year along in 1820 or 1821. It was approximately, though, the first of October. I won't state positively that it was that date.

Q. Whatever you took from the official books for the fiscal 236
year 1820, took you back to the year 1819, did it not?

A. Yes; the latter part of 1819.

Q. And you could not discriminate so as exclude anything that occurred in 1819, any expenditure made then or any receipts then, from the receipts or expenditures which actually were made in the calendar year 1820?

A. We did not.

Q. Therefore your account begins back in 1819?

A. Yes; it begins with the fiscal year ending September 30, 1820?

By the Special Master:

Q. Your account is predicated upon the fiscal rather than the calendar years?

A. Yes, sir.

By Mr. Carlisle:

Q. Was any part of this public debt created in 1819, so far as you found?

A. There was no part of the public debt; no, sir.

Q. You read the decree, did you not?

A. Yes, sir.

Q. Which said you must take the account for the period during which this debt was created?

A. There was no part of the public debt, as stated in the schedule. There were obligations by the State which antedated 1819.

Q. I do not mean antedated it. Were there any in 1819. Antedated would be 1818 or 1817, or sometime along there.

A. There was an obligation on the part of the State to pay
interest or an annuity to Washington and Lee College, with 237
respect to $50,000 worth of old James River Stock, which was presented by General George Washington to the College and that obligation was later exchanged for a manuscript bond. That obligation was in existence in 1819.

Q. Whose obligation was it?

A. The obligation of the James River Company, guaranteed by the State of Virginia.

Q. Guaranteed by the State of Virginia?

A. Yes.

Q. When was that issued?

A. We have not been able to find the date of the issue of that stock.

Q. Then why did you go back to 1819 to begin your accounts?

A. The primary reason was that the first issue of State bonds under the name of James River Loan No. 1, for $161,600 was dated in the fiscal year ending September 30, 1820.

Q. It had a specific date on it, did it not?—some day of the month?

The Special Master: What date was it?

A. The loan was authorized by an act of February 17, 1820.

By Mr. Carlisle:

Q. The calendar year 1820?

A. Yes, sir; the first certificate was issued—

Mr. Spooner: Is that one of the certificates you have there?

Mr. Conrad. No. Let him answer.

Q. State your answer in your own way. I will ask you 238
this question—

The Special Master: Do you want that question answered, when the first certificate was issued?

Mr. Carlisle: Yes.

The Special Master: Well, give that.

A. July 15, 1820.

By Mr. Carlisle:

Q. Now, Mr. Potter, if you did as you say you did, if you took the official report for the fiscal year 1820, which took you back to September 30, 1819, and made that the basis of your accounting, when the decree says that you shall simply take these accounts during the period when the debt was being created, is not your whole account vitiated by that basis which you have assigned—if you are wrong? If you have done what you say you did, and if the decree excluded everything prior to September 1820—is not your entire account permeated by that error, and are not all your totals affected by it?

Mr. Conrad: What error is that?

Mr. Carlisle: By beginning in 1819?

Mr. Conrad: But that is assuming what does not exist.

Mr. Carlisle: Well, I am assuming. I say if that is wrong.

Mr. Harrison: That is a hypothetical question.

Mr. Carlisle: But I am taking what he says.

Mr. Conrad: If you will pardon me, that is not exactly what he says. He says he started here with an appropriation made under an Act of February, 1820. That was the foundation. You assume that he started with an appropriation made in the year 1819, and speak of it as an error that pervades all of this settlement. If you will pardon me, I do not think that is quite fair to the 239 witness.

Mr. Carlisle: The witness, I suppose, thinks he took the proper date to begin with. I ask him, if you did not get the proper date and went back and included in your accounts charges against West Virginia and credits to West Virginia, and amounts of ordinary expenses and other things which are covered by this decree, during a period which the decree did not authorize you to take, is not your whole account affected by that error, if it was an error?

A. If there were errors, of course—

The Special Master: The question is if you began your account at a too early date, and it turns out later to be erroneous for that reason, whether that error would pervade your whole account. That is the substance of the proposition. It is not for you to say, whether you did begin too early or did not, but assuming that you did begin earlier than you ought to have begun, the question is does that error, if it is an error, pervade the whole account, and would it disarrange your final result?

Mr. Carlisle: All his totals.

The Special Master: Yes; all your totals?

A. It would disarrange them to the extent of the expenditures and receipts between the date at which I started and the date at which I should have started if I did make an error in starting.

By Mr. Carlisle:

Q. That would affect your entire account?

A. It would affect the totals, yes, sir. 240

Q. It would affect all the totals?

A. Yes, sir.

Q. I understand you to say, as a matter of fact—

By the Special Master:

Q. I want to ask you this right here. Would it be necessary, in order to get a correct result, assuming that you began too early, and for that reason the account is erroneous in the record, to recast the whole account?

A. No, sir.

Q. You do not think you would have to do that?

A. I know I would not.

Q. You think you could eliminate the erroneous items, and reach a result without recasting the whole account?

A. Yes, sir.

By Mr. Carlisle:

Q. Will you state to the Master just how you would do that. These erroneous sums, if they are erroneous, would be carried into every total you made up. Would you not have to revise all your totals?

The Special Master: Mr. Carlisle has in his mind now items of expenditure from the various counties also predicated upon this early date, and that would enter into the final total.

Mr. Carlisle: All the charges against West Virginia, credits to West Virginia, ordinary expenses,—everything covered by the decree which involves an accounting would be affected.

The Special Master: The simple question right here now 241
is, assuming there was an error in the record, whether he could rearrange his accounts without recasting them, and eliminate those errors.

A. I could; yes, sir.

By Mr. Carlisle:

Q. Would you not have to revise everyone of your totals? If you have included there something which ought not to be included would you not have to take it out of every one of your totals, every item?

A. Every total in which any of those figures enter.

Q. By totals, now, I mean for the purposes of this hearing, these items which you have stated here, which I have just read from. Take the $5,000,000 first, then the $1,000,000, and the $360,000 on this paper. Would you not have to revise each one of those?

The Special Master: You refer to the interest items in schedule 9?

Mr. Carlisle: Schedule 9, Exhibit D-1.

The Special Master: The question is whether you would not have to revise all those items of interest in case you began at a too early date—that is, whether or not those items do not in some way enter into those aggregates of interest?

A. Yes; but it would be no difficult matter to eliminate the items between the date at which I did start and the date at which I should have started.

By Mr. Carlisle:

Q. Let us see if there is no difficulty about it. I would 242
find it very difficult. Would you not in order to eliminate

those items have to go to the books of original entry in each instance, because you took the aggregates from the published reports?

A. If we started in the middle of the fiscal year, I would have to go to the books of original entry.

Q. If it started in the middle of the year?

A. Yes.

Q. I am talking about the first year, the basis if your accounts. Would you not have to go back to the original books of entry, ascertain the exact date, and the amount of each item during the period you have mentioned?

A. I don't understand your question.

Q. To show you what I mean I will take this item—"Officers of the general Government," $3,595,102.14. If it should turn out that you had included in that item, which you took from the official reports for that fiscal year, something which ought not to have been included, under the decree, would you not have to go back to the books of original entry to find what that was?

A. It would depend entirely on what it was.

Q. You could not find out what it was, could you, until you went back to the original books?

A. I don't know. It would depend on what you said it was. For instance, if you asked me to take out all of the expenses of the first fiscal year, which I included in that total, I could do that. If you asked me to take out one half of the expenses of the fiscal year, I would have to analyze the books, to find out what that one-half consisted of. 243

Q. Suppose I ask you to take out of that account all the items now included in it which belonged to the calendar year 1819—leaving out the fiscal year now, but during that calendar year. Would you not have to go to the original books to find what to take out?

A. I would.

Q. That is what I mean exactly. Then you would have to make a corresponding change all through your accounts, would you not, because your basis then would be wrong? I mean the basis you have adopted here?

A. We would have to make changes in every account affected by the figures in that year, but it does not necessarily follow that all the accounts were affected.

By the Special Master:

Q. Would that be feasible without a recomputation; or could you make a recomputation and make a deduction and get an accurate result?

A. Yes, sir; I could.

Q. You think you could take an item back prior to 1819 and reach your conclusions that would be involved in connection with these other items, and simply make a deduction at the end instead of recasting and recomputing?

A. Yes, sir; prior to 1820.

Q. I mean prior to 1820.

A. Yes, sir.

The Special Master: That is what you wanted, was it not, Mr. Carlisle?

Mr. Carlisle: Yes. 244

By Mr. Carlisle:

Q. Mr. Potter, will you state to the Master why you included the interest on the public debt as a part of the ordinary expenses of the State of Virginia?

A. Out of deference to the opinion of the attorneys for the Virginia side.

Q. That is what I supposed. You were advised to do that.

The Special Master: You were so instructed. That is about it.

Mr. Conrad: He was so instructed, and we have authority for it, sir.

Mr. Carlisle: It is not necessary to raise that question now. The question as to what are ordinary expenses, we think, is a question of law for the court.

The Special Master: Up to the present time the Master is advised that the State of Virginia has one contention in reference to that matter, and West Virginia another.

Mr. Carlisle: Certainly. The business of the Master is, under the decree, to ascertain facts, and then we will discuss the law, if we are able to do it, before the Supreme Court.

The Special Master: I do not apprehend there is much difficulty about that.

By Mr. Carlisle:

Q. Suppose you carried your accounts beyond the proper period under the decree—assuming that, now—if you carried your accounts to a date which was not required or authorized by 245 the decree, how would you correct that?

A. By deducting the amounts in the same manner as I would in the matter explained.

Q. By deducting the amounts which were corrected after the—

A. Yes, sir.

Q. That would involve as much labor as the other?

A. No, sir; not quite.

Q. I wish you would describe that certificate or whatever it was which you say was issued in July, 1820?

A. The only description I can give you at this time is that it is certificate No. 1 of James River loan No. 1, issued under authority of Act of Legislature February 17, 1820.

The Special Master: Certificate No. 1, issued when?

A. Certificate No. 1 was issued on the 15th of July, 1820.

Mr. Harrison: Under authority of the act of February 17, 1820?

A. Yes, sir.

By the Special Master:

Q. Have you any of those original certificates?

A. No, sir; this one is a blank certificate under that law.

Q. This certificate you have just shown me relates to an act of the legislature of 1821. It could not very well have been issued in 1820?

A. I think you will find two dates on it, both February 17, 1820, and February 20, 1821.

Q. But how are you going to get that into a printed docu- 246
ment in 1820?

A. That must have been a later print of the certificate that was issued.

Q. Is the certificate which you refer to as having been issued in July, 1820, a certificate by the Commonwealth or a certificate by the railroad company?

Mr. Conrad: By the James River Canal Company.

The Special Master: By the railroad Company?

Mr. Conrad: The James River Canal Company.

Mr. Anderson: The navigation company?

A. It was issued by the James River Company.

By Mr. Carlisle:

Q. You said you had a certificate issued under the act of 1819, certificate No. 1.

The Special Master: 1820.

Mr. Carlisle: Yes, but issued under that act of February 17, 1820, entitled "An Act to Amend an Act entitled 'an Act to improve the navigation of the James River.'" Did you examine that certificate?

A. I never have seen certificate No. 1; no sir.

Q. Then how do you know it imported an obligation on the part of the State of Virginia?

A. I have consulted the register. That is the first bond entered in that register. I presume you mean if this is—

Q. How do you know that certificate to which you refer, which

was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form?

The Special Master: Directly or indirectly.

Mr. Carlisle: Yes; directly or indirectly. 247

The Special Master: While he is looking for that, has any one here the Act of 1820, or a copy of it, so that I may have it before me as he is being examined?

Mr. Anderson: Yes; I have a copy of it.

Mr. Conrad: It is not that certificate you have there, Mr. Potter?

Mr. Potter: No. I understand.

Mr. Anderson: I call your Honor's attention to the fact that there are several obligations there. In the first place, there are appropriations authorized to be made for this company. Then there is a guarantee of the stock of the company, up to $12,000 a year.

The Special Master: I want to get the section under which this certificate was issued, so that I can have it before me when you are examining him.

Mr. McClintic: It could not very well be a guarantee of the stock.

Mr. Anderson: Of the dividend—12 per cent. for 12 years, and 15 per cent. forever thereafter.

The Special Master: The Act itself will disclose what the obligations were, of course.

(The pending question was read, as follows):

"Q. How do you know that certificate to which you refer, which was issued in 1820, was an obligation upon the part of the State of Virginia, either in substance or in form, directly or indirectly?"

A. Because it was funded by the State on the 12th day of November, 1873. 248

By Mr. Carlisle:

Q. Did you see that certificate at all?

A. No, sir.

Q. Do you know that that Act of 1873 refers to that certificate?

A. I don't know that there is an act of November 12, 1873. There is a funding transaction on the books of the second auditor which recites that that particular bond was refunded under that act.

Q. You see, you do not understand me. I am trying to get at the origin. I am trying to find out whether the certificates which you assumed was a debt of Virginia was at that time a debt of the State of Virginia—that is, when it was issued on the 17th of February, 1820, or whatever the date was.

The Special Master: No; July, 1820.

A. July 15, 1820.

By Mr. Carlisle:

Q. Did you look into it to see whether it was at that time a debt or a part of the debt of the State of Virginia?

A. This issue of bonds was referred to repeatedly in various reports, and it was mentioned on the books. It appears in the books of the Second Auditor's office as a part of the debt of the State of Virginia.

Q. Then you supposed that certificate was a bond, did you?

A. I made no assumption in regard to whether it was a bond or stock? 249

Q. You must have made some conclusion in regard to it?

A. I considered it as an obligation.

The Special Master: It is important to us to get exactly what the witness knows. The question is when you made your account and started with this item, whether you made any investigation of the original sources of information, so as to satisfy yourself as to what kind, if any, obligation, the State of Virginia was under in connection with the certificate. That was the point.

Mr. Carlisle: That is what I mean.

The Special Master: Did you make any investigation that enables you to state the kind of obligation the State of Virginia assumes in connection with this certificate, issued under these circumstances, and if you did, state what it was. If you did not, that settles it.

A. I did make such an investigation and satisfied myself that it was an obligation of the State of Virginia, but I can't state at this time from memory just the extent of my investigation.

The Special Master: Refresh your recollection, and be able to state that after recess. Give us the original sources of information from which you reached that conclusion as distinguished from the subsequent reports.

Mr. Carlisle: As I understand, he did not see this certificate.

The Special Master: What you want is what the witness did find, if he found anything, that did indicate any obligation on the part of Virginia as to this certificate. I rather infer that there may be more or less reference to the acts of the legislature in connection with this account from time to time, and I 250 would suggest—I do not know whether this suggestion is a wise one or otherwise—that it would be a good thing if we could all have duplicates of the particular acts and sections of the Acts to which these accounts relate, so that I may have them right here without looking all over a long act. I will then have the sections

upon which Virginia relies, for instance, and the sections, if any, upon which West Virginia relies, for ready reference. If I could have the acts of the legislature where I can look at them, while this examination is going on, it will help us. I hope counsel on either side will arrange about that. These things are undoubtedly familiar to you all, but they are not quite so familiar to me.

By Mr. Carlisle:

Q. Not having seen that certificate at all, as you testified, 251 did you suppose it was a bond, or did you suppose it was a certificate of stock in the James River Company the interests and dividends on which you say were guaranteed?

A. I never considered that point very much. We called them certificates, but they are in the schedule of Bonds. I never considered whether they were stock or bonds. I considered them as an obligation because the term stock and bond was used rather interchangeably in those early days. They called all bonds State stock.

Q. Yes, I understand; but I am trying to ascertain whether you found any bonds there or any certificates of stock issued by the James River Company the dividends on which were guaranteed by the State. Did you examine the papers held by the Literary Fund.

A. I don't know.

Q. Did you look there for a certificate or bond or certificate of stock?

A. I don't know that this bond is in existence. It was refunded and placed on file with the Treasury, and a new stock issued.

The Special Master: Well, you did not find it?

The Witness: No, sir.

Mr. Carlisle: When we get the papers we will see what it was.

The Special Master: He says he did not find anything of the kind.

By Mr. Carlisle:

Q. You treated it as an obligation of the State debt?

A. Yes, sir; as a part of the State debt.

Q. And then you made your accounting because you 252 thought that was the beginning of the debt of Virginia?

A. Because I thought what?

Q. Because you thought the issuing of that certificate, whatever it was, was the beginning of the creation of the public debt of the State of Virginia?

A. Yes, sir.

Q. That is what you thought?

A. Yes, sir.

Q. Now, if that was not any part of the public debt, then your accounting was erroneous?

A. If that was not the beginning, yes.

The Special Master: Are we to understand that the guarantee only related to the dividends—

Mr. Anderson: No, sir; as to both.

The Special Master: Both the principal sum and the interest on the principal sum?

Mr. Anderson: The State appropriated money indirectly to the extension of that improvement and also guaranteed 12 and 15 per cent dividend on the stock of the Company, and the State has paid enormous sums under that obligation from that time 253
down?

The Special Master: From a hurried reading I doubt whether section 14 goes as far as you think, Mr. Anderson. You may be correct, however; I only read it hurriedly. There is a proviso at the end of the section that limits the liability to $12,000 per annum.

Mr. Anderson: That is it, sir.

The Special Master: Do you mean by that they were to pay $12,000 per annum of the income?

Mr. Anderson: No, the State to pay $12,000 per annum whether anything was earned by the Company or not.

The Special Master: And no more.

Mr. Anderson: But still that was an obligation equal to $200,000 capitalized.

Mr. Spooner: No. We will contend, and I think we will be able to demonstrate, that it was no obligation at all in the sense of being a State debt, and I rise merely to suggest that there are four acts. They are splendidly drawn, as all the acts in the early days of Virginia were splendidly drawn. They are somewhat complicated, and you cannot take a certain section or an extract from a single section, and solve the question by the light from that section or extract; and as long as it will be a concrete thing which we must discuss, I think it will tend to the better elucidation of it if we take the testimony as to what this witness did, and why he did it, and discuss later this question of law—for that is what it is.

The Special Master: That is quite agreeable to me.

Mr. Anderson: And satisfactory to us. 254

The Special Master: But in the meantime you will appreciate the importance of my having these various sections where I can see them and become familiar with them.

Mr. Spooner: And after recess we will have before you the various acts.

The Special Master: Typewritten copies?

Mr. Spooner: No, printed copies, and your attention will be drawn to various sections which touch the subject.

The Special Master: You may proceed with your cross-examination, Mr. Carlisle. Mr. Carlisle's purpose now, as I understand it, is to detail the facts, and get those on the record, and later we will have oportunity to discuss the legal questions.

[*Vol. 4. May 5, 1909. Cross examination of A. G. Potter.*]

By Mr. McClintic:

Q. I will now refer to Exhibit D-1, first page of Schedule 1— 362

Mr. Harrison: Beginning with item 4 of the decree?

Mr. McClintic: Yes.

Q. (Continuing). In these ordinary expenses, did you charge any buildings?

The Special Master: Money expended for the construction of buildings?

Mr. McClintic: That is what I mean, yes.

The Special Master: If so, what. I suppose that is what you mean?

Mr. McClintic: Yes; I was going to follow that up if he said there were any. I don't know whether there were any or not. I wanted to find out.

A. Excuse me a moment and I will see if I can answer positively. I find one item, penitentiary, enlarging, and repairs. Part of that was for building—enlarging the penitentiary. I do not recognize any other items in this account at the present time as covering buildings.

By Mr. McClintic:

Q. Do you know whether or not you did charge buildings?

A. I don't remember positively whether any buildings went into this account or not.

Q. Did you intend to charge buildings; do you remember whether you did or did not? If you absolutely did not, there is no use of going into it; but if you did, I would like to know what they are. 363

A. If you will allow me to look I can tell you in a moment. "Deaf, dumb and blind institution." That may have been for building.

Q. I will ask you another question. Where did you get these accounts?

The Special Master: Do you want him to finish his answer to

the other question? He was undertaking to ascertain whether the deaf, dumb and blind institution was for building.

A. (Continuing.) The item is under "Deaf, Dumb and Blind Institution, and I don't know whether it covers building or not.

The Special Master: You are not able to state.

The Witness: No, sir.

By Mr. McClintic:

Q. Where did you get these items from, mentioned in Schedule 1, Plaintiff's Exhibit D-1?

A. From the published reports of the auditor of public accounts.

Q. Did you analyze any of them to see what they were for?

The Special Master: We went over that this morning and he said he did not, and unless there is some change to be made—

The Witness: No; there is none.

By Mr. McClintic:

Q. The third item is "General Government, $8,495.63" (Plaintiff's Exhibit D-1, first page of Schedule 1). Can 364
you tell us what that means, what is it for?

A. I think it is in the nature of petty cash items not chargeable to other accounts, merely general expense items not otherwise classified.

Q. Expenses for what?

A. I don't know. Charged up under that heading in the annual reports, and we put them in under that heading.

Q. You have another item, "Pensions." Pensions for what?

A. I don't know. They may have been State employees, but I have no absolute knowledge as to what class of individuals they apply to.

Q. You have an item there called "Expenses of representation." Do you know what that means?

A. No, sir.

Q. "Public arsenals?" Do you know what that means?

A. Only in a general way. I know there was a guard maintained in Virginia at that time.

Q. I am not asking about the public guard; I am asking about the arsenal.

A. They had to have an arsenal, I presume, for taking care of the arms.

Q. You mean by an arsenal a building?

A. No; I don't know that it means that. I think it is the expense of maintaining an arsenal.

Q. Do you know that, or are you conjecturing? 365

A. I don't know it, no.

The Special Master: That is, do you know anything about it outside the entry you have made from the books?

The Witness: No; we have not gone back of the entry.

The Special Master: He said he did not go back on any one of them.

Mr. McClintic: Now, schedule 2—

The Special Master: In the same exhibit?

Mr. McClintic: The same exhibit.

Does the same answer apply to all those, that you took those from a book and did not look back as to the divisions of that?

The Special Master: In detail?

Mr. McClintic: In detail?

The Witness: Well, with respect to the expenses, mileage of the board, and expenses of inspection, we did analyze them, as I have explained in the preceding exhibit.

By Mr. McClintic:

Q. As to all the others, then?

A. Otherwise we did not make any further analysis than the books showed.

Q. On the next page, Schedule 3, you charge maps, $42,529,98. Did you analyze that account and get details?

A. No; those were charges appearing in the annual reports, as shown by the next number, under references, which means the references in the annual report.

The Special Master: How much of that did you charge for 20, 21 and 22 added together?

The Witness: $30,000.

By Mr. McClintic: 366

Q. Of the $42,000?

A. Of the $42,000.

Q. And the next item, "Surveys, Salaries and Expenses, $110,369.47," how did you arrive at that?

A. In the same manner, taking the items appearing in the board of public works annual reports.

Q. How much of that is charged in items 19, 20 and 21?

A. $7,373.81.

Q. I understood you to say that you excluded from these all the items you charged under 3 of the direct charges?

A. Yes, sir.

Mr. McClintic: If your Honor please, I cannot speak of the decree as No. 3. C-1 I believe it is.

Mr. Harrison: You mean item 3 of the decree?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. On schedule 4 there are certain items amounting to $891,435,66, called the literary fund disbursements. Where did you get those, as to detail or not?

A. From an analysis of the Literary Fund books—journals and ledgers.

Q. You analyzed those books?

A. Yes, sir. We had no published reports of that and were compelled to go back to the books.

The Special Master: So you went back to the original items? 367

The Witness: Yes, sir.

Q. Hampden-Sidney College, at the bottom of the page, $25,000. What was the nature of that expense?

A. I don't know. It was merely a payment to the college as shown by the books, but for what purpose I don't know.

Q. Do not the books further show an investment in land and buildings up there?

A. I cannot say at this time.

Q. There is an item there, medical college, $5,000. What is that for?

A. I don't know.

Q. I thought you said you analyzed these expenses.

A. We analyzed them and found the charge and the payments to the medical college.

Q. What medical college?

A. I cannot say offhand. I don't know whether it is connected with the University of Virginia or not.

Mr. Anderson: It was connected with Hampden-Sidney, and I suppose it was $25,000 for building it, although I don't know. The State owns it.

Mr. Carlisle: Does the State own it?

Mr. Anderson: Yes; and still makes an appropriation for it.

By Mr. McClintic:

Q. Was that the only appropriation ever made for it, the $25,000?

A. I think it was during that period, yes.

Q. Up to 1861? 368

A. Yes.

Q. You charged next there an item "Davis' book on criminal law, $12,000." Was that item put in there at your volition or upon direction of counsel?

A. I did not ask counsel about it.

The Special Master: What is the basis of it?

The Witness: The cost of publishing that or purchasing a supply of them.

The Special Master: Was the State buying the book or publishing it?

The Witness: I could not tell you.

The Special Master: That is, did the State own the copyright, or was it simply buying a number of copies?

Mr. McClintic: He says he does not know.

The Special Master: Then that exhausts that.

By Mr. McClintic:

Q. Is the buying of a book on criminal law in your opinion an ordinary expense of goverment?

A. The buying of it is not. If it was bought for distribution among the State officials, then it would be such an expense.

Q. Was it done or not. The witness is going on to suppose a certain state of facts?

Mr. Harrison: No; you asked him for his opinion and he is giving it and now you say you don't want it.

Mr. McClintic: I want him to answer the question, but I do not want it on a supposed state of facts.

The Special Master: Mr. McClintic's question is whether on the facts that came to his knowledge this is an item that is properly charged to ordinary expenses.

(The stenographer repeated the last question of Mr. 369 McClintic and the answer thereto as above recorded, on request.)

The Witness: It would depend entirely on the purpose for which it was bought.

By Mr. McClintic:

Q. What has the literary fund got to do with the sale of slaves and expenses of free negroes, an item of $827.73?

A. All I know about it is I found the item on the book, "Expenses in connection with the sale of slaves and free negroes."

Q. You find charged here as an ordinary expenses, "State claims against the United States," $2,722,82. What is that for?

A. Expenses in connection with the collection of State claims. My recollection is that the Literary Fund had the handling of some of those claims and it cost that much to collect them.

Q. Did you find that from the books?

A. Yes, sir.

Q. Was the same taken out of the amount collected?

A. I don't know.

Q. What does the book show on that?

A. I cannot tell you offhand. I have it among my papers. It was an original entry of expense and we so considered it. 370

Q. Did you consider every item of expense that the State went to for any purpose, shape or form, an ordinary expense—every expenditure of money?

A. Any expense that did not appear to be an extraordinary expense I would call an ordinary expense of government.

Q. Will you kindly define the distinction between ordinary and extraordinary?

A. I merely use that word in the sense that it would be used in connection with any business. It we had a fire and burned the house down, it would be an extraordinary expense. I did not run across any item of that kind. Others I would consider ordinary expenses.

Q. Would the building of this building be an ordinary or extraordinary expense?

The Special Master: Do you mean this building where we are now sitting?

Mr. McClintic: Yes, sir.

A. I would rather not pass an opinion on that.

By Mr. McClintic:

Q. Well, is the building of an asylum at Williamsburg an ordinary expense or an extraordinary expense?

A. I think an ordinary expense if the lunatics of the State need it.

Q. Then when it is built in West Virginia it is an extraordinary expense and when it is built in Virginia it is an ordinary expense?

A. I don't think there is anything of that nature in here.

Q. Haven't you an item of that kind charged? 371

A. No, I think not.

Q. They have built buildings out of this fund, which you have charged as ordinary expenses, have they not?

A. We would probably have to have the reports from the asylums to determine what they have spent it for.

Q. You made no attempt to analyze that?

A. No, sir.

Q. You have an item here "Taxes on salaries, $217.23." What is that?

A. The literary fund paid the salaries of the employees, clerk and bookkeeper, and charged those salaries to expenses.

Q. You mean the State of Virginia?

A. The State of Virginia.

Q. Taxes on the salaries of their employees?

A. Yes, sir.

The Special Master: An income tax?

The Witness: I don't know. And the board of public works did the same thing.

The Special Master: It was practically an addition to the salaries of the employees?

The Witness: Yes; sort of a special compensation.

By the Special Master:

Q. I do not quite understand this item about State claims against the United States. Do you know anything about that except what you find on the books, as to how it comes about and what the basis of it is?

A. What is that item? 372

Q. State claims against the United States, $2,722.82. How does that happen to be an item of charge?

A. I stated that the Literary fund held some of those claims that possibly had been assigned to them; or at least they held them, and it cost $2,700 to collect the claims.

Q. That was for the collection of these claims against the United States?

A. Yes; I think that is the explanation.

Q. What was the nature of these claims?

A. I think they were Revolutionary, half-pay claims. The Government paid for soldiers' half pay.

Q. And the literary fund took the claims and prosecuted the claims against the United States?

A. Yes, sir.

Q. And this item got in in that way?

A. Yes.

By Mr. McClintic:

Q. You have an item here "Expenses account of purchase of stock by J. Bauer." $902.23.

A. I think Mr. Bauer was commissioned to go to New York or Philadelphia and buy some bonds for the Literary Fund and his expenses on that trip or trips amounted to that much.

Q. You have here commission on United States debt, $4,199.92.

A. I cannot tell you offhand what that is. It appears in the Literary fund books as an expense. 373

The Special Master: And under that head, I suppose?

The Witness: I believe so, yes.

By Mr. McClintic:

Q. You have here "Judgments and commissions on escheats, delinquent and redeemed lands, $26,029.48." What does that mean?

A. I think it is an expense of the Literary Fund for that department in getting judgments in connection with delinquent and redeemed lands.

Q. Did they not get the money that came from those 374
things?

A. I think probably they did; yes. I am not entirely clear as to the make up of that item. I could explain it later.

Q. Was not that proper against the money collected, like the other items were?

A. I don't know that it was.

Q. What was that University of Virginia, $649,874?

A. I think it was an annual appropriation to the University, with such other sums as were appropriated by special act during that period.

The Special Master: The Act gave all the appropriations for the forty years?

A. Yes, sir.

By Mr. McClintic:

Q. You have just below that, put Deaf, Dunb and Blind Institute, $40,821.02. Are there any buildings in that?

A. I don't know.

Q. Did you analyze it any further than the total?

A. We took the figures from the data on the books, and I don't know whether it covers buildings or not. I will have to look at the books to tell. I have the information among my papers.

Q. Please look and see by to-morrow. What is the item Virginia Military Institute, $28,500?

A. I believe it is the same as the appropriations to the University of Virginia.

Q. Do you mean an annual appropriation of so much?

A. Various items appropriated for the suppoprt or equipment.
or other purposes of the Virginia Military Institute? 375

Q. Do you mean that they were appropriated occasionally, a certain amount, or was it all appropriated in one sum, divided in the forty year period?

A. I can't tell you that offhand.

Q. On schedule 9, the last page of this exhibit, is an item "Interest on James River and Kanawha Guaranteed Bonds paid by Treasurer of the Commonwealth, $617,502.46."

Mr. Carlisle: Is there any date to that?

Mr. McClintic: That is the whole for the period. No date is given.

By Mr. McClintic:

What period does that cover?

A. I don't know. I can't tell you from these figures.

By Mr. Spooner:

Q. Have you any memoranda by which you can tell when that began?

A. Yes, sir.

Q. And what period it covers?

A. Yes; I can get that if you wish.

Mr. Spooner: Yes, do that.

By the Special Master:

Q. The time when it ended and when it began.

A. Beginning with the year 1843 and ending in December, 1860.

Q. It began when?

A. In 1843.

Q. And ended when?

A. In December, 1860. The last payment was in December, 376
1860.

By Mr. McClintic:

Q. Was not all that interest converted into stock of the James River and Kanawha Company by the Act of Assembly of the State of Virginia, and the acquiescence of the Company, and received by Virginia ?

A. I don't know.

Q. Did not the Act of March 23, 1860, provide for that?

A. I am not familiar with that Act of March 23, 1860.

Mr. McClintic: I believe that is all, your Honor, on section 4.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: If your Honor please, we now desire to offer Defendant's Exhibit D-1.

The Special Master: Very well. 537

(The paper referred to is filed herewith, marked "Defendant's Exhibit D-1.") 538

Mr. McClintic: On the bottom of page 5 of that exhibit there is an item marked "Primary Schools, out of income $2,400,331.11. We desire to withdraw that item from this exhibit as a part of the ordinary expenses of Virginia, for the reason to give notice to the other side— that this literary fund out of which this income was

derived was a fund already accumulated before the beginning of either period, either their period or our period in this case, and this expenditure was made alone, as I understand it, out of the income or interest which arose from the investment of that fund, which belonged to the State of Virginia before 1819, and was not paid out of money raised either by bonds or by taxes, or in any other way, during the period, but was wholly raised out of this income or from the investment of this literary fund.

The Special Master: Well, it came from assets accumulated anterior to the period in controversy, and has no relation to either indebtedness or taxation during the period, or since?

Mr. McClintic: And the fund was kept by the State of Virginia at the end of the period.

The Special Master: Do they have any parallel item in their schedule?

Mr. McClintic: They charge that item under the head of $863,000 of direct expenditures which arose from that fund.

The Special Master: That $863,000 is a part of the $2,400,000?

Mr. McClintic: Yes, sir. We put it under one head, and they put it under another. We now desire to withdraw it 539
from this heading, and claim no part of it. It is a question of law rather than fact, as I understand it.

Mr. Spooner: We object to this being included in the other.

The Special Master: Yes; but I know from him, of course, the relation of one item to the other.

Mr. Anderson: If your honor please, we of course make no objection to counsel on the other side withdrawing this item from the statement, but—

The Special Master: I understand you have no objection to their withdrawing the item, but you do not waive any rights you have in relation thereto.

Mr. Anderson: But we do not concede the statement of fact made by the other side. The literary fund is a continually growing fund in Virginia, all fines and escheats going to it.

The Special Master: If there is any question of fact involved about the literary fund, that of course will raise an issue between you.

The Special Master: So I understand the item of $2,400,331.11 is withdrawn?

Mr. McClintic: Yes, sir.

The Special Master: It is not objected to by the counsel for the State of Virginia, although the State of Virginia does not waive any rights it may have in that regard.

Mr. Anderson: We do not concede the statement of fact or the proposition of law either. 540

Mr. McClintic: We will present that here to your Honor, before the case is closed, through a supplementary statement.

The Special Master: Certainly. This seems to leave West Virginia in the position she would have been in if she had not included the item, and it does not preclude the rights of either party in connection with this exhibit.

Mr. McClintic: No, sir.

The Special Master: You may proceed with the examination.

By Mr. McClintic:

Q. Take Exhibit D-1, Mr. Dixey, and state to the Court if that was made up under your supervision?

A. That was made up my supervision and direction, and signed by me.

Mr. McClintic: I would state, for the further information of the Commissioner, that the withdrawal of that item will necessitate our later making a new proportion to go in the front of this paper.

The Special Master: Precisely. In other words, you desire to file a supplementary statement to defendant's exhibit D-1, a restatement of the statement?

Mr. McClintic: A restatement of the proportion.

The Special Master: In order to harmonize with the items you withdraw?

Mr. McClintic: Yes, sir.

By Mr. McClintic:

Q. Is this statement, Mr. Dixey, a correct one, including 541 the item as it stands before we withdrew this $2,400,000 item?

A. It is a correct statement of the amounts of such expenses as are included in it—such disbursements and expenditures as are included in it.

Q. The proportion on page 2—

The Special Master: It is made up from information derived from books of original entry?

A. Books of original entry; yes, sir.

By Mr. McClintic:

Q. As I understood you, all the information and all the exhibits so far filed have been derived from books of original entry in each and every instance?

A. Yes, sir.

The Special Master: Yes.

By Mr. McClintic:

Q. The proportion on page 2 was made by you, was it?

A. Yes, sir.

Q. And is correct on the face of it, as it then stood?

A. Yes, sir; it has been verified.

Q. And likewise the proportion on page 3?

A. The percentages on page 3 were made by me. With the exception of the $620,029, that is, the average of the population without slaves for Virginia, and the averages with and without slaves for West Virginia, everything else on that sheet was furnished by the United States Census Bureau.

542

By the Special Master:

Q. Did you make any revision of their computation?

A. I checked their computations. Those are simply averages.

Q. My question is whether you recomputed, so as to see whether the computations made in the Census Bureau were accurate or not?

A. Yes, sir.

Q. That is what you mean by checking?

A. I have their original letter here.

Q. When you say you checked their computation, you mean you compared your computations with theirs?

A. Yes, sir; I verified them.

Q. And found theirs correct?

A. Yes, sir; I found their computations correct. Of course the figures as they gave them I accepted as being correct. That is, the Census of 1820, for instance, as they give it, I accepted as being correct. Their totals and their divisions I verified.

Q. In other words, you did not go back to the Census yourself just for the purpose of ascertaining whether the total was correct?

A. I did not. Their letter states that it is an extract from the United States Census, and the letter is signed by Mr. North.

By Mr. McClintic:

Q. On pages 4, 5 and 6 of this Exhibit, Mr. Dixey, we find various items and various figures. Were those all examined by you?

A. As to totals; yes, sir. 543

Q. Under whose direction or by what direction did you put these various items in this exhibit?

A. By direction of counsel for West Virginia.

Q. As to the details making up each of these totals, I understood you to say you personally did not originally make them?

A. I did not examine every item; no, sir. If there was any question of policy or application, such matters were examined and passed on by me, but I made no attempt whatever to examine every item in the routine work of analysis.

By the Special Master:

Q. That is, you passed upon items as to which the application was not obvious?

A. Yes, sir; when there was any question in the mind of the gentleman who was in direct charge of the work.

By Mr. McClintic:

Q. Were any buildings which were erected in what is now the State of Virginia included in this exhibit?

A. In this exhibit?

Q. Yes; defendant's exhibit D-1?

A. There are no buildings; no, sir.

Q. No buildings were included?

A. No, sir.

Q. Were any purchases of land in what is now the State of Virginia included in this?

A. No, sir; there are no purchases of land. I may qualify that by saying that there are repairs to buildings included within it.

Mr. Spooner: That is different.

A. But no original investments. 544

The Special Master: No original construction?

A. No original construction.

By Mr. McClintic:

Q. Mr. Dixey, on plaintiff's Exhibit D-1—have you a copy of that there?

A. I haven't it here, Mr. McClintic.

Mr. Anderson: I will lend him mine, gentlemen.

The Special Master: What page?

Mr. McClintic: Page 4.

By Mr. McClintic:

Q. Are you familiar with the items on this schedule 1, page 4, of plaintiff's Exhibit D-4, which were not allowed by your exhibit? For instance, the third and fourth items, general government and pensions. Did you personally examine as to what those were for?

A. I don't find it here, Mr. McClintic.

Q. It is on page 4 of the whole exhibit, as marked here, schedule 1, entitled "Commonwealth of Virginia vs. State of West Virginia, analysis general expenses of Government, summary." Look on the preceding page.

A. I have it.

Mr. Anderson: It is headed "Schedule 1."

The Special Master: Page 4 is a continuation of page 3. What is the question, Mr. McClintic?

Mr. McClintic: I ask him whether he knows personally the details of the third and fourth items sufficiently to explain to the Court what they were for? 545

The Special Master: The third and fourth items on page 4?

Mr. McClintic: Yes.

The Special Master: That is transportation of free persons of color.

Mr. McClintic: No; General Government and Pensions is the one.

The Witness: It is on page 3 in my statement here.

Mr. McClintic: This was paged for us by the gentlemen on the other side.

The Special Master: What page are you looking at?

Mr. McClintic: Page 4 of Exhibit D-1.

The Special Master: What item have you in mind?

Mr. McClintic: The items General Government and Pensions.

The Special Master: That is on page 3 of my copy.

Mr. McClintic: It is page 4 here.

The Special Master: Let me have that repaged right now. You follow my paging. I have got to have some opportunity to work this out myself. The first page of Exhibit D-1 is page 1. Have you that, Mr. McClintic?

Mr. McClintic: Yes, sir.

The Special Master: Page 2 is headed "Commonwealth of Virginia vs. State of West Virginia, ordinary expenses of government. Article 4." Make that page 2. Now, page three is headed, "Summary, analysis of general expenses, Schedule 1." Page 4 is a continuation of it. Page 5 is headed "Schedule S." Page 6 is headed "Schedule 2." Page 7 is headed Schedule 3. Page 8 is headed Schedule 4. Page 9 is headed Schedule 9. Are you 546 correct now?

Mr. McClintic: Yes, sir. Mr. Potter's assistant paged this, and I did not know anything about it except what I found here.

Mr. Anderson: It is just accidental. There was a leaf put there. That is the reason for that.

The Special Master: There must not be any additional leaves put anywhere unless they are put into all the copies. I cannot allow confusion in this. Now, take your item, Mr. McClintic—General Government, $8,495.63. What is the inquiry?

By Mr. McClintic:

Q. Do you know what that means, what it is for?

A. Do I know what it means and what it is for?

Q. Yes.

A. As to the details?

Q. Yes.

A. I am not familiar with all the details.

Mr. McClintic: We will examine Mr. Scoville on that question later on.

The Special Master: All right.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

By Mr. Harrison:

Q. Now, Mr. Dixey, we will go to item 4 of the decree.

The Special Master: That is Defendant's Exhibit D-1?

Mr. Harrison: Yes, sir. The paragraph of the decree requires an ascertainment of such proportion of the ordinary expenses of the Government of Virginia, since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the *average* total population with and without slaves, as shown by the Census of the United States. Will you please look at your exhibit D-1 and the plaintiff's exhibit D-1, and state the difference in the totals 647 arrived at respectively by the two accounts.

The Special Master: You want to get the totals in each exhibit?

Mr. Harrison: Yes; the totals in each exhibit.

The Special Master: Are they not found on page 6 of Defendant's Exhibit D-1, and on page 2 of the Plaintiff's Exhibit D-1?

Mr. Harrison: I believe they are. Yes, sir; that is right.

A. The total on plaintiff's Exhibit D-1, page 2, is $40,023,287.79, and on Defendant's Exhibit D-1, page 6, $20,638,825.13, an excess on the plaintiff's Exhibit of $19,384,462.66.

By Mr. Harrison:

Q. How is that difference accounted for?

A. It is accounted for by items included in the plaintiff's exhibit, which are not included in the defendant's exhibit.

The Special Master: The principal of which is interest on public debt, $18,024,358.52. Is that right?

A. That is the largest individual item, and practically a very large percentage of the difference.

By Mr. Harrison:

Q. The largest item is that the plaintiff's exhibit includes interest on the public debt, amounting over $18,000,000?

A. Yes.

Q. The rest of it is accounted for how, in the period from 648
which you started to reckon the accounting?

A. Partly that; yes, and by the exclusion of some other items from our account.

Q. Well, they would be more or less negligible, would they not? The other items you speak of, the two larger items, I imagine, would be the interest on the public debt and the difference in the period of time from which the record commenced.

Mr. McClintic: And there are items which you have included in yours which we do not admit to be an ordinary expense, and we include some in ours which you have not in yours.

Mr. Harrison: They could not be very material, because the major portion of this difference is covered by the interest on the public debt.

A. The difference is both ways.

Mr. McClintic: There are a great many in yours that are cut out of ours.

The Witness: The actual difference is larger than the balance.

The Special Master: I will ask counsel for the plaintiff this. Do these items of interest rendered here on page 2 of Plaintiff's Exhibit D-1 represent amounts of interest actually paid during the period, or are they computations?

Mr. Anderson: They were actually paid.

The Special Master: The $18,024,358 is shown by the books to have been actually paid by the State during the period?

Mr. Anderson: Yes, sir; actually paid. 649

The Special Master: And so as to all the other items?

Mr. Anderson: Yes, sir.

By Mr. Harrison:

Q. Was not something said yesterday or this morning about your striking out from your exhibit, D-1, an item of over $2,000,000 on account of primary schools?

A. Yes; that was struck out, but that is not a difference as appears in the figures that I have given you. I assumed that you wished me to handle this in the same way I handled the other.

Q. What do you propose to do with that item if you strike it out? Are you going to include it anywhere else?

A. Counsel will tell you that.

Q. You will have to refer me to counsel about that?

A. I will have to refer you to counsel; yes, sir.

The Special Master: You give the result and it is up to the attorneys to discuss it. Is that your position, Mr. Dixey?

A. Yes, sir.

By Mr. Harrison:

Q. When you undertake to ascertain the just proportions of those items of ordinary expenses on the basis of the *average* total population of Virginia, please explain the method which you pursued.

A. I took the census of the United States, as shown by its records, from 1820 to 1860 by decades. 650

Q. By decades?

A. By decades, and added them together and divided them by five, there being five censuses in the period, to determine the average census.

By the Special Master:

Q. That is, by decades covering the period covered by the account?

A. Yes, sir; and then determined the proportion of Virginia's average census to the total of both States, or to the whole entire State, and the proportion of the West Virginia Census to the population of the entire State.

Q. That method is set out in detail on page 3 in Defendant's Exhibit D-1?

A. Yes, sir; and I applied those percentages to the entire amount of the ordinary expenses, as shown by the schedule.

Q. Defendant's Exhibit D-1, page 3, shows the details of that computation?

A. Yes, sir; that information was furnished us by the United States Census Bureau. I have the letter of the director, giving those statements.

By Mr. Harrison:

Q. Does your statement show the percentage of the whole on the basis of both total population and white population exclusive of slaves?

A. Yes, sir; you will find the percentage on page 3, Mr. Harrison.

By Mr. Anderson: 651

Q. You estimate it on the basis of the total average population for the five decades?

A. As called for by that section of the decree.

Q. As you understood it?

A. Yes, sir; it shows the average total population as shown by the Census of the United States, with and without slaves.

Q. The question was whether that meant the average for the period of forty years, or the average so as to strike the period of June 20, 1863.

The Special Master: The question is whether the term "average" relates to the period over which the accounts were running?

Mr. Anderson: Yes, sir.

The Special Master: That is, whether you would have the parallel of average with the parallel of accounts. In point of time, are they both coterminus; have they the beginning and ending at the same time?

Mr. Anderson: That is very likely what is meant—to average each decade.

Mr. McClintic: We will have to make a supplemental statement, then, by reason of taking out the $2,400,000, as I said this morning.

The Special Master: I understand that. That simply throws the amount out of joint. Is that all you want to ask him about this?

Mr. Harrison: I think so.

748

[*Vol. 6. May 7, 1909. Direct Examination C. E. Scoville.*]

By Mr. McClintic:

Q. Mr. Scoville, on page 3 of plaintiff's exhibit D-1, there is charged what is termed an analysis of general expenses of government, and there is the word "summary" under that.

Mr. McClintic: If your Honor please, I would like to make a statement to make myself clear as to what I want in there. I want to call it to the special attention of the Master, in view of what you said. There is a very large number of items which they have marked apparently on here as ordinary expenses of government, and it is necessary in some way to get the matter into the record, so as to show to you what each of those items is, in order that you may see whether or no it is pertinent to the words "ordinary expenses." I am not wholly advised as to the best method by which that can be done. The only method I know of is to examine Mr. Scoville, who has examined them, and let him state what they are, unless your Honor can suggest some better way.

The Special Master: Do you object to them all?

Mr. McClintic: No; not to all on that page, but a great many I object to, and the difficulty lies in the fact that the 749
mere word there does not explain anything.

The Special Master: Do you object to the classification? For instance, do you object to the general assembly item as being an ordinary expense?

Mr. McClintic: No, sir; not inherently.

The Special Master: But you have objection to some of the items that make up that aggregate?

Mr. McClintic: No, not as far as I know of; not anything on general assembly.

The Special Master: I was using that for an illustration. That is all. I do not know that you can make any better progress than to take each item, unless he could prepare a statement in detail in relation to all these items, and then later on have that submitted. How long would it take him to go through with this?

Mr. McClintic: It would take some little time. I don't know how long.

Mr. Spooner: It is an important matter.

The Special Master: Yes; certainly. We are only discussing the question as to the most feasible way of getting it in. Has he his details all prepared?

Mr. McClintic: No; it is a question not of figures, but of information as to what the figures mean. In other words, take the words "general government," the third item there, $8,495.63. That does not mean anything to your mind unless you know what it is.

Mr. Spooner: It has to be proven by testimony. It cannot be proven by exhibit.

The Special Master: I guess you had better take it and go along with it, item by item.

By Mr. McClintic:

Q. State, Mr. Scoville, if you know, to what the third item under "general government," $8,495.63 refers, and what it is. 750

The Special Master: What expense it is. What character of expense.

A. In that account there was charged the expenses of the War of 1814 as recorded on the books, and not what might be termed current expenses during our period.

The Special Master: Do I understand that the whole item $8,495.63 is predicated upon the expenses of the War of 1814?

A. Yes, sir.

The Special Master: Now go right along with the next item.

By Mr. McClintic:

Q. The next item is pensions, $88,548.74.

Mr. Harrison: What is his authority for the statement he made just now?

Mr. McClintic: The original entries on the books.

Mr. Harrison: Did you find $8,495.63?

The Witness: I am not attempting to testify as to the exact amount, but the character of items that are included under that caption.

By the Special Master:

Q. Did you find an account on the books denominated "general government?"

A. Yes, sir.

Q. Then you ran that account down to the items of which it was composed?

A. Exactly. 751

Q. And found this result to which you testified?

A. Those items are for war expenses for the War of 1814.

Mr. Conrad: 1812.

Mr. Hogg: It is sometimes called 1814 and sometimes 1812.

Mr. McClintic: We all know what he means.

By Mr. McClintic:

Q. The next item, Mr. Scoville, is pensions, $88,548.74. Tell the court if you know what that is for; if you have been able to find out?

A. The books of original entry and all of the records which we had access to, and searched, did not disclose just what pensions those were, but the original entries for each individual disbursement do record them as payments for pensions; but whether they are Revolutionary War pensions or Government Employe pensions is not shown as far as I can find.

The Special Master: Or 1812 pensions?

The Witness: No sir.

Mr. Spooner. Is there no legislation that shows?

The Witness: I could not find any information.

Mr. Anderson: About what years was that; do you recall?

The Witness: That runs through the entire period, payments every year.

The Special Master: There must have been some statute under which those pensions were conferred. However, he did not find anything.

By Mr. McClintic:

Q. On the same page, farther down, we find the words 752
"expenses of representation," $24,120.17. Will you please explain if you know what that is?

A. Those are election expenses for representatives in Congress.

Q. What is that; election expenses for representatives in Congress?

A. Yes, sir; comparing polls, etc.

Mr. Anderson: Expenses of Federal elections?

The Special Master: The regular biennial expenses involved in Congressional elections?

The Witness: They are regular expenses; yes, sir.

The Special Master: Regular biennial Congressional expenses; that is, expenses in Congressional elections?

The Witness: I won't say biennial. They occur regularly.

Mr. Harrison: They run all the way during the period?

The Witness: Yes, sir.

The Special Master: You say they do run all the way during the period?

The Witness: Yes, sir.

The Special Master: What do they consist of?

Mr. Anderson: They are in both accounts, are they not?

Mr. McClintic: Yes, sir. I thought they were not. That is the reason I asked the question.

The Special Master: Then there is no controversy over 753 that.

Q. The next charge is "public arsenals," $96,709.63.

A. The charges to that account are included in Defendant's Exhibit D-1.

Q. Under the head of "military establishment?"

A. Yes, sir.

The Special Master: Do they aggregate the same?

The Witness: No, sir; they do not, for one reason, on account of the difference in the period.

Mr. Harrison: They run from 1820.

The Special Master: Yes; I understand. You cover three years and four months more than they do.

By Mr. McClintic:

Q. Do you find the item of "warrants on account" and "general appropriations?"

By Mr. Spooner:

Q. Are those expenses recurring expenses from year to year?

A. The arsenal expenses?

Q. Yes.

A. Yes, sir; we include those in our statement of ordinary expenses.

By Mr. McClintic:

Q. Take that next item, "warrants on account" and "general appropriations," $746.087.72. What is that?

A. That account includes a varied class of expenditures, and does not appear in any of our exhibits, because we analyzed all expenditures which were grouped under that head, and applied them to the proper individual accounts to which they were chargeable.

By Mr. Harrison:

Q. Do they not appear in the books of the Commonwealth under that head? 754

A. There is such an account; yes.

Q. You disregarded it, though.

A. We did not disregard it. We analyzed it and found what was in the account, and applied it to the proper accounts.

By the Special Master:

Q. In so doing, did you take all the items included in the original account and apportion them to some account, or did you leave some unaccounted for, undistributed? That is, when you got through with your analysis of that account, had you attributed to some account that you made up all the items contained in that account?

A. We did, with the exception of a small amount of about $11,000, which we called miscellaneous expenditures, and a part of that came from those warrants on account.

Q. Did you have an item of miscellaneous expenditures?

A. We have on our exhibit, under ordinary expenses, an item of miscellaneous expenditures, which we explained by saying that there are other unclassified expenses.

Q. And in that item you included the $12,000?

A. Yes, sir; part of which came from these warrants on account.

Q. So that everything included in that account is distributed in some other accounts you have made?

A. Unless it has been excluded under instructions from 755 counsel.

Mr. Harrison: Has that been done?

The Special Master: Has anything been excluded? That is what we want to get at.

Mr. Harrison: Whether anything has been excluded is what we want to find out.

The Special Master: If the whole item is accounted for in some of the various accounts you have made, as the result of your analysis, that takes care of it. On the other hand, if there is anything unaccounted for, what is unaccounted for and what is it?

A. I cannot tell that without referring to some of our detailed papers. I think it is safe to say some were excluded.

Mr. Harrison: How much was it?

The Witness: I cannot tell right here how much it was, but our papers will disclose that.

The Special Master: Make a statement of that, so the other side will have an opportunity to criticise it.

Mr. McClintic: The other side did not give us any details so that we could criticise. We had to take everything there was. They

are the plaintiffs, and they are making up this statement that we could not do anything with except by taking it as it was.

Mr. Harrison: You ought to have analyzed the accounts yourselves.

The Special Master: Of course they rest on their general 756
statement, and if you are able to successfully attack any part of it, or appear to, it is open to them to reply as best they can. There is no question about that. What is your next item.

By Mr. McClintic:

Q. "Slaves transported and executed," $611,351.23. Please explain that, Mr. Scoville.

A. The account "slaves transported and executed" covers the amount paid by the State for slaves executed and transported. Under the laws of Virginia if a slave was executed or transported, the owner of that slave was paid an appraised value, and in this account to which we are referring were included expenditures on that account.

The Special Master: What is meant by "transported?"

The Witness: Transported beyond the limits of the United States.

The Special Master: He was exported at the time he was transported?

The Witness: There is a credit against that account for slaves sold.

Mr. Harrison: Has the witness answered whether that item appears on the corresponding schedule of West Virginia—$611,351.23?

Mr. McClintic: I did not ask him that, but I think it does.

The Special Master: No; he did not ask him that. What is the fact about that?

The Witness: It does not appear in our exhibit.

Mr. Harrison: Why not?

Mr. McClintic: I expect it is because counsel told him 757
otherwise.

The Witness: I just thinking how to frame that. That is the fact. Under instructions from counsel, that item was omitted.

By Mr. McClintic:

Q. The next item is "gun carriages," $14,317.05. Is that included in your exhibit?

A. We include that in Defendant's Exhibit D-1, under "transportation of arms." Gun carriages in that account means the carriage of guns. Transportation of arms is the proper title, we think, for it.

Q. Yes; I should think that would be better than "gun carriages."

A. It does not mean the carriages the guns were carried on.

Mr. Anderson: It means transportation of guns, does it not?

The Special Master: He has explained that item. He says it means the carriage of guns.

Mr. Conrad: The State had an armory here and one at Lexington, and it may be that arms were transported.

By Mr. McClintic:

Q. There is an item below there "revision of laws," $4,500. Do you know what that is?

By Mr. Harrison:

Q. What item in your accounts did you say that gun carriage item appeared?

A. Defendant's Exhibit D-1, page 5; under "military establishment, transportation of arms."

By the Special Master:

Q. It makes up another larger item?

A. Yes, sir.

Q. It is not by itself? 758

A. No, sir.

Mr. McClintic: It is detailed to itself. It shows what it is. It is detailed under the account "military establishment."

The Special Master: But this is $14,307.05. You have it $12,160.08.

Mr. McClintic: There is hardly a single item that agrees, even when you have to take the same item on account of this period. They all disagree. Under this head everything disagrees.

The Witness: I cannot say just where the charge there for "revisions of laws" appeared in our own accounts, if it appears at all. It does not appear under that caption.

By Mr. McClintic:

Q. Do you know what it refers to?

A. I do not.

Q. Do you find anything in the books of original entry to show under which it comes?

A. No, sir; there is no account of that caption.

Q. The next is a small item of $71.10, for seines. Do you know what that is?

A. I am under the impression that that is prior to March 19, 1823, and that it is a refund.

Q. The next item is "public warehouses," $35,722.00.

A. To that account there was charged the expenses of the

Warehouse Commissioners, and it is a proper reduction 759
from receipts from warehouses.

Q. But there is no corresponding item in your account?

A. On Defendant's Exhibit D-1, page 6, we show a credit to West Virginia of $389,694.91 for an item called "inspectors of tobacco," and from that amount the expense of Commissioners is deducted.

The Special Master: On page 6 you have that, have you?

A. Yes; under "less the following receipts."

By Mr. McClintic:

Q. The next item is "tobacco sales," $454.91.

Mr. Harrison: What is the difference between that item on your account and the plaintiff's corresponding account?

A. I suppose it is on account of the difference in the period. The difference is not very large.

The Special Master: The aggregate in the Plaintiff's Exhibit is $35,722.00, and the total credit you give is $36,570.00, which is more, but that includes the other item.

A. That includes two other items.

The Special Master: The $23,626.96 is a corresponding item?

Mr. McClintic: Yes.

The Special Master: What is your next item, Mr. McClintic?

By Mr. McClintic:

Q. Take the item "Tobacco sales $454.91." Do you know 760
what that is, Mr. Scoville?

A. I am not familiar with that expenditure.

Mr. McClintic: Is that in your account, General Anderson?

Mr. Anderson: Yes, sir.

Mr. Harrison: It is, yes.

Mr. McClintic: What do you mean by that?

Mr. Harrison: I could not explain that.

Mr. Anderson: I suppose it means sales at warehouses.

Mr. Harrison: The State had something to do with the sale of tobacco, in the way of inspection and commission and all that.

The Witness: I think that item is for the payment of burnt tobacco at the warehouses. That accounts for its being an expenditure. The title here, "Tobacco sales," under expenditures is not quite clear.

The Special Master: You allow $2,639.30 for burnt tobacco?

The Witness: Yes, sir.

The Special Master: Is that a corresponding item?

The Witness: That comes in another item further on, the first report here in the Plaintiff's Exhibit.

By Mr. McClintic:

Q. You have, next, "Armory, manufactory and repairs of arms, $243,015.60. Have you any corresponding item to that?

A. That is in Defendant's Exhibit D-1, page 5, under mili- 761
tary establishment; repairs of arms is the last item, and the manufacture of arms is the fourth item under military establishment.

Mr. Anderson: Transportation of arms?

The Witness: No.

Mr. McClintic: Armory and manufacture and repairs of arms. Is there anything included by the plaintiff in there for anything of that character, or do you remember about that?

The Witness: I think not in connection with that.

Mr. McClintic: The next item is "Sale of slaves, $99.26."

Mr. Anderson: The armory was built long before 1820.

By Mr. McClintic:

Q. The next item is "Sale of Slaves, $99.26. Do you know what that is?

A. No; I do not.

Q. The next item I refer to is Revolutionary claims agent, $3,861.67. Have you any knowledge of that?

A. That expenditure is for commissions of the agents.

Q. Collecting revenues.

A. Yes, sir; from the United States Government.

Q. The next item is "administrators of J. Merryweather and R. Graves, $11,067.33." Do you know anything about that.

A. We do not include any such item and I don't know what that is.

By Mr. Harrison:

Q. You have no memorandum about that?

A. Not under that heading. 762

Q. Well, under any other heading?

A. I cannot identify it, no, sir. That is, in our account it is in under its proper title, if it is there at all.

By Mr. McClintic:

Q. The next item is "Clerk hire and so forth, on account of delinquent lands, $18,374.27." Did you include that?

A. That is included in Defendant's Exhibit D-1.

Q. Under this heading, or under the head of officers? I looked for it and did not see it.

A. That is included in our account under officers of the Government, inasmuch as that account includes the salaries of officers and clerks.

By the Special Master:

Q. You say you include it under the title of officers of the Government?

A. Yes, sir; on page 5.

Q. And the aggregate there is $3,190.633.

A. Yes, sir.

Q. Do you include the latter item in that aggregate, so far as you know?

A. So far as I know, yes.

By Mr. McClintic:

Q. The next item is Buckingham furnace lands, $771.72. What have you to say about that?

A. I might say first these furnace lands were in Buckingham County, Virginia, and they were sold, and there were claimants to part of the proceedings, and that amount of about $900 is the amount which was paid to these claimants, plus com- 763
missions out of the amount which was received from the sale of the Buckingham lands. We do not take credit for the sale of the lands, and that is a proper charge against the sale.

Q. You do not charge that anywhere in your accounts?

A. No, sir.

Q. On the next page, the first item is "Transportation of free persons of color to Liberia, $26,103.50." Do you allow that in your account?

A. It is not included in our account.

Mr. Conrad: Why not?

The Witness: Under instructions from counsel.

Mr. Hogg: It is neither an ordinary expenditure nor an extraordinary expenditure.

By Mr. McClintic:

Q. Further down the page (page 4 of Plaintiff's Exhibit D-1), we find "Unexpended postage returned to treasury, $53.13." How could that be a charge?

A. We have not any such account in our exhibit. I think that might be better explained under some other title. I do not know why it is there.

The Special Master: You do not know anything about that?

The Witness: No sir.

By Mr. McClintic:

Q. The next item on this page to which I will call your attention is "Penitentiary: Hatcher vs. Commonwealth, $12,897.96. Do you know anything about that?

A. I do not. 764

Q. Do you find any item like that on the books of Virginia anywhere?

A. I do not recall the item at all.

Q. The next item to which I will call your attention is "Ferriage of troops during late war—"

The Special Master: Referring to that other item, have you looked for it?

The Witness: No, sir.

The Special Master: When did you begin your examination of this plaintiff's Exhibit D-1.

Mr. McClintic: I don't know that he ever begun it.

The Witness: No, I have not.

Mr. McClintic: He went over the books and took out all items. and it is from that knowledge that he is testifying.

The Special Master: But you have had this exhibit since last November, have you not?

The Witness: But we were very busy with our own exhibits.

The Special Master: Are we to understand that you have not put in any time at all examining these exhibits of the plaintiff for the purpose of testifying in regard to these figures of theirs?

The Witness: We have just finished with our own exhibits.

Mr. McClintic: What is the fact about that, Mr. Scoville?

The Witness: We have no special examination of the 765
Plaintiff's Exhibits, with the exception of No. 3. We made an examination, not a thorough examination, but a superficial examination, as to the difference between their charges for these roads and our own.

By Mr. Harrison:

Q. Am I to understand you to say that you knew nothing about that item at all, the item of the penitentiary; Hatcher against the Commonwealth?

A. I do not recall it. I do not mean by that that it is not in our account, but I do not recall it under that title.

Q. You do not recall that the books of original entry show the payment of a judgment for that amount?

A. No, sir; I do not recall the item at all.

By Mr. McClintic:

Q. I understood you to say that you had taken up the accounts of Virginia, beginning with the 19th of March, 1823, and taken every item of receipt and item of expenditure up to January 1st, 1861?

A. That is correct, yes, sir.

Q. And every item is either on these papers or on the general balance sheet which is to be filed as soon as it reaches here?

A. Absolutely every dollar received and disbursed.

Q. And then you do not remember having seen an item of Hatcher vs. Commonwealth for $12,000 and something?

A. I do not. 766

By Mr. Harrison:

Q. Did you examine the annual reports?

A. Yes, sir.

Q. You saw no such item there?

A. I do not recall the item. I may have seen it at some time, but I do not recall it.

By the Special Master:

Q. There are 750,000 items.

A. You could not remember all.

Q. The fact is you never made any search for this item?

A. No, sir.

Q. You never criticised this schedule?

A. No, sir.

Q. Or spent any time on it?

A. No, sir.

Q. And the only information you can give is your recollection from the accounts as you go along; that is correct is it not?

Mr. McClintic: From what he knows about the accounts of Virginia—

The Special Master: It is not predicated upon any particular examination of this schedule?

The Witness: No, sir. It would be difficult—

Mr. McClintic: He has not had time.

The Special Master: You have not done it, anyway.

A. No, sir.

The Witness: It would probably be found either under one of our schedules under some other title, or having been excluded, but I do not recall the item.

By Mr. McClintic: 767

Q. In making up your schedule, D-1, did you follow the nomenclature on the books of original entry?

A. Yes, sir. An item of that nature must be chargeable to some account, and we would include that, not under this individual expenditure, but under its proper account.

Mr. Harrison: Are we to understand that you did follow the nomenclature of the accounts as you found them?

The Witness: Yes, sir.

Mr. Harrison: Did you not just say in connection with the item, "Warrants on account general appropriation"—I think that was it?

The Witness: Yes.

Mr. Harrison: Why did you not follow that nomenclature in the statement of your own account?

The Witness: For the reason that warrants on account are not represented in expenses—

Mr. Harrison: I am asking you for the fact. It is a fact that in that instance you did not follow the nomenclature?

Mr. McClintic: Did the books of original entry have any such item as "warrants on account"?

The Witness: They did.

The Special Master: In that instance you did not follow that heading; you analyzed that account and distributed the items under what you considered their proper heads?

The Witness: Yes, sir.

Mr. Harrison: In asking you this question I merely want to develop the fact that in other instances you did not follow the nomenclature that you found in the books of the Commonwealth. 768 I cannot recall the different instances, but you have a military establishment. You did not find any such nomenclature as that in the books?

The Witness: No, sir.

Mr. Harrison: So he did not follow the nomenclature in the statement of his account?

The Witness: I do not know how to express that or explain it any better.

Mr. Harrison: You may have had a reason, perfectly sufficient perhaps, for not doing it; but the question is the question of fact—did you do it?

The Witness: It seems that in this case you have called attention to we have changed the nomenclature in order to state the account.

The Special Master: More intelligently?

The Witness: More intelligently and clearly.

By Mr. McClintic:

Q. The next item to which I will call attention is ferriage of troops during the late war, $54.71. Have you any knowledge of that?

A. I do not recall that.

Q. The next item is "Criminal and Civil Code," $52,073.88. Is that in your account?

A. That item is included in our account. Let me see if I can find just where it is.

Mr. Harrison: It is not included under that nomenclature, is it?

The Witness: No, sir; it is not. It is on page 5 of Defendant's Exhibit D-1, under "printing, compiling, and so forth, of Code, Statutes and Report."

769

By Mr. McClintic

Q. The next item is rent $52.25. Do you know what that is?

A. I do not know what that particular item is.

Q. The next item is Virginia Volunteers, $29,470.05. Do you know what that is?

A. That is the expense of getting a regiment of Virginia soldiers ready for the Mexican war, I think, in 1847. It was almost entirely repaid to Virginia by the United States Government.

By Mr. Harrison:

Q. You have no corresponding amount under that heading in your report?

A. No, sir. Neither the expenditure nor the receipts are included in any of our exhibits.

Q. Why not?

A. Because it was not considered by counsel an ordinary expense.

Q. That is the reason it does not appear?

A. Yes, sir.

The Special Master: Do you remember what balance was unpaid? While we are on the items, we might have it on the record.

Mr. Harrison: What was the question?

The Special Master: He said nearly all had been repaid. I asked him what balance remained unpaid.

The Witness: We found charges against that particular Mexican War, $32,101.16. We found that they collected 770 from the United States Government on account of those expenditures, $27,943.66; leaving a balance of expenditures over receipts of $4,157.50.

By Mr. Conrad:

Q. Did you find that the amount received from the United States Government was on the identical item there of charge?

A. Yes; so recorded in the books.

Q. In what books did you find that?

A. In the books of the Auditor of Public Accounts.

Mr. Harrison: When was it received?

Mr. McClintic: Can you give the date of the receipt?

The Witness: I can get it without much delay (referring to memorandum). The money was received from the United States Government in 1848, in 1850, in 1851, in 1852, and in 1853. I find on looking at the detailed analysis that in that item of receipts, amounting to $27,943.66, there are some small items which were refunded, which were not collected from the United States Govern-

ment, but which were refunded on account of overpayments and advances which were returned on this same account. Less than $1,400 was refunded. The balance was collected from the United States Government.

By Mr. McClintic:

Q. The next item is tobacco sales and burnt tobacco, $1,931.30. You allow for that, I believe?

A. Yes; that is in our exhibit. 771

Mr. Anderson: The amount is agreed, is it?

The Special Master: No; they have the amount as $2,666.13, and the amount here is $1,931.30.

Mr. Anderson: There is another item, though, I think, of $454.51.

The Special Master: Well, those two together do not quite make up the amount that they credit—that is, if they do go together.

By Mr. McClintic

Q. The next item is land taxes, $296.59. Do you know what that means?

A. I do not; but I presume it is a refund of taxes, and a corresponding expenditure on our statements is deducted from the receipts from taxes.

By Mr. Harrison:

Q. You mean your statement takes account of that in some form?

A. That is, for taxes refunded. It has been deducted from what we take credit for.

Q. That is a qualification. You say if so and so. You cannot say?

A. I cannot identify it.

By the Special Master:

Q. You can, by taking the time?

A. Yes, sir.

Q. Of course those things you can work out later?

A. Yes; without difficulty.

772

By Mr. McClintic:

Q. The next item I call to your attention is "Assessment of free negroes, $897.21." Have you any knowledge of that item, Mr. Scoville?

A. We have included the charges on that account under the account called "General Account of revenue,' on Defendants Exhibit D-1, page 4.

Mr. Harrison: You do take account of it, then, under another head?

The Witness: That is the general account.

By Mr. Conrad:

Q. Do you have the same item?

A. General account of revenue is the account.

Q. But you embrace in it the same item that Mr. McClintic has inquired about?

A. Yes, sir. That is the amount paid to the assessors for listing free negroes.

By Mr. McClintic:

Q. There is an item called "Fugitive Slave Fund," $5,201. Do you know what that was?

A. The charges to that account are in the nature of rewards for the capture of fugitive slaves.

Q. You have no charge on your exhibit of that account, have you?

Mr. Conrad: Nothing was more ordinary and usual than that.

The Special Master: You have no topic of that character, have you?

The Witness: No; I do not remember any.

The Special Master: Are you looking now to see whether 773
it is included in any other item.

The Witness: Yes. We include it in Exhibit D-1, page 6, an expenditure under the title, "Rewards," $13,992.64, which is for the apprehension of fugitives and criminals.

The Special Master: And does that probably include this item of $5,201?

The Witness: It probably does, yes, sir.

By Mr. McClintic:

Q. Going to the next item, land sold in 1855, $8.48. Do you recall anything about that?

A. I do not recall that item.

Q. Under the title "Public printing," there is $23,092.31. Do you include that under that head or some other head?

A. We have the same head, page 5 of Defendant's Exhibit D-1.

Q. The next item is "Claims under 27th and 45th Chapter Code of Virginia, $1,344.05." Do you know what that is?

A. I do not.

The Special Master: That is not rewards, is it?

The Witness: I could not tell.

Mr. Conrad: You could not tell without reference to the Code.

By Mr. McClintic:

Q. The next item to which I call your attention is Treasury Note expenses, $375.45. Do you allow that in your exhibit?

A. We do not allow it.

Q. Do you know what it is? 774

A. It is for printing treasury notes.

The Special Master: Printing what?

The Witness: Printing Treasury notes, the notes themselves, the expense connected with printing the notes.

By Mr. McClintic:

Q. That is, Virginia State money?

A. That is Virginia State money.

Q. The next item is "Tax on dividends, $128.50." Do you remember what that is?

A. I cannot say that I remember that particular item, but I am under the impression that it is a refund.

Q. If it was a refund it had no business as a charge here, had it?

A. No, sir.

Q. (Reading): "Arms and munitions of War, $4,111.13." Do you know what that is?

A. That is an expense on account of the early wars, 1812 and 1814, and is not included in our account.

Q. The next is "Survey of Washington's birth place, $139.21." What have you to say about that?

A. That title is self explanatory and we have not included that in the account.

Q. That was not an ordinary expense?

A. No, sir.

Mr. Harrison: Why did you not include it?

The Witness: We did not include it—

Mr. McClintic: If you will allow me to answer, I will say that he did not include it because we instructed him not to 775 include it.

Mr. Conrad: The thing had to be a recurring expense to be an ordinary expense.

The Special Master: That is the position they took, I suppose.

By Mr. McClintic:

Q. The next item is "temporary clerks in auditor's office, $3,826.64." Is that taken care of in your account somewhere?

A. I think it is.

Mr. Conrad: If these two experts had gotten together they could have avoided a lot of this examination.

The Witness: (After looking over papers.) I have that impressed very strongly on my mind, but I cannot locate it.

By Mr. McClintic:

Q. The next item is "marking Virginia and Maryland Boundary, $6,094.44." Do you include that anywhere?

A. No, sir.

Mr. Harrison: Why not?

A. Under instruction of counsel.

By Mr. McClintic:

Q. The next item is maps, $11,400.90. Is that charged in your account?

A. It is not.

Mr. Conrad: What is that,—Maps?

The Witness: Yes, sir.

Mr. Conrad: Published by the State for public use throughout the limits of the entire Commonwealth.

Mr. Harrison: When were those maps published, if you know?

The Witness: I am not able to tell when they were published. I can tell when the money was expended. 776

Mr. Harrison: They were published in 1825, 1826, 1827 and 1828, were they not?

Mr. Conrad: They were, and they were published for the use of the entire Commonwealth.

The Witness: The dates you give are correct—1825, 1826, 1827 and 1828; that is the date of the expenditure of the money.

By Mr. Harrison:

Q. Have you got that same figure in that account?

The Witness: $11,397.24. It is not in our account.

Q. The expenditure is correct?

A. Yes.

Q. And not included in your account on direction of counsel?

The Witness: Yes.

The Special Master: What is the item; "maps?"

Mr. Conrad: For maps which were published and circulated all over the Commonwealth.

By Mr. McClintic:

Q. The next item is public arms, $11,499.97. Is that included in this?

A. We have included the charges for public arms in Defendant's Exhibit D-1, page 5; the amount that we charge there on the military establishment, public arms, pay roll at armory, and so forth, $21,609.30. I think we have combined another account with 777 this account.

Q. The next item is State Convention, $258,677.40. Have you included that?

A. It is not included in any of our exhibits.

Mr. Harrison: That expenditure was made, was it not?

Mr. McClintic: What was it?

Mr. Harrison: It was for the State Convention of 1829-1830 and 1850-1851.

Mr. Spooner: Constitutional conventions?

Mr. Harrison: State constitutional conventions, yes.

The Special Master: Two different Constitutional Conventions?

Mr. Harrison: Yes, sir.

Mr. McClintic: You had one in 1864, too, did you not? You had one at Alexandria?

Mr. Harrison: Yes, there was Pierpont and two or three others there.

Mr. McClintic: There were seventeen people there.

Mr. Harrison: That money was expended, was it not, for the Conventions of 1829-30 and 1850-51?

The Special Master: These conventions are apparently as regular as the eruption of a volcano.

Mr. Harrison: There were two ex-Presidents of the United States in that first convention, and Chief Justice Marshall.

Mr. Spooner: Is that why it was so expensive?

Mr. Harrison: No, but it was a famous assemblage of men.

Mr. Spooner: Oh, yes, it was an extraordinary convention.

Mr. Anderson: It cost about one fourth as much as the convention of 1850-51. 778

The Witness: There was expended $258,906.28 in the years 1830 and 1851-52.

Mr. Harrison: And you did not include that?

The Witness: No, under instructions of counsel.

Mr. McClintic: The next item is "Medical College, $25,000." Did you include that item?

A. No, sir. It was on account of construction at Richmond.

Mr. Harrison: Construction of buildings?

The Witness: I don't know what was constructed.

The Special Master: Which is the item?

Mr. McClintic: Medical College, $25,000.

Mr. Harrison: You do not include that item in your statement?

The Witness: It was not included.

Mr. Harrison: I suppose for the same reason.

The Witness: For the same reason; the instructions of counsel.

Mr. McClintic: And that was for construction, you said, in Richmond.

Mr. Harrison: He said he didn't know what it was for.

The Witness: I said it was for construction in Richmond.

Mr. Conrad: For construction?

The Witness: Yes, sir.

Mr. Conrad: I thought you were asked the question 779
whether it was for a building and you said you didn't know whether it was a building or not.

Mr. McClintic: The next item is "Experimental Railroad, $10,000." Please tell us where that was constructed.

The Witness: There was expended on account of the experimental railroad, $6,000 in accordance with an act passed March 31, 1850, page 15, for an experimental railroad not exceeding two miles in length between the depot of Richmond and Petersburg railroad, and the depot of Richmond and Fredericksburg Railroad, and between such other points as the Board of Public Works may select, furnishing engines and other necessities.

Mr. Conrad: That is not embraced in your account?

The Witness: It is not.

By Mr. McClintic:

Q. The next item is Blair and Bolling, special service, $200. Do you know what that is?

A. The item is very familiar, but I shall have to look further before I can answer.

Q. You do not include it in your account, do you?

A. I cannot tell whether I do or not without further examination of these detail figures.

Mr. McClintic: If the court please, it is now twenty minutes after ten o'clock, and I will not be able to finish this witness to-night.

The Special Master: I hoped you would be able to get through.

Mr. McClintic: There are two schedules besides this one to examine him about.

Mr. Harrison: Are you going to go through those in the 780
same way that you are going through this one?

Mr. McClintic: This is the only way I know to get the information I want to in regard to these items.

The Special Master: Of course I do not want to direct counsel as to how they should conduct this examination, but I think probably seven or eight of these items would be reconciled by the accountants if they could get together and go over them. If the others are of the same character, I see no reason why they should not have a try at it, and then if there are any others that they cannot agree on we can take those up.

Mr. McClintic: What I want to do is to get something in the record, so we can make our arguments on it.

The Special Master: Probably one-half or two-thirds of these

items have not got to be examined by the experts; this witness will probably have to examine that proportion of them to find out whether he included them in other charges. Perhaps I am putting the proportion too high when I say two-thirds, but I will say a great many of them. All of this could be done by the experts themselves, and they could agree on a great many of the items. Of course, here is your State Convention; that is an item about which you would have a controversy. But there are a great many other items which the experts could probably agree on.

Mr. McClintic: I would like to have a statement of the witness as to what they represent, more than the way it is stated here.

The Special Master: Take this Blair Bolling special ser- 781
vice, $200. If it turns out that is included, you do not care anything about it.

Mr. McClintic: I want to say, your Honor, that this proposition inviting us to work with the experts of the other State is an entirely new proposition to me.

The Special Master: If the other schedules are practically like these, there is no reason why the experts should not dispose of nearly all the items. That will not bind either one of you as to whether the items shall be in or out, but they can tell whether the items here appear in your account under another name.

Mr. McClintic: In connection with that, I want some explanation as to what the items are.

The Special Master: This witness it seems has not had an opportunity to examine the schedule. All he has testified to is from his general recollection.

Mr. Spooner. In some respects that has been pretty definite.

The Special Master: It has been definite in some cases, but on the whole not very satisfactory.

Mr. Harrison: All we want is to have your expert confer with ours and let them see what progress they can make in disposing of many of these items.

Mr. McClintic: We do not want the experts to decide this case, however; we will want to argue it.

The Special Master: The experts will not decide the ques- 782
tion; but the question arises, is this item included, or is that item included, and as to a great many of them the experts are able to tell. As to others, the witness cannot remember. That is very natural, of course he cannot remember. It is a physical impossibility for him to remember, it is asking too much of him. As I say, he can recall with regard to some of these items as to whether they are included or not, but as to others, he has to make an examination in connection with a lot of these items before he can make a statement which is satisfactory. Of course, when he says he thinks it is in or thinks it

is not in, that goes for nothing with me; it is either in or out, and it can be ascertained, and he will have to take the time as to a lot of these items, to say certainly whether they are included or not. So, so long as it is understood that the experts are going to get together and go over these items and see if they can agree as to a lot of them, it seems to me we are not gaining very much now by going over this. If there is an item here that Mr. Dixey has been instructed to leave out, it will be left out, of course; he will not consent to its going in. Then if the plaintiffs claim that it ought to go in, I will hear their argument on that.

Mr. McClintic: I want the information more definite as to what the items are.

The Special Master: When we get them weeded down as to the items of controversy, of course I want on the record the facts in relation to those items, so I can take the facts and your argument, and weigh your argument according to the facts; and the experts among themselves can work out these details. So far as 783
they disagree, that will be entirely open to explanation, and to the production of any facts necessary; but you will be in a much better position to put your facts in when you know what they are than you are now.

Mr. McClintic: I realize that.

838

[*Vol. 7. July 1, 1909. Plaintiff's Revised Exhibit D-1.*]

[The Special Master]: Now, we will proceed under Paragraph 4.

Mr. Anderson: I have here schedule D-1.

The Special Master: The plaintiffs submit substitute schedule D-1. Is that agreed upon as to the computations?

(The exhibit referred to was filed with the stenographer and marked "Plaintiff's Revised Exhibit D-1.")

Mr. Anderson (replying to the Special Master): Not in all 839
details.

Mr. McClintic: That, as I understand it, Mr. Dixey has not had time to go over and check up. It was handed to him on yesterday, and he did not have time to finish it.

The Special Master: Then we will make more progress by laying that aside.

Mr. Dixey: There is an admitted discrepancy there of almost $50,000.

The Special Master: Is that in any one item or several items?

Mr. Dixey: We do not know.

The Special Master: Then shall we lay that aside for the present?

Mr. Dixey: I would rather have you take Mr. Potter's say on that.

The Special Master: The only question I am interested in is whether all the items in this schedule are agreed upon. I understand that they are not.

Mr. Dixey: That is correct.

The Special Master: Now, the next question is whether the experts will get together and make an effort to reach an agreement.

Mr. Harrison: Might it not facilitate matters for your Honor to go ahead and ascertain what are agreed upon? Take this fourth schedule, which relates to the ordinary expenses of the State government, and leaving out the classification and referring only to the question of the amounts of the ordinary expenses, extending over the thirty-seven years involved, there is only a difference, as I understand it, of $50,000. 840

The Special Master: Well, if the experts themselves can get together and settle that, it saves the time of something like ten or fifteen men.

Mr. Carlisle: Is the difference of $50,000 in the total amount, and not a difference of $50,000 in West Virginia's part of it?

Mr. Harrison: It is a case of the amount, no matter what you do with it.

The Special Master: It is immaterial to me. Now, here is $50,000. If you want to reconcile the $50,000 between yourselves, in connection with this schedule, and the experts have gone over it for the purpose of reaching that result—

Mr. Harrison: The difficulty about referring that to the experts to reconcile is that it means a very considerable expenditure of time and labor in running down the items that compose that $50,000, to see what they are.

The Special Master: Let me ask you this. Suppose you put it up to me to settle? Have I not got to run it down the same way? And then six or seven men on each side have to listen to it. Is it not better to let two men take it and try to settle it if they can?

Mr. Anderson: I wished to find out where it was. It may be we will be able to adjust it.

The Special Master: That is my suggestion, that the experts take it up. I am willing to stay here—of course if you do not agree, I am willing to stay here and hear the controversy between all the parties; but my own notion about it is that if there are items of disagreement in this $50,000 and you do not agree to eliminate it among yourselves, that the experts had better make an 841

effort to agree before we take the time of the experts and the time of all counsel to go into the matter fully.

Mr. Anderson: I hope that counsel will be able to eliminate it.

The Special Master: Very well. It it immaterial to me whether the agreement is reached between the counsel or between the experts. Here is the point—

Mr. Anderson: They have been working on that for six weeks, and they have not been able to find out what those accounts are.

The Special Master: That is going to be the question, whether I will have to sit here and listen to the experts on both sides—

Mr. Anderson: That is the reason I suggest we postpone it.

The Special Master: Very well; and not take the time of the Master and all the counsel on either side, unless it appears that the counsel are not able to agree after the experts put in their work and ascertain what the disagreement is. Is that satisfactory?

Mr. Harrison: Yes, sir.

The Special Master: Then we will spend no further time on Plaintiff's Substitute Exhibit D-1.

[*Vol. 7. July 1, 1909. As to Introduction of Further Evidence.*]

875

The Special Master: Then we come to D-1, Plaintiff Revised Exhibit D-1. There the experts, I think, have some computations to make. Have you any evidence to submit in relation to D-1, other than what is in the record?

Mr. Harrison: No other than what is embodied in our schedule.

The Special Master: Unless it should appear that the experts are not able to agree, in which case you would have to submit to me, I suppose, the items of disagreement for me to decide. Have you anything to submit, either of you, under the fourth paragraph, Plaintiff's Exhibit D-1?

Mr. Carlisle: That relates to what?

The Special Master (reading from decree):

"Such proportion of the ordinary expenses of the Government of Virginia since any of said debt was contracted as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of the State of Virginia, with and without slaves, as shown by the Census of the United States."

As to Plaintiff's Substitute Exhibit D-1, paragraph 4 of the Decree, unless the experts are unable to agree on some item now in

controversy, there is no additional testimony to be submitted by either side. Am I correct? 876

Mr. McClintic: Unless there is something overlooked.

The Special Master: I want this distinctly understood. I think I have already stated it a number of times. This hearing is not going to be conducted on the basis of snap judgment against either of you. At the last moment, as far as that is concerned, if either party finds it has left out anything which it thinks seriously or materially affects its rights, I will open the report and see that it goes in. I want to make a report only after having given both parties full opportunity to have all their contentions heard, and if I am satisfied you have left out anything at any time, as I say, I will open the case.

Mr. Harrison: We have nothing in addition to that except what may be explanatory.

The Special Master: In case the experts agree, you have not any additional testimony?

Mr. Anderson: Not as to the amounts, but as to the facts.

Mr. Harrison: That is, in the character of classification.

The Special Master: But until you get the result from the experts, you would not be in a position to go on?

Mr. Harrison: No, sir.

The Special Master: Then, for the purpose of the hearing right now, we will pass paragraph 4.

[*Vol. 7. July 1. 1909. Relating to Differences in Schedules.*]

892

[Mr. Dixey]: I think it will be very much longer than Saturday morning before an analysis could be made of the ordinary expenses and an agreement reached on that.

Mr. Anderson: What is the discrepancy; what is the amount of it?

Mr. Dixey: The balance is about $42,000, but there may be hundreds of thousands of dollars involved in that, and we cannot tell until we make the analysis.

The Special Master: How could there be hundreds of thousands of dollars involved, if there is only a difference of $42,000?

Mr. Dixey: Because you have charges and credits each way, 893 and the difference is only $42,000.

Mr. Anderson: Do you stand by your original schedule? Defendant's Exhibit D-1.

Mr. Dixey: We are here now I understand, for the purpose of reconciling these things. If any errors develop in the course of the analysis, we shall of course want to correct them

Mr. Potter: It will take two months to make an analysis of that account item by item.

The Special Master: There is $42,000 in controversy. The plaintiffs charge you with $42,000 more than you think they ought to.

Mr. Dixey: Yes, sir.

Mr. Anderson: We will accept West Virginia's total rather than have any trouble about that.

The Special Master: Rather than have any trouble about that, Virginia waives that $42,000.

Mr. Anderson: I mean as to that $42,000. We have other figures about which there can be no controversy as to the amount.

Mr. Dixey: That is just the point.

The Special Master: Mr. Dixey's contention is this: That he finds it difficult, I suppose, to apply to any particular item the descrepancy that there may be; is that it?

Mr. Dixey: That is it; that that $42,000 is unlocated.

The Special Master: That is, if it is applied to one item the result may be one thing, and if it is applied to another item the result may be another, and if applied to another still another thing.

Mr. Anderson: I call attention to the fact that I think he is 894
mistaken, because these items have been agreed upon between Mr. Dixey and Mr. Potter; everything has been agreed upon except a discrepancy in the totals of $42,000, and we are willing to accept West Virginia's totals.

Mr. Dixey: I do not know that at this time.

Mr. Anderson: I will read them to you.

Mr. Dixey: Even then I cannot identify them from memory.

Mr. Anderson: I think you can.

Mr. Dixey: No, I cannot. I have had it and gone over it.

Mr. Anderson: Certainly Mr. Scoville can.

Mr. Dixey: Unfortunately Mr. Scoville is ill and is not here.

Mr. Anderson: There is no question that it has been agreed upon between the accountants as to these items between Virginia and West Virginia.

Mr. Dixey: I have not agreed upon that.

The Special Master: Of course the agreement that I ultimately recognize is the agreement between counsel for Virginia and counsel for West Virginia.

Mr. Anderson: I said that they had been agreed upon between the accountants.

The Special Master: In the face of Mr. Dixey's statement that it has not been made, I cannot hold that an agreement has been reached. I cannot report they agree when they do not agree.

Here is the condition that confronts. Here is Mr. Dixey, who 895
is a responsible accountant for West Virginia, and if he tells

me that he does not agree, even if he has heretofore agreed and withdraws that agreement—although of course I do not suggest that that is the fact—I would not be able to hold that an agreement was reached.

Mr. Anderson: Well, we are prepared to prove these items, and by incontrovertible evidence.

The Special Master: I know you are. We have all thought that rather than take the time of all of us by taking your proof and their proof and having me pass upon it, that the wisest thing was to have two men spend their time on it, Mr. Potter and Mr. Dixey, instead of twelve of us or fourteen of us spending our time on the same thing. Now, I have no power to insist on your agreeing. Of course I would be very glad to have you agree if you can. It is entirely a matter for you as to whether you will agree or not. I cannot hold, Brother Conrad, that the experts do agree when they are here and disagree.

Mr. Conrad: I agree entirely in that, but the accountant on behalf of West Virginia stated, as I understood him, in open Court not ten minutes ago that the differences between himself and Mr. Potter amounted to $42,000.

Mr. Conley: $49,000.

Mr. Conrad: Very well; $49,000, or $59,000, if you say so, in favor of the State of Virginia.

Mr. Dixey: May I modify that and say as shown by the schedule presented here to-day?

The Special Master: The amount is immaterial. 896

Mr. Conrad: And the attorney General has stated that and we accept his statement.

The Special Master: You mean that you accept their schedules?

Mr Conrad: Yes, sir.

The Special Master: In full?

Mr. Conrad: Oh, no, the difference. We waive the balance of $49,000, or whatever it is.

The Special Master: What do you say to this suggestion? I suppose the $49,000 may not be attributable to any one item, and of course this is purely a hypothesis on my part; they may contend that it is distributed over various items, and that they cannot make an admission covering it in that way. Is that it?

Mr. Dixey: Yes. There may be hundreds of thousands of dollars involved in it.

Mr. Conrad: We have had that voluntary statement from the accountant for West Virginia, that there may be hundreds of thousands of dollars. We have not heard of it before. We heard it only when the Attorney General of Virginia agreed that he would accept the balance as found by the accountant for West Virginia. Now,

my object in rising to occupy your time is this: We have agreed to all these things, we have agreed to fix the time as 1823 instead of 1820 or 1821; we have agreed to the other items, in the interest of time only—not because we believed they were right and we were wrong. Now, it is proposed again, and I understood that it would be proposed, last night, that there shall be another adjournment of this case. If your Honor has any interest professionally or otherwise that requires your attention away from here, 897
we yield to that, of course; but if there is to be another adjournment, I want earnestly to suggest that that adjournment be to a time when the final argument and submission of this case to you be made. Let the time to which this adjournment is made be occupied, as much of it is necessary, in getting this record into condition; but let the remainder of that time be occupied in the final argument and submission of this case to you.

The Special Master: You mean let the time in the interim be so occupied?

Mr. Conrad: Yes, let the next meeting be the final meeting, wherever it is, New York or anywhere else. If there are any matters of reconciliation of discrepancies to be made there, let that be done before the argument is entered upon; but let it be done on that occasion in New York, or wherever you choose to meet, and when that is done, then let us enter upon the final argument in this case and put it in your hands, so that there may be no other adjournment for the purpose of perfecting this record. This in the interest of time. * * * * *

So that the only schedule that appears to involve the possibility of serious delay is Schedule D, relating to the ordinary expenses of the State Government. There is a difference between the two accountants in the totals, of $49,000, that being Virginia's excess over West Virginia's statement. Now, we say we will accept West Virginiaa's statement. 898 899

The Special Master: In toto.

Mr. Harrison: Yes, sir.

The Special Master: On that proposition?

Mr. Harrison: On that proposition. It has been suggested by Mr. Dixey, the accountant for West Virginia, that he is not prepared to say—

The Special Master: That presents a little different question. The impression I got was you were not willing to diminish your claim by $49,000, but the proposition now is that you will take the schedule presented by West Virginia as true.

Mr. Harrison: Not as to classification.

The Special Master: No, not as to classification.

Mr. Harrison: I think we agree, and probably in an hour we can determine among ourselves.

The Special Master: It does not involve classification. Will you take the schedule of West Virginia as submitted, as to the amount, without binding yourselves as to classification?

Mr. Harrison: We can answer that in a little while, after these accountants see if that is not the fact.

The Special Master: In the first place, I cannot require either of you to agree on either of these things. You are only doing it as a matter of courtesy and to get through with this work; but if West Virginia has submitted a schedule, and as to that Virginia agrees that the amount stated therein is accurat. I 900
will take those amounts as accurate, and as the agreement of both parties. As to the classification, I will hear you about that later. If you are willing to take the classification of West Virginia on those amounts as accurate in amounts, that eliminates that from controversy.

Mr. Harrison: I think that can be done.

Mr. Anderson: We will take West Virginia's account, as far as it goes.

Mr. Harrison: I was going to say as far as it goes.

Mr. Anderson: We have eighteen million dollars in addition.

The Special Master: Those are separate entirely. They include interest.

Mr. Anderson: Yes.

The Special Master: Of course that item we do not require them to agree to.

Mr. Harrison: They do agree on amounts.

The Special Master: Yes. Then it is for me to say, with the evidence in this case, whether that interest will be allowed or not. But you agree on the amounts. All you want to be heard on is the question as to whether it will be allowed.

Mr. Harrison: I was going to make this suggestion. West Virginia's schedule shows $17,582,585.25 of ordinary expenses of the State Government during the period covered by the contracting of this debt, down to 1861. Is not that correct?

Mr. Dixey: No, sir, it is not. We cannot even start out— 901
our schedule shows over $18,000,000 as it stands.

Mr. Anderson: Then you have changed it?

Mr. Dixey: No, sir. Mr. Potter has changed it. Mr. Potter has deducted two items from our schedule and put them in another schedule in another account. Those two items are agreed to, and added to that amount he has there, brings ours. But the whole principle is so different that agreeing to the $42,000 would not reconcile the difference between us; because Mr. Potter takes the original figures and deducts hundreds of thousands of dollars, and then takes our original figures and adds hundreds of thousands of dollars; and

they say the difference is $42,000. It is true, but it does not mean anything.

The Special Master: But if they do this; if they take your schedule in toto, with the amount stated, as a true statement, the only thing left on the schedule is the question of proper classification. It is quite open to Virginia, if they want to do it; if you have submitted a schedule containing items, it is open to you to agree that those items are a truthful statement of those items, and reserve the right as to the question of whether they are properly classified. Now, if there are any details that can be submitted by the experts on either side that will illuminate the question as to whether or not they are properly classified, that is something you know more about than I do; but if there are any other things to be determined by Acts of the Legislature and not by experts, those are things that I will have to pass upon myself, probably. Do I make myself clear?

Mr. Dixey: Yes, sir. 902

The Special Master: And if Virginia is willing to take that position under this paragraph, to agree that these amounts are accurately stated, I will enter it upon the record; and later I will hear you upon the proposition of classification. If you need any additional evidence to establish your contention, pro or con., that evidence I will hear now. It seems to me that simplifies the whole situation, if Virginia is willing to take that course.

Mr. Harrison: Do you deny that your statement of the ordinary expenses, after deducting school expenses, leaves $17,000,000?

Mr. Dixey: That was not your first statement. I do not deny that.

Mr. Harrison: Well, I say we accept that statement, so far as it goes, as being accurate; and that is what he shows. The difference, if your Honor pleases, includes items that they have excluded and we have included.

The Special Master: What are those items?

Mr. Harrison: As to those items, they are in agreement about, as I understand.

The Special Master: As to amounts?

Mr. Harrison: As to amount. It is purely a question of whether they shall or shall not be included. Let me go a little further.

The Special Master: Very well.

Mr. Harrison: We show our expenses, our share of the expenses of the State Government, for the period included was $37,875,000 and something.

The Special Master: Some $18,000,000 of which is interest? 903

Mr. Harrison: Some $18,000,000 of which they agree upon as the amount, and some million or more of several items are agreed upon as to the amount.

The Special Master: That eliminates that.

Mr. Harrison: It is merely a question of whether they shall be or shall not be included in a statement of ordinary expenses.

The Special Master: Upon the question of whether they ought to be or ought not to be included, is there any information that the experts have gathered that will illuminate that question?

Mr. Conrad: I think it is purely a question of law.

The Special Master: You understand the question. Of course, if there are any computations that have a legitimate bearing upon that proposition, one way or the other, we want them. If there are not, we will not spend any more time on those items. For instance, $18,000,000 interest. If they both agree that that is the sum to be charged, if any sum is charged, that ends that so far as any testimony in this case is concerned—unless you have something in the way of legislation or anything else, whatever it is, that tends to show that it ought not to be included, or the other side has anything tending to show that it ought to be included; if you are willing to agree to the schedules submitted by West Virginia, with the exception of a number of items, the amount of which you agree to, I do not see any difficulty in reaching an agreement on this proposi- 904
tion. Then we bring the controversy down to these items as to which you agree upon the amounts, but do not agree as to whether they shall be included.

Mr. Harrison: That is a matter of argument.

Mr. Conrad: That would be for the argument.

The Special Master: It is a matter of argument in the end, but, *quo ad*, is there any evidence on that that you desire to introduce?

Mr. McClintic: Before we go on, I have had no opportunity to look at that. I understand it was only given to Mr. Dixey yesterday.

The Special Master: Very well. Let me see if I understand it. You have presented a schedule here by Mr. Dixey, to which he has sworn, as being true, and I have no doubt he believes is true, and it states the facts from your point of view. They present a schedule on the same subject matter. In their schedule they include items which you do not include, and which you say ought not to be included; but as to these items Mr. Dixey agrees that they are properly stated.

Mr. Dixey: I do not know that I do. I have not had time to examine the schedule.

The Special Master: I perhaps was assuming too much. While it may be embarrassing, we have to take these things as we find them here. I cannot compel you people to agree. I can do this. West Virginia submits a schedule under this paragraph. If Virginia sees fit to agree to the accuracy of all the items in that schedule, I

will enter upon the record that the parties agree as to those 905
items, in the amounts. Now, in addition to that West Virginia
or Virginia does not agree to the classification contained in that schedule and wants to produce any evidence sustaining her contentions, and if she does want to produce such evidence I will hear it. If they do not agree and they think the evidence is already in, that settles that. If, on the other hand, the other side want to submit additional evidence to sustain their schedule, to sustain their contention that their schedule is correct, I will hear that. If they have not anything to submit as to the items in your schedule to which Virginia agrees, there is no necessity for any further controversy because there is no disagreement. Now, as to these items. Take, for instance, the interest and the half dozen other items that you say ought to be included and which they say ought not to be included. If you agree on that amount, I will enter that as an agreement. If you do not, I will give Mr. Dixcy time to verify and see if he does agree. Of course, in the absence of their agreeing, we would have to sit here and take the testimony, or I would have to appoint an expert to go over it. I do not suppose anybody expects me to perform the office of expert. Of course, if these experts do not agree, and you do not want to sit here and listen and examine, I would have to submit the matters to an expert who would go into the question and then report to me, and would be subject, of course, to cross examination. It seems to me that is the situation. If Virginia is merely to say that they agree to your schedule under
this paragraph and the amounts stated therein, not binding 906
themselves as to classification, I do not see that there is any further controversy about the amounts.

Mr. Dixcy: There is no schedule in evidence which Virginia could agree to at the present moment. Our original schedule showed a total of over $20,000,000, from which Mr. McClintic withdrew some $2,000,000, leaving about $18,000,000, in addition to that there have been various items agreed upon that have altered some of the items as they appeared in the original schedules. The changes have not been material, but I believe the statement is about $351.00. There are twenty or thirty changes in the schedule as originally presented, I believe, and the new schedule has not been presented in evidence. It was our understanding that it would not be until Virginia and West Virginia agreed on it.

The Special Master: What is the reason the schedule you submitted at the last hearing is not in evidence?

Mr. Dixcy: It has been altered.

The Special Master: Well, I would like to know why the schedule you offered last time is not in evidence?

Mr. Dixcy: It is.

The Special Master: Well, if they see fit to agree to that, how am I going to help that and how are you going to help it?

Mr. Dixey: There was $2,000,000 withdrawn from that at the last hearing.

The Special Master: I don't care whether there was $10,- 907
000,000 withdrawn. *Quo ad,* suppose they withdrew all the others. I knew nothing about the details of this, but if with the exception of the $2,000,000 which they withdrew, they are willing to agree to that schedule, what harm is there in it?

Mr. Conrad: I should like to know on whose behalf and what interest is represented by the counsel accountant?

The Special Master: It seems to me this comes to a simple proposition—

Mr. Carlisle: I would say in behalf of Mr. Dixey that I do not understand that he is undertaking to act as counsel.

The Special Master: I do not understand that he is either, not at all. I don't think that Brother Conrad intended to intimate that Mr. Dixey was transgressing—

Mr. Carlisle: We cannot explain it as well as Mr. Dixey can, very often.

The Special Master: Perhaps they appreciate that Mr. Dixey was handling the matter with considerable intelligence.

Mr. Carlisle: I suppose it is understood that we meet to-morrow morning for the purpose of hearing these two witnesses, unless their depositions are agreed to.

The Special Master: No; I understood that was rather superseded by the agreement that they take those depositions anyway.

Mr. Carlisle: Then, perhaps my suggestion was not appropriate.

The Special Master: If have submitted a schedule here at the last session, which with the exception of an item of $2,000,000 the other side are now ready to agree to—it may be that I do not 908
quite comprehend the full situation, but for the life of me, I cannot see why there should be any further controversy about that.

[*Vol. 7. July 1, 1909. Further Discussion of Differences in Schedules.*]

The Special Master: I would like to make this inquiry. As 912
to Paragraph 4, which involves the schedule we have been talking about, where you eliminate the $2,000,000 item, are the counsel for Virginia prepared now to say that they will take the schedule submitted by West Virginia and agree to the accuracy of all the items stated therein?

Mr. Anderson: We agree to it as far as it goes. The errors in West Virginia's statements are errors of omission.

The Special Master: Will you note the question that I put. Will the counsel for Virginia enter now upon the record the statement that they agree to the accuracy of all the items submitted by the schedule for West Virginia under paragraph 4, the same paragraph as to which Virginia submitted its schedule, Plaintiff's Exhibit D-1? Do you agree to the accuracy of those items? If you do—

Mr. Anderson: We agree to those items as far as they go.

The Special Master: My question does not include any other items. I would like to know without qualification if there is any objection. The question is especially confined to the schedule. West Virginia submits a schedule. It has withdrawn an item of $2,000,000. With the exception of that item, West Virginia stands by the items therein stated as being accurate in amount. Does Virginia now agree to the accuracy of that schedule, in amount, so far as that schedule goes?

Mr. Anderson: So far as the amount goes.

The Special Master: That may be entered upon the record, that Virginia and West Virginia agree upon the schedule submitted by West Virginia, marked "Defendant's Schedule D-1," 913 that the amounts stated therein, in that schedule, are correctly stated; and the Master will report that the parties agree thereto. Now, that eliminates that schedule, so far as that goes.

Mr. Conley: But as modified at the time of its introduction.

The Special Master: Oh, certainly. It does not bind either party to the schedules, but it does eliminate every item in that schedule from now, except that $2,000,000 item. Now, there are items that Virginia claims ought to be included in that schedule. I will read them. Is this it (indicating)?

Mr. Harrison: Yes, sir.

The Special Master: Now, what are the items that you claim, Brother Harrison, ought to go in here?

Mr. Harrison: I think it would be better to let Mr. Potter take the stand and explain this now.

The Special Master: Does page 2 include all the items that are not included in the schedule?

Mr. Harrison: Pages 3 and 2.

The Special Master: Just give me the items that you claim should go in, which they have not included. Tell me where they are. First, in the item of interest.

Mr. Harrison: No. Look at the top of page 2. We are taking up the items of page 2 and 3 that do not embrace the interest. That is on a different page, which we call your attention to presently.

The Special Master: Yes.

Mr. Harrison: Now, you will observe that the first item on page 2 of our schedule, substitute, is dependent on original totals, deducting school commissions. They have deducted from their ordinary expenses school commissions. 914

The Special Master: There is an item of $2,000,000—

Mr Carlisle: No, that is $860,000. That is part of that.

Mr. Harrison: They did deduct, in all, $2,000,000. I think I had better let Mr. Potter explain that.

The Special Master: All right.

Mr. Harrison: At all events the figures following there will show. That item, if your Honor please, is the ordinary expenses of the Government, total amount shown, according to defendant's exhibit, revised exhibit. Now, we say that is incorrect in so far as it does not include other items that ought to be included as ordinary expenses.

Mr. Carlisle: You have agreed to our items?

The Special Master: We have agreed to the items, yes. What I want to find out is the item he says should be included.

Mr. Harrison: The first is tobacco receipts deducted by the defendants from ordinary expenses, amounting to $353,123.96.

The Special Master: Please step around here, Mr. Dixcy.

Mr. Harrison: No, let Mr. Dixcy say whether that is not correct.

The Special Master: You have not included that. They think it ought to be included. 915

Mr. Harrison: You have taken credit for it where they ought not to have taken credit for it, and we are putting it back. You are trying to take credit for it.

Mr. McClintic: No, we are not taking credit for it.

Mr. Harrison: I ask Mr. McClintic if I am to understand him to say that that item was not taken account of by West Virginia at all.

Mr. McClintic: Let the expert testify.

Mr. Harrison: You are withdrawing your remark?

Mr. McClintic: No, I am not withdrawing anything: I simply don't want to get into a controversy.

The Special Master: Mr. Dixcy, please state whether or not the amount of $353,123.96, which appears in the plaintiff's substitute Exhibit D-1, is a correct statement of tobacco receipts during the period.

Mr. Dixcy: May I ask a question preliminary to answering that? The original figures in this schedule have been restored.

The Special Master: That does not quite answer the question.

Mr. Dixcy: If it does, yes; if not, no.

The Special Master: Here is a question—and if I do not make it plain, say so. I will try to make it plain. The question is whether the item of tobacco receipts, $353,123.96, which 916

appears on page 2 of Plaintiff's Substitute Exhibit D-1, is accurately stated in amount.

Mr. Dixey: It agrees with the amount in Defendant's Exhibit D-1 as originally introduced.

The Special Master: You may eliminate that suggestion and answer the question just as I asked it. I do not want it confused that way. Is the amount of $353,123.96 the correct aggregate?

Mr. Dixey: I don't know, Mr. Littlefield.

The Special Master: Have you not got it in one of your schedules?

Mr. Dixey: There are two figures here, one the original figure and one the adjusted figure.

The Special Master: What is your original figure?

Mr. Dixey: The original figure was that amount.

The Special Master: The original figure made by you?

Mr. Dixey: Yes.

The Special Master: Intended to be true?

Mr. Dixey: Yes, sir.

The Special Master: Was it true?

Mr. Dixey: We believed it to be so.

The Special Master: Do you believe it to be true now?

Mr. Dixey: There have been adjustments made—

The Special Master: Do you believe it to be true now? You said it was true; do you believe it to be true now? If you do, that settles that. If you do not, please say so.

Mr Dixey: I do not think that is the correct figure now.

The Special Master: You do not think it is? 917

Mr. Dixey: No, sir.

The Special Master: On revising your notes and figures, you have discovered an error?

Mr. Dixey: Yes, sir.

The Special Master: What is the amount of the error?

Mr. Dixey: The revised figures are $346,560.65.

The Special Master: Then, as to that item, you do not agree, and you want to change your original testimony, do you not? You first testified that that item was correct, that the figures $353,123.96 was correct. Did you or did you not?

Mr. Dixey: Yes, sir; that was the original testimony.

The Special Master: Now, then, since then you have discovered that you made a mistake. Is that right?

Mr. Dixey: Yes, sir.

The Special Master: Very well. We will leave that out. Now, what is the error?

Mr. Dixey: $346,560.65, as I have it.

The Special Master: Are you satisfied that that amount is correct?

Mr. Dixey: No, sir; I am not. That was to be compared with Mr. Potter, and I am not entirely sure that it has been so compared.

The Special Master: Well, I will ask Virginia if Virginia is willing to agree that $346,560.65, now changed by Mr. Dixey, is the accurate statement of the amount. Are you willing to agree to that?

Mr. Harrison: No, sir; we do not agree to that because
we have already compared it with his chief of staff and 918
have ascertained that the $353,000—

The Special Master: We cannot discuss that, then. I cannot compel you to agree. It is open to you on cross examination to ascertain why the change was made. Take the next item, "Constitutional Convention."

Mr. Harrison: Before that, I would like to ask Mr. Dixey what he did with that in his account.

Mr. Dixey: I understood that there was a tobacco warehouse included originally, about $4,000, which was deducted, and I think that that was agreed upon between Mr. Potter and Mr. Scoville.

Mr. Harrison: But that does not answer the question. Do you not take credit for $353,123.96 in your account by deducting those tobacco receipts that go to ordinary expenses?

Mr. Dixey: On the original schedule, yes, sir.

The Special Master: That will show.

Mr. Harrison: You do do that?

Mr. Dixey: Yes, sir.

Mr. Harrison: Where did the receipts come from; where were they derived?

Mr. Dixey: From the inspectors of tobacco, received from the inspectors of tobacco, less certain amounts that were paid out and expenses of the Commissioners, refunds, and amounts paid for burnt tobacco; and the balance was that amount.

Mr. Harrison: Where were those warehouses located?

Mr. Dixey: They were located all over the State.

Mr. Harrison: Were any of them located in the territory now constituting the State of West Virginia?

Mr. Dixey: Not that I recall, no, sir.

Mr. Harrison: Why, then, do you deduct receipts of to- 919
bacco as a proper credit on the total of ordinary expenses of the State government?

Mr. Dixey: These items were all gone over in conference with counsel and that was by instruction of counsel.

Mr. Harrison: What have the receipts that the State may have derived from her connection with the tobacco warehouses located in the present State of Virginia got to do with West Virginia's fair proportion of the ordinary expenses of the State government?

Mr. Dixey: Well, they were the general receipts that seemed to

belong to the State as a whole, and we thought it was the best way to apportion them—simply to deduct them from the ordinary expenses.

Mr. Harrison: West Virginia takes credit for something that Virginia received into her treasury—

Mr. Dixey: This is not a credit to West Virginia.

Mr. Harrison: Does not West Virginia take credit for it?

Mr. Dixey: Not for that.

Mr. Harrison: Have you not deducted that from your total ordinary expenses?

Mr. Dixey: Yes, sir.

Mr. Harrison: Is not that taking credit for it?

Mr. Dixey: No. sir; certainly not. West Virginia gets credit for only her proportion of it, that comes from the total of all the ordinary expenses.

Mr. Harrison: I understand. I say that diminishes the total of the ordinary expenses, does it not?

Mr. Dixey: Yes, sir; but West Virginia did not get credit 920
for it, but only a part of it.

The Special Master: Except her pro-rata share, and your theory is that that should be deducted in order to get the net?

Mr. Dixey: Yes, sir.

Mr. Harrison: And you say you got that from conference with counsel?

Mr. Dixey: From a conference with counsel, yes, sir.

Mr. Harrison: I want to remind you of the statement that Mr. McClintic made at the bar a few moments ago, that there were no warehouses located in West Virginia and of course West Virginia had nothing to do with receipts from tobacco warehouses.

Mr. McClintic: I am not testifying.

The Special Master: I do not understand that Mr. Harrison claims that this was chargeable to West Virginia *per se*, but in getting at his total of ordinary expenses covered over the whole State, that it is proper to deduct this. That is his theory. He deducts this to get his net expenditures. Whether there is legal foundation for it, of course is another proposition.

Mr. Harrison: As to that, Virginia takes no account of that as having any proper place in the statement of the ordinary expenses, and in order to restore the status of the ordinary expenses to the figures that she thinks are correct, she puts that item back. West Virginia having taken it off she puts it back in that 921
column.

The Special Master: That is, West Virginia practically undertakes to make a wash entry of it. that is, if she is allowed the credit you want to make the charge, one counterbalancing the other?

Mr. Harrison: Yes.

The Special Master: I understand that; but the thing we are interested in particularly now is the amount. Of course, Mr. Dixey has changed the amount to $346,000. Now, what I would like to know is whether Virginia agrees to that.

Mr. Anderson: No, because the other amount has been deducted by West Virginia. We do not, for that simple reason.

The Special Master: I understand, but that amount of $353,123.96 would go out altogether, and in its place would be the $346,560.65.

Mr. Anderson: That would require a re-statement of their whole account, because they have deducted it.

The Special Master: But that could be arranged without any trouble.

Mr. Anderson: Of course; but the way to correct that is to charge back the same amount.

The Special Master: That is true. I understand Mr. Dixey to now say that instead of the item being $353,000 it should be $346,000, and he wants to credit the general sum of ordinary expenses with that and reduce it and make it net. Now, are you willing to agree that $346,560.65 is the amount of the tobacco receipts, either to be credited or charged, as the case may be. If they credit it, you say they ought to charge it, so as to offset it. 922
Are you willing to agree that the amount shall be $346,560.65?

Mr. Harrison: It involves this. There would be a difference of some $6,000 or $8,000, and that $6,000 or $8,000 consists of items that they have located elsewhere, and have taken credit for elsewhere. It is the sale of a warehouse in Virginia—

The Special Master: How much did you receive for it?

Mr. Potter: $5,880.81.

The Special Master: Are you able to state whether that $5,880.81 is correct, the sum allowed on account of the sale of the warehouse?

Mr. Dixey: I have not the figures here.

The Special Master: Where are your working papers?

Mr. Dixey: Downstairs.

The Special Master: Bring them up, please.

Mr. Carlisle: I may be mistaken, but I have understood that the figures in the original account presented by Mr. Dixey, with the exception of about $2,000,000, have been agreed to. Now, I understand this examination to show that they are not correct.

The Special Master: No; what we are doing now, if I understand it, is this. Virginia claims that there should be other items allowed for which they are entitled to charge under so-called ordinary expenses.

Mr. Carlisle: They want an additional item put in. Now they have agreed that the items are correct.

The Special Master: Is it your point that that $353,123.96 923 was included in that schedule as a credit?

Mr. Carlisle: I don't know.

Mr. McClintic: Yes, sir.

The Special Master: And therefore that they agree to it?

Mr. Carlisle: It is credited there.

The Special Master: And having been credited there, you say it ought to be settled?

Mr. Carlisle: They having agreed to it.

The Special Master: Very well. Let me call your attention to the fact that your expert is the man who now disagrees to it.

Mr. Carlisle: He cannot disagree to it.

The Special Master: Very well, then. Mr. Dixey declines to say he would agree to it. He said he testified the other day and wanted to change it. It stood as $353,123.96 and it was your expert that undertook to change it to $346,560.65. Of course if you want to ride over your expert, you have a right to do so.

Mr. Carlisle. Mr. Dixey made his answer in response to a question put by the other side.

The Special Master: No, it was in response to a question by me.

Mr. Carlisle: By somebody.

The Special Master: If you say, Brother Carlisle, that counsel for West Virginia thinks that the item of $353,123.96 is correct and should go into the accounts, that settles it.

Mr. Carlisle: I have not said it was correct, for I don't 924 know anything about it. I have simply said that the parties on the other side agreed it was correct, and I thought the record showed that the amounts and the items were correct.

The Special Master: It did show it until your own expert declined to accede to it.

Mr. McClintic: It is incorrect, because they have deducted a building and certain accounts—

The Special Master: We will get there in a moment. Send down for your notes, Mr. Dixey, please. Of course, if the point is made that that is included as a credit and that is binding on the parties, of course that eliminates it.

Mr. Carlisle: Suppose we want to prove something different from that account; would you be willing to do that—

The Special Master: No sir.

Mr. Carlisle: That is what they are trying to do.

The Special Master: Then that settles that, and we will not discuss it any longer. The fact about it is, as it stands now, the

objection to the accuracy of this item comes from Mr. Dixey and nobody else.

Mr. Carlisle: In response to a question.

The Special Master: Certainly, in response to a question.

Mr. Carlisle: I thought when Mr. Harrison began the examination and when your Honor put that question to Mr. Dixey that he was trying to show that some item had been omitted.

The Special Master: I thought so too.

Mr. Carlisle: And I understand the agreement to be that the items there are correct items and that the amounts are correct, but if there are any items that ought to be put in—

The Special Master: I understood it that way, but it turns 925
out we were in error and this item appeared in the schedule prepared by your accountant as a credit. I have misunderstood that just as you did. If you take the point that having appeared in that schedule as a credit, $353,000, that that is an agreement on that item, I suppose that is agreeable to the other side.

Mr. Carlisle: Yes; but I would have objected immediately if I had not understood he was trying to introduce some new item.

Mr. Anderson: We agree as to the amount, but not as to the application.

The Special Master: We can settle that now. Mr. Carlisle makes the point that this schedule to which you agreed contains this item of $353,000. Do you object to that?

Mr. Harrison: We do not agree that it is a proper item of credit.

The Special Master: That is not the question. The question is as to the amount.

Mr. Harrison: Yes, sir.

The Special Master: Very well. There is no more controversy about the $353,000. You may record the amount as agreed to by both parties and was included in the previous schedule in accordance with the suggestion of Mr. Carlisle.

Mr. Anderson: We never agreed it was a proper credit.

Mr. Carlisle: Whether proper or improper, you have agreed to it.

Mr. Harrison: Oh, no.

Mr Anderson: I cannot allow the remark made by Mr. 926
Carlisle to go unchallenged. We did not suppose we were to be led into a trap. We agreed as to the amount and did not agree that there were not any set-offs against it, and errors in the method by which that result was reached—

Mr. Carlisle: If there was error in the account, then they were not correct and your agreement was wrong. You said they were correct.

The Special Master: The agreement went so far as to agree to the accuracy of the items and the amount stated therein, and it did

not go so far as to bind either party on the question of classification.

Mr. Carlisle: No, sir; not at all.

The Special Master: And as to whether the items were or were not properly charged, I think I have stated that as much as fifteen times, and so many times I can re-state it as often as may be necessary for my own illumination, I do not intimate that anybody else needs to be illuminated about it.

Coming to the next item, Constitutional Convention, $258,906.28. I would like to ask Mr. Dixey if that is correct.

Mr. Dixey: $258,000, yes, sir.

The Special Master: That is agreed to by both parties as correct in amount. Do you have any objection to that?

Mr. Anderson: No, sir.

Mr. McClintic: No sir. 927

The Special Master: The next item is, "Slaves. Cost of Slaves transported and executed, $311,168.35." Is that item correctly stated in amount?

Mr. Dixey: (After referring to memorandum) $311,168.35.

The Special Master: That item is also agreed to in amount?

Mr. Anderson: Yes, sir.

The Special Master: The next is "Boundary Line, $16,704.78." Is that agreed to in amount?

Mr. Harrison: That is the aggregate of several boundary lines.

Mr. Dixey: No; it is given in one here, $16,704.78.

The Special Master: Is that agreed to?

Mr. Dixey: That is correct.

Mr. Anderson: Yes, sir.

The Special Master: That item, then, is agreed to by both parties?

The next item is "Maps, Commonwealth and Board of Public Works, $16,628.04 and $11,446.48;" making a total of $28,074.52.

Mr. Dixey: That is correct.

The Special Master: Is the amount of that item agreed to by both parties?

Mr. Anderson: Yes, sir.

Mr. Dixey: Yes, sir.

The Special Master: The next is "Deaf, Dumb and Blind Institution, 1845 to 1860."

Mr. Dixey: I will have to ask you to wait a moment. (Continuing after referring to memorandum.) We do not agree on that.

The Special Master: What is the difference, please?

Mr. Dixey: Well, they have got a total of $80,661.94. There is a difference of $20,000.

Mr. Potter: That is through the Literary Fund. 928

Mr. Dixey: I did not recognize it immediately. It can be reconciled, but we do not agree.

The Special Master: How about that? Is West Virginia willing to agree to—what is the sum that you make it?

Mr. Dixey: What became of that other $20,000?

The Special Master: No matter about that. What do you say you are willing to agree to?

Mr. Dixey: We have $100,661.94.

The Special Master: You have $100,000 and they have $80,000?

Mr. Dixey: I say we have it. It is merely a memorandum on our part. It has never been introduced in evidence as part of the account.

The Special Master: What objection, then, is there to agreeing that the amount of $80,000 is the correct amount of the item? You make it more; they simply claim that. If they are willing to agree to your item of $80,000, that ought to settle that.

Mr. McClintic: We will agree to that being the amount.

Mr. Anderson: The other $20,000 we thought ought to be struck out.

The Special Master: Then the amount of $80,661.94 is agreed to?

Mr. Anderson: Yes.

The Special Master: The next item is "International Ex- 929 changes, $2,836.19." Is that agreed to as to amount?

Mr. Dixey: That is right.

The Special Master: That item is agreed to as to amount. The next item is, "Over-payment of Treasury Note, $50." I suppose that item is agreed to in amount?

Mr. Dixey: $50 is right.

The Special Master: Let it be recorded that that is agreed to.

The next item is "Printing Treasury Notes, $375.74." Is that agreed to as to amount?

Mr. Anderson: Yes.

Mr. McClintic: Yes.

The Special Master: That is agreed to.

The next item is "Loss account of Counterfeit Money $190." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes.

The Special Master: That is agreed to.

The next is "Virginia Military Institute, Additions and Improvements to Buildings, etc., $151,000." Is that amount right?

Mr. Dixey: $151,000 even is right.

The Special Master: That amount is agreed to by both sides, as to the amount?

Mr. Anderson: Yes.

Mr. Dixey: Yes.

The Special Master: "University of Virginia, Water Supply, $25,000." Is that amount agreed to? 930

Mr. Dixey: $25,000.

The Special Master: Let the record show that that amount is agreed to.

The next item is "Improvements, Public Square, and Improvements, Capitol Square, $1,456.91 and $12,278.47." Is that agreed to as to amount?

Mr Dixey: That is right.

Mr. Anderson: Yes.

The Special Master: The next item is "Fugitive Slave Expenses, $701." Is that amount agreed to?

Mr. Dixey: Take those items, that $701 and that $1,500; I have it in one.

The Special Master: You have $2,201?

Mr. Dixey: Yes.

The Special Master: Is that agreed to as to amounts?

Mr. Dixey: Yes; that is right.

The Special Master: The next is "Penitentiary Lot and New Hospital Building, $17,947.48." Is that agreed to as to amount?

Mr. Dixey: Yes.

Mr. Anderson: Yes .

The Special Master: The next item is "items of Indian defense in 1834, 1835, $754." And the next item is calling out the militia at Wheeling in 1838, $1,099. Those two items together make $1,853. Is that agreed to as to amount?

Mr. Dixey: We have not got that, $1,853.00; we will have to make further investigation.

The Special Master: How near to it have you got it?

Mr. Dixey: Total $1,099. 931

The Special Master: You have not got the $754?

Mr. Dixey: We do not locate it.

The Special Master: Well, the amount of the item $1,099, for calling out the militia at Wheeling in 1838 is agreed to?

Mr. Dixey: Yes.

The Special Master: That leaves $754?

Mr. Harrison: You have not that item at all?

Mr. Dixey: We do not locate it.

The Special Master: We will not wait for that.

Mr. Potter: It is probably included in the expenses of old wars.

Mr. Dixey: We can probably locate it.

The Special Master: The next is "Medical College of Virginia, Additions and Improvements to Buildings, etc., $25,000." Is that agreed to in amount?

Mr. Dixey: That is right.

The Special Master: That is agreed to.

The next is "Attorney General's Fees for prosecuting Selden Withers & Co., $500."

Mr. Dixey: Yes; $500.

The Special Master: That is agreed to as to amount?

Mr. Dixey: Yes, that is correct.

The Special Master: The next is "Eastern and Western Asylums: Additions and Improvements to Buildings, $363,845.56; and Support, $7,450.01; making a total of $371,295.57. Less buildings, original, $27,000, leaving $344,295.57." The first item is additions and improvements, $363,000. You have it right there, have you not?

Mr. Dixey: Yes. I have got to locate it. I have it, $371,295.57. They deduct buildings, $27,000, which I do not 932
locate immediately in my figures here.

Mr. Potter: That is included in the $371,000 but has been deducted.

The Special Master: Then, is it proper to say that the item of $344,000 is agreed to as to amount, after making a deduction of $27,000?

Mr. Dixey: Without knowing that there are not more buildings in there, I could not say.

Mr. Anderson: That is the original asylum.

The Special Master: Shall we mark that item as agreed to in amount?

Mr. Anderson: You can mark the $371,000 agreed to, if you want to. Mr. Scoville knew about that.

Mr. McClintic: Mr. Scoville became ill and had to leave.

The Special Master: Of course we are very sorry, but we cannot help that. Do you feel authorized to say that $344,000 is correct?

Mr. McClintic: I could not say.

The Special Master: Mr. Dixey agrees to the $371,000, and there is deducted $27,000 for the original buildings—

Mr. McClintic: I presume that is correct. Mr. Dixey thinks that possibly there are some more buildings—

The Special Master: Suppose we have this entry made as to that. That item is agreed to subject to the right of West Virginia to show that there are additional credits that should be deducted from the item. Is that agreeable? 933

Mr. McClintic: Yes, sir.

The Special Master: The next item, "Gun House at Alexandria, $900." Is that agreed to as to amount?

Mr. Dixey: $900 is correct.

Mr. Anderson: Yes.

The Special Master: The amount of $900 is agreed to.

The next item is "Cannon House, Surry County, $110." Is that agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next is "Gun House for Richmond Artillery, Act of March 11, 1835, $1,079.09." Is that correct as to amount, and is it agreed to as to amount?

Mr. Dixey: That is correct as to amount.

The Special Master: The next item is "Sundries, B. P. W. Expenses, as follows: Legal expenses, $2,024.97."

Mr. Dixey: We do not agree as to that, by a small amount.

The Special Master: How much—less than $2,000?

Mr. Harrison: Why don't you agree?

Mr. Dixey: I cannot say immediately. We have $38,461.62.

The Special Master: You mean as the aggregate of those various items?

Mr. Dixey: I can explain—

Mr. Potter: $1,668.12 for the expenses of the agent to London. (Mr. Potter read some other figures from a memorandum.)

The Special Master: Then that leaves that amount?

Mr. Potter: Yes.

The Special Master: Then that is agreed to as to amount? 934 How about this interest on the public debt, amounting to $18,574,747.84. Is that agreed to as to amount?

Mr. Dixey: That is correct.

The Special Master: Now, are there any other items which Virginia claims which are not included in the schedule?

Mr. Anderson: No.

The Special Master: Are there any items which West Virginia claims which are not included in the schedule submitted at the previous hearing, that should be added to the schedule?

The question was, Brother Carlisle and Mr. Attorney General, whether under this paragraph there were any items that West Virginia claims should be taken into account in addition to those that they have in their schedules that we have just been over, items that Virginia claims should go in, and Mr. Dixey is inquiring—

Mr. Anderson: There are none to be included, none others to be included.

The Special Master: Then, so far as accounts are concerned, and items on those accounts and their amounts, the case is closed under Paragraph 4, and I am now ready to hear anything that may be offered by either party for the purpose of establishing their contention that these items should be included or should not be included, and Virginia may proceed.

[*Vol. 7. July 2, 1909. Relating to Trans-Alleghany Lunatic Asylum.*]

Mr. Anderson: The accountants have reconciled several of these items.

(At this point the witness, Judge McWhorter, was excused.)

The Special Master: Do you recollect the paragraph under which there were two items? 965

Mr. Dixey: I think one was $27,000.

The Special Master: And the other was $700—

Mr. Dixey: The $27,000 is correct, so far as it goes, but there were other buildings in there.

Mr. Harrison: This is schedule four, ordinary expenses.

Mr. Dixey: But it does not include all the buildings.

The Special Master: Now, as to that item, what is the reason—what schedule is that?

Mr. Harrison: That is schedule D-1.

[*Vol. 7. July 2, 1909. General discussion. Direct Examination of A. G. Potter.*]

The Special Master: The next paragraph, Schedule D, relates to the ordinary expenses. That was the paragraph as to which there were two items. Let me have that schedule. 978

(After examination of schedule). How about D now, Plaintiff's Substitute Exhibit D? Are you agreed on that, Mr. Dixey?

Mr. Dixey: Not including that item of the Eastern and Western Asylums, including that credit of $27,000. The credit is right, so far as it goes.

The Special Master: Just say that on Plaintiff's Substitute Exhibit D-1 the item of Indian defense in 1834, 1835, $754, is agreed to. Also let the record show that West Virginia contends that in the items relating to the Eastern and Western Asylums the total of $371,295.57 should be diminished by more than $27,000, because they contend that there was more than that expended in the construction of the original buildings that went into the first total.

Now, you have not been able, Mr. Dixey, to get your details, to state how much that would be?

Mr. Dixey: No, sir.

The Special Master: What do you say about there being additional buildings, Mr. Potter; have you investigated that?

Mr. Potter: Yes, sir.

The Special Master: Were you able to find anything additional in the line of original construction?

Mr. Potter: Not in the line of original construction, but 979
there were buildings added from time to time.

The Special Master: I suppose Mr. Dixey would contend that if they added a wing that would be in the nature of original construction?

Mr. Dixey: Yes, sir.

The Special Master: Now, take the $27,000, Mr. Dixey, that from time to time additions were made, which should be considered as the original construction. You say there were—

Mr. Potter: Yes, sir.

The Special Master: How much do you think they aggregate?

Mr. Potter: I cannot tell.

The Special Master: How much do you think, Mr. Dixey?

Mr. Dixey: A large sum; I could not say how much.

The Special Master: Well, what do you mean by a large sum?

Mr. Dixey: I could not tell you. We did not go into that.

The Special Master: We will not take time this morning to go over that.

Mr. Dixey: We can reconcile those later, Mr. Potter, and I can reconcile that.

The Special Master: That item is left with the understanding that Mr. Potter and Mr. Dixey report to the Master just exactly what those additional expenditures were, and the circumstances under which they were made, and that the Master will take the report made by them as to that item as the agreement of the parties, he to determine whether they are in the nature of an original expenditure and to be deducted. Of course you are to be heard 980
on that proposition. There is no sense in spending time discussing that. That is simply a question of judgment as to whether it is or is not. That is entirely for me to say, when we get to it. That takes care of that item.

The parties are bound by what these experts report to me, and I say whether the $27,000 shall be increased or not. That is just exactly as if we spent a week here talking about it, and just as good as to spend more time about it.

Now, then, take the next schedule.

Mr. Anderson: No; there is a very important matter there, the apportionment of the ordinary expenses of the government.

The Special Master: That is in the revised—

Mr. Anderson: No, sir—

The Special Master: Are these the results of the revised computation predicated upon the agreement entered into yesterday?

Mr. Anderson: No, a more important matter is this—

The Special Master: What is it?

Mr. Anderson: There was a misapprehension on the part of the accountants as to the principle upon which the apportionment shall be made, and the decree directs the apportionment to be made as to aggregate population and as to with and without slaves. 981

The Special Master: I do not make any apportionment; I simply report facts.

Mr. Anderson: The decree directs that apportionment be made as to population.

The Special Master: No, sir; I simply report the facts and what the decree does later on, none of us knows.

Mr. Anderson: I do not mean the court decided it.

Mr. Carlisle: You said they directed it to be done.

The Special Master: I report the amount of the ordinary expenses on the basis of the Virginia population with and without slaves. That is a matter of computation, as shown by the census.

Mr. Anderson: You have to make that?

The Special Master: Yes.

Mr. Anderson: The decree says it shall be done on the basis of the average total population of Virginia, with or without slaves.

Mr. Carlisle: Where?

Mr. Anderson: In the 4th Section.

Mr. Carlisle: It does not. We do not say on what basis it shall be made. The court may hereafter determine that.

Mr. Anderson: I do not say the court has decided which shall be done.

Mr. Carlisle: You did say that.

Mr. Anderson: I beg your pardon. The court has not decided anything upon that.

The Special Master: Please bring my attention to specific items.

Mr Anderson. The decree directs this apportionment to be made on the basis of average total population with and without slaves. Now, in making the computation and apportionment, 982 the accountant made the mistake of taking the census at the end of each decade; that is, for the years 1823 to 1830 he took the census for 1830; from 1830 to 1850 he took the census for 1840. The purpose of the court evidently was to come as nearly as possible to the actual population for each year for which these expenditures were made. Now, what the accountant has done, you will observe, is to ascertain the average population for each decade.

The Special Master: Here is a sheet of paper that you gave me, marked "Ordinary Expenses, March 23 to December 31, 1860," which is the schedule you are now discussing?

Mr. Anderson: Yes, sir.

The Special Master: Has this been submitted to the other side?

Mr. Anderson: No, sir. This was made up only last night.

The Special Master: So it has not been submitted long enough for them to tell whether it is correct or not. We do not have to discuss that, because the whole thing is a matter of computation and incompetent. What I have to say is that if Mr. Dixey can take that and make his computation and report to me whether he agrees—

Mr. McClintic: When he has time to go over it.

The Special Master: Surely. If he does not agree with Mr. Potter, I will get an expert and have him make a computation.

Now, is there anything else? I will ask the stenographer 983 to mark this paper.

(Papers handed to the stenographer were filed with the case and marked "West Virginia 1, West Virginia 2 and West Virginia 3.")

Mr. Harrison: We want Mr. Potter to take the stand to explain some of these things.

Whereupon:

ARTHUR G. POTTER,

a witness heretofore sworn in behalf of the plaintiff, was recalled for further examination:

By Mr. Harrison:

Q. You will observe that the Virginia schedule D-1 includes a number of items of expenditures in the State of West Virginia, which according—

Mr. Anderson: Do you mean ordinary expenses?

Q. (Continuing) I mean to say ordinary expenses of Government, which according to our view should be included.

The Special Master: I understand that was suspended yesterday so as to give you a chance.

Mr. Harrison: I would like Mr. Potter to explain the character and circumstances—

The Special Master: Sure. You may now state the reason why you include those items as a proper subject of charge under this, as a part of ordinary expenses of government. You can begin with the first item and go down through, or make a statement covering them all, if you can. Put it in your own way and give all the detail you think necessary, in order that I may have the information necessary to pass upon that question. Begin with 984 $353,123.96, tobacco receipts.

A. We ascertained that the tobacco warehouses controlled by the State were in the following places: Richmond and Petersburg:

Dinwiddie, Campbell, Prince Edward, Mecklenburg, Buckingham, Cumberland, Albemarle, Nelson and Pittsylvania counties, all counties within the present State of Virginia; and that the business being done in Virginia was a proper receipt for the State of Virginia and was not a credit to the ordinary expenses of government. West Virginia took credit for that by deducting from the ordinary expenses.

By the Special Master:

Q. Your contention is that ought not to appear on either side?

A. Yes, sir.

Q. Is that all that is to be said about that?

A. We have agreed as to the total—

Q. I understand that, but is that all that needs to be said in order to show what the record is?

Mr. Harrison: You may state briefly how those receipts are derived. No matter about that; you may cross that question out.

Mr. Carlisle: I would like to have that, then. We would like to know about that.

The Witness: They were receipts for inspection and storage of unmanufactured crop tobacco, whether stemmed or unstemmed; also for the sale of waste and sample tobacco or the tobacco remaining in the warehouse three years. 985

Mr. Carlisle: That is all on that.

The Special Master: They were paid out and afterwards reimbursed by the industry.

The Witness: There were no payments by the State except for the salaries of the inspectors.

Mr. McClintic: Were not the salaries of these inspectors paid and charged in the ordinary expenses?

A. I cannot say that. They were paid by the expenses. They were deducted from the figure that produces this net figure that you have deducted from your ordinary expenses.

By the Special Master:

Q. As I understand it, Virginia contends that this item of tobacco receipts, either disbursements or receipts, does not appear on either side of the account as you have stated it; you have elimimated it altogether?

A. Yes, sir.

Q. And therefore you think West Virginia ought not to be entitled to the credit?

A. Yes, sir.

The Special Master: On that item, have you any further cross examination, Mr. McClintic?

Mr. McClintic: The inspectors were paid by the State, were they not, and paid out of the salary fund?

The Witness: They were paid by any money that happened to be in the treasury. There was no salary fund, as I understand it.

Mr. McClintic: And that money that was paid to them is charged up in the ordinary expenses, is it not?

The Witness: Charged up in the salary account. 986

The Special Master: Although it may be that the State paid the salary of the inspectors of tobacco, and that was included in the first instance in the salary fund, in making that statement you have deducted from the salary fund as a charge the amounts thus paid to the inspectors of tobacco; is that right?

The Witness: Yes, sir.

The Special Master: So it does not appear in their account at all. What about the next item? Please take those items, Mr. Potter, and go through them.

The Witness: Expenses of Constitutional Convention.

The Special Master: Is there anything that needs to be said about that except that it was a constitutional convention to revise the constitution of the State? I suppose I may take judicial notice of that fact?

Mr. Harrison: Two conventions; one of 39-40 and one of 49-50.

The Special Master: Is there anything to say about that, except that there were two conventions?

Mr. Harrison: No.

The Special Master The next item is "Cost of Slaves Transported and Executed." Does not that item speak for itself and show what it was for?

The Witness: Yes, sir.

The Special Master: Of course I will assume that the State was transporting and attending to these slaves. 987

Mr. Carlisle: And the question is whether it was on ordinary expense.

The Special Master: Yes. Unless there is some special fact that should be in the record, we will not have to spend any time on that.

Mr. Anderson: There is nothing except what appears in the Statutes.

The Special Master: Very well.

The next is "Boundary Line." I suppose that was money expended for the boundary line?

The Witness: Several boundary line disputes.

The Special Master: It does not make any difference how many there were; I suppose that speaks for itself. That is all there is of that. I do not think there is anything to be added to that.

The next is "Maps." Commonwealth and Board of Public Works.

I suppose they used a lot of maps and the State paid for them. Is there anything more than that to be said about that?

The Witness: Those were maps—

Mr. McClintic: Big State maps, were they not?

The Witness: Yes, sir.

Mr. Carlisle: They were maps made in connection with the development of the State.

The Special Master: Maps that were thought to be necessary to properly develop the work under the control of the Board of Public Works.

Mr. McClintic: What I wanted to add was that these were State maps, maps of the whole State.

Mr. Harrison: Yes. 988

The Special Master: Well, the maps were State wide and covered the whole State.

The Witness: I don't know that I can state that positively. There may have been some county maps.

The Special Master: Well, it is more to your interest that they cover the whole State. The next item is "Deaf, Dumb and Blind Institution, 1845 to 1860." What is there to say about that?

Mr. Harrison: That has nothing to do with the original cost.

The Special Master: I understand this is a matter of improvements and additions to buildings?

Mr. Anderson: And enlargements.

The Special Master: Of course, that will raise the question as to whether it is an investment in the plant or a matter to be taken into account in the maintenance of the plant. The next is "International Exchanges."

The Witness: That was an amount appropriated for expenses in connection with the exchange of books, works of art, and agricultural implements with foreign governments, 1849 to 1860.

The Special Master: That is justified, I suppose, by the accumulation of public intelligence, which Virginia received as a matter of courtesy from these countries. Can you add anything to that?

Mr. Carlisle: I suppose not.

The Special Master: Does that state the facts?

Mr. Carlisle: So far as we know.

The Special Master: That cleans that up. The next is "Over- 989
payment of Treasury Note, $50." What is that; did they pay a note twice?

Mr. Potter: I don't know that it was one note, but there was a difference of $50 after all the notes had been paid.

The Special Master: They paid it and did not recover it back; is that it?

Mr. Potter: Yes, sir.

The Special Master: Printing treasury notes. Does not that explain itself?

Mr. Potter: That is the cost of printing the treasury notes, yes.

The Special Master: Loss on account of counterfeit money. Can anything be added to that; does that not explain itself?

Mr. Potter: Except the money was received from the Northwestern and Merchants and Mechanics Banks at Wheeling, being moneys received by the treasurer.

The Special Master: When?

Mr. Potter: 1859.

The Special Master: And it turned out that that was counterfeit?

Mr. Potter: And has been charged as a loss in the ordinary expenses.

The Special Master: The State did not collect it. Of course that left the bank liable for it. As a matter of fact, the State lost it and did not collect it. Is that all of that?

Mr. Potter: Yes, sir.

The Special Master: Virginia Military Institute, Additions and Improvements to Buildings, $151,000. Is that criticised because the aggregate, $151,000, may include what would be additions as well as improvements; or is that sufficiently intelligible? 990

Mr. McClintic: It is all buildings, is it not, Mr. Potter?

Mr. Potter: It is buildings, yes. They were all additional buildings.

The Special Master: Then when you say improvements there, all you mean to say is that the addition thus made was an improvement on the original plant?

Mr. Potter: Yes, sir.

The Special Master: It is admitted it was an addition to the buildings?

Mr. Potter: Some of them were very small.

The Special Master: It is a matter of no consequence about their size—

Mr. Conrad: This was a mess hall added to the Institute.

The Special Master: It is quite immaterial what it was.

Mr. Anderson: That was only part of it.

The Special Master: A designation adds nothing to it. Your contention is it ought not to be allowed, and their contention is it should be allowed. Your proposition, Brother Carlisle, is that it was an addition to property which was an investment. I suppose that is your contention. That takes care of that item. The next is University of Virginia: Water Supply. 991

Mr. Potter: An appropriation for the University of $25,000 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water.

The Special Master: Was there a system of water works constructed for the use of the University of Virginia?

Mr. Potter: Yes.

The Special Master: That covers that, then. The only question is whether that is a maintenance charge or an additional charge. Have you any suggestions to make, Brother McClintic?

Mr. McClintic: No, sir.

The Special Master: Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: Improvements Public Square and Improvements Capitol Square. I suppose that is just what the heading shows?

Mr. Potter: Yes. That should read Capitol Square, Governor's Mansion, and so forth.

The Special Master: When you say improvements in Public Square and improvements in Capitol Square, do you mean to say that is simply a question of repairing, keeping in order, or an addition?

Mr. Potter: Here are the items under the second division (referring to memorandum) 1825, for a guard house; 1834 for grading the grounds around the Capitol Square; 1838, water system; 1851, gas system; 1855, approaches—

The Special Master: What are you giving—the years or the amounts? Taking the amounts that make the aggregate $1,-
456,091, I wish you would tell what they are for, and give the 992
amounts that make up the $12,247.

Mr. Potter: I was giving the amounts of the $12,247. I have not the details of that other amount.

The Special Master: If you have not, you will submit that later, and submit it for their inspection?

Mr. Potter: These amounts have been agreed on with them.

The Special Master: I understand, but what I want is this. I suppose both of you may want to discuss the question of whether they may be called a maintenance charge or not. In order to give that, we may want the details showing just what was done. For instance, if any of the moeny was expended by the acquisition of additional land, that might be one thing. If it was expended for the purpose of keeping in repair during that year, that might be quite another thing. Mr. Dixey, you notice what I say about that. You will have no trouble about that?

Mr. Dixey: None at all.

The Special Master: The next is "Fugitive Slave Expenses."

Mr. Dixey: For the arrest of fugitive slaves.

Mr. Harrison: That explains itself.

The Special Master: Have you any suggestion about that, Mr. Potter?

Mr. Potter: Some part of that may be for the apprehension of fugitive slaves in other States.

The Special Master: That distinction is not worth discussing. That is the sum that was spent for apprehending fugitive slaves in Virginia and some outside Virginia. To my mind that is of no consequence, the question as to where they were arrested. I 993 do not think the geographical location of the expenditure would cut any figure whatever in that. Is there anything to be added there? If not, that is enough about that. The next is "Reward, Additional." That is in connection with the same thing, I suppose?

Mr. Potter: Reward for information leading to the conviction of persons carrying off slaves.

The Special Master: That is, rewards paid to people in connection with the enforcement of the fugitive slave law?

Mr. Potter: Yes.

The Special Master: Can there be anything added to that? If not, that is all we want about that. That settles that matter. Now, going to the next one. "Penitentiary Lot and New Hospital Building." Is that all that can be said about it?

Mr. Potter: Yes.

The Special Master: Is there anything further on that, Mr. Potter? If not, we will pass to the next item. "Items of Indian Defense in 1834-1835;" and the next "Calling out Militia at Wheeling in 1838." Can anything be added to that?

Mr. Potter: I think not.

The Special Master: Can you suggest anything that minimizes it? That is 1834, 1835 and 1838.

Mr. Potter: Do not confuse those two. Calling out the militia at Wheeling in 1838 is $1,099.

The Special Master: I am not confusing them. I am simply 994 saying there was $754 expended in 1834 and 1835 in defending against the Indians.

Mr. Carlisle: It was not paid until then, I suppose, although the occasion of the expenditure may have occurred long before then.

Mr. Potter: All I know is the payment was made then.

The Special Master: And the service rendered was sometimes anterior to that. Is there anything to be added to that? If not, we will pass to the next. "Calling out Militia at Wheeling in 1838."

Mr. Potter (reading from memorandum): "For which they should receive the usual pay of the militia when they were in actual service, etc."

The Special Master: Is there anything to be added to that? If

not, we will go to the next item. "Medical College of Virginia, Additions and Improvements to Buildings, etc."

Mr. Potter (again referring to memorandum): "The Act creates, etc. (reading) "the hospital and infirmary for extending the college buildings."

The Special Master: That is undoubtedly additional.

Mr. Potter: The Act is March 1, 1860.

The Special Master: Improvements is used there for suggesting that the addition was an improvement, because, technically speaking, it was an addition. That is $25,000. The next is "Attorney General's Fees prosecuting Selden, Withers & Company." Who were Selden, Withers & Company?

Mr. Carlisle: They were defaulters, New York bankers.

Mr. Anderson: That means prosecuting a claim against 995
them, not criminally.

The Special Master: I understand.

Mr. Potter: It was paid under the Act of December 25, 1859, I think.

Mr. Anderson: And this was paid for conducting the lawsuit.

Mr. Potter: That is right.

The Special Master: The next is "Eastern and Western Asylums; Additions and Improvements to Buildings, etc., $363,845.56;" and "Support, $7,450.01;" making a total of $371,295.57. What is that "Support?"

Mr. McClintic: That is a question that is under dispute. We were speaking about that awhile ago.

The Special Master: The support proposition?

Mr. McClintic: No—

The Special Master: "Additions and Improvements to Buildings, etc., $363,845.56." Are those the same kind of additions involved in these other items?

Mr. Potter: Yes, sir; but the item of support—

The Special Master: I will come to that in a moment. That is all there is to be said about that; so far as they are called improvements it is in the sense that an addition is an improvement. Now, "Support," what is that for?

Mr. Potter: For annual support the State appropriated so much each year.

The Special Master: The annual appropriations in the maintenance of this institution. Do you agree to that?

Mr. McClintic: That is correct.

Mr. Potter: I think it is merely an omission on the part of 996
our friends.

The Special Master: There is an opportunity for repentance, between now and the argument, and they can make that confession if

they have a mind to; and if they do not make it and I decide against them, it can go in. The next is "Gun House at Alexandria" and "Cannon House, Surry county." I suppose that is the same sort of an investment, $110.

Mr. Potter: The same thing.

The Special Master: The next is "Gun House for Richmond Artillery, $1,079.09."

Mr. Potter: The same.

The Special Master: The next is "Sundry Board of Public Work Expenses, as follows." Is there anything to be added to any of these items except matters disclosed in the items themselves?

Mr. Potter: Not entirely. The printing of bonds is not the entire cost of printing bonds. As I understand it, the defendants have included the printing of registered bonds, and this is the printing of coupon bonds and the engraving of the coupon bonds.

The Special Master: That is, they have included the printing of the registered bonds, and you have included the printing of registered bonds and coupon bonds.

Mr. Potter: Yes.

The Special Master: Do you agree on that?

Mr. McClintic: We are handicapped by illness of Mr. Scoville on that.

The Special Master: I say this. Mr. Dixey may look that 997
up and if there is anything you want to call my attention to in reference to that, that may be done later. Is there anything else to be said about those items?

Mr. Potter: No, sir, I think not.

Mr. McClintic: No, sir.

The Special Master: As to those items, the case is closed. Now, let us take up the next paragraph, which is Paragraph No. 5, I think. As to that, I understand the experts have not been able to reach any result.

Mr. Carlisle: Before that, stated by the defendant's counsel on Exhibit C-1, on page 8—

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

E-1
Page 1

COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

RK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,469.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary.....	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above.....	$186,253,889.55	68.8636%
In West Virginia Counties, per contra.....	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above		$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties.....			$84,213,900.15

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia

At June 20th, 1863.

Alternative Estimate of the Valuation of Real and Personal Property, Applying to the Assessed Valuation of Personal Property in Counties Dominated by the Wheeling Government, which it is Alleged is on a Greenback Basis, the Gold Value as at Date of Assessment, viz., February 1st, 1863, as Reported in Report of United States Treasury, Office of Government Actuary, Form II—Ed. 5-17-'95.

FAIR ESTIMATED VALUATION—VIRGINIA.			FAIR ESTIMATED VALUATION—WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31		Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces, Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15	Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59		Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40	Plaintiff claims assessed valuation in these Counties is a fair estimated valuation		52,903,002.84
		$186,253,889.55	(As per agreed summary	$82,449,252.04)	$67,676,127.44
			Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00	
			Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50
			Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
			Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17
			(As per agreed summary	$24,739,894.21)	11,333,765.67
			Plaintiff's Fair Estimated Valuation of Property, Real and Personal in West Virginia Counties applying greenback value to Personal Property assessments		$79,009,893.11

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal:		
In Virginia Counties, as above	$186,253,889.55	70.2146%
In West Virginia Counties, per contra	79,009,893.11	29.7854%
Total	$265,263,782.66	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1 ..... $ 37,794,211.18

Of which Plaintiff claims there is chargeable to West Virginia 29.7854% as above $ 11,257,156.98

Certified Correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations :

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY.
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.		
Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

Summary.

Plaintiff's Fair Estimated Valuation of Property Real and Personal with exceptions noted above:		
In Virginia, as above	$248,966,787.30	74.4085%
In West Virginia, per contra.....	85,627,548.40	25.5915%
	$334,594,335.70	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..	$ 9,672,105.55

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.			
Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

DARK PAGE BLEED THRU

Plaintiff's Alternative Method of Determining
Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia.

At June 20th, 1863.
Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are Included as Personal Property, Notwithstanding the Fact That They Had Been Emancipated by President Lincoln's Proclamation; and also if Personal Property Assessment is Reduced From the Alleged Greenback Basis to Gold Basis at Rate Applying on February 1st, 1863, viz., 62.3% (as on Page 2a of This Exhibit.)

FAIR ESTIMATED VALUATION—VIRGINIA

Total Valuation of Real Property at latest obtainable assessment as per agreed Summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	75.5841%
In West Virginia, per contra	80,423,541.36	24.4159%
	$329,390,328.66	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces	$29,546,249.20		
Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.			
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation.		52,903,002.84	
(As per agreed summary	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis, a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	

DARK PAGE BLEED THRU

PLAINTIFF'S EXHIBIT E 2.

IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

"That in December, 1861, and in 1862, and down to the close of the war, in April, 1865, the treasury notes of the Confederate States were in general circulation as currency in this city; that these treasury notes were constantly diminishing in value from the 1st of January, 1862, to the end of the war; that the following table shows the value of said currency in gold at various times in the City of Lynchburg, to-wit:

Months	1861	1862	1863	1864	1865
January	....	1.25	3.00	20 to 20½	45 to 60
February	....	1.25	4.00	21½ to 25	45 to 65
March	....	1.30	5.00	23 to 24½	70 to 60
April	....	1.40	5.50	22 to 23	60
May	1.10	1.50	5½ to 6	18 to 21	
June	1.10	1.50	7 to 8	17 to 19	
July	1.10	1.50	9	20 to 23	
August	1.10	1.50	12 to 13	22½ to 25	
September	1.10	2.50	12 to 13	22½ to 27½	
October	1.15	2.50	14	26 to 27	
November	1.15	3.00	15 to 17	27½ to 33½	
December	1.20	3.00	18 to 20	34 to 49	

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, certify that the foregoing is a true extract from the record of Dearing's Administratrix vs. Rucker, decided by the Supreme Court of Appeals of Virginia at its April Term, 1868, and that the table therein copied showing the value of Confederate States treasury notes at various times during the war, is the only table filed, or to be found in the record of said cause.

Given under my hand this the 1st day of July, 1909.

H. STEWART JONES,
Clerk of the Supreme Court of Appeals of Virginia.

PLAINTIFF'S EXHIBIT E-3.

TOTAL ASSESSED VALUATION OF REAL ESTATE, PERSONAL AND RAILROAD PROPERTY IN VIRGINIA AND WEST VIRGINIA WITH PERCENTAGES OF EACH TO THE TOTAL.

NOTE.—The Assessed Valuation of Railroads from 1867 to 1879, inclusive, in Virginia is not shown in Auditor's reports, so we estimate their value at $9,000,000.00 and add that amount in each year.

1867	Virginia	$354,848,482.69	73.79%
	West Virginia	126,060,743.00	26.21%
1868	Virginia	357,699,144.00	72.17%
	West Virginia	137,952,255.00	27.83%
1869	Virginia	363,480,163.33	72.41%
	West Virginia	138,510,065.00	27.59%
1870	Virginia	388,557,534.00	73.40%
	West Virginia	140,783,286.00	26.60%
1871	Virginia	370,202,374.38	72.07%
	West Virginia	143,436,703.00	27.93%
1872	Virginia	351,552,630.38	71.05%
	West Virginia	143,270,414.00	28.95%
1873	Virginia	345,686,411.23	70.19%
	West Virginia	146,845,522.00	29.81%
1874	Virginia	341,428,256.00	69.72%
	West Virginia	148,305,419.00	30.28%
1875	Virginia	335,309,651.49	68.09%
	West Virginia	157,118,644.00	31.91%
1876	Virginia	330,317,488.75	68.49%
	West Virginia	151,977,231.00	31.51%
1877	Virginia	332,989,771.56	68.70%
	West Virginia	151,681,708.00	31.30%
1878	Virginia	325,686,872.31	68.90%
	West Virginia	147,021,912.00	31.10%
1879	Virginia	328,393,559.22	69.04%
	West Virginia	147,266,120.00	30.96%
1880	Virginia	317,191,383.17	68.33%
	West Virginia	146,991,740.00	31.67%
1881	Virginia	333,469,913.75	68.76%
	West Virginia	151,479,428.00	31.24%
1882	Virginia	343,813,689.50	68.92%
	West Virginia	155,050,076.00	31.08%
1883	Virginia	353,975,149.88	67.00%
	West Virginia	174,309,734.00	33.00%
1884	Virginia	364,638,390.03	67.34%
	West Virginia	176,796,754.00	32.66%
1885	Virginia	383,723,692.70	68.07%
	West Virginia	179,958,334.00	31.93%
1886	Virginia	375,375,333.50	68.33%
	West Virginia	173,993,762.00	31.67%
1887	Virginia	375,043,238.31	67.28%
	West Virginia	182,346,389.06	32.72%
1888	Virginia	$380,429,882.52	67.95%
	West Virginia	179,385,329.00	32.05%
1889	Virginia	384,014,695.75	67.68%
	West Virginia	183,381,499.75	32.32%
1890	Virginia	404,923,584.55	68.38%
	West Virginia	187,165,353.61	31.62%
1891	Virginia	439,832,800.41	69.44%
	West Virginia	193,533,458.00	30.56%
1892	Virginia	448,039,022.67	67.28%
	West Virginia	217,858,413.64	32.72%
1893	Virginia	453,151,823.73	67.09%
	West Virginia	222,218,154.37	32.91%
1894	Virginia	450,277,768.08	67.17%
	West Virginia	220,007,517.00	32.83%
1895	Virginia	438,258,777.14	66.17%
	West Virginia	224,025,744.40	33.83%
1896	Virginia	451,931,676.89	67.69%
	West Virginia	215,669,932.30	32.31%
1897	Virginia	459,023,847.08	67.75%
	West Virginia	218,517,105.72	32.25%
1898	Virginia	462,892,204.46	67.57%
	West Virginia	222,195,486.10	32.43%
1899	Virginia	469,732,937.09	67.28%
	West Virginia	228,409,289.26	32.72%
1900	Virginia	488,773,981.77	66.95%
	West Virginia	241,313,244.18	33.05%
1901	Virginia	497,956,643.30	66.69%
	West Virginia	248,749,692.90	33.31%
1902	Virginia	501,284,776.89	67.67%
	West Virginia	239,476,148.94	32.33%
1903	Virginia	519,352,393.00	65.82%
	West Virginia	269,644,299.60	34.18%
1904	Virginia	533,757,406.00	65.76%
	West Virginia	277,859,198.92	34.24%
1905	Virginia	571,997,927.00	63.05%
	West Virginia	335,203,005.85	36.95%
1906	Virginia	597,835,020.00	40.42%
	West Virginia	881,285,710.95	59.58%
1907	Virginia	632,285,784.00	40.48%
	West Virginia	929,663,694.63	59.52%
1908	Virginia	661,796,631.00	41.38%
	West Virginia	937,232,718.54	58.62%

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

DARK PAGE BLEED THRU

PLAINTIFF'S EXHIBIT E-4.

Prepared for the Plaintiff, and certified to as correct by
JOHN B. LIGHTFOOT, JR.
Richmond, Va.

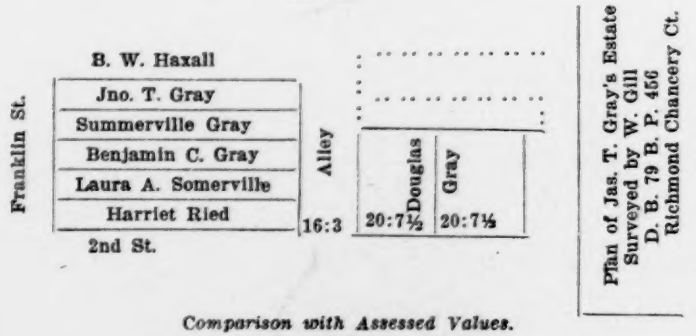
Comparison of Actual Value of Real Property in Virginia, June, 1863, with Assessed Value. 1863, showing percentage of Decrease in Actual Value, as evidenced by sales recorded from April to August, 1863, in Richmond City, and Counties of Henrico, Hanover, and Chesterfield.

RICHMOND CITY

ESTATE OF JAMES GRAY.

Deed Book 79 B. 462.

At the request of the heirs of James Gray, his realty in the City of Richmond was appraised by Messrs. Wellington Goddin, James M. Taylor and A. D. Williams for partition.
The report of these appraisers is made part of the partition deed and recorded with it.
The report is dated *June 22, 1863.*



	Character	Location	Front Feet	Appraised Value
1	Brick Tenement	S. E. Cor. Second and Franklin	26' 10"	$30,000.00
2	" "	Adjoining, 2nd from above on East	26' 2"	28,000.00
3	" "	Adjoining, 3rd from above on East	26' 1"	28,000.00
4	" "	Adjoining, 4th from above on East	26' 2"	28,000.00
5	" "	Adjoining, 5th from above on East	26' 9"	29,000.00
6	Brick Tenement	E. side Second bet. Main and Franklin	20' 7½"	11,000.00
7	" "	Adjoining this	20' 7½"	11,000.00
8	Brick Tenement	N. E. Cor. Broad and 4th Sts.	52'	20,000.00
9	" "	Adjoining this	52'	18,000.00
10	Warehouse and Offices	S. E. Corner 13th and Cary	61'	55,000.00
				$258,000.00

Comparison with Assessed Values.

	1863 Appraised Value	†Reduced To Gold @ 7 3-4	‡1863 Assessed Value	Decrease	%
*130'	$143,000.00	$18,451.61	$37,150.00	$18,698.39	50.33
*44'	22,000.00	2,838.71	7,540.00	4,701.29	62.35
52'	20,000.00	2,580.65	11,900.00	9,319.35	78.31
52'	18,000.00	2,322.58	12,900.00	10,577.42	82
61'	55,000.00	7,096.77	21,320.00	14,223.23	66.71
	$258,000.00	$33,290.32	$90,810.00	$57.519.68	63.34

* Grouped on Land Books.
† See Plaintiff's Exhibit E-2.
‡ Same as assessment of 1856, see Appendix.

Plaintiff's Exhibit E-4
Sheet 2

Deed Book #79A.

RICHMOND CITY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold.	Assessment 1863	Decrease	Per cent.	
274	Dennis Delaney and wife to Thos. L. Hardy	Conveys 19′ No. Side Jackson St., back 120′—Part of lot #4 in plot with deed from W. Goddin &c., to Burch, July 5, 1845.	Apl. 6/63	$ 3,000.00	5 1/2	$ 545.45	$ 733.00	$ 187.55	25.59	Bldg. $133.00
314	Alex. H. Rutherfoord to Charles Behle	Conveys 25′ No. Side Broad near First St. back about 130′.	Apl. 22/63	12,650.00	5 1/2	2,300.00	4,000.00	1,700.00	42.50	
427	Wm. W. Dunnavant and wife to Joseph F. Powell	Conveys 60′ No. Side Cary near 3rd Back 160′.	June 1/63	8,400.00	7 1/2	1,120.00	2,100.00	980.00	46.67	No Bldg.
	Deed Book No. 79 B.									
475	Philip K. White and wife to Jno. B. Davis	Conveys 35′ E. Side Mayo, bet. Franklin & Broad—Part of #17 in Mayo's plan, on Council Chamber Hill—White from Peyton Johnson.	June 6/63	10,000.00	7 1/2	1,333.34	5,500.00	4,166.66	75.76	Bldg. $4,000.00
405	Wm. A. Thomas to Joseph Hodgson	Conveys 22′, 12th St. between Broad & Marshall Back 106 ft.	June 9/63	11,950.00	7 1/2	1,593.34	5,290.00	3,696.66	69.89	Bldg. $3,750.00
464	James B. White and wife to Ezekiel J. Levy	Conveys 21 feet So. Side Grace—Corner First Back 156′.	June 16/63	23,500.00	7 3/	3,032.26	7,000.00	3,967.74	56.69	Bldg. $6,000.00
	Joseph August and wife to Frank J. Brand Deed Rec'd Henrico D. B. 79, p. 350, assessed Richmond.	Conveys 33′ So. Side Broad between Monroe & Madison 2nd door from Cor. Monroe.	June 23/63	2,000.00	7 3/4	258.07	1,646.00	1,387.93	84.32	Bldg. $1,250.00
475	Daniel Trueheart, Jr., to Wolff Jacobs	Conveys 33 No. Side Main Between 17th & 18th "Designated on Assors Books by letter C."	July 8/63	17,500.00	9	1,944.45	7,300.00	5,355.55	73.36	Bldg. $4,000.00

HENRICO COUNTY.

Deed Book #79.

Plaintiff's Exhibit E-4
Sheet ?

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
451	Ellis Juan to J. M. Marshall	Conveys 44 3/4 feet, being lot #29 "Green Plan." Near Penitentiary on Belvidere Hill.	May 10/63	$ 800.00	5 1/2	$145.45	$600.00	$454.55	75.75	No Bldgs.
314	Wm. O. Taylor and wife to Marcus Kaughman	Conveys 80 Acres on new road to Williamsb'g. About 5 miles below Rd. Adj. lands of Courtney, Plat with Deed.	June 1/63	1,460.00	7 1/2	194.67	800.00	605.33	75.67	No Bldgs.
629	Margaret Heron to L. B. Lipscamb	Conveys part of lot #2, Sq. 118, Adam's plan—front'g 55 feet E. Side 24th between N. & O. Sts.	June 4/63	962.50	7 1/2	128.33	200.00	71.67	35.84	No Bldgs.
367	H. P. Poindexter to Thos. Bruton	Conveys 4.754 Acres about 1½ miles from Rd. (W.) on Road from Meadow Bridge to Brook Tpk.	June 13/63	700.00	7 1/2	93.33	285.00	191.67	67.25	No Bldgs.
444	Sam. G. Greenhow and B. Winston to J. Schutte	Conveys 166 Acres adjoining lands of Jas. Currie on Four Mile Run.	June 20/63	3,320.00	7 3/4	428.40	1,328.00	899.60	67.74	
353	Sam'l Huffman and wife to Jno. Ad. Neidemayer	Conveys 34 Acres, more or less Upper End Henrico, adjoining Reeves Tinsley.	June 22/63	900.00	7 3/4	116.13	340.00	223.87	65.84	No Bldgs.
493	A. E. Dickenson and wife to J. H. Oliver	Conveys 30 feet, So. Side Grace extended, (Sydney) back 150'.	June 29/63	2,040.00	7 3/4	263.22	300.00	36.78	12.26	No Bldgs.
368	Jno. Nettles and wife to Jno. Hughes	Conveys 47 acres (estimated) about 8 miles below Rd. adjoining Jas. A. Carter et als.	July 1/63	1,500.00	9	166.67	376.00	209.33	55.67	

HENRICO COUNTY.

Plaintiff's Exhibit E-4
Sheet 4

Deed Book #79.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
454	Pleasants Roach and wife to Jno. Hart	Conveys lots 6 & 7 in Plan of Sydney, fronting 90' So. Side Westham Road.	July 9/63	$ 300.00	9	$ 33.34	$ 200.00	$ 166.66	83.33	No Bldgs.
429	J. H. Poindexter and wife to J. D. Hammersly	Conveys "Rocketts Mills" property —Land Bks. show near Gas House containing 12 Acres.	July 30/63	26,500.00	9	2,944.44	7,200.00	4,255.56	59.10	Includes Bldg.
					10	2,650.00		4,550.00	63.19	$2,000.00—
433	Wm. Taylor, Tr. for Maria Brimmer to Henry Linkhauer	Conveys 157' × 173' on No. side Venable near 25th St.	July 31/63	16,000.00	9	1,777.77		222.23	11.11	Assessed to Henry
					10	1,600.00	2,000.00	400.00	20.	Brimmer. Includes
					11	1,454.55		545.45	22.22	Bldg. $1,500.00
484	Geo. W. Munford and wife to Glazebrook and Thomas	Conveys "Old Home" Tract containing 430.967 acres, about 10 miles above Richmond.	Aug. 11/63	15,083.86	12 1/2	1,206.71	4,310.00	3,103.29	72.	Includes Bldg. $600.00

Plaintiff's Exhibit E-4
Sheet 5

Deed Book #1.

HANOVER COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
201	Mann S. Valentine, Jr. & wife to Alfred Moses	Conveys 413 1/2 Acres known as "Crany Island"—Adjoining lands of Timberlake & others.	Apl. 30/63	$20,675.00	5 1/2	$3,759.09	$10,337.50	$ 6,578.41	63.64	Bldg. $600.00
457	Hugh Campbell to Thaddeus C. Brown	Conveys 442 Acres more or less, known as "The Grove," on Road from Cedar Creek Meeting House to road from Richmond to Louisa C. H.	June 20/33	9,000.00	7 3/4	1,161.29	4,422.50	3,261.21	73.74	Bldg. $300.00
	Deed Book #2.									
427	W. F. G. Garnett and wife to Wm. Stagg	Conveys 259 Acres more or less on Va. Cent. R. R. adjoining lands of Timberlake—Same sold to G. by Mahlon Terrell Dec. 3, 1859.	June 18/63	10,000.00	7 3/4	1,290.32	3,885.00	2,594.68	66.79	Bldg. $200.00
	Deed Book #1.									
194	Ezekiel Talley (Spc. Comr.) to Jno. P. Ballard	Conveys "Gould Hill" containing 810 1/4 Acres, adjoining "Sommerville (Chas. L. C. Page—later W. B. Newton); Pamunkey River—Sold at Auction in suit of Nelson, &c. v. Burwell, &c.	Nov. 2/63	59,950.58	15	3,996.70	16,200.00	12,203.30	75.32	Bldg. $1,200.00 Assessed to Wm. R. Nelson.

CHESTERFIELD COUNTY.

Page	Parties	Location	Date	1863 Consideration	Ratio of Confederate Money to Gold at Date of Sale	1863 Consideration Reduced to Gold	Assessment 1863	Decrease	Per cent.	
357	Geo. W. Friend and wife to D. S. Woodbridge	Conveys 150 acres near the C. H.—Adjoins Silas Cheatham, Gregory & Jordan.	June 5/63	$ 5,000.00	7 1/2	$ 666.67	$2,250.00	$1,583.33	70.37	Bldgs. $1,000.00
439	Edwin W. Poindexter & wife to Isaac M. Wolff	Conveys 837 acres more or less adjoining Chas. Friend, Cheatham, Perdue et als.	June 22/63	25,000.00	7.75	3,225.81	10,242.00	7,016.19	68.50	Bldgs. $200.00
558	Jno. H. A. Clay et als. Ex'ors of P. Clay to Francis B. Cheatham	Conveys 195 acres 38 poles called "Peoria," adjoining the lands of Worsham, Cheatham, &c.	June 26/63	1,082.21	7.75	139.64	1,370.00	1,230.36	89.81	No Bldgs. Assessed to Phineas Clay & Marked "Peoria" 1861-2
377	Mary Jewett to Richard G. Elam	Conveys 220 acres lying No. side Jenito Road, adjoining Furcron, &c.	July 9/63	2,000.00	9	222.23	1,320.00	1,097.77	83.16	Bldg. $400.00
393	Thos. W. Nelson and wife to S. Simon	Conveys 100 acres more or less about 4 miles from Manchester, adj. Anderson, &c.	July 28/63	4,000.00	9 10	444.45 400.00	1,000.00	555.55 600.00	55.55 60.	No Bldgs.
513	Chas. T. Scott and wife to James Galloway	Conveys 142 1/2 acres about 5 miles from Petersburg adjoining Wms. Campbell, &c.	Aug. 20/63	5,000.00	12 3/4	384.31	1,425.00	1,040.69	73.03	Bldg. $500.00

PLAINTIFF'S EXHIBIT E-5

P-1

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In the 3rd District, Richmond City, the District of F. Butler, Commissioner of the Revenue, with Taxes thereon at one dollar on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.		Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 100 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purpurposes, per centum on the State taxes.
Gray, Jas., Est.	Richmond	Fee	Pt. 681	130 feet	F & 2d	30,000.	37,150.	371.50		
" " " and R. B. Summerville.	"	"	" 680	44 "	2d	6,000.	7,540.	75.40		
Gray, Jas., Est.	"	"	" 610	52 "	H & 4th	8,000.	11,900.	119.00		
Gray, J. H. & others, Trustees.	"	Trust	" 610	52 "	H	9,000.	12,900.	129.00		
Gray, Jas., Est. and Ro. B. Summerville.			" 348	61	D & 13th	14,000.	21,320.	213.20	[Appears 2d District.]	
Delany, Dennis	Richmond	Fee	Pt. 5	19 feet	Jackson	600.	733.	7.33		
Rutherfoord, Alex'r H.	"	"	" 743	25 "	H	3,000.	4,000.	40.00		
Dunnavant, W. W.	"	"	" 659	60 "	D		2,100.	21.00		
White, Jas. B.	"	"	" 740	21 8-12 "	G & 1st	6,000.	7,000.	70.00		
August, Joseph			" 15	33 "	H	1,250.	1,646.	16.46	From R. M. Bridges.	
Trueheart, Jr., Dan'l				33 "	E	4,000.	7,300.	73.00		
Trueheart, Jr., Dan'l (1862)				" "	"	4,000.	7,300.	43.80	From D. Trueheart by will.	
IN THE 1ST DISTRICT, RICHMOND CITY.										
White, P. K.			Pt. 17	30	Mayo	4,000.	5,500.	55.00	From Peyton Johnson & wife.	
IN THE 2ND DISTRICT, RICHMOND CITY.										
Thomas, Wm. A.			Pt. 752	22 "	12, bet H & I.	3,750.	5,290.	52.90		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Richmond City. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E-5, P. 2.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the year of 1863

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
					Bearing from C. H.	Miles.						
Taylor, W. O.	Richmond	Fee	80	Near 7 Pines.	E.	6	10.	.....	800.	8.00		
Greenhow, Samuel C., and Bickerton, L. Winston	Richmond	Fee	166	Adj. John Currie.	S. E.	8	8.	.....	1,328.	13.28		
Nettles, John	Henrico	Fee	47	Adj. James Carter.	S. E.	8	8.	.....	376.	3.76		
Poindexter, James H., John E. Wamble & Martin Benton.	Henrico	Fee	12	Rocketts Mills near Gas House.	E.	½	600.	2,000.	7,200.	72.00		
IN HENRICO COUNTY WITHIN THE DISTRICT OF J. B. KEESEE.												
Poindexter, Henry P.	Henrico	Fee	4¾	Adj. D. C. Clopton's Est.	N. W.	3	60.	.....	285.00	2.85		
Huffman, Samuel	Henrico	Fee	34	Adj. Reeves Tinsley.	W.	10	10.	.....	340.00	3.40	From Crawford Alley, &c.	
Munford, Geo. Wythe	Richmond	Fee	431	Old Home adj. M. Sheppard's Est.	N. W.	12	10.	600.	4,310.00	43.10		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiff's Exhibit.
E.-5, P. 3.

Extracts from the Tables of Town Lots in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In Henrico County, within the Distrct of J. B. Keesee Commissioner of the Revenue, with taxes thereon at forty cents on every hnudred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold of the land charged in possession.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether in fee simple, for life, &c.	Number of each lot in the town, or a description of the part of lot owned.	Name of the town in which the lot is situated.	Value of buildings on the lot.	Value of lots, including buildings.	The amount of tax on lots at 40 cents on every $100 value thereof.	Explanation of alterations during the preceding year, especially from whom transferred, and when and how the owner acquired the lot, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purpurposes, per centum on the State taxes.
1862. Juan, Ellis	Henrico	Fee	1 W. 2 No. 29, B. W. Green's Plan.	Sydney	450.	600.	3.60		
1863. Heron, Margarett	Richmond	"	1 N. 1 Part No. 2, Sq. No. 118.	Adams' Plan	.....	200.	2.00		
1863. Dickinson, Alfred E.	Henrico	"	1 W. 2 Grace Street 30x	Sydney	.....	300.	3.00		
1863. Roach, Pleasant	"	"	1 W. 2. Dover Street, 6 & 7, 90x	Sydney	.....	200.	2.00		
1863. Brimmer, Henry	"	"	1 W. 1 Venable Street, 157x173.	Union Hill	1,500.	2,000.	20.00		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Henrico County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E-5 Sheet 4.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the years 1861, 1862 and 1863.

In Henrico County, within the District of John Eacho, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
					Bearing from C. H.	Miles.						
1863. Valentine, Mann S., Jr.	Richmond	Fee	413½	Crany Island. Adj., A. B. Clarke.	S. E.	8	25.	600.	10,337.50	103.38		
1863. Garnett, W. F. G.	Henrico	Fee	259	Adj. A. D. Timberlake.	S. W.	7	15.	200.	3,885.	38.85		
1863. Nelson, William R.'s Est.	Hanover	Fee	810	Adj. W. B. Newton	S. E.	6	20.	1,200.	16,200.	162.00		
1862. Nelson, William R.	"	"	810	" " " "	"	6	20.00	1,200.	16,200.	97.20		
1861. Wm. R. Nelson.	"	"	810	" L. A. Pagee and Wm. B. Newton.	"	6	20.	1,200.	16,200.	64.80		
IN HANOVER COUNTY WITHIN THE DISTRICT OF E. C. TAYLOR.												
1863. Campbell, Hugh	Hanover	"	442¾	Adj. C. Vaughhan.	W.	20	10.	300.	4,422.50	44.23		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Hanover County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

Plaintiffs Exhibit
E.-5, P. 5.

Extracts from the Tables of Tracts of Lands in the Land Books of the Commonwealth of Virginia for the years 1862 and 1863.

In Chesterfield County, within the District of R. D. Flournoy, Commissioner of the Revenue, with Taxes thereon at forty cents on every hundred dollars value thereof.

NAME OF THE PERSON Who by himself or by his tenant has the freehold in possession of the land charged.	Residence of the owner of the tract of land.	Nature of the owner's estate, whether held in fee or for life.	Number of acres in each tract.	Name of the tract and description of the land, as to water courses, mountains or other places on or near which it lies.	Distance and bearing from the court house.		Total value of land per acre, including buildings.	The sum included in the value of each tract of land on account of buildings.	Total value of the land and buildings.	The amount of tax on the whole tract at forty cents on every $100 value thereof.	Explanations of alterations during the preceding year, especially from whom transferred, and when and how the owner derived the land, and why, and upon what authority any alteration was made.	COUNTY LEVY. Amount of levy for county purposes, per centum on the State taxes.
					Bearing from C. H.	Miles.						
1863. Friend ,Geo. W.	Chesterfield	In fee	150	Silas Cheatham.	E.	½	15.	1,000.	2,250.	52.50		
1863. Poindexter, Ed. W.	"	" "	772	1 R. Charles W. Friend.	E.	5	12.	200.	9,267	92.67		
1863. Same.	"	" "	65	Saml Poindexter.	"	6	15.	.....	975.	9.75		
1863. Scott, Charles F.	"	" "	142	2 R. H. & P. Turnpike.	S. E.	10	10.	500.	1,425.	14.25		
DISTRICT W. G. FLOURNOY.												
1863. Clay, Phenihas, Est.	Chesterfield	In fee	195	Wm. Worsham.	W.	14	7.	.....	1,370.	13.70		
1862. Clay, Phenehas, Est.	"	In fee	195	Peoria by Wm. Worsham.	W.	14	7.	.....	1,370.	8.22		
1863. Jewitt, Mary	"	"	220	Thos. Fureron.	W.	16	6.	400.	1,320.	13.20	Transfd from Wm P. Jewitt by will	
1863. Nelson, Catharine A.	"	In fee	100	Mary Cocke.	N.	10	10.		1,000.	10.00		

I, Morton Marye, Auditor of Public Accounts of Virginia, do certify that the foregoing are true extracts from the Land Books of Chesterfield County. In testimony whereof, I hereto set my hand this 28th day of June, 1909.

MORTON MARYE,
Aud. Pub. Accounts.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES OF THE STATE OF VIRGINIA.

PARAGRAPH V OF DECREE.

Ordinary expenses of government from March 19th, 1823, to December 31st, 1860, inclusive		$37,794,211.18
Divided on basis of fair estimated valuation shown in plaintiff's Exhibit E-7 (Slaves excluded from Personal Property):		
Virginia	69.2034% $26,154,879.14	
West Virginia	30.7966%	$11,639,332.04
Alternative division on basis of fair estimated valuation if slaves are included as personal property, as shown in plaintiff's Exhibit E-7:		
Virginia	72.5780%=$27,430,282.59	
West Virginia	27.4220%	$10,365,928.59

We certify that the above calculations are correctly made from percentage not prepared by us.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & COMPANY,
For the Plaintiff.

PLAINTIFF'S EXHIBIT E-7.

FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF VIRGINIA AND WEST VIRGINIA JUNE 20, 1863, WITH AND WITHOUT SLAVES.

[Prepared for the Plaintiff, and the calculations certified to as correct, by John B. Lightfoot, Jr., Richmond, Virginia. Totals of assessments taken from A. G. Potter's compilation of Auditor's Report of 1861.]

SCHEDULE 1.

SLAVES EXCLUDED.

VIRGINIA.

	Total assessed value for all counties 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property—		
Tracts of land and buildings	$237,802,014.94	
Town lots and buildings	55,216,016.36	
	$293,018,031.30	$146,509,015.65
Personal Property—		
Property other than slaves and realty, taxed at 40c. per $100	$101,741,727.40	$ 50,870,863.70
Total	$394,759,758.70	$197,379,879.35

NOTE.—In the foregoing the 1860 figures are shown for Virginia Counties as follows:

1 Alexandria County
2 Elizabeth City County
3 Buchanan County
4 Norfolk City.

All other Virginia Counties and Cities made returns for 1861 and are so shown.

WEST VIRGINIA.

	Total assessed values for those West Virginia Counties which were, for the most part, dominated by Confederate forces 1861.	Fair Est. Valuation (basis of ½ of assessed value) June 20, 1863.
Real Property:		
Tracts land and bldgs.	$27,131,384.35	
Town lots and bldgs.	2,433,774.50	
	$29,565,158.85	$14,782,579.43

DARK PAGE BLEED THRU

Pl. Ex. E-7, p. 2.

Personalty:			
Property other than slaves and real property taxed at 40c. per $100.00.....	$9,659,305.00	$4,829,652.50	$19,612,231.93
Real Property:			
	As above, for Residue of West Virginia Counties.	(Basis of full assessed value.)	
Tracts land and bldgs.....	$47,295,978.96		
Town lots and bldgs.....	6,739,592.74		
	$54,035,571.70	$54,035,571.70	
Personalty:			
Property other than slaves and realty taxed at 40c. per $100.00.....	$14,189,011.00	$14,189,011.00	68,224,582.70
Total excluding slaves..	$107,449,046.55		$87,836,814.63

PERCENTAGES: EXCLUDING SLAVES.

1863—			
Total fair estimated value, Virginia.....	$197,379,879.35	=	69.2034%
Total fair estimated value, West Virginia.....	87,836,814.63	=	30.7966%
	$285,216,693.98	100	%

Note: In the foregoing, the following are taken as the Counties dominated for the most part by Confederate forces:

1	Jefferson	6	Pendleton
2	Berkeley	7	Pocahontas
3	Morgan	8	Greenbrier
4	Hampshire	9	Monroe
5	Hardy	10	Mercer

The figures for Hampshire are those of 1860.

Of the "residue of West Virginia counties," 1860 figures are taken for the following:

1	Barbour	County	16	Putnam	County
2	Brooke	"	17	Ritchie	"
3	Cabell	"	18	Taylor	"
4	Calhoun	"	19	Tyler	"
5	Doddridge	"	20	Tucker	"
6	Hancock	"	21	Upshur	"
7	Harrison	"	22	Wayne	
8	Lewis	"	23	Wetzel	"
9	Marion	"	24	Wirt	"
10	Marshall	"	25	Wood	"
11	Mason	"	26	Kanawha	"
12	Monongalia	"	27	Randolph	"
13	Ohio	"	28	Boone	"
14	Pleasants	"	29	Logan	"
15	Preston	"			

The remaining W. Va. Counties showed returns for 1861, and these are taken.

Pl. Ex. E-7, p. 3.

SCHEDULE 2.

SLAVES INCLUDED.

VIRGINIA.

	1860. Value	1863. Fair Est. Value
Total number slaves in Va. over 12 years of age, by Counties, 1860 ..... 261,717*		
Value of these at $300 each.....	$78,515,100	.....
Fair estimated value of same June 20, 1863, on basis of ½.....	.....	$39,257,550
Fair estimated value at same date of other property as per Schedule 1.	.....	197,379,879.35
Total fair estimated value of all property, including slaves	.....	$236,637,429.35

* For Virginia, the figures concerning slaves are taken from the 1860 tables, Aud. Rep. 1861, by what are there termed "Districts." Where a "District" contains Counties in both States, the figures for the Counties in West Virginia are deducted.

DISTRICT:

	All in Virginia.	Number.
Tidewater	" " "	103,977
Piedmont		134,424
Valley	20,911	
Deduct for:		
Berkeley	911	
Hampshire	729	
Hardy	645	
Jefferson	2,256	
Morgan	60	
Pendleton	138	
	4,739	15,172
So. West.....	10,290	
Deduct for:		
Boone	86	
Fayette	127	
Greenbrier	996	
Logan	70	
Mercer	192	
Monroe	611	
McDowell	...	
Raleigh	28	
Wyoming	36	
	2,146	8,144
Total number slaves in Virginia.....		261,717
These at $300 each		$78,515,100.00

DARK PAGE BLEED THRU

Pl. Ex. E-7, p. 4.

WEST VIRGINIA.

	Value 1860.	Fair Est. Value 1863.
Total number slaves in West Virginia over 12 years age, by Counties, 1860..... 10,476*		
Value of these at $300 each.....	$3,142,800.00	
Fair estimated value of same June 20, '63 on basis of ½.....	.....	$1,571,400.00
Fair estimated value, at same date, of other property, as per Schedule 1...	.....	87,836,814.63
Total fair estimated value, including slaves.....	.....	$89,408,214.63

PERCENTAGES, INCLUDING SLAVES.

1863:

Fair estimated total value, Virginia.....	$236,637,429.35 =	72.578%
Fair estimated total value, West Virginia.....	89,408,214.63 =	27.422%
Fair estimated total value both States.....	$326,045,643.98 =	100 %

* For West Virginia, the figures and districts are taken as in case of Virginia.

DISTRICT:

		Number.
Tidewater	....	....
Piedmont	....	....
Valley:		
Berkeley	911	
Hampshire	729	
Hardy	645	
Jefferson	2,256	
Morgan	60	
Pendleton	138	4,739
So. West:		
Boone	86	
Fayette	127	
Greenbrier	996	
Logan	70	
Mercer	192	
Monroe	611	
McDowell	....	
Raleigh	28	
Wyoming	36	2,146
North West.....	All in W. Va.	3,591
Total number slaves in W. Va.....		10,476
These at $300.00 each.....		$3,142,800.00

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

THE VALUATION OF SLAVES IN 1860 AND 1861.

COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES IN 1862 AND 1863.

DEFENDANT'S EXHIBIT E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA VERSUS STATE OF WEST VIRGINIA.

Defendant's Exhibit E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

THE NUMBER OF SLAVES IN 1860 AND 1861, BASED ON THE ASSESSMENT ROLLS OF COUNTIES FOR WHICH RETURNS WERE FOUND, AND THE VALUE THEREOF, COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES FOR WHICH RETURNS WERE FOUND IN 1862 AND 1863:

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
VIRGINIA:				
Accomac,	2,645	$ 1,326,732	2,739	$ 1,373,882
Albemarle	.....	.....	7,449	3,736,418
Alexandria,	709	355,634	709	355,634
Alleghany,	589	295,442	522	261,835
Amelia,	4,269	2,141,330	4,195	2,104,212
Amherst,	3,211	1,610 638	3,405	1,707,948
Appomattox,	2,444	1,225,910	2,526	1,267,042
Augusta,	2,545	1,276,572	2,587	1,297,639
Staunton,	....	.....	441	221,206
Bath,	475	238,260	517	259,327
Bedford,	5,303	2,659,985	5,660	2,839,056
Bland,	....	.....	113	56,681
Botetourt,	1,728	866,765	1,671	838,174
Brunswick,	5,209	2,612,834	5,381	2,699,110
Buchanan,	14	7,022	13	6,521
Buckingham,	4,827	2,421,223	4,866	2,440,786
Campbell,	4,932	2,473,891	4,981	2,498,470
Lynchburg,	1,822	913,915	1,611	808,078
Caroline,	6,029	3,024,146	6,074	3,046,718
Carroll,	65	32,604	104	52,166
Charles City,	1,782	894,353	1,877	941,503
Charlotte,	5,489	2,753,282	5,560	2,788,896
Chesterfield,	....	.....	....	.....
Clarke,	1,834	919,934	1,798	901,877
Craig,	215	107,844	225	112,860
Culpeper,	3,245	1,627,692	3,259	1,634,714
Cumberland,	3,899	1,955,738	3,834	1,923,134
Dinwiddie,	3,918	1,965,269	4,010	2,011,416
Petersburg,	3,538	1,774,661	3,453	1,732,025
Elizabeth City,	....	.....	1,196	599,914
Essex,	3,921	1,966,774	3,873	1,942,697
Fairfax,	1,607	806,071	1,611	808,078
Fauquier,	5,025	2,520,540	5,016	2,516,026
Floyd,	224	112,358	244	122,390
Fluvanna,	2,877	1,443,103	2,883	1,446,113
Franklin,	3,330	1,670,328	3,394	1,702,430
Frederick,	844	423,350	824	413,318
Winchester,	330	165,528	342	171,547
Giles,	444	222,710	438	219,701
Gloucester,	3,038	1,523,861	3,053	1,531,385
Goochland,	3,507	1,759,111	....	.....
Grayson,	280	140,448	294	147,470
Greene,	981	492,070	997	500,095
Greensville,	2,213	1,110,041	2,280	1,143,648
Halifax,	8,696	4,361,914	8,818	4,423,109
Hanover,	4,984	2,499,974	5,115	2,565,684
Henrico,	3,860	1,936,176	4,494	2,254,190
Richmond City,	7,639	3,831,722	6,474	3,247,358
Henry,	2,678	1,343,285	2,779	1,393,946
Forward,	127,215	$63,811,040	133,705	$67,066,427

DARK PAGE BLEED THRU

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
Forward,	127,215	$63,811,040	133,705	$67,066,427
Highland,	208	104,333	219	109,850
Isle of Wight,	1,040	521,664	2,148	1,077,437
James City,	1,141	572,326	1,162	582,859
Williamsburg,	405	203,148	410	205,656
King and Queen,	3,288	1,649,261	3,406	1,708,450
King George,	2,066	1,036,306	1,984	995,174
King William,	2,916	1,462,666	3,248	1,629,197
Lancaster,	1,605	805,068	1,583	794,033
Lee,	486	243,778	481	241,270
Loudoun,	3,063	1,536,401	3,000	1,504,800
Louisa,	5,429	2,723,186	5,366	2,691,586
Lunenburg,	4,163	2,088,161	4,212	2,112,739
Madison,	2,408	1,207,853	2,373	1,190,297
Mathews,	1,507	755,911	1,479	741,866
Mecklenburg,	7,392	3,707,827	7,506	3,765,010
Middlesex,	1,526	765,442	1,550	777,480
Montgomery,	1,141	572,326	1,173	588,377
Nansemond,	2,571	1,289,614	2,677	1,342,783
Nelson,	3,215	1,612,644	3,158	1,584,053
New Kent,	1,780	892,848	1,808	906,893
Norfolk,	2,887	1,448,119	2,751	1,379,902
Norfolk City,	1,997	1,001,695	1,951	978,622
Portsmouth,	736	369,178	689	345,602
Northampton,	.....	.....	2,250	1,128,600
Northumberland,	1,733	869,273	1,823	914,417
Nottoway,	3,856	1,934,170	3,953	1,982,825
Orange,	3,309	1,659,794	3,486	1,748,578
Page,	495	248,292	483	242,273
Patrick,	1,026	514,642	1,024	513,638
Pittsylvania,	7,417	3,720,367	7,171	3,596,974
Danville,	763	382,721	573	287,417
Powhatan,	3,177	1,593,583	3,156	1,583,050
Prince Edward,	4,352	2,182,963	4,279	2,146,346
Prince George,	2,894	1,451,630	2,926	1,467,663
Prince William,	1,269	636,530	1,243	623,489
Princess Anne,	1,518	911,909	224	112,358
Pulaski,	918	460,469	928	465,485
Rappahannock,	1,721	863,254	1,748	876,797
Richmond,	1,373	688,697	1,384	694,214
Roanoke,	1,603	804,065	1,580	792,538
Rockbridge,	2,328	1,167,725	2,273	1,140,137
Rockingham,	1,268	636,029	1,241	622,488
Russell,	516	258,826	573	287,417
Scott,	324	162,518	331	166,030
Shenandoah,	484	242,774	457	229,231
Smyth,	508	254,813	500	250,800
Southampton,	3,174	1,592,078	3,141	1,575,536
Spottsylvania,	2,382	1,194,811	3,409	1,709,954
Fredericksb'g,	724	363,158	685	343,596
Stafford,	1,575	790,020	1,545	774,972
Surry,	1,552	778,483	1,544	774,470
Sussex,	3,604	1,807,766	3,598	1,804,757
Tazewell,	676	339,082	670	336,072
Warren,	804	403,286	822	412,315
Warwick,	602	301,963	616	308,986
Washington,	1,319	661,610	1,375	689,700
Westmoreland,	2,088	1,047,341	2,153	1,079,945
Wise,	34	17,054	38	19,061
Wythe,	1,116	559,786	1,120	561,792
York,	999	501,098	990	496,584
Total,	243,986	$122,383,375	253,351	$127,080,865

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
WEST VIRGINIA:				
Barbour,	68	$ 33,201	....	.....
Berkeley,	911	444,796	926	$ 452,120
Boone,	86	41,990	....	.....
Braxton,	54	26,366	57	27,830
Brooke,	5	2,441	....	.....
Cabell,	216	105,462	....	.....
Calhoun,	6	2,930	....	.....
Clay,	25	12,206	9	4,394
Doddridge,	17	8,300	....	.....
Fayette,	127	62,008	124	60,543
Gilmer,	21	10,253	28	13,671
Greenbrier,	996	486,297	984	480,438
Hampshire,	729	355,934	....	.....
Hancock,	1	488	....	.....
Hardy,	645	314,921	641	312,968
Harrison,	292	142,569	....	.....
Jackson,	42	20,507	41	20,018
Jefferson,	2,256	1,101,492	2,256	1,101,492
Kanawha,	1,238	604,454	1,237	603,965
Lewis,	103	50,290	....	.....
Logan,	30	14,648	....	.....
McDowell,	....	.....	....	.....
Marion,	46	22,460	....	.....
Marshall,	20	9,765	....	.....
Mason,	200	97,650	....	.....
Mercer,	192	93,744	191	93,256
Monongalia,	69	33,689	....	.....
Monroe,	611	298,321	627	306,133
Morgan,	60	29,295	59	28,807
Nicholas,	85	41,501	76	37,107
Ohio,	21	10,253	....	.....
Wheeling,	2	977	....	.....
Pendleton,	138	67,379	139	67,867
Pleasants,	7	3,418	....	.....
Pocohontas,	....	.....	139	67,867
Preston,	41	20,018	....	.....
Putnam,	353	172,352	345	168,446
Raleigh,	28	13,671	35	17,089
Randolph,	107	52,243	20	9,765
Ritchie,	12	5,859	....	.....
Roane,	35	17,089	37	18,065
Taylor,	68	33,201	....	.....
Tucker,	17	8,300	....	.....
Tyler,	7	3,418	....	.....
Upshur,	97	47,360	....	.....
Wayne,	74	36,131	77	37,595
Webster,	....	.....	....	.....
Wetzel,	8	3,906	....	.....
Wirt,	17	8,300	....	.....
Wood,	82	40,037	....	.....
Wyoming,	36	17,577	35	17,089
Total,	10,301	$5,029,467	8,083	$3,946,525

NOTE: The valuation of slaves for 1860 and 1861 is based on the average assessed valuation of slaves in 1862 and 1863, as shown by the original assessment rolls of counties reporting both the number and value.

Such values are:

For Virginia,	$501.60
For West Virginia,	488.25

Certified Correct:

CLIFFORD E. SCOVILLE, THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff objects to the use of the average assessed valuation of Slaves in 1862 and 1863 as a basis of their assessed valuation in 1860 and 1861, as the Records of the Commonwealth of Virginia clearly show that slaves were assessed in the last mentioned years at 40c per $100 of value and as the tax levied on all slaves over 12 years was $1.20, their assessed valuation was $300; and for the further reason that in 1862 and 1863 the assessed value of the slaves in Virginia was estimated with reference to Confederate money as a standard of value.

We have checked all figures in this exhibit consisting of pages 1, 2, and 3, and find them to be correct.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT E 3.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERN MENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

Treasury Department
Office of the Government Actuary.
Form No. 11-Ed. 5-17-95-1,000.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

Average Relative Values of Gold and U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period of Seventeen Years from 1862 to 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Table showing the Average Value in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
January	102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	112.5	112.8	106.3	102.1
February	103.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	114.5	113.4	105.4	102.
March	101.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1	115.5	114.3	104.8	101.2
April	101.5	151.5	172.7	148.5	127.3	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	114.8	113.	106.2	100.6
May	103.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4	115.8	112.6	106.9	100.7
June	106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5	117.	112.5	105.4	100.8
July	115.5	130.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	114.8	111.9	105.4	100.5
August	114.5	125.8	254.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7	113.5	111.2	105.	100.6
September	118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.3	114.8	114.5	113.5	112.7	109.7	115.8	110.	103.3	100.4
October	128.5	147.7	207.2	145.5	148.3	143.5	137.1	130.2	112.8	113.2	111.2	108.9	110.	116.4	109.7	102.8	100.6
November	131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111 2	112.9	108.6	110.9	114.7	109.1	102.8	100.2
December	132.3	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.3	112.2	110.	111.7	113.9	107.9	103.8	100.1
First quarter-year	102.6	153.4	159.	198.5	136.3	135.7	139.8	133.3	117.8	111.1	109.8	114.1	111.9	114.2	113.5	105.5	101.7
Second quarter-year	103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	115.6	111.5	112.9	117.3	112.4	115.9	112.7	106.2	100.7
Third quarter year	116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	114.7	111.	104.6	100.5
Fourth quarter-year	130.6	148.9	222.7	146.2	142.9	139.3	135.6	123.	111.6	111.2	112.8	109.2	110.9	115.	108.9	102.8	100.3
First half-year	103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	115.1	113.1	105.9	101.2
Second half-year	123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	114.8	109.9	105.7	100.4
Calendar year	113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	114.9	111.5	104.8	100.8
Fiscal year ended June 30th	.....	137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.	112.7	113.9	107.9	102.5

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PARAGRAPH V OF DECREE.

Def. E-3
Page 2

GOLD VALUE OF CURRENCY.

Table showing the Average Value in Gold of One Hundred Dollars in Currency in the New York Market, by Months, Quarter-years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868.	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
January	97.6	68.9	64.3	46.3	71.4	74.3	72.2	73.7	82.4	90.5	91.7	88.7	89.7	88.9	88.6	94.	97.9
February	96.6	62.3	63.1	48.7	72.3	72.8	70.7	74.4	83.7	89.7	90.7	87.6	89.1	87.3	88.2	94.8	98.
March	98.2	64.7	61.4	57.5	76.6	74.1	71.7	76.2	88.8	90.1	90.8	86.6	89.2	86.6	87.5	91.4	98.8
April	98.5	66.	57.9	67.3	78.6	73.7	72.1	75.2	88.4	90.4	90.	84.9	88.2	87.1	88.5	94.2	99.4
May	96.8	67.2	56.7	73.7	75.9	75.	71.6	71.8	87.2	89.7	88.	85.	89.9	86.3	88.8	83.5	99.5
June	93.9	69.2	47.5	71.4	67.2	72.7	71.4	72.4	88.6	89.	87.8	85.8	90.	85.4	88.9	94.9	99.2
July	86.6	76.6	38.7	70.4	66.	71.7	70.1	73.5	85.6	89.	87.5	86.4	91.	87.2	89.4	94.8	99.5
August	87.3	79.5	39.4	69.7	67.2	71.	68.7	74.5	84.8	89.	87.4	86.7	91.2	88.1	89.9	95.2	99.5
September	84.4	74.5	44.9	69.5	68.7	69.7	69.6	73.1	87.1	87.3	88.1	88.7	91.2	86.4	90.9	96.8	99.6
October	77.8	67.7	48.3	68.7	67.4	69.7	72.9	76.8	88.7	88.3	88.3	91.8	91.	85.9	91.2	97.3	99.5
November	76.3	67.6	42.8	68.	69.5	71.6	74.4	79.2	89.8	89.9	88.6	92.1	90.2	87.2	91.7	97.3	99.8
December	75.6	66.2	44.	68.4	73.2	74.2	74.	82.5	90.3	91.5	89.1	90.9	89.6	87.8	92.6	97.5	99.9
First quarter-year	97.5	65.2	62.9	50.4	73.3	73.7	71.5	74.7	84.9	90.	91.	87.6	89.3	87.6	88.1	94.8	98.3
Second quarter-year	96.3	67.4	53.6	70.7	73.6	73.2	71.7	75.2	88.	89.7	88.6	85.3	89.	86.3	88.7	94.2	99.3
Third quarter-year	86.1	76.8	40.8	69.8	67.2	70.8	69.5	73.7	85.8	88.4	87.6	87.3	91.1	87.2	90.1	96.6	99.6
Fourth quarter-year	76.6	67.2	44.9	68.4	70.	71.8	73.7	79.4	89.6	90.	88.7	91.6	90.2	86.9	91.8	97.3	99.7
First half-year	96.9	66.3	57.9	58.9	73.5	73.4	71.6	73.9	86.4	89.8	89.8	86.4	89.2	86.9	88.4	94.4	98.8
Second half year	81.	71.6	42.8	69.1	68.6	71.3	71.5	76.5	87.7	89.2	88.2	89.4	90.7	87.1	90.9	96.4	99.6
Calendar year	88.3	68.9	49.2	63.6	71.	72.4	71.6	75.2	87.	89.5	89.	87.9	89.9	87.	89.6	95.4	99.2
Fiscal year ended June 30th	....	72.9	64.	49.5	71.2	70.9	71.5	72.7	81.1	88.7	89.4	87.5	89.3	88.8	87.8	92.7	97.6

DARK PAGE BLEED THRU

Defendant's Alternative Method of Determining Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia.

At June 20th, 1863.

VIRGINIA.			WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment, as per agreed summary	$296,085,460.31		Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15			
Total valuation of Personal Property, including slaves but excluding Income at latest obtainable assessment, as per agreed summary	403,696,228.59				
Plaintiff claims that a fair estimated valuation is 25% of this assessed valuation		100,924,057.15			
Total		$248,966,787.30	Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60
			Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
			Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97
			Total as per agreed summary	$82,449,252.04	
			Total fair estimated valuation of Real Property, as noted above		$51,382,002.57
			Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
			Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
			Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69
			Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00
			Total as per agreed summary	$30,394,487.21	
			Total fair estimated valuation of Personal Property, including Slaves, but excluding income as noted above		13,699,871.44
			Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis and according to the principle adopted by the Plaintiff, to be		$65,081,874.01

SUMMARY.

Plaintiff claims the fair estimated valuation of Property, Real and Personal, in Virginia, as noted above, to be	248,966,787.30	79.2765%	
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis, and according to the principle, adopted by the Plaintiff, to be as per contra	65,081,874.01	20.7235%	
Total	$314,048,661.31	100 %	
Defendant further claims that the Ordinary Expenses of Government from March 19th 1823, to December 31st, 1860, amount to	$ 18,207,684.29		
As shown in Joint Exhibit D-1 and that the amount to be charged to West Virginia, computed on the principle adopted by the Plaintiff, is 20.7235%, as above		$ 3,773,269.45	

Certified Correct as to amounts and calculations.
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being reduced to 69.2% and to the use of this amount as a FAIR ESTIMATE of the valuation; objects to Slaves being considered Personal Property; objects to the use of percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified Correct as to figures and Calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

DARK PAGE BLEED THRU

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24,739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299,257.45
Total	$710,889,989.03	$113,142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

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County.	1860				1861				1862				1863				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.			Nu
VIRGINIA:																	
Accomac	2,645	.....	$ 1,353,505.00	$ 7,693.00	2,739	.....	$ 1,354,953.60	$ 3,822.00	2,643	.....	$ 1,008,285.00	$ 850.00	2,263	.....	$ 971,261.00	$ 1,020.00	
Albemarle	.....	.....	.....	.....	7,449	.....	2,626,742.00	116,956.00	12,681	$ 2,906,845.00	3,073,022.00	109,016.00	12,916	$ 7,647,305.00	4,212,185.00	201,569.00	1
Alexandria	709	.....	816,186.00	161,521.45	709	.....	816,186.00	160,900.45	149	.....	429,121.45	23,201.24	.....	.....	371,202.45	5,250.00	
Alleghany	589	.....	355,465.00	27,510.00	522	.....	380,427.00	16,986.00	659	259,580.00	371,595.00	4,682.00	677	484,935.00	617,220.00	3,190.00	
Amelia	4,269	.....	979,016.00	35,738.00	4,195	.....	1,017,215.00	14,840.00	7,172	2,453,900.00	1,000,325.00	12,980.00	7,538	5,840,450.00	1,524,152.00	17,997.00	
Amherst	3,211	.....	761,320.00	9,539.00	3,405	.....	882,485.00	7,080.00	5,860	2,004,545.00	980,975.00	9,546.00	6,368	4,839,000.00	1,798,220.00	6,091.19	
Appomattox	2,444	.....	661,245.00	14,315.00	2,526	.....	711,061.00	6,340.00	4,276	1,707,240.00	785,959.00	4,588.00	4,446	3,350,375.00	1,216,929.00	13,334.00	
Augusta	2,545	.....	3,052,439.00	12,310.00	2,587	.....	3,133,015.00	10,015.00	4,430	1,760,685.00	3,433,132.00	7,201.00	4,515	3,930,430.00	6,078,024.00	73,864.50	
Staunton	.....	.....	.....	.....	441	.....	435,404.08	43,366.00	734	339,400.00	486,229.00	34,552.00	749	630,890.00	831,077.00	130,348.00	
Bath	475	.....	425,836.00	2,875.00	517	.....	384,645.00	.....	781	298,375.00	405,285.00	.....	740	521,407.00	641,091.00	200.00	
Bedford	5,303	.....	2,115,884.00	9,592.00	5,660	.....	2,011,160.00	8,422.00	9,135	2,836,934.00	1,952,789.00	4,557.92	9,623	4,825,805.00	2,886,851.00	54,269.00	
Bland	.....	.....	.....	.....	113	.....	154,400.00	.....	273	92,370.00	254,156.00	.....	252	163,850.00	435,115.00	.....	
Botetourt	1,728	.....	1,044,030.00	20,093.43	1,671	.....	1,001,191.00	13,313.12	1,852	909,756.00	1,104,465.00	3,650.00	2,671	1,966,055.00	1,681,013.00	8,327.00	
Brunswick	5,209	.....	1,412,920.00	15,283.00	5,381	.....	1,442,560.00	7,754.00	9,212	3,564,725.00	1,477,460.00	7,311.00	9,479	6,819,700.00	1,847,050.00	11,849.00	
Buchanan	14	.....	81,548.00	.....	13	.....	84,904.00	.....	29	10,300.00	94,645.00	.....	33	17,500.00	142,252.00	.....	
Buckinghan	4,827	.....	933,423.00	21,310.00	4,866	.....	838,847.00	12,114.00	8,104	2,457,025.00	882,716.00	10,649.00	7,096	5,062,000.00	1,346,710.00	13,585.00	
Campbell	4,932	.....	1,452,167.00	150,927.00	4,981	.....	1,571,830.00	115,157.00	8,175	2,961,200.00	1,594,054.00	100,684.00	8,524	6,336,915.00	3,022,783.00	89,508.00	
Lynchburg	1,822	.....	984,599.00	242,409.00	1,611	.....	1,078,978.00	148,148.00	1,502	546,100.00	1,334,867.50	92,911.60	1,722	1,482,500.00	5,156,421.00	819,025.00	
Caroline	6,029	.....	1,460,978.00	19,540.00	6,074	.....	1,490,234.00	1,744.00	10,389	3,510,767.00	1,579,549.00	6,712.00	8,554	5,974,572.00	2,490,952.00	9,238.36	
Carroll	65	.....	156,233.87	.....	104	.....	290,028.93	300.00	258	91,420.00	336,919.00	.....	280	143,990.00	426,303.00	.....	
Charles City	1,783	.....	405,592.00	13,858.00	1,877	.....	434,720.00	7,301.00	3,643	1,104,370.00	477,720.00	7,641.90	1,784	596,895.00	486,689.00	7,564.80	
Charlotte	5,489	.....	1,562,782.00	39,456.00	5,560	.....	1,509,757.00	27,080.00	9,245	3,102,447.00	1,474,850.00	16,385.00	9,589	6,596,820.00	2,020,267.00	21,019.00	
Chesterfield	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7,671	5,722,220.00	1,760,777.00	27,337.00	
Clarke	1,834	.....	748,762.00	4,018.00	1,798	.....	720,928.00	2,190.00	2,623	916,545.00	744,163.00	700.00	.....	.....	.....	.....	
Craig	215	.....	262,376.00	.....	225	.....	253,431.00	.....	390	139,705.00	277,120.00	.....	447	275,775.00	429,280.00	2,000.00	
Culpeper	3,245	.....	928,245.00	18,561.00	3,259	.....	1,046,014.00	7,923.00	4,587	2,044,436.00	1,079,756.00	4,724.00	3,253	1,902,550.00	1,476,177.50	34,919.00	
Cumberland	3,899	.....	937,357.00	37,125.00	3,834	.....	808,050.00	6,254.00	6,331	1,917,150.00	869,315.00	.....	6,537	4,605,600.00	1,184,638.00	.....	
Dinwiddie	3,918	.....	814,161.00	13,665.00	4,010	.....	810,776.00	6,100.00	6,486	2,362,630.00	868,333.00	2,000.00	6,515	4,400,087.00	1,011,982.00	4,800.00	
Petersburg	3,538	.....	2,520,019.00	626,747.00	3,453	.....	2,754,673.00	199,288.00	4,024	1,893,595.00	2,956,881.00	175,707.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	
Elizabeth City	.....	.....	.....	.....	1,196	.....	334,069.00	2,680.00	.....	.....	.....	.....	.....	.....	.....	.....	
Essex	3,921	.....	1,062,457.62	44,483.85	3,873	.....	1,005,861.30	14,278.00	6,472	1,958,465.00	945,763.98	14,172.00	6,265	1,904,900.00	1,291,389.03	14,526.00	
Fairfax	1,607	.....	804,195.00	30,343.00	1,611	.....	899,020.00	13,656.00	.....	.....	.....	.....	.....	.....	.....	.....	
Fauquier	5,025	.....	2,578,876.00	7,621.00	5,016	.....	2,544,018.00	6,335.00	.....	.....	.....	.....	.....	.....	.....	.....	
Floyd	224	.....	305,154.00	3,721.00	244	.....	271,282.00	.....	374	152,050.00	363,880.00	.....	493	372,300.00	744,784.00	6,478.00	
Fluvanna	2,877	.....	801,182.00	12,121.00	2,883	.....	753,155.00	5,200.00	4,781	1,737,141.00	831,593.00	2,800.00	5,107	3,910,900.00	1,393,673.00	15,168.00	
Franklin	3,330	.....	1,237,755.00	2,327.00	3,394	.....	1,137,392.00	44.00	5,987	1,934,000.00	1,161,237.00	.....	6,262	4,230,100.00	1,754,029.00	500.00	
Frederick	844	.....	1,096,876.00	8,092.00	824	.....	1,666,656.00	1,036.00	715	281,300.00	525,825.00	2,300.00	.....	.....	.....	.....	
Winchester	330	.....	669,739.00	40,754.80	342	.....	1,060,637.00	23,972.80	428	180,900.00	1,045,582.00	16,848.00	.....	.....	.....	.....	
Giles	444	.....	390,735.00	1,925.00	438	.....	373,820.00	2,000.00	708	246,200.00	356,005.00	950.00	651	290,025.00	511,210.00	700.00	
Gloucester	3,038	.....	723,846.00	5,675.00	3,053	.....	653,340.00	3,819.00	.....	.....	.....	.....	.....	.....	.....	.....	
Carried forward	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$49,682,101.00	$36,563,172.93	$682,319.66	147,223	$99,085,801.00	$57,939,446.98	$3,769,957.85	16

* This value is based on the average value of the total number of s

DARK PAGE BLEED THRU

1861				1862				1863				Total of Latest Assessment.					County.
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.				
2,739	.....	$ 1,354,953.60	$ 3,822.00	2,643	.....	$ 1,008,285.00	$ 850.00	2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00	$ 1,020.00	$ 3,006,019.01	Accomac
7,449	.....	2,626,742.00	116,956.00	12,681	$ 3,906,845.00	3,073,022.00	109,016.00	12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00	201,569.00	7,531,011.47	Albemarle
709	.....	816,186.00	160,900.45	149	.....	429,121.45	23,201.24	.....	.....	371,202.45	5,250.00	.....	.....	371,202.45	5,250.00	4,246,781.48	Alexandria
522	.....	380,427.00	16,986.00	659	259,580.00	371,595.00	4,682.00	677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00	3,190.00	886,218.89	Alleghany
4,195	.....	1,017,215.00	14,840.00	7,172	2,453,900.00	1,000,325.00	12,980.00	7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00	17,997.00	2,227,607.77	Amelia
3,405	.....	882,485.00	7,080.00	5,860	2,004,545.00	980,975.00	9,546.00	6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00	6,091.19	3,285,852.00	Amherst
2,526	.....	711,061.00	6,340.00	4,276	1,707,240.00	785,959.00	4,588.00	4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00	13,334.00	1,517,374.47	Appomattox
2,587	.....	3,133,015.00	10,015.00	4,430	1,760,585.00	3,433,132.00	7,201.00	4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00	73,864.50	10,447,385.19	Augusta
441	.....	435,404.08	43,366.00	734	339,400.00	486,229.00	34,552.00	749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00	130,348.00	.....	Staunton
517	.....	384,645.00	.....	781	298,375.00	405,285.00	.....	740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00	200.00	1,023,626.72	Bath
5,660	.....	2,011,160.00	8,422.00	9,135	2,836,934.00	1,952,789.00	4,557.32	9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00	54,269.00	4,915,374.34	Bedford
113	.....	154,400.00	.....	273	92,370.00	254,156.00	.....	252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00	.....	677,408.17	Bland
1,671	.....	1,001,191.00	13,213.12	1,852	909,756.00	1,104,465.00	8,650.00	2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00	8,327.00	3,093,896.88	Botetourt
5,381	.....	1,442,560.00	7,754.00	9,212	3,564,725.00	1,477,460.00	7,311.00	9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00	11,849.00	1,571,475.99	Brunswick
13	.....	84,904.00	.....	29	10,300.00	94,645.00	.....	33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00	.....	145,260.55	Buchanan
4,866	.....	838,847.00	12,114.00	8,104	2,457,025.00	882,716.00	10,649.00	7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00	13,585.00	2,419,172.74	Buckingham
4,981	.....	1,571,830.00	115,157.00	8,175	2,961,200.00	1,594,054.00	100,684.00	8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00	89,508.00	6,073,524.78	Campbell
1,611	.....	1,078,978.00	148,148.00	1,502	546,100.00	1,334,867.50	92,911.60	1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00	819,025.00	.....	Lynchburg
6,074	.....	1,490,234.00	1,744.00	10,389	3,510,767.00	1,579,549.00	6,712.00	8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00	9,238.36	3,451,136.32	Caroline
104	.....	290,028.93	300.00	258	97,420.00	336,919.00	.....	280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00	.....	827,284.23	Carroll
1,877	.....	434,720.00	7,301.00	3,643	1,104,370.00	477,720.00	7,641.90	1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00	7,564.80	1,033,531.77	Charles City
5,560	.....	1,509,757.00	17,080.00	9,245	3,102,447.00	1,474,850.00	16,385.00	9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00	21,019.00	3,393,480.56	Charlotte
.....	.....	.....	.....	.....	.....	.....	.....	7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00	27,337.00	2,944,786.00	Chesterfield
1,798	.....	720,928.00	2,190.00	2,623	916,545.00	744,163.00	700.00	.....	.....	.....	.....	2,623	916,545.00	744,163.00	700.00	3,865,795.11	Clarke
225	.....	253,431.00	.....	390	139,705.00	277,120.00	.....	447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00	2,000.00	870,973.94	Craig
3,259	.....	1,046,014.00	7,923.00	4,587	2,044,436.00	1,079,756.00	4,724.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,371,412.76	Culpeper
3,834	.....	808,050.00	6,254.00	6,331	1,917,150.00	869,315.00	.....	6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00	.....	2,127,944.91	Cumberland
4,010	.....	810,776.00	6,100.00	6,486	2,362,630.00	868,333.00	2,000.00	6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00	4,800.00	2,427,991.10	Dinwiddie
3,453	.....	2,754,673.00	199,288.00	4,024	1,893,595.00	2,956,881.00	175,707.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	6,604,014.00	Petersburg
1,196	.....	334,069.00	2,680.00	.....	.....	.....	.....	.....	.....	.....	.....	1,196	* 599,914.00	334,069.00	2,680.00	1,032,933.00	Elizabeth City
3,873	.....	1,005,861.30	14,278.00	6,472	1,958,465.00	945,763.98	14,172.00	6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03	14,526.00	2,095,105.24	Essex
1,611	.....	899,020.00	13,656.00	.....	.....	.....	.....	.....	.....	.....	.....	1,611	* 808,078.00	899,020.00	13,656.00	5,028,362.72	Fairfax
5,016	.....	2,544,018.00	6,335.00	.....	.....	.....	.....	.....	.....	.....	.....	5,016	*2,516,026.00	2,544,018.00	6,335.00	9,250,346.87	Fauquier
244	.....	271,282.00	.....	374	152,050.00	363,880.00	.....	493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00	6,478.00	871,642.70	Floyd
2,883	.....	763,155.00	5,200.00	4,781	1,737,141.00	831,593.00	2,800.00	5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00	15,168.00	2,160,783.87	Fluvanna
3,394	.....	1,137,392.00	44.00	5,987	1,934,000.00	1,161,237.00	.....	6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00	500.00	2,506,642.31	Franklin
824	.....	1,666,656.00	1,036.00	715	281,300.00	525,825.00	2,300.00	.....	.....	.....	.....	715	281,300.00	525,825.00	2,300.00	5,681,169.61	Frederick
342	.....	1,060,637.00	23,972.80	428	180,900.00	1,045,582.00	16,848.00	.....	.....	.....	.....	428	180,900.00	1,045,582.00	16,848.00	.....	Winchester
438	.....	373,820.00	2,000.00	708	246,300.00	356,005.66	950.00	651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00	700.00	1,030,201.25	Giles
3,052	.....	653,340.00	3,819.00	.....	.....	.....	.....	.....	.....	.....	.....	3,053	*1,531,385.00	653,340.00	3,819.00	1,936,241.88	Gloucester
102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$49,682,101.00	$36,563,172.93	$682,319.66	147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.98	$3,816,296.85	$115,467,671.21	

* This value is based on the average value of the total number of slaves in counties for which both number and value is shown in 1862 and 1863.

DARK PAGE BLEED THRU

County.	1860				1861				1862				1863			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$ 49,682,101.00	$36,563,472.93	$ 682,319.66	147,222	$ 99,065,801.00	$ 57,929,446.98	$3,769,957.85
Occhland	3,507	.....	882,985.00	25,975.00	.....	.....	.....	.....	5,768	2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,830.00	10,656.00
Grayson	280	.....	279,337.00	1,200.00	294	.....	320,568.00	200.00	551	187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00
Greene	981	.....	371,965.00	1,535.00	997	.....	359,706.00	768.00	1,838	545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00
Greensville	2,213	.....	438,850.00	450.00	2,280	.....	466,020.00	750.00	3,963	1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....
Halifax	8,696	.....	2,636,968.00	77,631.00	8,818	.....	2,602,942.00	33,507.00	14,770	5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,333.00
Hanover	4,984	.....	1,408,020.00	30,737.00	5,115	.....	1,328,990.00	17,762.00	8,621	3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00
Henrico	3,860	.....	1,425,038.00	144,932.00	4,494	.....	1,386,853.00	68,944.68	6,557	2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00
Richmond	7,639	.....	4,073,365.00	605,795.43	6,474	.....	4,274,884.00	459,347.00	7,917	3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64
Henry	2,678	.....	845,159.00	6,827.00	2,779	.....	813,485.00	2,860.00	4,978	1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83
Highland	208	.....	314,790.00	1,200.00	219	.....	312,288.00	150.00	341	102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00
Isle of Wight	1,040	.....	447,528.00	8,620.00	2,148	.....	867,977.00	11,968.00	1,643	601,750.00	466,225.00	7,626.00	.....	.....	.....	.....
James City	1,141	.....	267,597.00	8,619.00	1,162	.....	287,899.00	2,712.00	.....	.....	.....	.....	.....	.....	.....	.....
Williamsburg	405	.....	276,220.00	25,743.00	410	.....	269,541.00	9,997.00	.....	.....	.....	.....	.....	.....	.....	.....
King and Queen	3,288	.....	912,999.00	4,532.00	3,406	.....	937,602.00	7,216.00	5,882	1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00
King George	2,066	.....	478,874.00	9,022.00	1,984	.....	513,311.00	7,280.00	2,999	1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....
King William	2,916	.....	423,670.00	6,970.00	3,248	.....	441,115.00	1,220.00	5,029	1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00
Lancaster	1,605	.....	313,610.00	4,350.00	1,583	.....	306,475.00	3,055.00	2,340	710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00
Lee	486	.....	699,153.00	2,320.00	481	.....	742,706.00	342.00	958	468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....
Loudoun	3,063	.....	2,590,444.00	34,478.40	3,000	.....	3,207,617.00	21,171.40	.....	.....	.....	.....	.....	.....	.....	.....
Louisa	5,429	.....	1,618,875.00	24,093.00	5,366	.....	1,663,795.00	17,013.00	9,169	3,217,660.00	1,790,134.00	22,388.00	8,963	5,833,915.00	2,397,065.00	24,707.00
Lunenburg	4,163	.....	926,401.00	3,147.00	4,212	.....	861,074.00	3,904.00	7,219	2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00
Madison	2,408	.....	1,156,079.00	9,462.56	2,373	.....	1,121,577.00	1,608.00	4,235	1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33
Matthews	1,507	.....	327,884.00	2,650.00	1,479	.....	343,250.00	800.00	2,110	599,090.00	318,030.00	800.00	.....	.....	.....	.....
Mecklenburg	7,392	.....	1,553,038.00	31,894.00	7,506	.....	1,642,462.00	28,225.00	12,481	3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50
Middlesex	1,526	.....	324,513.00	7,812.00	1,550	.....	347,625.00	3,657.00	2,546	652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00
Montgomery	1,141	.....	753,910.00	9,460.00	1,173	.....	780,915.00	3,890.00	2,132	879,400.00	888,875.00	4,400.00	2,750	1,691,530.00	1,526,377.00	23,280.00
Nansemond	2,571	.....	1,005,005.00	17,804.00	2,677	.....	1,036,998.00	12,228.00	.....	.....	.....	.....	.....	.....	.....	.....
Nelson	3,215	.....	569,377.00	3,160.00	3,158	.....	531,572.00	1,377.00	5,356	1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00
New Kent	1,780	.....	320,945.00	5,706.20	1,808	.....	316,990.00	5,771.00	2,958	892,670.00	405,200.00	.....	1,853	1,115,725.00	519,072.00	.....
Norfolk	2,887	.....	654,166.00	14,305.00	2,751	.....	619,528.00	8,441.28	1,390	501,225.00	230,875.00	3,028.00	.....	.....	.....	.....
Norfolk City	1,997	.....	1,298,477.50	271,297.00	1,951	.....	1,258,780.00	164,856.00	2,327	860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....
Portsmouth	736	.....	232,765.00	51,508.00	689	.....	248,455.00	57,939.00	941	276,960.00	215,605.00	62,909.00	.....	.....	.....	.....
Northampton	.....	.....	.....	.....	2,250	.....	642,880.00	2,494.00	2,123	.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00
Northumberland	1,733	.....	426,450.00	650.00	1,823	.....	417,340.00	.....	2,884	818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00
Nottoway	3,856	.....	854,726.00	19,564.00	3,953	.....	859,740.00	14,602.00	6,342	2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00
Orange	3,309	.....	779,770.00	10,469.00	3,486	.....	819,151.00	7,440.00	5,873	1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00
Page	495	.....	867,587.00	6,224.00	483	.....	860,453.00	1,569.00	944	355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00
Patrick	1,026	.....	527,418.00	4,659.00	1,024	.....	530,975.00	1,050.00	1,872	663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00
Pittsylvania	7,417	.....	2,104,281.00	21,541.00	7,171	.....	1,990,008.00	7,840.00	12,362	4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	2,097,599.00	171,200.00
Danville	763	.....	268,746.00	31,451.00	573	.....	238,404.00	14,578.00	1,023	418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28
Carried forward	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43

DARK PAGE BLEED THRU

1861				1862				1863				Total of Latest Assessment.					County
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.				
102,454	.....	$40,143,865.31	$1,006,414.37	145,108	$ 49,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.93	$3,816,295.85	$115,467,671.21	
.....	.....	.....	.....	5,768	2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2,698,135.52	Goochland
294	.....	320,568.00	200.00	551	187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	939,744.36	Grayson
997	.....	359,706.00	768.00	1,838	545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	961,860.60	Greene
2,280	.....	466,020.00	750.00	3,963	1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	768,704.13	Greensville
8,818	.....	2,602,942.00	33,507.00	14,770	5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5,245,749.29	Halifax
5,115	.....	1,328,990.00	17,762.00	8,621	3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3,243,892.30	Hanover
4,494	.....	1,386,853.00	68,944.68	6,557	2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	3,271,529.06	Henrico
6,474	.....	4,274,884.00	459,347.00	7,917	3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19,663,313.00	Richmond
2,779	.....	813,485.00	2,860.00	4,978	1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1,811,520.71	Henry
219	.....	312,288.00	150.00	341	102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1,296,097.42	Highland
2,148	.....	867,977.00	11,968.00	1,643	601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1,407,738.36	Isle of Wight
1,162	.....	287,899.00	2,712.00	.....	.....	.....	.....	.....	.....	.....	.....	1,162	* 582,859.00	287,899.00	2,712.00	1,102,552.98	James City
410	.....	269,541.00	9,997.00	.....	.....	.....	.....	.....	.....	.....	.....	410	* 205,656.00	269,541.00	9,997.00	.....	Williamsburg
3,406	.....	937,602.00	7,216.00	5,882	1,592,590.00	941,985.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1,764,398.74	King and Queen
1,984	.....	513,311.00	7,280.00	2,999	1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1,544,464.85	King George
3,248	.....	441,115.00	1,220.00	5,029	1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1,729,586.10	King William
1,583	.....	306,475.00	3,055.00	2,340	710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	981,261.00	Lancaster
481	.....	742,706.00	342.00	958	468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1,633,215 73	Lee
3,000	.....	3,207,617.00	21,171.40	.....	.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,800.00	3,207,617.00	21,171.40	11,684,915 00	Loudoun
5,366	.....	1,663,795.00	17,013.00	9,169	3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3,544,387 57	Louisa
4,212	.....	861,074.00	3,904.00	7,219	2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1,598 421 73	Lunenburg
2,373	.....	1,121,577.00	1,608.00	4,235	1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2,150,811 93	Madison
1,479	.....	343,250.00	800.00	2,110	599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	777,059 78	Matthews
7,506	.....	1,642,462.00	28,225.00	12,481	3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3,530,539 97	Mecklenburg
1,550	.....	347,625.00	3,657.00	2,546	652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	870,729.64	Middlesex
1,173	.....	780,915.00	3,890.00	2,132	879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,799,449 75	Montgomery
2,677	.....	1,036,998.00	12,228.00	.....	.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,783.00	1,036,998.00	12,228.00	1,770,113.03	Nansemond
3,158	.....	531,572.00	1,377.00	5,356	1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2,694,440.00	Nelson
1,808	.....	316,990.00	5,771.00	2,958	892,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	926,208.29	New Kent
2,751	.....	619,528.00	8,441.28	1,390	501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2,918,682.33	Norfolk
1,951	.....	1,258,780.00	164,856.00	2,327	860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,820.00	1,086,205.00	115,972.00	5,749,810.86	Norfolk City
689	.....	248,455.00	57,939.00	941	276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2,090,080.00	Portsmouth
2,250	.....	642,880.00	2,494.00	2,123	.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00	519,841.00	1,500.00	1,397,328.00	Northampton
1,823	.....	417,340.00	.....	2,884	818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1,219,354.00	Northumberland
3,953	.....	859,740.00	14,602.00	6,342	2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1,964 321.92	Nottoway.
3,486	.....	819,151.00	7,440.00	5,873	1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2,805,006.00	Orange
483	.....	860,453.00	1,569.00	944	355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2,140,857.54	Page
1,024	.....	530,975.00	1,050.00	1,872	663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1,281,441.00	Patrick
7,171	.....	1,990,008.00	7,840.00	12,362	4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4,782,153.21	Pittsylvania
573	.....	238,404.00	14,578.00	1,023	418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	770,158.00	Danville
208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$9,946,175.83	$239,353,755.13	

DARK PAGE BLEED THRU

County.	1860				1861				1862				1863				N
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.			
Brought forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	
Powhatan	3,177	.....	789,892.00	11,487.00	3,156	.....	781,924.00	4,593.00	5,266	1,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	
Prince Edward	4,302	.....	1,035,329.00	41,213.00	4,279	.....	963,827.00	18,096.00	6,998	2,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	
Prince George	2,894	.....	787,372.00	18,209.00	2,926	.....	895,394.00	10,121.00	4,536	1,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	
Prince William	1,269	.....	615,710.00	14,734.80	1,243	.....	578,707.00	8,514.80	.....	.....	.....	.....	.....	.....	.....	.....	
Princess Anne	1,818	.....	562,412.00	12,825.00	224	.....	563,823.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Pulaski	918	.....	765,562.00	5,250.00	928	.....	754,557.00	950.00	1,636	611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	
Rappahannock	1,721	.....	566,869.00	802.00	1,748	.....	643,857.00	1,150.00	3,316	1,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	
Richmond	1,373	.....	361,865.61	3,175.00	1,384	.....	336,457.92	1,759.00	2,954	672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	
Roanoke	1,603	.....	879,608.00	18,778.00	1,580	.....	977,989.00	16,606.00	2,763	896,650.00	997,232.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	
Rockbridge	2,328	.....	1,991,203.00	54,634.71	2,273	.....	1,924,718.81	28,630.21	4,024	1,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	
Rockingham	1,268	.....	2,855,817.00	32,082.00	1,241	.....	2,793,172.50	14,407.00	2,164	768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	
Russell	516	.....	628,823.00	700.00	573	.....	660,922.00	.....	1,061	357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	
Scott	324	.....	668,486.00	2,591.00	331	.....	661,765.00	2,017.00	465	186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	
Shenandoah	484	.....	1,408,887.00	4,755.00	457	.....	1,487,641.00	780.00	549	220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	
Smyth	508	.....	502,340.00	6,835.00	500	.....	500,160.00	5,570.00	1,044	424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	
Southampton	3,174	.....	1,287,193.00	11,157.00	3,141	.....	1,326,697.00	7,108.00	5,081	1,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	
Spottsylvania	2,382	.....	1,066,307.00	17,451.90	3,409	.....	976,683.00	18,590.00	3,220	1,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	
Fredericksburg	724	.....	698,492.00	75,965.00	685	.....	612,077.00	61,804.00	1,117	441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	
Stafford	1,575	.....	478,025.50	22,461.00	1,545	.....	441,672.50	22,209.00	.....	.....	.....	.....	.....	.....	.....	.....	
Surry	1,552	.....	348,872.99	8,265.06	1,544	.....	349,580.40	4,725.00	2,280	688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	
Sussex	3,604	.....	801,725.00	4,398.82	3,598	.....	810,060.00	400.00	6,043	2,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	
Tazewell	676	.....	566,828.00	6,911.00	670	.....	566,078.00	4,470.00	1,124	378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	
Warren	804	.....	548,143.00	5,640.00	822	.....	520,794.00	1,250.00	1,348	429,775.00	536,819.00	340.00	.....	.....	.....	.....	
Warwick	602	.....	80,085.00	1,120.00	616	.....	90,080.00	1,120.00	.....	.....	.....	.....	.....	.....	.....	.....	
Washington	1,319	.....	1,290,488.00	26,152.00	1,375	.....	1,455,589.00	16,135.00	2,507	864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554.00	
Westmoreland	2,088	.....	347,612.00	9,470.00	2,153	.....	350,571.00	9,668.00	3,328	1,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	
Wise	34	.....	148,505.00	1,475.00	38	.....	165,646.00	1,725.00	51	24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	
Wythe	1,116	.....	1,143,261.00	25,095.00	1,120	.....	1,100,401.00	19,620.00	1,941	633,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	
York	999	.....	215,671.00	2,500.00	990	.....	195,190.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Total	243,986	.....	$94,995,274.09	$3,665,076.41	253,351	.....	$100,201,850.44	$2,296,964.74	369,466	$126,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	
WEST VIRGINIA:																	
Barbour	68	.....	$ 516,950.00	$ 4,508.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Berkeley	911	.....	797,998.00	3,080.00	926	.....	$ 862,022.00	$4,826.00	.....	.....	.....	.....	.....	.....	.....	.....	
Boone	86	.....	187,680.00	2,815.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Braxton	54	.....	289,435.00	825.00	57	.....	311,153.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Brooke	5	.....	407,487.00	7,650.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Cabell	216	.....	605,462.00	4,800.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Calhoun	6	.....	55,955.00	400.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Clay	25	.....	105,320.00	510.00	9	.....	57,527.00	847.00	.....	.....	.....	.....	.....	.....	.....	.....	
Doddridge	17	.....	165,220.00	2,362.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Fayette	127	.....	219,158.00	1,020.00	124	.....	242,411.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	
Carried forward	1,515	.....	$3,350,665.00	$27,970.00	1,116	.....	$1,473,113.00	$5,673.00	.....	.....	.....	.....	.....	.....	.....	.....	

1861				1862				1863				Total of Latest Assessment.					County.
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.				
208,802	.....	$76,715,816.31	$2,014,946.73	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$ 9,946,175.83	$229,853,755.13	
3,156	.....	781,924.00	4,593.00	5,266	1,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,124,730.00	5,590.00	1,042,646.93	Powhatan.
4,279	.....	963,827.00	18,096.00	6,998	2,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,690,959.00	68,592.00	2,299,360.30	Prince Edward.
2,926	.....	896,394.00	10,121.00	4,536	1,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	4,536	1,810,132.00	892,677.00	11,576.00	1,887,005.40	Prince George.
1,243	.....	578,707.00	8,514.80	.....	.....	.....	.....	.....	.....	.....	.....	1,243	*623,489.00	578,707.00	8,514.80	2,628,411.00	Prince William.
224	.....	563,823.00	.....	....	.....	.....	.....	.....	.....	.....	.....	224	*112,358.00	563,823.00	.....	1,531,299.27	Princess Anne.
928	.....	754,557.00	950.00	1,636	611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,731,920.36	Pulaski.
1,748	.....	643,857.00	1,150.00	3,316	1,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,046,446.00	.....	2,698,529.36	Rappahannock.
1,384	.....	336,457.92	1,759.00	2,054	672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	2,112	725,870.00	561,667.81	.....	1,069,219.94	Richmond.
1,580	.....	977,989.00	16,606.00	2,765	896,650.00	997,282.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,558,317.00	128,727.00	3,014,050.66	Roanoke.
2,273	.....	1,924,718.81	28,630.21	4,024	1,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,533,582.00	57,370.00	5,323,247.55	Rockbridge.
1,241	.....	2,793,172.50	14,407.00	2,164	768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,726,373.00	57,523.50	5,424,219.96	Rockingham.
573	.....	660,922.00	.....	1,061	357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,187,672.00	.....	1,576,304.75	Russell.
331	.....	661,765.00	2,017.00	465	186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	517	327,500.00	998,689.00	300.00	1,248,493.57	Scott.
457	.....	1,487,641.00	780.00	549	220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,159,671.00	476.00	4,499,679.62	Shenandoah.
500	.....	500,160.00	5,570.00	1,044	424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,621,730.00	414,460.00	2,518,350.84	Smyth.
3,141	.....	1,326,697.00	7,108.00	5,081	1,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	4,783	2,464,255.00	1,841,724.80	1,955.00	1,549,447.12	Southampton.
3,409	.....	976,683.00	18,590.00	3,220	1,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	3,220	1,292,815.00	637,604.00	9,577.00	2,413,479.86	Spottsylvania.
685	.....	612,077.00	61,804.00	1,117	441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	1,117	441,675.00	654,447.00	57,016.00	1,338,430.00	Fredericksburg.
1,545	.....	441,672.50	22,209.00	.....	.....	.....	.....	.....	.....	.....	.....	1,545	*774,972.00	441,672.50	22,209.00	1,711,583.00	Stafford.
1,544	.....	349,580.40	4,725.00	2,280	688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	466,413.00	37,562.00	881,874.16	Surry.
3,598	.....	810,060.00	400.00	6,043	2,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,273,032.00	1,852.00	1,065,446.22	Sussex.
670	.....	566,078.00	4,470.00	1,124	378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,059,241.00	2,000.00	1,860,424.00	Tazewell.
822	.....	520,794.00	1,250.00	1,348	429,775.00	536,819.00	340.00	.....	.....	.....	.....	1,348	429,775.00	536,819.00	340.00	2,080,567.84	Warren.
616	.....	90,080.00	1,120.00	.....	.....	.....	.....	.....	.....	.....	.....	616	*308,986.00	90,080.00	1,120.00	453,501.21	Warwick.
1,375	.....	1,455,589.00	16,135.00	2,507	864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554.00	2,771	1,754,750.00	2,216,805.00	86,554.00	4,490,523.00	Washington.
2,153	.....	350,571.00	9,668.00	3,328	1,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	598,204.00	670.00	1,674,143.00	Westmoreland.
38	.....	165,646.00	1,725.00	51	24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	67	55,920.00	274,984.00	.....	277,640.83	Wise.
1,120	.....	1,100,401.00	19,620.00	1,941	638,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,198,741.00	185,391.00	3,035,517.92	Wythe.
990	.....	195,190.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	990	*496,584.00	195,190.00	.....	897,388.86	York.
253,351	.....	$100,201,850.44	$2,296,964.74	369,466	$126,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,844,637.59	$11,108,300.13	$296,035,460.31	
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	68	*$ 33,201.00	$ 516,950.00	$ 4,508.00	$ 1,435,327.12	Barbour.
926	.....	$ 862,022.00	$4,826.00	.....	.....	.....	.....	.....	.....	.....	.....	926	*452,119.00	862,022.00	4,826.00	5,293,640.00	Berkeley.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	86	*41,989.00	137,680.00	2,815.00	501,364.79	Boone.
57	.....	311,153.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	57	*27,330.00	311,153.00	.....	779,557.90	Braxton.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	*2,441.00	407,487.00	7,650.00	1,166,793.00	Brooke.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	216	*105,462.00	605,462.00	4,800.00	2,033,209.92	Cabell.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	6	*2,929.00	55,955.00	400.00	323,404.70	Calhoun.
9	.....	57,527.00	847.00	.....	.....	.....	.....	.....	.....	.....	.....	9	*4,394.00	57,527.00	847.00	227,043.33	Clay.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	165,220.00	2,362.00	791,411.00	Doddridge.
124	.....	242,411.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	124	*60,543.00	242,411.00	.....	910,550.25	Fayette.
1,116	.....	$1,473,113.00	$5,673.00	.....	.....	.....	.....	.....	.....	.....	.....	1,514	$739,208.00	$3,411,867.00	$28,208.00	$13,466,302.00	

County.	1860				1861				1862				1863			
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves		Other Personal Property.	Income.
	Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.		
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,970.00	1,116	.....	$ 1,473,113.00	$ 5,673.00	.....	.....	.....	.....	.....	.....	.....	.....
Gilmer	21	.....	161,522.00	1,601.00	28	.....	175,772.00	935.00	.....	.....	.....	.....	.....	.....	.....	.....
Greenbrier	996	.....	1,808,705.00	33,240.32	984	.....	1,902,530.00	18,250.26	1,419	$ 599,761.00	$1,883,100.00	$10,295.00	238	$ 745,220.00	$2,252,197.00	$17,630.75
Hampshire	729	.....	1,082,218.00	14,207.50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hancock	1	.....	262,146.00	450.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hardy	645	.....	942,419.00	5,679.00	641	.....	1,014,392.00	7,710.00	.....	.....	.....	.....	.....	.....	.....	.....
Harrison	292	.....	1,083,482.00	5,751.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Jackson	42	.....	294,986.00	4,217.00	41	.....	303,932.00	600.00	.....	.....	.....	.....	.....	.....	.....	.....
Jefferson	2,256	.....	1,910,687.00	24,365.00	2,256	.....	1,888,233.00	13,190.20	.....	.....	.....	.....	.....	.....	.....	.....
Kanawha	1,238	.....	720,969.00	30,271.00	1,237	.....	749,570.00	28,542.00	.....	.....	.....	.....	.....	.....	.....	.....
Lewis	103	.....	432,326.00	5,246.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Logan	30	.....	120,156.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
McDowell	.....	.....	31,138.00	.....	.....	.....	35,595.00	.....	.....	.....	33,995.00	.....	177	19,295.00	29,455.00	.....
Marion	46	.....	717,028.00	10,600.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall	20	.....	340,471.00	3,758.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mason	200	.....	548,385.00	2,500.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Mercer	192	.....	279,050.00	1,500.00	191	.....	300,545.00	.....	301	95,370.00	308,960.00	30.00	176	123,615.00	369,388.00	.....
Monongalia	69	.....	1,071,376.00	4,700.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Monroe	611	.....	1,408,522.00	12,588.00	627	.....	1,416,431.00	5,663.00	1,136	401,830.00	1,541,052.00	1,687.00	1,052	569,326.00	2,010,111.00	12,853.50
Morgan	60	.....	186,232.00	150.00	59	.....	202,144.00	400.00	.....	.....	.....	.....	.....	.....	.....	.....
Nicholas	85	.....	264,084.00	1,636.00	76	.....	237,162.00	50.00	.....	.....	.....	.....	.....	.....	.....	.....
Ohio	21	.....	347,555.00	1,600.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wheeling	2	.....	470,005.00	95,748.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pendleton	138	.....	523,324.00	1,805.00	139	.....	520,629.00	15.00	201	61,450.00	555,093.00	80.00	155	91,450.00	786,201.00	.....
Pleasants	7	.....	129,035.00	800.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Pocahontas	.....	.....	.....	.....	139	.....	470,156.00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Preston	41	.....	679,170.00	2,500.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Putnam	353	.....	299,725.00	930.00	345	.....	332,887.00	540.00	.....	.....	.....	.....	.....	.....	.....	.....
Raleigh	28	.....	125,355.00	1,000.00	35	.....	134,835.00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Randolph	107	.....	306,617.00	1,561.00	20	.....	126,805.00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Ritchie	12	.....	261,832.00	2,726.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Roane	35	.....	158,731.00	2,130.00	37	.....	185,404.00	1,440.00	.....	.....	.....	.....	.....	.....	.....	.....
Taylor	68	.....	361,874.00	800.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Tucker	17	.....	77,679.00	698.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Tyler	7	.....	308,536.00	948.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Upshur	97	.....	401,914.00	2,202.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wayne	74	.....	363,127.00	1,045.00	77	.....	380,000.00	265.00	.....	.....	.....	.....	.....	.....	.....	.....
Webster	.....	.....	21,554.00	.....	.....	.....	59,546.21	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wetsel	8	.....	19,060.00	430.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wirt	17	.....	110,393.00	1,470.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wood	82	.....	683,030.00	29,758.50	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Wyoming	36	.....	121,083.00	506.00	35	.....	112,066.00	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total	10,301	.....	$22,787,166.00	$339,087.32	8,983	.....	$12,021,747.21	$83,273.46	3,057	$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25

1861				1862				1863				Total of Latest Assessment.					
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	County.
Number.	Value.			Number.	Value.			Number.	Value.			Number.	Value.				
1,116	.....	$ 1,473,113.00	$ 5,673.00	.....	.....	.....	.....	.....	.....	.....	.....	1,514	$ 739,308.00	$ 2,411,867.00	$ 28,208.00	$13,466,302.00	
28	.....	175,772.00	935.00	.....	.....	.....	.....	.....	.....	.....	.....	28	*13,671.00	175,772.00	935.00	769,507.31	Gilmer.
984	.....	1,962,530.00	18,250,26	1,419	$ 599,761.00	$1,883,100.00	$10,295.00	928	$ 745,220.00	$2,252,197.00	$17,630.75	928	745,220.00	2,252,197.00	17,630.75	3,466,378.52	Greenbrier.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	729	*355,934.00	1,083,318.00	14,307.50	3,956,442.56	Hampshire.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	*488.00	263,146.00	450.00	906,907.51	Hancock.
641	.....	1,014,392.00	7,710.00	.....	.....	.....	.....	.....	.....	.....	.....	641	*312,968.00	1,014,392.00	7,710.00	3,911,771.10	Hardy.
41	.....	303,932.00	600.00	.....	.....	.....	.....	.....	.....	.....	.....	292	*142,569.00	1,083,482.00	5,750.00	3,797,004.16	Harrison.
2,256	.....	1,888,233.00	13,190.20	.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	303,932.00	600.00	1,643,682.47	Jackson.
1,237	.....	749,570.00	28,542.00	.....	.....	.....	.....	.....	.....	.....	.....	2,256	*1,101,492.00	1,888,233.00	13,190.20	6,462,928.00	Jefferson.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,237	*603,965.00	749,570.00	28,542.00	2,237,382.51	Kanawha.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	103	*50,299.00	432,236.00	5,246.00	1,379,235.89	Lewis.
.....	.....	35,595.00	.....	.....	.....	33,995.00	.....	177	19,295.00	29,455.00	.....	30	*14,647.00	120,156.00	.....	338,650.94	Logan.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	177	19,295.00	29,455.00	.....	172,698.05	McDowell.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	46	*22,459.00	717,028.00	10,600.00	2,731,063.13	Marion.
191	.....	300,545.00	.....	301	95,370.00	308,960.00	30.00	176	123,615.00	368,388.00	.....	20	*9,765.00	340,471.00	3,758.00	2,371,897.95	Marshall.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	200	*97,650.00	548,385.00	2,500.00	2,814,941.05	Mason.
627	.....	1,416,431.00	5,663.00	1,136	461,830.00	1,541,052.00	1,687.00	1,052	569,325.00	2,010,111.00	12,853.50	176	123,615.00	368,388.00	.....	679,564.35	Mercer
59	.....	202,144.00	400.00	.....	.....	.....	.....	.....	.....	.....	.....	69	*33,689.00	1,071,378.00	4,700.00	2,954,136.46	Monongalia.
76	.....	237,162.00	50.00	.....	.....	.....	.....	.....	.....	.....	.....	1,052	569,325.00	2,010,111.00	12,853.50	3,399,232.99	Monroe.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	59	*28,807.00	202,144.00	400.00	740,758.44	Morgan.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	76	*37,107.00	237,162.00	50.00	775,013.22	Nicholas.
139	.....	520,629.00	15.00	201	61,450.00	555,093.00	80.00	155	91,450.00	786,301.00	.....	31	*10,253.00	347,555.00	1,000.00	5,074,553.00	Ohio.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	*976.00	470,005.00	95,748.00	.....	Wheeling.
139	.....	470,156.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	155	91,450.00	786,301.00	.....	1,098,709.76	Pendleton.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	129,035.00	300.00	577,606.79	Pleasants.
345	.....	332,887.00	540.00	.....	.....	.....	.....	.....	.....	.....	.....	139	*67,367.00	470,156.00	.....	1,189,733.24	Pocahontas.
35	.....	134,835.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00	679,170.00	2,500.00	1,679,082.61	Preston.
20	.....	126,805.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	345	*168,446.00	333,887.00	540.00	*32,898.02	Putnam.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	134,835.00	.....	498,330.90	Raleigh.
97	.....	185,404.00	1,440.00	.....	.....	.....	.....	.....	.....	.....	.....	20	*9,765.00	126,805.00	.....	1,130,745.77	Randolph.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	12	*5,859.00	261,832.00	2,736.00	1,136,737.79	Ritchie.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	37	*18,065.00	135,404.00	1,440.00	463,066.20	Roane.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	68	*33,201.00	261,871.00	300.00	1,241,063.36	Taylor.
77	.....	38,000.00	265.00	.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	77,679.00	693.00	288,520.66	Tucker.
.....	.....	59,546.21	.....	.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00	208,536.00	948.00	678,236.00	Tyler.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	97	*47,360.00	461,914.00	3,102.00	1,229,680.33	Upshur.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	77	*37,595.00	330,000.00	265.00	1,135,038.58	Wayne.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	59,546.21	.....	216,085.00	Webster.
35	.....	112,066.00	.....	.....	.....	.....	.....	.....	.....	.....	.....	9	*3,906.00	19,060.00	430.00	789,068.00	Wetzel.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	17	*8,260.00	110,393.00	1,470.00	868,578.43	Wirt.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	82	*40,026.00	633,030.00	29,758.50	2,600,610.50	Wood.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00	112,066.00	.....	371,137.00	Wyoming.
8,983	.....	$12,021,747.21	$83,273.46	3,057	$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,397	$5,654,593.00	$24,730,894.21	$299,257.45	$82,649,382.04	

Other Evidence and Proceedings Relating to Paragraph V of the Decree.

[*Vol. 5, Nov. 16, 1909.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH V OF THE DECREE.

ARTHUR G. POTTER,
testified as follows: 66

By Mr. Anderson:

Q. Please examine this schedule, marked "Plaintiff's Exhibit E 1," and state what that statement embraces, the sources from which it was derived, and your knowledge as to the correctness of the statement in general and in particular.

A. The statement is a division of the sum total of the ordinary expenses of Government in the preceding exhibit, namely, forty million dollars, on the basis of a fair estimated valuation of the real and personal property. The estimated valuations of the real and personal property are shown in what we call Article II—I believe it is Exhibit B—and is based on the same figures that were used in that schedule.

Q. That is, you predicate this result from the statements contained in Plaintiff's Exhibit B 1?

A. Yes, sir.

Mr. Robinson: Partially.

Mr Anderson: And upon the population.

The Special Master: Yes; so far as it is necessary.

By Mr. Anderson:

Q. This includes personal property as well as real property?

A. Personal property.

Q. How did you estimate the value of the personal pro- 67
perty, and of what date, and how did you ascertain it?

A. Certain of the counties made returns of personal property in 1863, and certain of them did not. We took those that did make returns, and from the—do you want me to explain the exact method by which I arrived at it?

Q. I did not ask that now. The question is whether that statement is correct, and from what sources it was derived.

The Special Master: Your question would involve all the answer he has given. You might as well state it fully and give your reasons as you go along. Put it in, concretely and concisely.

A. We had the personal property returns in 77 counties for 1863. I understand these returns were in Confederate money. We reduced that to gold—

By The Special Master:

Q. As of what date?

A. As of February, 1863, which was the date of the assessment. On that date we ascertained that one dollar in gold was worth four dollars Confederate. We reduced the Confederate valuation to gold. Then we took the valuation of 1861 and determined the percentage of shrinkage.

Q. Do you apply the same percentage to the remaining counties that appeared to apply to the 77?

A. No; there was an intermediate step. We determined the percentage of shrinkage. Then we took the 33 counties of 1861, and applied that percentage of shrinkage and got at the value of those for 1863. Adding the two together gave us the valuation of personal property in 1863, as of February, which was the date 68
of the assessment.

By Mr. Conrad:

Q. Are not those explanations you are now making all set out and printed in that slip itself?

A. Yes, sir; on page 3.

By Mr. Anderson:

Q. What do you know as to the correctness of the statements in that schedule, Mr. Potter? Did you verify them?

A. I made these personally—all of them.

Q. Did you compare them with the original records?

A. Yes, sir.

Q. State whether that is a correct statement of the principles upon which it is stated, as set for forth upon the paper itself.

A. I believe it is.

Mr. Anderson: That paper may be filed. That is all we think it will be necessary to introduce in support of this paragraph. It is based upon what is known as the Commissioner of Revenue—the land books returned by the Commissioner of Revenue for each year.

The Special Master: They are public records, open to the inspection of the other side?

Mr. Anderson: Yes, sir; open to the inspection of the other side.

The Special Master: Do you wish to ask any questions, gentlemen?

By Mr. Spooner:

Q. I did not understand exactly how you got at that $23,-042,230, estimated personal property in Virginia and $24,406,- 69
681, in West Virginia.

A. The assessed valuation of personal property in West Virginia I took from the reports of the Auditor. I will have to look at my papers, if you will permit me.

Q. Certainly.

A. The 33 counties in West Virginia I took from the West Virginia's Auditor's report, in the West Virginia Journal of 1863, page 324, assessments of 1862.

Q. What is the date of that Auditor's report?

A. Auditor's report, Journal of 1863.

Q. You do not know the date?

The Special Master: You mean the house journal. You say the journal of 1863.

A. No; it is a volume of Auditor's reports that I found in the library at Charleston.

Mr. Conley: It is published in the Journal of the House of Delegates or Senate.

A. The Journal of 1863.

By Mr. Anderson:

Q. You mean the ledger of 1863, do you not?

A. All my memoranda show are the Auditor's report in the Journal of 1863—that is right; the Journal of the House of Delegates.

By Mr. Spooner:

Q. How much did you find to be the value of personal property in Virginia without the reduction to the basis of the value in Confederate money?

A. In 73 counties it was $70,566,000.

Q. Can you state separately how much of that was money 70
and how much was other personal property?

A. No, sir; the reports merely give it in totals.

Mr. Anderson: The report only gives the totals.

A. Only the totals. I do not give any details in that.

By Mr. Conrad:

Q. Your report shows the sources of your information, where the sources can be found, does it not?

A. Yes, sir.

By Mr. Spooner:

Q. What percentage did you reduce the valuation of personal property in Virginia to as contradistinguished from West Virginia?

A. What percentage?

Q. Yes; you said it was $77,000,000. You brought it down to $23,000,000 and something. What was the principle on which you made that reduction? I only want to get at your methods?

A. The $70,000,000, was reduced to gold on a basis of four to one.

Q. You assumed that all of that $70,000,000 was money?

A. Oh, no; personal property—the value of personal property in 73 Virginia counties as stated in the report.

By the Special Master:

Q. Your assumption is it was computed in Confederate money?

A. Not my assumption; no, sir. I did not assume anything. I was informed by the counsel for Virginia. 71

Q. It is immaterial as to how you get it. You proceeded on the hypothesis that the personal property was estimated in Confederate money?

A. That the assessments were made in Confederate money.

By Mr. Spooner:

Q. You did not get that very important information, then, either from the published reports or from any records of the State?

A. No, I did not.

By the Special Master:

Q. That is, was there any public document that made that statement?

A. No, sir; none that I have seen.

Mr. Conrad: The Master would almost take judicial notice of that, as a matter of history, pretty much on the basis that Chief Justice Chase proceeded in Harrington against Smith, in North Carolina. The published history of the country shows that the only currency in this region at that period was the Confederate currency. Gold was a commodity. Greenbacks were a commodity. Confederate money alone was current here, and all the assessments of property were made in Confederate money. I say the Master might safely take judicial notice of that as a matter of public history.

Mr. Spooner: I was only trying to get at the facts as to how these estimates were made.

Mr. Anderson: We call the attention of your Honor and of counsel to the fact that our statement with regard to all of this personalty as to which this scale, as it is called, applied, reducing the value estimated in Confederate money to the value estimated 72
in lawful money, in specie—not gold, but specie, gold and silver being then on a par with each other—is supported by the legislation at that time. The legislation of the Richmond Government, which controlled this whole region during all this period, provided that the land assessments should remain the same, the assessment of 1856, subject to such changes as might be necessitated by reason of new improvements or the destruction of improvements, while personal property was assessed annually at its then current value; and taxes, by the express mandate of the statute, were payable in Confederate money, defining what Confederate money was. Taxes were payable in Confederate money and the assessments, as will appear from comparison, were made in Confederate money. The assessments, I will say to my friends, were very much larger in nominal amount in 1863 than they were prior to the beginning of the war, but very much smaller in the quantity of property, as will be seen on an examination of the Commissioner's books, because of the fact that by the disastrous operation of the war then prevailing throughout this territory, there was an enormous destruction of personal property, and it will be found also that there was a great diminution in the quantity of personal property that was assessed, while there was a nominal appreciation in values, a horse being estimated to be worth, in 1861, in the then lawful money, from $20 to $50, and in 1863, $150 or $200, perhaps—certainly $150, an increase of five hundred per cent. sometimes, in the subject of taxation
in the nominal assessment, while the real value had been de- 73
preciated very greatly. The witness has taken the very highest value at which Confederate money was sold during that period, four for one, while the fact is, I want to say to my friends, that in June, when the assessment was in fact made, the value was eight or nine to one. The fortunes of the Confederacy were waning. Stonewall Jackson fell in the month of May, and from that time the value of Confederate money, which depended entirely upon the ultimate success of the Confederate Government, depreciated rapidly; but we take the assessment at the very highest rate in Virginia at that time, four for one.

The Special Master: The important point at this stage of the hearing is that the other side should be advised of the hypothesis and the theory upon which the statement is predicated. Later, if they think they have occasion to criticize either the hypothesis or the

report, I will hear them. Of course they now have notice of exactly what your contention is.

Mr. Spooner: I would like to ask another question.

Mr. Anderson: The first act as to Confederate currency was in 1862, and the last was in 1863, before this assessment became effective.

By Mr. Spooner:

Q. Did you make any deductions in the estimates of the value of personal property in West Virginia on account of the appreciation of gold?

A. We made no deduction of any kind for West Virginia 74
counties. The report states that the figures were taken from the Auditor's report of 1862.

By Mr. Conrad:

Q. Is that West Virginia now?

A. Yes; and a few of the counties which were not returned in that report from the old Virginia statements of 1861.

Mr. Mollohan: Not West Virginia?

Mr. Anderson: Yes; West Virginia.

Mr. Mollohan: No; there was no West Virginia then.

Mr. Conrad: That raises a large question, that we are not going into at this time.

Mr. Anderson: It refers to the counties now constituting West Virginia.

Mr. Mollohan: Counties that you owned yourself.

Mr. Conrad: Who appropriated the money derived from taxation by those assessments?

Mr. McClintic: The State of Virginia.

Mr. Anderson: Are there any other questions, gentlemen?

Mr. Spooner: I did not mean to interrupt you.

By Mr. Anderson:

Q. I understand, Mr. Potter, you said this statement is correct.

A. Yes, sir.

Mr. Anderson: I will ask that it be filed.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Fair Estimated valuation of the property, real and personal. Article V." is filed herewith, marked "Plaintiff's Exhibit E-1.") 75

Mr. Anderson: We are through on that statement, if the Master please, except that I wish to give your Honor—and I will furnish a

copy of it to my friends on the other side—a citation of the acts of the Richmond Government of Virginia, providing that all taxes should be paid in Confederate money, and also the act providing that all the lands should continue at the former antebellum assessments, while personal property should be reassessed annually at its annual value.

(The paper referred to was subsequently forwarded by Mr. Anderson, and is filed herewith, marked "Plaintiff's Exhibit E-2.")

[*Vol. 4. May 5, 1909. Cross Examination A. G. Potter.*] 377

Mr. Carlisle: There are some questions I want to ask the witness at this time.

By Mr. Carlisle:

Q. Mr. Potter, I will not go through the entire process adopted by you in ascertaining the assessed value either of the land or the personal property in these two States.

Mr. Anderson: Which schedule are you looking at?

Mr. Carlisle: Schedule 5.

By Mr. Carlisle:

Q. Do you find that the assessed value of personal property in what now constitutes the State of Virginia in 1863 was $23,042,230, and you find that the assessed value of personal property in West Virginia at the same time was $24,406,681, or considerably over $1,000,000 more than the assessed value of the personal property in the State of Virginia, with its hundred counties. 378 In order to ascertain that result, you took the assessed value of the personal property as shown by such records as were accessible to you, and you divided that by four. Why did you do that?

A. Because I was informed by counsel that this assessment was in Confederate money in Virginia.

Q. Is that all the information you had upon the subject? Have you seen any law of the State of Virginia authorizing assessments to be made in Confederate money?

A. No, sir.

Q. There was a law in the State, which we all know, authorizing the owner to pay his taxes in Confederate money, but there was no law authorizing the assessment in Confederate money.

Mr. Conrad: But we all know, as a matter of fact, that it was assessed in Confederate money.

Mr. Carlisle: You say you know it as a matter of fact. I do not know it.

Mr. Conrad: We can prove it.

Mr. Carlisle: I see by comparing that assessment with the assessment in West Virginia that personal property is assessed about the same.

Mr. Anderson: Both those were Confederate assessments.

The Special Master: Where does the statement appear in this report about his having divided by four?

Mr. Carlisle: In the whole statement here.

The Witness: It is on the last page.

By Mr. Carlisle:

Q. There was a law authorizing the taxpayer to discharge 379
his obligations to the State for taxes on personal property by paying in Confederate money, but no law in regard to the assessment in Confederate money. Now, as a matter of fact, do you know whether the taxes on the land were also paid in Confederate money?

A. I do not.

The Special Master: The question now is whether the witness has any knowledge of how the taxes were paid.

By Mr. Carlisle:

Q. Why did you divide the valuation on personal property by four and not divide the assessment on the land by four, although they were on the same footing?

Mr. Conrad: There was no assessment of land after 1866. Personal property was assessed every year.

Mr. Carlisle: But there was no law to assess it in Confederate money.

Mr. Conrad: Land was not assessed in Confederate money.

Mr. Carlisle: Neither was personal property, according to the law.

Mr. Conrad: Yes; it was. We can explain it.

Mr. Carlisle: It certainly requires explanation.

Mr. Anderson: Land was assessed in 1856, the last time, in gold.

Mr. Conrad: The first case ever decided by the Chief Justice of the United States in North Carolina on circuit, was to the effect that although a bond was payable absolutely in money, still despite the seal, it was a Confederate transaction. There was no statute at all providing for it. There was no law that authorized them to do it. All business transactions in Virginia were
on the basis of Confederate money, and it would have been 380
impossible after 1861 to assess personal property on green-

backs, gold, silver or anything but what was the sole money we had here. You could not have assessed it on a gold basis or a greenback basis. We did not have them. Their value here was a purely commercial value.

Mr. Carlisle: I do not see, Major, that that answers my question at all. Of course it is a well known rule of law that if transactions take place between individuals where the *de facto* government is existing, its law and customs control that transaction.

Mr. Conrad: Of course. Transactions that take place between the State government and its own citizens would not be put upon a different footing from transactions between citizens.

Mr. Carlisle: No; but there is no evidence here—

The Special Master: What Mr. Carlisle wants in the first instance is to develop the facts upon which the report is predicated. Then later as between yourselves if you do not agree, you will discuss your various contentions.

Mr. Carlisle: Yes, the argument will come hereafter.

By Mr. Carlisle:

Q. It is a fact, then, that you divided the assessed valuation of the personal property by four?

A. Yes, sir.

Q. And therefore reduced it from about $73,000,000 down to $23,000,000. That is a fact?

A. Yes, sir.

Q. And it is a fact that you did not divide the assessed valuation of the real estate by four?

A. Yes, sir.

Q. But you took them just as they stood?

A. Yes, sir. 381

Q. Just as you found them on the books?

A. Yes; just as they were reported on the land books and other sources of information from which we got these figures.

Mr. Carlisle: That is all I want—the facts.

The Special Master: Then, as I understand, except that the defense may wish to put a question or two that they have overlooked, this concludes the cross examination of Mr. Potter?

Mr. McClintic: No, we have schedules 6 and 7 yet, but we will not be long on those in the morning.

The Special Master: Very well, then, we will suspend here until 10 o'clock in the morning. I would like to have counsel for the defense and for the plaintiff go over these various schedules that have been presented so that between now and to-morrow morning the exhibits may be paged, so that they will be harmonious through-

out, and we may refer to them later by exhibit and page. Mr. Dixcy has already paged the memoranda presented by the defendant.

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday, May 6, 1909, at 10 o'clock A. M.

[*Vol. 5. May 6, 1909.*] 464

The Special Master: If there are any other documents of the same miscellaneous character we will mark them in the same way. Have you anything more, Brother Conrad? 465

Mr. Conrad: We are conferring as to whether a certain matter is properly in rebuttal or not. We know as a matter of fact that the assessments of personal property made from 1862 to the close of the war, were made based on Confederate money. It has been objected that there was no act authorizing that, but it is so, and it would have been impossible to have had an assessment on the gold basis or the greenback basis, beause we had none of that money in the State at that time.

Mr. Carlisle: From our inspection of the assessment of personal property at that time, we do not think that the value put upon it indicated that it was on a Confederate money basis.

Mr. Conrad: Well, we will reserve that evidence.

Mr. Anderson: That will be in rebuttal.

The Special Master: Then it is understood that as to that phase you rest until you hear from the other side?

Mr. Anderson: Yes, sir.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*] 546

Mr. McClintic: We now offer Defendant's Exhibit E-1.

(The paper referred to was received in evidence, marked "Defendant's Exhibit E-1.") 547

By Mr. McClintic:

Q. State, Mr. Dixcy, if you made up Defendant's Exhibit E-1.

A. Yes, sir; the schedules as presented were prepared by me, and the work was done under my direction and supervision, and bears my signature.

Q. The totals and percentages and other things therein were all made by you, were they?

A. Yes, sir; on page 2—entirely by me, and verified.

Q. The items appearing on page 3 and the following pages, as to the amount of the valuation of property—were they verified by you?

A. As to totals, yes, sir.

Q. Please state to the Commissioner what they were compiled from, beginning on page 3, as to real estate in Virginia?

A. The first item, for Alexandria, was taken from the auditor's report of 1860. The next 15 items, being the names of various counties, were taken from the auditor's report for 1861.

Q. That is shown on the face of the report itself.

A. That is shown on the schedule. The next three items are from the land books of 1861. I may say that we attempted to—

By the Special Master:

Q. It is all taken from the sources indicated in the statement?

A. Yes, sir. The endeavor was to obtain all the items that we could from the land books. We took them from other sources only where the land books were not available.

Q. The land books I understand are the duplicates of the original assessments?

Q. Made for the years indicated? 548

A. Yes, sir.

Q. And where you have not made statements here predicated upon the land books of 1863, is that because you could not find the land books for that year?

A. We were unable to find them; yes, sir.

Q. In that event, you found the land books for the nearest year?

A. The land books for the nearest year, or the auditor's report for the nearest year. We tried to obtain the assessed valuation as near to the date called for by the decree, as possible.

By Mr. McClintic:

Q. On page 6, Mr. Dixey, comes the assessed valuation of the personal property in Virginia. Please state to the court how that was made, and from what sources?

A. That was made, as indicated on the face of the schedule, from the property books, in almost every case, as regards what is now the State of Virginia. The item at the end, for Chesterfield, was taken from the Auditor's report of 1863.

The Special Master: At the end, where?

A. At the end of the schedule on page 7.

Q. Please look at page 8, Mr. Dixey: —

By the Special Master:

Q. What is the distinction, right here, between property book and land book?

A. The property books contain personal property.

Q. Are there two sets of books, one containing real estate and the other personal property? 549

A. Yes, sir.

Q. One denominated land book and the other property book?

A. Yes, sir.

Q. As distinguishing personal property from real estate?

A. Yes, sir.

Mr. Anderson: And there was an annual assessment of personal property?

The Special Master: An annual valuation of personal property, but only a valuation by decades of real estate.

Mr. Anderson: The assessments of real estate was not at regular intervals. The last assessment of real estate was in 1856, and that assessment continued until 1870.

Mr. McClintic: To state the facts further, there was an annual land book made for each year, in which the assessors of each county added to for buildings erected and took off for buildings destroyed, or changes made by a county court, or anything like that? So that there was a land book each year.

Mr. Anderson: There was a slight change in the assessment.

The Special Master: Do I understand that except as there may have been changes in the character of the real estate, the land books continued from one assessment to another?

A. Yes, sir.

The Special Master: If there was a physical change as to 550 the construction of a building, that was allowed for in making the assessment, but otherwise the assessors took the assessed value for the preceding year, and continued until another general valuation was made. Is that right?

Mr. Anderson: Yes, sir.

Mr. McClintic: Yes, sir; that is right.

The Special Master: But the personal property was assessed and valued every year?

Mr. Anderson: Every year.

Mr. Conrad: I have sent for a land book and a personal property book.

The Special Master: Yes; the practice is a little bit new to me, and I simply wanted to intelligently understand what the conditions were.

By Mr. McClintic:

Q. Please state from what this assessment on page 8 in West Virginia was obtained?

A. This is an assessment of personal property in West Virginia and was obtained from the sources indicated on the schedule at the heading of each class of items. I was about to say that the original entries in the property books were not available in so many cases as they were in what afterwards became the Virginia counties.

By the Special Master:

Q. In West Virginia, for instance, you have only six counties for property books of 1863?

A. Yes; those were on file here.

Q. Other than those, there were none on file?

A. No, sir.

Q. Was any effort made to get at the property books in the towns themselves? 551

A. I will say in regard to that, sir, that I think those things are all filed here. We found between 1830 and 1840, roughly, there were large cases in the basement, which we had open. They were all filled with these property books, and we went through those books individually endeavoring to get the nearest assessment made to 1863.

Q. As I understand, there were three duplicates, or there should have been, of both land and property books, one of which according to the law was filed here in the Capitol, one of which I suppose was kept by the assessors, or was supposed to be—

Mr. Conrad: Yes, sir.

The Special Master: Supposed to be kept by the assessors as a permanent public record.

Mr. Conrad: Not by the assessors. It was filed in the county courts' clerks office and in the hustings court, the corporation courts of the town. There were three copies always made.

The Special Master: One copy went where?

Mr. Conrad: One copy came to Richmond, one copy was kept in the clerk's office, and the other copy—

Mr. McClintic: Went to the sheriff for the purpose of making up the tax figures.

Mr. Anderson: It went to the treasurer, who was at that time the sheriff.

The Special Master: The treasurer of what; the town or county?

Mr. McClintic: At that time, the sheriff of the county—

Since the War they have made a new title in this State, 552
but at that time the sheriff was a police officer and a fiscal officer.

The Special Master: My inquiry is whether in regard to the land books and property books any effort has been made to get at those books in those other two places of deposit, outside of the capitol here?

A. None on our part.

Mr. Conrad: They were very much deranged during the War in those regions that were open to the Armies.

The Special Master: That is very true, but has any effort been made on the part of either party to get at the other two of the triplicate set?

Mr. McClintic: If your Honor please, I looked at two or three counties in our State, and could not find them. Beyond that we did not make any further effort, so far as I know.

The Witness: I didn't know three copies were filed.

Mr. Anderson: They must have been sent to Wheeling during that time. There were thirty or forty counties.

The Special Master: The only question I had in mind was, first, whether any effort had been made to get at the other two of this triplicate set.

Mr. McClintic: I found, on examination, that the personal property books were not kept and they are not to-day kept more than three or four years back. Generally at the end of that period they have been destroyed. All the personal property books
that went to the State of Virginia for that year were destroy- 553
ed years and years ago. Your Honor possibly knows that we have had a removal of our capital three times, and they did not keep those things. They simply dumped them away, as they did a whole lot of other books. So far as the counties are concerned, it is not customary for the counties to keep personal property books for very many years. I found that up to the seventies the personal property books had been destroyed. They got to be very voluminous, and as room was scarce, they threw them away. The land books as a rule are kept.

The Special Master: Has any effort been made to get at the original land books in these other places?

Mr. McClintic: The land books were based on the assessment of 1856, and it was not worth while to look for them, because we had the original appraisements, and the changes were infinitesimal from that time to 1863.

The Special Master: If it is agreed by both sides that the assessment that appears here for 1860 to 1861 as to the land can be adopted as the assessed value of land for 1853, that eliminates that element.

Mr. McClintic: There are some differences between Virginia's

account and ours. I think they can be easily reconciled. I believe they are purely clerical.

The Special Master: I may say here that when it comes to questions of detail in connection with these two accounts, which ought to be reconcilable by reference back to the original sources of information, I may ask the accountants on both sides to get together for the purpose of ascertaining what the facts are in those cases. I cannot undertake to investigate those questions. The ac- 554
countants must do that for me; and that will apply to all the items involved in this account. Wherever there is any probability of ascertaining identity of items and identity of amount, where there is a disagreement in these accounts, unless there is some other arrangement made, I shall have to request the accountants to get together and see what they can find. If when they get together and they get the results, there are things they cannot agree on, of course I will determine those; but so far as they can reach common results from the original sources of information, I should like them to do it. That will winnow out a lot of those details.

Mr. Conrad: I will hand your Honor at this time an official publication which gives the form in each county and town of the State.

The Special Master: Let me ask this question right here, because while we are discussing this, if we can make progress, we had better do it. Is it agreed by counsel on both sides that the assessed value of the real estate, as it may appear, either by the land records of 1861 or 1860 or 1863, can be treated as the assessed value on June 20, 1863. That is, are you near enough together?

Mr. Anderson: We are willing that the nearest authentic assessment that can be found shall be taken. We have endeavored to do that.

The Special Master: Is it agreed on both sides?

Mr. Conrad: I think we are shut up to it on both sides. 555
The last assessment of land made before the War both for Virginia and West Virginia was in 1856. That ran until 1866, unless West Virginia had a reassessment of land and I do not think she did.

The Special Master: She could not have had any reassessment before 1863.

Mr. Conrad: We are bound by that.

The Special Master: I know, but I do not want to bother the court with all these names, provided I can have it appear in the record that the parties on either side agree. Of course all these reasons would undoubtedly satisfy the court it is all right. What I want now, if I can safely do it, is to put into the record the statement agreed to by counsel on both sides, that the valuations that

appear here for any other year than 1863 will be accepted by both sides as the valuation under this paragraph for June 20, 1863, except with this suggestion. If there are any items as to which there is a disagreement in the reports of the two accountants, the understanding is that the accountants are to get together. Is that agreed upon?

Mr. Harrison: They are to reconcile them if they can.

The Special Master: Yes; they are to reconcile them if they can. If not, I will get the result, and I will determine then in those particular instances what the fact is.

Mr. McClintic: If your Honor please, there is only one difficulty in that and I do not know whether we can arrange it or not. The West Virginia counties, as shown by the exhibit originally filed here by the accountant for Virginia, had 45,000 square miles. That same exhibit, taken from the Auditor's report of 1861, showed that there were counties in West Virginia, as we can prove by the United States Geological Bureau, which only have 480 miles in 556
them, and in that exhibit they had them as 1,500 square miles. The reason for that was that the Auditor's report says that in many instances they were taken by adding the acreage of the lands assessed in each county together, and that made so many acres, and that made so many square miles. The facts are that West Virginia and Virginia at that time assessed titles instead of land, and there are in a great many cases simply duplications. In other words, there would be a half a dozen people claiming a hundred thousand acres of land. Each one of that half dozen had on the books his hundred thousand acres of land, in order to keep his title. That makes a very grave duplication in West Virginia; but on the face of the books the assessed valuation appears as so much.

The Special Master: Well, how can I do anything else except report the assessed valuation? Of course I appreciate the force of those considerations, but I presume they went all over the State, did they not?

Mr. McClintic: That applies to the wild lands, so-called, and the doubtful titles. Virginia has two systems of land titles, one west of the Alleghenies and the other east of the Alleghenies. We belonged west of the Alleghenies. They had what was known as an inclusive survey west of the Alleghenies. In other words, a man could go out onto Barren Creek and survey a hundred thousand acres and say "I exclude all previous entries, surveys and grants." 557

Mr. Anderson: We had that on the east side, too.

Mr. McClintic: Those things were duplicated and duplicated.

The Special Master: Let us see where we would land on that. There is to be presented to me what will be and is by these reports

the assessed valuation. Now, is the assessed valuation, so far as it relates to the territory of West Virginia, to be attacked upon the ground that this practice was adopted, and that it resulted in the assessment? If you are going to be bound by the assessment, that is all there is of it, if I am to report the assessment as it stands. If you desire to open up that question, then I will hear you upon that.

Mr. Anderson: If your Honor please, the difference between those two assessments is very slight.

The Special Master: I do not want counsel on either side to agree to any fact that is going to embarrass them in any way, or to deprive them of any right.

Mr. Anderson: The amount is very small. The difference in the result as ascertained by the accountants for Virginia and West Virginia is only .088 of one per cent. Therefore it is *de minimis*.

The Special Master: It is important for me, and for you gentlemen later on.

Mr. Anderson: We are perfectly willing to take that statement.

The Special Master: You do not want negligible elements of controversy when you get this up in the Supreme Court, 558
and I do not want to bother the Supreme Court with unnecessarily small details.

Mr. Anderson: As to what my friend Mr. McClintic said just now with reference to the manner in which this excessive or fictitious area was arrived at, I have no doubt he is correct. The same thing occurred in Virginia. Both in West Virginia, west of the Alleghenies and in Virginia, failure to put their claims on the land books resulted in forfeiture of title to the land, according to the law of the State; and in order to save their title to land, they had titles that were worth little or nothing put upon the land books. Sometimes there would be five or six claims to the same land, and they were assessed at nominal amounts, frequently insignificant amounts, sometimes a cent an acre or less.

The Special Master: I have got to do one of two things. I must take the public record of this assessment, or I must allow the public record to be impeached. I do not know what you may have, but it is almost incredible to my mind that you could have living evidence by which you could establish the instances in which the assessors had assessed land under these circumstances in particular cases. Of course you may have it.

Mr. McClintic: We could prove that without difficulty in numbers of instances. Whether it is a provable matter or not is another thing.

The Special Master: That would be another question. The assessed value, of course, is what I must report under this pargaraph.

The whole point is, are you all willing to agree that the assessed value as it appears here in these reports for years other than 1863 may be accepted by me and reported as the assessed 559
value of land on June 20, 1863.

Mr. Anderson: We are willing that that should be done, sir.

Mr. McClintic: We will confer and let your Honor know this afternoon.

The Special Master: I merely make the suggestion. None of you need feel bound to make any of these agreements which I suggest. It is only for the purpose of saving myself work, and saving the court work later.

By Mr. McClintic:

Q. Are the totals of the personal property assessments as set out on the bottom of page 7 correct?

A. You mean in this summary? 560

Q. Yes.

A. The total assessment?

Q. Yes.

A. They are correct according to the sources of information from which we took them, as shown by the schedule.

The Special Master: I would like to have that same suggestion with reference to agreement apply to the personal property as well as to the land. Of course you are not obliged to agree to it, but I merely suggest it. Of course I appreciate the fact that the personal property raises quite different considerations. But we have got to do one of two things. Of course in the absence of getting the assessment for the year 1863, we would have to approximate it in some way, by some competent testimony, and if the only competent testimony you have was the assessment for 1860, and you have to leave the case there, so that I have got to infer, you might as well agree on it and eliminate that as an element of controversy.

Of course I do not direct the course of the hearing, but when it comes to me, if there is nothing before me except the assessment of 1860 to show the value of the personal property in 1863, I should have to come pretty near finding that that is the value in 1863. Of course you have the property book, if you want to supplement it by any additional testimony. We are not discussing actual value; this is assessed value, and I cannot report actual values. 561

Mr. Conrad: The only thing we can do is to lay before you the official reports.

The Special Master: I don't know—on the basis of a fair estimate of valuation of property.

Mr. Conrad: That is another thing. All we can do upon this assessed valuation is to furnish you with the official publications—

and please note that they are as well the official publications of the people of West Virginia as they are of the people of Virginia at the time they were made in 1863. Now, if an assessment of land appears we know it existed in 1856 and continued.

The Special Master: I do not know that I am confined to the assessed valuation of the personal property.

(Reading):

"5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Of course if all you give me is the assessed valuation of 1860, and stop there, and that is all the evidence I have, I may have to take it.

Mr. Spooner: We move to amend that—

The Special Master: I only suggest that. You can go on with the examination. As to whether you both think it prudent, in the interest of progress, and certainty in the result, to agree upon this question of the valuation as to land and personal property, that is something you will have to decide for yourselves. I simply make the suggestion. You may proceed.

Mr. Spooner: We moved to amend that by making it read "assessed valuation." In the Supreme Court's report in connection with these proceedings that word "assessed" is put in.

Mr. Anderson: If your Honor please, that is only the sec- 562
ond paragraph that the word "assessed" occurs.

The Special Master: In the second paragraph the word "assessed" does not appear in the decree as I have it. What I have here is a certified copy of the order on which I am acting, signed by the clerk of the court.

Mr. Spooner: That was amended.

The Special Master: Let us find out where we are. His certificate is dated June 5, 1908, under the seal of the court.

Mr. Spooner: I am not making any mistake about this.

The Special Master: Probably not, but there is one thing certain; if this authority is not corr t the proper authority will have to make it correct.

Mr. Spooner: It has been made correct.

The Special Master: But they must make it correct to me. I had in mind all the while that it read "assessed" but when I come to look at this certified copy of the decree I see that the word "assessed" is not there. I will have to communicate with the clerk of the court. I will have it sent back and amended . Of course, this is my authority, this copy I have.

Mr. Anderson: Under the fifth paragraph of the decree, 563
your Honor shall estimate the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia—the fair estimated valuation. There is no suggestion that the assessed value shall be taken as a criterion in that paragraph.

But if your Honor please, when we come to endeavor to ascertain fairly on each side, what was the fair valuation of property on the 20th of June, 1863, it was found to be an absolutely unsolvable problem, and the nearest approach we could get to a value was to take the assessed valuation. Your Honor will understand very well that very few men are old enough to have been in active business then. So it would take the testimony of thousands of men to prove what the assessed value of property in those two States was at that time.

The Special Master: I appreciate that fully.

Mr. Anderson: So it was very difficult. But in taking the assessed valuation we found that here was this difference between the assessed valuation in loyal West Virginia and in the Confederate Virginia—or in Federal West Virginia and Confederate Virginia, I would rather say; because both were right according to the principles which they followed and which it seemed to them to be constitutional.

The Special Master: I accept the change, although I noticed the inadvertence when you made it.

Mr. Anderson: I will put quotation marks around the word "loyal" in the first instance. The assessment there was in reference to lawful money of the United States. It was the money in which the taxes paid to the Wheeling Government were paid in 1863 and 1864; while in Virginia it was transparently 564
evident that the assessments placed by the sworn officers of the Government here had reference to some other standard of value than gold or silver.

Mr. McClintic: Gold was not a standard of value in West Virginia. It was not known then.

Mr. Hogg: It was a curiosity.

Mr. Anderson: So were greenbacks here a curiosity, and illegal as a circulating medium. Comparing the two assessments, you will see that horses were assessed for three or four times as much in 1863 as they were in 1860, although horses in 1860 were worth less in lawful money. So it was evident that the assessments here were made with reference to Confederate money as a standard. In order to ascertain the fair valuation it was necessary to apply the scale adopted by the courts, and that is what we did in reaching our conclusions.

The Special Master: That is another question. The only practical question here is whether between yourselves you will agree, first, upon taking the assessed valuation of the land for the valuation and for what will be the fair estimated valuation under paragraph 5, and then, whether at the same time you will agree that the assessments of personal property you put in shall be treated by me as of 1863; and so far as they go, unless you see fit to supplement them by other evidence to be taken by me as to the valuation of the personal property. You can make that agreement if you like, and reserve the right of Virginia to assert the proposition for which they contend, that for obvious reasons the valuation was excessive and ought to be reduced. That is independent of the ques- 565
tion what the figures themselves show. Of course when I come to report to the court, if I report a valuation for 1861, I have to give some reason why I reach a conclusion in 1863; and if you both stop on 1861 and do not undertake to go further, I might as well have it as a matter of agreement in the record. I only make these suggestions and I want counsel, if they think they can do so with safety and propriety to join me in having an agreement that will eliminate this element of controversy.

Mr. Spooner: We understand your Honor's suggestion and we will consider it with an earnest desire to come to an adjustment about it, and we will not take a great deal of time in considering it either. One of these statements of personal property, as I recollect, embraces 30 odd counties, the assessment of 1860 or 1861.

Mr. McClintic: 1861 and 1862.

Mr. Spooner: 1861 and 1862. Then the other counties of Virginia are reported from the assessment roll of 1863. That is upon the theory that they have been unable to find a complete record for 1863. We shall ask to put in a statement of assessment of 1861 and also a statement of the assessed value in 1863.

The Special Master: Well, that question of fixing a valuation of 1861 would be a question addressed to the discretion of the Master.

Mr. Spooner: Yes; that is true.

The Special Master: That is something I will hear you upon when you reach it. That will not present any difficulty so far as the land is concerned, because the statement made by both 566
sides, as I understand it, is that the valuation of the land in 1861 was practically the same as in 1863—substantially the same, with some few changes.

Mr. McClintic: What did this assessment of personal property, in a general way, include?

Mr. Anderson: What page are you on?

Mr. McClintic: Page 6.

The Special Master: You mean assessments in both places, Virginia and West Virginia?

Mr. McClintic: Yes; the general subject matters assessed in each State.

The Witness: Well, as far as I itemized they were slaves, horses, mules, asses, jennies, pleasure carriages, cattle, sheep, hogs, watches, clocks, pianos and harps.

By Mr. McClintic:

Q. Is that what the assessment rolls show as being the subject matter of assessment?

A. The assessment rolls show those in detail.

Q. And other details?

A. And other details in addition, but not separate.

Q. Those classes were shown on each assessment roll, and they are assessed separately under those heads?

A. Yes, sir.

Q. That is true of each State?

A. Yes, sir.

The Special Master: I see that they do not assess household furniture in those States. You may proceed.

Mr. Conrad: I just asked him if that is not personal property you are examining about.

The Special Master: Is that one of the original valuation books (indicating book)?

(The Special Master and counsel examined some books).

567

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

By Mr. Harrison:

Q. How did you ascertain the fair proportion of the ordi- 654
nary expenses to be borne by West Virginia, on the basis of the fair estimated value of property, real and personal, by counties? Is that shown by your Exhibit E-1?

A. We substituted the assessed valuation, for we certainly were incompetent to make a fair estimated valuation, and we used the same basis that Virginia used?

Q. You did?

A. Well, practically so.

Q. Did you make a comparison between the assessed values of personal property in Virginia in 1861 and 1862 and 1863?

A. In 1861, 1862 and 1863?

Q. Yes.

A. It was made. I did not make it personally, but I instructed it to be made, I think I have seen the result. I am not quite sure whether they were made or not. My impression is they were.

Q. You are not able to testify about them yourself?

A. I am not sure whether I saw them or not. There were some papers handed to me since this hearing commenced, and I am not sure what they were. I instructed them to be made, and I assume they have been made, but I did not give them any attention. 655

The Special Master: You are on Defendant's Exhibit E-1 now, are you, Mr. Harrison?

Mr. Harrison: E-1; yes, sir.

The Special Master: Paragraph 5.

Mr. Harrison: On the basis of the fair estimated value of the property.

By Mr. Harrison:

Q. You included in the assessed valuation of personal property slaves?

A. Yes, sir.

Q. And you made no deduction on account of the depreciation in currency?

A. No, sir.

Q. Those two considerations would probably cover substantially the difference between your result and the result shown on Mr. Potter's statement, would they not?

A. I assume that they would. On personal property we did not get all of our figures from the same sources. We discovered a lot of personal property books and took them over there. I think Mr. Potter had not seen them. The books were not open. We found them down in the basement of the Capitol and had them opened and went through those.

841

[*Vol. 7. July 1, 1909. General Discussion.*]

[The Special Master]: We come now to Paragraph 5. Have you a substitute exhibit there for plaintiff's original Exhibit E-1?

Mr. Harrison: That relates to the fair estimated value of the property, real and personal, does it not?

The Special Master (reading from decree): "And also on 842

the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia."

Have you reached any agreement on that?

Mr. Dixey: We cannot determine that until the preceding one is determined, because it involves the ordinary expenses the same as the preceding one.

Mr. Harrison: It does not involve the method by which you reached the fair estimated value.

The Special Master: Have you or have you not reached an agreement on that paragraph?

Mr. Anderson: No, sir. There are a great many points of disagreement there.

The Special Master: Are those matters that the experts have gone over, or are they matters which they can go over with any hope or expectation of reaching a reconcilement?

Mr. Anderson: I think they are almost entirely as to classification and as to the construction of these decrees.

Mr. Harrison: The fair estimated value is, of course, a question of facts.

The Special Master: That involves a question of fact as to whether you agree on it.

Mr. McClintic: We will not agree on that—the fair estimated value.

The Special Master: Do I understand, then, that there is not any prospect of reaching an agreement on what is the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia? 843

Mr. Carlisle: I believe we agree on the value of the real property.

Mr. McClintic: The assessed value of the real property.

Mr. Carlisle: Yes.

The Special Master: I am going to report the fair estimated valuation. Now, then, if counsel for Virginia and West Virginia agree that the assessed valuation is the nearest that you can both approximate to the fair estimated valuation, I will report that as the fact. If you do not agree on that, I will hear either of you on any phase of that.

Mr. Harrison: It is upon that point that we want to introduce some testimony.

The Special Master: The first question is, do you agree on the assessed valuation?

Mr. Anderson: We do not think that is a fair criterion.

The Special Master: I do not ask you to bind yourselves as to what is a fair criterion, but the first question is this. I suppose you both rely in some stage of the contention that either of you

may have on this proposition, upon the element of assessed value?

Mr. Anderson: Yes, sir.

The Special Master: Now, what weight or force may be given is a matter to be determined later on by me, after hearing both parties. Now what I want to know is whether, as to the figures the assessed valuation show, whether you agree on them.

Mr. Carlisle: We do not agree as to the assessed valuation of the personal property.

The Special Master: Let us confine it to the real estate.

Mr. McClintic: We have agreed on the real estate. 844

The Special Master: Do I understand, Brother Attorney General, that you agree on the assessed valuation of the real estate?

Mr. Anderson: Yes, sir.

The Special Master: I do not understand that by making that valuation that that is the valuation I am to take. If that is the case, that eliminates that from that sum—what is the amount?

Mr. McClintic: It is set out in Section 2.

Mr. Anderson: $82,000,000 for West Virginia, and I think $290,000,000 for Virginia, and something.

The Special Master: Under Paragraph 5 of the decree we are to determine "and also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia." Now, give me, if you can put your hand on it in a minute, what the assessed valuation is.

Mr. McClintic: It is stated in B-1.

Mr. Harrison: In Virginia the assessed valuation was $296,085,460.31.

Mr. Carlisle: That is real estate only.

Mr. Harrison: Yes.

The Special Master: And what are the figures as to West Virginia?

Mr. Harrison: West Virginia, $82,449,252.04.

The Special Master: Yes; I had not read that. We need not spend any more time on that. That is already agreed to.

Mr. Harrison: We agree as to the amounts of the assessed valuation of the real estate.

The Special Master: The agreement does not bind you any 845
further than that. If I find in the end that the assessed valuation is the fair valuation, I shall find so; if I find that the assessed valuation is not the fair valuation, then I shall so find. If I think it is a factor that should be taken into account, I will take it into account, and not otherwise. Now, as to the personal valuation.

Mr. Harrison: There is a wide disagreement.

The Special Master: There is a wide disagreement as to the valuation of personal property.

Mr. Carlisle: There is a wide disagreement; yes, sir.

The Special Master: There may be a wide disagreement as to the fair valuation of personal property, but is there a wide disagreement as to the assessed valuation?

Mr. Carlisle: Yes, sir.

The Special Master: Do you say so also, Brother Anderson? Brother Carlisle says that the assessed valuation of the personal property shows a wide disagreement as to the figures between Virginia and West Virginia. Do you understand it?

Mr. Anderson: It is almost impossible to find out what the assesed valuation in 1863 was; for a large portion of Virginia there were no returns made because there were no assessments made.

The Special Master: My recollection is that the exhibits do show the assessed valuations for certain portions of the State. What I want to inquire about is whether the exhibits already in the case, so far as they do show assessed valuations, are agreed upon as showing what the assessed valuation was. I will simply stop right there. Do you agree on that? 846

Mr. Carlisle: We do not concede—

The Special Master: Let me give you my point. I do not know that I made myself quite plain. Suppose, for instance, for one county the returns in here show an assessed valuation of $100,000 on personal property. Now, what I want to know is do you both agree that the assessed valuation in that county is $100,000? That does not bind you, it does not affect you in any way as to what bearing it may have upon the ultimate result. Do you agree upon the figures?

Mr. McClintic: No; there is a wide disagreement all through that. There is no possibility, I think, of getting together, unless we change ideas.

The Special Master: Let me make this suggestion. Of course you are more competent to express an opinion than I am in reference to this, you being more familiar with all the facts; but it would seem to me that there ought to be a public record somewhere for the year 1863 that would give an assessed valuation and at the same time also, unless there is some confusion in connection with the inherent conditions existing at that time, there ought to be only one record on that proposition, and if so, that record ought to show one thing. Of course I don't know how this may be; I am simply giving you my impression of what I would suppose you might find. If there is a published report showing the valuation of personal property in a part of these counties for 1863, and there is only one published report, of course it will only show one thing. Do you get my point?

Mr. McClintic: Yes, sir.

The Special Master: You do not concede that that is the valuation by any means. It is open to any criticism that you 847
have to make.

Mr. Carlisle: The question is whether they have any correct records of that kind at all.

Mr. McClintic: We do not concede that they took them off the right books, either. In other words, we disagree as to books.

The Special Master: In other words, they claim they have made an effort to get at the original sources and you claim you have made an effort to get at the original sources, and you do not get the same results?

Mr. Carlisle: Yes. We say ours are more correct than theirs.

The Special Master: Surely; you think your results are more correct than theirs. Now, is there any probability of the experts being able to get together and agree upon what that assessed valuation is? I suppose we would all concede, at least you would concede it was admissible upon that question—what force and effect it might have would be a matter for discussion.

Mr. Anderson: As to the land, that is possible, but as to personal property it is impossible, because in a great number of counties there was no assessment at all.

The Special Master: But you do not quite get the significance of my suggestion. As to a county where there is no assessed valuation, I do not suppose either side has given any figures as to assessed valuation.

Mr. Carlisle: We have gone back to the nearest year.

The Special Master: That is another proposition. I am in- 848
quiring about 1863. My inquiries have all been directed to the year 1863. Now, what I want to know is whether the experts agree upon what the official records show in any or all of these counties, or all or none of these counties, for a valuation of personal property in 1863. That is the first question. Do they agree on the amount? And if they have not yet agreed, can they get together and agree on the amount? Or are there two sets of public records for some of these counties? If there are not two sets of public records, there is no reason why the two experts should not agree, where they go to the same record. Now, where there are no assessed valuations, of course neither side will be able to give any assessed valuation. What do you say about that proposition that the experts may be able to agree as to the assessed valuations where there are public records of the assessed valuations? What do you think about that, Brother Anderson?

Mr. Anderson: I may anticipate, probably, the putting in of our case. The suggestion of your Honor has been carefully considered

by counsel on both sides and by the experts; but we found it was absolutely impossible to ascertain what the assessed valuation of the personal property was in a number of counties of Virginia.

The Special Master: Why?

Mr. Anderson: Because there was no assessment.

The Special Master: This question that I have just put does not include that proposition at all. I am afraid I did not make myself clear—

Mr. Anderson: And this fact was developed, too: That the assessments were made in different counties with reference to different standards and measures of value; that in western Virginia they had reference to United States currency, while in what now constitutes Virginia the valuations were made with reference to Confederate money. 849

The Special Master: That would be a question directed to the fair valuation rather than the assessed valuation. 850

Mr. Anderson: What is the fair estimated value? If your Honor please, to fairly meet that, to fairly respond to that inquiry directed by the Supreme Court, Virginia has taken the evidence of a number of living witnesses and has also collated and is prepared to file the evidence of concrete facts shown by the public records of the State, which demonstrate, in our judgment, what was the depreciation of property in June, 1863, approximately, as contrasted with its value in 1861. We have introduced the evidence of a number of existing, intelligent witnesses, business men, men of wide experience, who testify as to those facts as to the State at large, and as to particular instances; and we have introduced the testimony of the records as to sale after sale of property made at that time, and as to the partition of property and the value put upon it by experienced business men, showing the enormous depreciation of real estate at that time and the enormous depreciation of personal property, and showing that as a minimum the loss was not less than fifty per cent., while in a large part of the State the personal property loss was ninety per cent., it was found that nine-tenths had been destroyed; in other sections three-fourths, and so on. But we have taken one-half, if your Honor please, and we have divided 1861, the value for those years by two, and we think that is a very liberal estimate as to West Virginia. That is as near as we can get to a fair estimate of the value of the property.

The Special Master: Now, let us get down to the question pending before me. If I understand you, you yourself in the last analysis predicate some of your figures on the assessed valuation of personal property. 851

Mr. Anderson: The assessed valuation before the war.

The Special Master: It does not make any difference when it was.

You cannot do that unless it is a legal element in reaching the conclusion. Otherwise you would have to exclude it. Now, if it is a legal element in 1861, it is a legal element in 1863?

Mr. Conrad: Oh, no—

The Special Master: One moment. I do not appreciate the distinction between one year and another year. I do not say it concludes. I cannot quite see why an assessment in one year is a valid element in reaching a conclusion and an assessment in another year is not a valid element in reaching a conclusion. The force or weight it may have is another thing. If counsel will notice the distinction I make there they will see the point. The one thing I am interested in here is to have such evidence put in as has a legitimate bearing on establishing this issue, and I could not let Virginia set up one contention predicated upon the assessed valuation of personal property at one time and consider that and then exclude all consideration of the assessed valuation of property at another period. The only point is this: Is assessed valuation at any time an element entitled to be considered? The weight to be given to it, of course, is a matter to be determined later. Do I make myself clear?

Mr. Anderson: Yes, sir. 852

The Special Master: Now, what I want to know is whether the assessed valuations—I will go back to those other years after I get through with 1863. I am talking about 1863, and I am more than glad to have counsel make their suggestions as I go along. Now, the question we are on right now is whether or not the experts and the parties agreed upon what the assessed valuation of the personal property was, so far as you have been able to get it, in 1863. That does not bind either of you as to the effect to be given to that valuation. I simply want to know whether you agree upon the figures, and I will hear you later as to whether or not it is entitled to some weight or great weight.

Mr. Conrad: Speaking for the creditors, as far as any official assessment or appraisement of personal property is concerned, that can be produced by West Virginia, I would be prepared to accept it.

Mr. Carlisle: You have an assessed value on personal property in 1863, assessed by old Virginia and divided by four.

Mr. Conrad: That is very easily made. Will your Honor pardon me a moment?

The Special Master: Certainly.

Mr. Conrad: When you employed a while ago as the rule of reasoning the instance, in reference to Virginia, that a certain assessment of 1861 or 1860 or 1859 might be assumed as a reasonable basis to reason from, that therefore the sum given would be true in 1863, I venture, with great deference, to suggest to your Honor that there is a serious fallacy in that reasoning. 853

The Special Master: If I conveyed that reasoning to you, Brother Conrad, it was not intentional. My suggestion on that only went this distance. Perhaps I did not make myself clear. It was bearing upon the question as to whether the assessment of the personal property was an element to be considered, any assessment made at any time being open to any explanation that may be made.

Mr. Conrad: I think that will be conceded.

The Special Master: The only question is whether the assessment, whenever it was made, so far as it is entitled to weight, is a factor to be considered.

Mr. Conrad: I do not think there is any question about that.

Mr. Littlefield: That is all I meant to convey. I did not intend by any means to intimate that an assessment made in 1863 was entitled to the same weight and had the same probative force as the assessment made in 1861. I will hear you upon that question, when we come to it. Do I make myself clear?

Mr. Conrad: Yes, sir.

Mr. Carlisle: We all agree to that.

The Special Master: Now, we will start where I began. Do you both agree upon the assessment of personal property so far as it is taken from the official records for the year 1863, as to the amount?

Mr. Carlisle: We would agree, I have no doubt—

Mr. McClintic: I beg your pardon—

Mr. Carlisle: One moment. We could agree as to the actual assessment of personal property in 1863. But they do not put it into their report, they do not put it in their report or account, except where they divided it by four, and we cannot take that division. 854

The Special Master: I do not ask you to. You agree, in the first place, in the figures?

Mr. Anderson: We have filed an exhibit giving the assessment of 1863.

The Special Master: Do you both agree—

Mr. McClintic: If they have filed an assessment of counties I have never seen it. They have filed a number five, which gives the total, but if they have filed it by counties I have never seen it. Now, we did file a statement by counties, of Virginia, I suppose about 75 per cent. of the counties, from the property books of 1863, which is our Exhibit E-1.

Mr. Conrad: When you refer to Virginia, what do you mean?

Mr. McClintic: I mean the present State of Virginia.

Mr. Conrad: How may counties?

Mr. McClintic: I would suppose seventy-five per cent. of the counties. I did not calculate them exactly. They show on this Exhibit 5, or E-1, filed by us.

Mr. Conrad: From official assessment?

Mr. McClintic: Yes, sir.

The Special Master: Right there, I would like to know what difficulty there is in Mr. Potter, representing Virginia, looking those figures over and either agreeing or disagreeing to them.

Mr. McClintic: I see no objection to that. 855

The Special Master: Then why do you spend time discussing that?

Mr. McClintic: That was a question of fact I wanted to put before your Honor.

The Special Master: Precisely. Without remembering in which schedule it was, I had a recollection that there was segregated a schedule by counties. Now, I would like to inquire from you, General Anderson, whether or not Mr. Potter cannot look over these official records for 1863 and advise the Master and all concerned whether he agrees with the statement of figures given by the expert for West Virginia as the personal valuations for 1863.

Mr. Carlisle: As to those counties?

The Special Master: Certainly.

Mr. Anderson: I think that can be done, but I do not see how that can be informing to the Master in ascertaining the fair estimated value, for the reason that in Virginia the standard was Confederate money and in West Virginia the standard was greenbacks.

The Special Master: There is no use in discussing that question now, because I am not hearing that question now. I will hear you both on that *ad libitum* before we get through with the hearing and all the evidence you have on that, but what I am trying to get at now is whether one piece of evidence which you both undertake to submit, and one relies on for one purpose and the other for another purpose, whether you both agree on that.

Mr. Anderson: That is just a question of time, and it will 856
not take very much time I think.

The Special Master: Then, we will have probably from both experts a joint schedule stating what the official valuation for such of the counties as you have been able to get the valuation of personal property for for 1863. Now, do you both agree—you understand what I am trying to get? You submit, Brother Anderson, some official valuations of 1861, do you not?

Mr. Anderson: Yes, sir.

The Special Master: Now, do you both agree as to the figures submitted by Virginia as the official valuations for those various counties, as to personal property, for the year 1861? Do you both agree about that?

Mr. Conley: No, sir, we do not agree to that because they do not include the whole property, as we contend.

The Special Master: I will say this. Unless it is put down by counties the Master will not consider it. Let us see what this paragraph calls for (reading from the decree): "And also on the basis of the fair estimated valuation of property, real and personal, by counties, of the State of Virginia." Now, I have to say to you that as I shall require both Virginia and West Virginia to submit to me their valuations by counties, I shall not consider a lump valuation; I cannot report it that way; I have got to report it by counties, and you must submit it to me by counties.

Mr. Anderson: We will furnish that in detail. We have it in the aggregate.

The Special Master: Then separate it into counties. I 857
mean report by counties, for I cannot report total valuations.

Mr. Anderson: We take our figures from the Auditor's report.

The Special Master: It is immaterial where you take them from, but you must get your facts in here so as to answer the questions propounded. Now, Virginia must submit—I say must submit; I mean that of course in a tentative way—in order to have considered their contention by the Master they must submit a valuation by counties. I suppose you can do that without trouble, can you not, Mr. Potter?

Mr. Potter: Yes, sir.

The Special Master: And is there any good reason why the official records for 1861 do not show one thing? Do I understand there is any difficulty about the official records of 1861, so far as you find them?

Mr. McClintic: I don't know, your Honor. We simply went into the books where we could find them.

The Special Master: Let me ask Mr. Dixey this question. Is there any difficulty in agreeing that the books show one thing as to the assessed valuation of personal property for 1861?

Mr. Dixey: For all the counties? Yes, sir.

The Special Master: So far as they exist?

Mr. Dixey: Not so far as they exist.

The Special Master: There is no difficulty about that?

Mr. Dixey: No, sir. 858

Mr. Anderson: A few counties would have to be taken for 1860. There is very little difference.

The Special Master: These suggestions apply to 1860 or 1861. Whether 1860 or 1861 is too remote in the consideration that will be open to both of you to discuss. You do not bind yourself to anything; but I am trying to eliminate everything I can that you can agree on. I do not want to have to take all these figures, and

then try to find out what the valuation is by counties. I don't want to have to go through all that myself in order to get at the result. If you can agree upon that, it will save us all a great deal of time.

Mr. Dixey: Do you want all the counties obtainable for 1863, and also all the counties obtainable for 1861, even though they be duplicates?

The Special Master: Duplicates?

Mr. Dixey: I mean even though the counties appear in 1861 and 1863 both; do you want them for both years?

The Special Master: That is a matter upon which you may be guided by the advice of your counsel. What I want is this. If Virginia submits these figures for 1860 and 1861 and 1863, I would like to have the expert for West Virginia examine those figures and compare them and tell me whether he agrees that they are correct statements from the official records. Do I make myself plain?

Mr. Dixey: Yes, sir.

Mr. McClintic: I understand, but I want to say this for the benefit of the other gentlemen. We are supposed to submit here at this hearing the personal assessment of 1860 as taken from the Auditor's reports, and if the gentlemen want to take it 859 and go over it with the books, I would be glad to do that; but at the same time we are going to submit that as testimony for whatever it is worth.

Mr. Conrad: From the report of Auditor Bennett?

Mr. McClintic: Yes, sir.

Mr. Conrad: His published report is here.

Mr. McClintic: I am taking it off. In addition to that, I want to submit a table showing the value of real and personal property by counties in 1860 and published in a book called Miscellaneous statistics, Census Reports, 1860.

The Special Master: That is, a United States Census report?

Mr. McClintic: Yes, sir. I have taken a transcript from it for convenience; and if the gentlemen want to take that and compare it with the books, I would be glad to have them do so:

Mr. Anderson: Will you let us have a copy of that?

The Special Master: Yes; let them have a copy of it. Counsel need not have any apprehension. There is no agreement that you make here that will in the slightest degree at all prejudice your rights as to whether this thing or that thing shall be given this effect or that effect. I am simply trying to get an agreement upon the elements, and what weight I will give these things is something I will hear you on later. But get your facts all in now. That is, I would suggest that that is the best thing to do. And then later, when we come to have the final argument, I will hear you both

upon what is proper and what weight should be given to this consideration or that consideration. But now we will get all the facts we can agree upon, and that will simply eliminate some elements of controversy. 860

Mr. McClintic: I will also at the proper time present a table showing the number of slaves, as taken from the United States Census report; likewise the number under twelve years old and the number over twelve years old; and the total by counties; also the slaves assessed in 1860 in each of the counties, over twelve years old, as shown by the auditor's report.

The Special Master: That is, bearing upon the question of valuation of personal property?

Mr. McClintic: Yes, sir. I will give notice to the other side.

The Special Master: You submit that as notice of something you intend to offer, and it is subject to inspection and criticism by the other side?

Mr. McClintic: Yes, sir.

The Special Master: Now, when can Mr. Potter and Mr. Dixey give us this record by counties of the assessed valuation of the personal property for 1863, 1861 and 1860?

Mr. Anderson: That data has been compiled by both sides.

The Special Master: I mean when can they give us that result, so I can put it in the record that that is what the figures show?

Mr. Carlisle: For the counties which they can have access to.

The Special Master: The agreement covers the counties for which figures can be had. 861

Mr. Anderson: Take the first year, 1860.

The Special Master: The records will all show that.

Mr. McClintic: Did I correctly understand your Honor to say that if you cannot get 1863, you would like to have the nearest year?

The Special Master: No; I am not intimating that I am going to take anything—

Mr. McClintic: I mean are you asking for that?

The Special Master: No. I understand this: That you have in here already, either on the part of Virginia or on the part of West Virginia, the valuation of the personal property for 1863 so far as it goes, and you also have in here the valuation for 1861—

Mr. McClintic: 1862—

The Special Master: Well, that is very good. You may put in—and so far as you put in I should like to have you agree upon what that valuation shows. Now, the weight to be given that is to be determined later, after having heard the argument of both parties. If you want to put in your valuation for 1863, so far as you have got it and agree on it, and if you want to put the figures in for 1862 and 1861 and 1860 the same, that simply covers this. You agree

on the amounts, but you do not agree on the effect of it, and I do not intimate what weight I will give to any of the valuations. Do I make that clear, Brother Anderson?

Mr. Anderson: Yes, sir. 862

The Special Master: Is that satisfactory, Brother Conrad?

Mr. Conrad: Entirely so.

The Special Master: The only purpose now being to get away brushwood, is to get to the agreement on the facts. The effect to be given to it is a matter for later consideration. Can the experts give us that, and, if so, when will they be able to give it to us?

Mr. McClintic: Well, we have it for 1863, already, taken from the books.

The Special Master: Have you got it for all three years, or all four years?

Mr. McClintic: No. We have 1860 only from the Auditor's report; and 1861 and 1862—and only where we could get it for 1863.

The Special Master: This only requires you to agree so far as you can agree. If, in addition to the agreement, you think there is anything in relation to either of those years you want to introduce—

Mr. McClintic: The trouble about it is it involves a great deal of labor, going down to the basement of this building and getting out a lot of boxes filled with books and going all over them.

Mr. Conrad: At the first meeting there was offered on the part of Virginia a report made by Mr. Bennett, the Auditor of Virginia, giving an itemized, detailed statement of each county of the State, of the appraisement of every article of personal property in the commonwealth. That has been in evidence all the time, made county by county, alphabetically arranged, giving the 863 assessment of the personal property up to 1862. Now, when gentlemen say that they have, from the official records of Virginia an assessment of personal property in 1863, I confess that is a matter of astonishment to me.

Mr. Carlisle: We say part of it.

Mr. McClintic. It has been introduced in evidence here, and a copy of it furnished you.

Mr. Conrad: There was hardly, outside of the cities and towns of this commonwealth, a tea cup equipped with a handle in 1863.

Mr. McClintic: Oh, you had a heap more property than you thought you had.

Mr. Conrad: No, sir, we had not, and I know pretty well what I am talking about. We hadn't any farming implements to speak of—

The Special Master: I have just read Mrs. Pryor's book on that period. While I do not want to be understood that I have taken judicial notice, sitting here as Master, of what is stated in that book,

still it is very illuminating. I do not say it is controlling by any means.

Mr. Conrad: It is so conspicuous that the Courts of Virginia would take judicial notice of the fact—I am referring to how little personal property there was here—and the personal property of the State consisted in great part of slaves and bank stock.

Mr. Carlisle: But still, if they did make an assessment—

The Special Master: I can say this. Of course I notice the 864
Major's suggestion about this book. I suppose if the other side offers evidence that they think impeaches it, I shall be obliged to admit, if in my judgment it is competent. When we come to what is evidence, I suppose both sides expect me to rule, or endeavor to rule, in accordance with legal principles bearing upon the question of that ancient debt. I suppose if West Virginia claims that there is an official record upon which this report must have been based, and they say it does not agree with it, I do not see why I would not have to be required to consider it in determining whether or not I thought that, as distinguished from the book, was the authentic valuation. Now, those are all questions that are going to come up later. My question now is, will the experts go back to the original official records for the year 1863, 1861, 1862 and 1860, and so far as they show, in whole or in part, the valuation of the personal property, will they agree on it if they can? Then, when we come to the valuation of 1861, if either side has any contention they want to submit in reference thereto, tending to show that it is not entitled to the weight it would show on its face, I will hear it. And the same with 1860, 1862 and 1863. I do not say, and I do not understand, that the assessed valuation of personal property is the only criterion of its fair value. Of course I could not rule that; not in the presence of lawyers; but I suppose we are all quite familiar with the kind of evidence that it would be necessary to have in order to establish the valuation of property at any period of time. By those rules I should expect counsel to be governed, and of course I will have to do the best I can in ruling, to follow 865
along on those rules. Now, all we are trying to do is to get at one element, without any reference whatever to the weight it has, subject to all kinds of explanations that either of you can make, to get that one element agreed upon for the year 1860, 1861, 1862 and 1863, so far as you can get the original sources. There ought not to be any trouble about that.

Mr. Anderson: I do not think there ought to be any trouble about that. It will only take a little time.

The Special Master: Does that embarrass you, Brother Anderson?

Mr. Anderson: No, sir.

The Special Master: With the suggestion I have made, does that embarrass you, Brother Conrad?

Mr. Conrad: No, sir.

The Special Master: That is, as far as that goes. Now, are there any other items in relation to paragraph 5, as to which you have any disagreement, or as to which there have been disagreements, as to which you can now agree? If not, we will go to paragraph 6.

Mr. Anderson: I do not think there are, sir. What will be a fair estimated value on each side will rely on different evidence.

The Special Master: Now, of course, whether you will want to put your evidence in until you get the assessed valuation to work from—

Mr. Anderson: I think it will be better to put it all to- 866
gether.

The Special Master: I do not know but what you both might want to use the assessed valuation to start from, and of course if you do, we will have to wait until you get that.

[*Vol. 7. July 1, 1909.*]

[The Special Master]: 876

We next come to Plaintiff's Exhibit, Substitute Exhibit E-1.

Mr. Anderson: That will await the filing of the assessed valuations.

The Special Master: We cannot go on intelligently until 877
you agree as to those results, so far as that is concerned.

[*Vol. 7. July 1, 1909. As to assessed values.*]

Mr. Carlisle: * * * We still have the matter of the assessment—

Mr. Conrad: The assessments of 1863?

Mr. Carlisle: No, sir; the assessment of 1863 so far as there is any assessment in 1863 is already in. Now, what the Master wants is an assessment by counties. 908

Mr. Conrad: We put it in.

Mr. McClintic: I haven't seen it.

Mr. Conrad: We submitted that.

Mr. McClintic: You mean the book you filed?

Mr. Conrad: Yes.

Mr. McClintic: Not for 1860. There were only partial figures for 1861 in that book.

Mr. Conrad: Pardon me. I am perfectly familiar with that book. That is a report made by Mr. Bennett, a reliable West Virginian, who was the Auditor of this State. He made it when

he represented the territory of both the present States, and we put that in evidence formally and distinctively a year ago. There is an assessment by counties of all personal property. The gentlemen say they have not seen it.

Mr. Carlisle: I never saw it, I am sure.

Mr. Conrad: It has been in evidence all the time.

Mr. McClintic: Did you put in that as your claim of the assessment under this exhibit you filed as No. 5? 909

The Special Master: Just one moment. I doubt whether this is making much progress. Let me make this suggestion without discussing the character of this book or what it is evidentiary of, we have two sets of accountants here, and I am rather inclined to think it is the proper thing for each accountant to submit a schedule of his own. I think it is quite fair, Brother Conrad, for them to ask your accountant to submit his schedule. Then he can show the source from which he got it, and then they can get together and agree, perhaps. There may be evidence in this case, and it may be legal evidence; and I do not say you will be required to put in anything additional, but it seems to me it is quite proper for them to ask your expert to take up the evidence submitted by their experts, by counties, and see if they can agree. We cannot print all this book.

Mr. Conrad: It would not be necessary. It is a public official document.

The Special Master: Somebody must pick it out from the book, and it strikes me that your expert is the best man to do it. I do not think they are unreasonable in requesting that they try to get together with their expert, on these counties in these years. I may agree with you that you may have the evidence already in.

Mr. Conrad: All that would be necessary would be one to hold the book and the other hold his statement and go over it.

The Special Master: That is simply giving the result. That does not militate against the fact that the result ought to be reached. You may be right about that. I do not under- 910 take to say about that. Then, Mr. Carlisle's suggestion is that the introduction of evidence on the part of Virginia in connection with what the assessed value of real property was at that time is contingent upon the submitting of these schedules by the accountants, and that then that evidence will come in. I understood that to be Mr. Anderson's position. Am I right.

Mr. Anderson: I would like to say a word on the entire question.

The Special Master. Certainly.

Mr. Anderson: I cherish a most earnest desire to expedite this case, and I see no occasion whatever for any such delay as is now proposed.

Mr. McClintic: We are not proposing any delay.

Mr. Anderson: Excuse me. I have been waiting for an oppor-

tunity to say this, and I will not take very much time to say what I want to say.

The Special Master: You will have unlimited time. I mean, I want you to take all the time you desire.

Mr. Anderson: I see no occasion for this delay at all. This matter of the assessed value in 1863 of the real and personal property can be put before you to-morrow, or certainly by Saturday, official records, as to the items of which there can be no controversy whatever. The statements which Virginia desires to file under section 5 of the decree, which I believe is E-1 of the Exhibits, can all be laid before your Honor either now or on Saturday morning, or to-morrow. So there is no occasion for delay so far as Exhibit E is concerned.

934

[*Vol. 7. July 1, 1909. Relating to Joint Statement of Assessed Values.*]

The Special Master: I think we have gotten pretty nearly through everything we can do except Paragraph 5, and the evidence you may want to submit.

Mr. Conrad: The experts will get together, I understand, under your direction, on the matter of reconcilement of the matters of appraisement.

The Special Master: I do not want you to feel concerned by any suggestion I make, but my suggestion is, would it be practical for you to go right along under this paragraph and then put in your proof under Paragraph 5, and then let the schedules come in later? If you do not feel if would be best to go on now, we can take it up in the morning. Of course if we could do it now in the course of an hour or so—

935

Mr. Anderson: We would not be ready on No. 5.

The Special Master: Is not everything you have got on that in depositions?

Mr. Anderson: No. We want to file something as to the assessed values.

The Special Master: You could not go with that now?

Mr. Anderson: No, sir. It will take a very little time for an accountant—

The Special Master: We could not get through with that this evening?

Mr. Anderson: No. I think probably Schedule E-1 will take an hour.

The Special Master: The question is, will we not save time if we

postpone that until to-morrow? We cannot close it up this afternoon, as far as I can see.

Mr. Moon: Your Honor asked for a joint schedule under Paragraph 1?

The Special Master: That we have already agreed to.

Mr. Moon: They are getting that up. 936

The Special Master: They are to take that and make one schedule and both sign it, so we will not have two duplicates on file. That takes care of that. What do you think, gentlemen, that we would make as much progress as practicable if we were to adjourn now until to-morrow morning?

(Informal discussion followed as to the question of adjustment.)

Mr. Conrad: I understand also that when we adjourn here we adjourn for the final argument of the case.

Mr. Carlisle: If the experts do not get through to-morrow, whenever they do get through, let them send us the result of their work.

The Special Master: You will be ready to-morrow morning at nine o'clock, will you not, gentlemen?

Mr. Dixcy. I think so. We may not have that Exhibit A.

The Special Master: All the experts have got to reconcile under Paragraph 5 is the assessed valuation by counties for the years 1863, 1862, 1861, and 1860, so far as they can get them. There is no reason why you will not be ready, is there?

Mr. Dixcy: Only the physical reason that these books are incased in packing boxes, and they have to be dug out, and there is a good deal of labor involved, and it will take a good deal of time.

The Special Master: You appreciate this. Here are eight or ten lawyers. Their time is all worth something, and they are anxious to get through with his. We do not want to unduly press you people, but if you can be here to-morrow morning at nine 937 o'clock with a reconcilement of these matters that have been submitted to you, it will clean this case up, and it will be really an extremely great convenience to all concerned. Now, we feel like asking under these circumstances that you shall put in all the time possible between now and then to get the results. You appreciate the situation?

Mr. Anderson: If Mr. Dixcy and Mr. Potter cannot agree, I would be very glad if your Honor would indicate to them that they state in writing wherein they do not agree.

The Special Master: Yes; I will do that.

Mr. Carlisle: And if they do not agree, they may agree later.

The Special Master: It is almost sure that they can agree on what the official record shows.

Mr. Carlisle: Suppose they do not agree by to-morrow morning.

The Special Master: They can have one set of men at work on that branch of the case and another set under the other paragraph all at the same time, and it really does seem to me, even though they may have to work pretty late, that they really ought to put in some extra exertion in order to be here and facilitate this whole matter on the part of all concerned, because it will be a great accommodation to all of us.

943

[*Vol. 7. July 2, 1909. Testimony of J. M. McWhorter.*]

Mr. McClintic: I have a witness I would like to put on the stand.

The Special Master: Very well; while we are waiting for Mr. Potter, Mr. McClintic suggests that we hear from his witness.

Whereupon

J. M. McWHORTER

a witness produced by and on behalf of the State of West Virginia, having been first duly sworn, was examined.

By Mr. McClintic:

Q. What is your age?

A. Well, I have lived 81 years; I don't know whether I am that old or not.

Q. What is your occupation?

A. Attorney at law.

Q. What official positions did you hold under the Government of Virginia before the 20th of June, 1863, if any?

A. I was clerk of the County Court and deputy clerk of the 944
Circuit Court of Roane County.

Q. What official positions have you held under the Government of West Virginia?

A. I was first Warden of the Penitentiary for one year—not for a year, either. I was appointed to see whether we could work the convicts to any advantage, and they were scattered through the different jails, and I informed the Governor, after investigating, that we could not work them to any advantage.

Q. What other position did you hold?

A. Then I was Auditor for two terms.

Q. When did you first become Auditor of West Virginia?

A. In 1865.

Q. Were you elected in 1864?

A. Yes, sir.

Q. Were you ever a member of the West Virginia Legislature?

A. I was.

Q. When?

A. In 1863, the first Legislature of the State.

Q. What other positions have you held, besides being Auditor of the State?

A. Judge of the Circuit Court of the Circuit of Greenbrier County, and associate counties with Greenbrier.

Q. How often were you judge of that Circuit Court?

A. Twice.

Q. When did your last term end?

A. December 31, 1904.

Q. When were you first judge of that Circuit?

A. I was appointed Judge there in March, 1870. 945

Q. How long did you serve then?

A. Nearly three years.

Q. You served until you were constituted out of office by a new Constitution?

A. Yes, sir.

Q. Were you over in West Virginia much during the periods of 1861, 1862 and 1863?

A. The War broke out in 1861. I was clerk of the county court of Roane county, and lived there until February, 1864. I then moved to Jackson County. I was over in Jackson, and Kanawha during that time; and some other counties, also, for instance, Mason—

Q. What was the condition of that country as to the contending armies? Was there much raiding and backward and forward movements of each army through that section of West Virginia?

A. Yes, sir. In 1861, when the War broke out, the people divided, those belonging to the Union Forces, those adhering to the Union, forming what they called home guards. On the other side, they had guerilla companies; and between the two it was a terrible state of affairs. I do not want to see it again, and I don't think I ever will.

Q. What was the result of that guerilla warfare upon the people and the property and personal property, especially?

A. No one could feel any safety as to his property. I lost a horse or two myself. Most everybody had to keep a constant watch on his property for fear it would be carried away by one side or the other. 946

Q. What was the condition of property in West Virginia as to depreciation in value on account of these war conditions?

A. As I remember it now, property was very much depreciated in value, because of the apprehension all the time that they would lose it. They found a ready market for the cattle, beef cattle and sheep, mutton; that found a ready market as long as the soldiers were in there. But there was a constant fear and apprehension all the time of the loss of property, and people were ready to dispose of it at a depreciated price.

The Special Master: Am I correct in understanding you to say that

it resulted in an absolute depreciation, or simply that there was this apprehension?

The Witness: On account of the apprehension, there was a depreciation. People were ready to dispose of their property and turn it into money.

By Mr. McClintic:

Q. Was or was there not a large emigration from West Virginia from the period of 1861 to 1863?

A. There was in 1861. As I have stated, the companies were formed on one side and the other. Nearly all that went into the home guard, men of proper age, went into the Federal forces, in the Federal Army; and they moved their families out, so as to have them secure.

Q. Was there not a large emigration from West of the Confederate sympathizers, down into Virginia or other Southern States?

A. Oh, yes; I know a great many who left and came south—
a great many. 947

Q. Was there not also a large emigration of Union sympathizers to Ohio and other nearby Northern States?

A. Yes, sir; a large emigration.

Q. Were there many army movements, either of the Confederates or of the Federals, backwards and forwards in West Virginia during this period, and continuous raids by one side or the other?

A. The Confederates first organized companies there—

The Special Master: I think he has already stated that. I understood him to testify in regard to that.

Mr. McClintic: I am not speaking of the Guerilla companies, but the Confederate Army proper now.

The Special Master: Very well; proceed.

A. The Confederates first organized their forces there; but they did not hold their position very long. They soon had to leave. They left there and there never were any other forces than the guerilla forces on either side, except in—I have forgotten now whether it was 1861 or 1862, but whenever it was, there was one other raid through there, by General Jones. He passed through, and the forces of the regular army, a small army, got out of the way then.

Q. What was in the minds of the people as to confiscation of property at that time; what was discussed?

Mr. Harrison: You are not asking for facts now, but what was in the minds of the people?

Mr. McClintic: Yes; what was in the minds of the people.

A. Well, it was understood there at one time that there was 948
a bill pending before the Confederate Congress to confiscate the property of the Union men of the State, and it alarmed them a good deal.

Q. Was there not also talk and claims made by the Union people that they would confiscate the property of the Confederates?

A. There was a great deal of that done; a great deal of talk that it was a part of warfare to confiscate the opponent's property.

Q. Was there not in effect a good deal of that done? I mean, was there not a good deal of real confiscation?

A. That is what I say; there was a good deal of that done, a good deal of property confiscated.

Mr. Conrad: Confiscated?

Mr. McClintic: Yes; taken in all sorts of ways.

Mr. Conrad: That is not confiscation.

Mr. McClintic: It amounted to the same thing.

Mr. Conrad: Oh, no!

The Special Master: What you are trying to show is that one or the other of the contending forces took personal property and applied it to their own purposes?

Mr. McClintic: Not only personal property, but real property, through alleged forms of law.

The Special Master: If that is true, I suppose it could be shown by legal proceedings.

The Witness: I do not know that any real property was taken.

The Special Master: You would not undertake to establish that, by oral testimony? 949

The Witness: I do not think any real property was taken.

The Special Master: Of course, whatever was done under the forms of law, the records will show. Personal property, of course, could be taken physically without having any written proceedings connected therewith.

By Mr. Carlisle:

Q. When you speak of the conditions there, are you speaking of the single county of Greenbrier, or of that section of the State?

A. I was speaking of the section in which I lived. I am not speaking of Greenbrier.

Q. You are not confining yourself to Greenbrier?

A. I was not in Greenbrier. I was in Roane County and Kanawha and Mason County.

Mr. McClintic: And adjoining territory?

The Witness: Yes.

The Special Master: The whole territory with which you were conversant at that time. That is what he is testifying about?

Mr. McClintic: Yes, sir. That is all.

Cross Examination.

By Mr. Conrad:

Q. Referring to the numerous offices that you have held, were any of them held under the old State of Virginia?

A. Yes, sir; up to the time of the convention at Wheeling, when they declared themselves independent of Virginia.

Q. What office had you held up to that time? 950

A. I had held the office of clerk of the county court.

Q. But your judgeship and your position as Warden of the penitentiary, and so forth, was under the restored government of Virginia?

A. No, sir; it was under the Government of West Virginia.

Q. You lived in Roane County, and then moved to Jackson, an adjoining county?

A. Yes, sir. That was in 1864 that I moved to Jackson County.

Q. When you speak, or have spoken of the condition of affairs in West Virginia, do you undertake to state under oath here anything about the condition of affairs outside of Roane and Jackson and the adjoining counties?

A. No, sir; I do not. I did go, though, sometimes, into Lewis County, and sometimes into Harrison County.

Q. You have been asked about the destruction of property there. Can you say that to your knowledge any property ever was destroyed by any organized force of the Confederate Army?

A. Yes, sir.

Q. What property?

A. Yes.

Q. When and what property?

A. I was just saying that I am not quite sure when it was that Colonel Jones passed through there. I think it may have been in 1861— 951

Q. 1862.

Mr. Carlisle: 1863, was it not?

The Witness: 1863, I believe it was.

By Mr. Conrad:

Q. I was adjutant of one of his regiments.

The Special Master: This was not Judge Jones, of Alabama?

Mr. Conrad: No, this was another Jones; William E. Jones.

The Special Master: There are several Joneses.

By Mr. Conrad:

Q. Just a moment. This is a matter I wish to have stated particularly. I wish you would indicate one piece of property that you know, to your knowledge, was destroyed by any Confederate force?

A. I don't know that I can, any personal property.

Q. What real property was destroyed?

A. None that I know of.

Q. Oh, yes, there was. We burned up hundreds of thousands of barrels of oil.

A. I was not in the oil section. I remember of hearing of that.

Q. I want you to state to the Master whether you know of that command taking any horses or cattle or property of that kind that was not paid for, and paid for in greenbacks, at that?

A. Yes. I did.

Q. What was it?

A. That was old Man Hickle, in Roane County. He came 952
in there, and old man Jenkins offered him greenbacks for what they took from him and he would not take the greenbacks, but wanted Confederate money.

Mr. Conrad: I hope your Honor got that point.

By Mr. Conrad:

Q. I wish you would state again if you know of any property whatever that was taken by General Jones' command?

A. I do not.

Q. Do you know of any other organized Confederate force that ever was in that part of Virginia during the War?

A. I know some forces that claimed to be organized and claimed to be a part of the Confederate Army.

Q. What counties were they in?

A. They were in Calhoun, Roane, Jackson—they were scouting parties, rangers, they called themselves.

Q. Guerillas?

A. Well, they called themselves rangers.

Q. Yes. Let us see a moment. Were not those men composing those commands, citizens of that part of the country?

A. Some of them were and some were not.

Q. Do you know any of them that were not?

A. Most of them were composed of the citizens.

Q. Again, I ask you, to your knowledge was there any organized part of the military force of the Confederate Army in that part of Virginia?

A. Not unless these companies that I have referred to could be considered a part of the military force of the Confederate 953
Army.

Q. Those guerillas, you mean. They were not. Now, when you talk about property being destroyed and taken, you mean taken by those guerillas?

A. I do, mostly.

Q. They were your own people—

Mr. Carlisle: It wouldn't make any difference who took it. The question is whether it was taken.

Mr. Conrad: I understand that.

The Special Master: I suppose I should have to say that if the statements made by Major Conrad are evidence, he would subject himself to cross examination.

Mr. Conrad: I am perfectly willing to do so.

Mr. Carlisle: It makes no difference whatever, if the property was destroyed, who destroyed it.

The Special Master: The cross examination is proceeding, evidently, from a more or less intimate knowledge of conditions inquired about.

Mr. Conrad: Yes; I ought to know something about them.

The Special Master: Not that the Master indicates that he thinks counsel confiscated any of the property—

Mr. McClintic: I believe the distinguished counsel admits that he burned bridges.

Mr. Conrad: When General Lee entered Pennsylvania he issued an order absolutely prohibiting his men from even taking an apple from the orchards, and there is no evidence that the rule was ever violated. And so, when we went into West Virginia, property 954
was not taken by the soldiers, and if you know of any instance in which Jones' command took property without paying for it, I wish you would state it.

The Special Master: He has stated that already.

The Witness: I said I do not know of his taking any, and I did not hear of his taking any.

Mr. Conrad: Then he says his knowledge of West Virginia is confined to these counties.

The Special Master: Yes; I so understand it.

Mr. Conley's suggestion in regard to the apples was that General Lee probably knew what the effect would be on the men if they eat green apples.

Mr. Conrad: It was a bellicose thing, then, you know.

The Special Master: He was a little afraid it might be disastrous.

By Mr. Anderson:

Q. When were you auditor of West Virginia?

A. My term of office commenced March 4, 1865.

Q. I have here the auditor's report from 1861 to 1870, of West Virginia, a book which has already been offered in evidence.

Mr. McClintic: Understand me; I never introduced the book in evidence. I only introduced one page. You can introduce as much as you want to, however.

Mr. Anderson: It is understood that either party can refer to this.

The Special Master: Certainly; that is right.

By Mr. Anderson:

Q. I notice in the auditor's report for 1865, or coming down 955
to 1865, that the assessed valuation of personal property in Ohio County, which is the county, I believe, in which the City of Wheeling is located, aggregated $817,560 in 1860, and had increased to $2,663,637 in 1865, immediately after the war, which was an increase of over $2,100,000, an increase of over 300 per cent. If there was much destruction of personal property in West Virginia, how do you account for that condition of affairs, that the property increased threefold during that time?

A. Well, in Ohio County it was entirely safe. They had never been raided. They had not been threatened with danger there, and the City of Wheeling did prosper beyond any question.

The Special Master: That is, your statement was that that county was not subject to these uncertain conditions?

The Witness: That is it, sir.

Mr. Anderson: Well, take the county of Roane. You were auditor in 1865?

The Witness: Yes, sir.

Mr. Carlisle: But this was before 1865.

Mr. Anderson: No; this is the report of 1865.

Mr. Carlisle: He was elected Auditor in 1865, was he not?

The Special Master: He was elected in 1864 and became Auditor in 1865. That was the statement of the witness.

Mr. Anderson: Yes. This shows that the assessed value of personal property in 1860 in Roane County was $158,731, and in 1861 it is estimated at $130,700, which shows a depreciation of 956
$28,000. So there appears to have been some depreciation. Let us take Ritchie County. The assessments in 1860 were $261,832; and in 1865 the figures are $445,138, or nearly double.

The Witness: In Ritchie County?

Mr. Anderson: Yes, sir.

The Witness: Yes, sir.

By Mr. Anderson:

Q. Take Jackson County, which is one of the counties you mentioned that suffered from the guerillas. That is immediately on the Ohio River, is it not?

A. Yes, sir; Jackson County is on the Ohio River.

Q. Your report shows that the personal property in Jackson County for 1860 was assessed at $294,986, and for 1865 you estimated it to be worth $403,314, or an increase of perhaps 60 per cent.

A. Yes, sir. It is along the Ohio River there—

Q. That is one of the counties that you say suffered. Now, take Kanawha County. Kanawha County is one of the counties mentioned. The assessed valuation of personal property in Kanawha County

in 1860 was $720,969, and in 1865 that increased to $803,137, or an increase of about twenty per cent.

A. There seems to have been no loss there, no, sir.

Q. Now, Judge McWhorter, is it not a fact that no Confederate armies occupied any part of West Virginia west of Greenbrier County after 1862?

A. That is a fact, yes.

Q. Is it not true that the only Confederate armies that ever 957
were in West Virginia retired from West Virginia in the fall of 1861? That portion of West Virginia, I mean, not dominated by the Confederacy—in the fall of 1861 or early in 1862?

A. Yes, sir; excepting for these raids that I have referred to.

Q. Jones' raid?

A. Yes, sir.

Q. And Jenkins' raid?

A. Yes, sir.

Q. They were commands that went rapidly into the country and rapidly out of it again?

A. That is so.

Q. They did not occupy the country but a few days, any portion of it, did they?

A. Only a short time; they just went through and out again.

Q. Was not General Lee's Army stationed on Sewell Mountain, a country that was almost a wilderness, not densely populated at all?

A. That was a mountainous region, yes, sir.

Q. And the Federal Army, under General Rosecrans, was near it in that same region, in that mountainous region, was it not?

A. Yes, sir.

Q. And they had to retire from that country because of the bad conditions of the roads, and because it was impossible to supply their armies; is not that so?

A. That was the situation, yes, sir. 958

Q. When was oil first discovered in West Virginia? When was petroleum, I mean, first discovered?

A. I think it was in 1860.

Q. Was not that industry and that resource of West Virginia largely developed during the War, in the early part of the Civil War?

A. Well, in 1861, it was the most active development that we had, I believe.

Q. When was natural gas discovered in West Virginia?

A. There has been the greatest discovery of natural gas in recent years.

Q. Was it not discovered during the Civil War?

A. It has not grown into use then, I am sure.

Q. It had not been developed for economic purposes?

A. No, sir.

Q. But it was discovered?
A. Yes, sir.
Q. And the petroleum interest was largely developed, was it not?
A. Yes, sir.
Q. In considerable sections of the State?
A. Yes, sir.

The Special Master: In 1861 it was the highest state of development, I understand.

Mr. Anderson: In 1861, 1862 and 1863. The development was along the Little Kanawha River and other regions of the State.

Mr. McClintic: There were not any developments of oil except along the Kanawha River.

Mr. Anderson: Are you testifying? 959

Mr. McClintic: You are testifying. You are asserting that the development was along the Little Kanawha River and other regions of the State.

Mr. Anderson: I was asking questions.

Mr. McClintic: If you were asking a question, then it is all right.

The Special Master: If that is material, put the specific question. Is that all, Mr. Anderson?

Mr. Anderson: No, sir.

The Witness: During the war, after 1861, I do not think there was much development of the oil, or much working of the oil there.

By Mr. Anderson:

Q. Was there not a market in West Virginia in 1862 and 1863 for all the products of agriculture, and other products of the people?
A. Yes, sir.
Q. They got good prices?
A. Yes, sir; pretty good prices.
Q. In lawful money of the United States?
A. Yes, sir.
Q. Did not the United States Government, in connection with its military operations, expend very large sums of money in West Virginia?

The Special Master: In the purchase of supplies, you mean?

Mr. Anderson: In the purchase of supplies, yes.

A. They got good prices for all their products.

By Mr. Anderson: 960

Q. Did not Cincinnati furnish a good market for all your products during that time, at high prices?
A. We did not have to go as far as Cincinnati.
Q. You had a home market?

A. While Uncle Sam's Army was there, we furnished to the Army all our products.

Q. And the United States Army did not depredate upon your country, did it?

A. No, sir.

Q. When they were stationed in West Virginia?

A. No, sir; I cannot say that they did. When disturbances arose, they would confiscate the property and take the property out in the region—

Q. But they paid for it, did they not?

A. They would very often do that, but if it was a Confederate they did not always pay for it.

Q. You mean if they got it from Confederate sympathizers they would not pay for it?

A. Yes, sir.

Q. Is it not a fact that the portion of West Virginia you are familiar with, and north of that, the "Pan Handle," Monongahela and Marion and Taylor and Harrison and Ritchie Counties, and all that region there, was really prosperous during the war; did not lands appreciate in value, as well as the products of the State?

The Special Master: How can he tell when he was not up there at all. That must be hearsay. He cannot give testimony as to parts of the State he was not in, or at least we cannot give any weight to that testimony.

Mr. Anderson: He said he was in Harrison County. 960½

The Witness: Well, I was through all of these counties during the war, more or less.

The Special Master: Of course if you were through them, it is all right, you can testify about them.

Mr. Anderson: He was auditor of the State Government which was stationed at Wheeling.

The Special Master: Of course, if the record shows he was through there, where he would have an opportunity of having personal knowledge, he can testify.

The Witness: I passed through these counties—

The Special Master: But, except as to places where he has personal knowledge, there is no use to fill up the record. I cannot give any weight to a statement that is purely hearsay, you know.

Mr. Anderson: I don't want any hearsay testimony.

The Witness: The counties north of Harrison County were generally pretty prosperous.

Re-Direct Examination.

By Mr. McClintic:

Q. Was it not after 1863 that the counties on the Ohio River, and in the north part of the State, were safe from Confederate raids.

A. Yes, sir; from all depredations, I think. They were safe at that time.

Q. Were not all the Confederate sympathizers, and practically all of the Confederate guerillas run out of that section by that time?

A. Well, mostly. There were only occasional raids made in there. 961

Q. What proportion of the able-bodied men of your section of West Virginia went into the armies, on either side?

A. Well, Roane, Jackson and in there, I should say there were mighty near seventy-five per cent. of them in both armies.

Q. On one side or the other?

A. Yes, sir. Men between the ages of 18 and 45; I should say there was as much as seventy-five per cent. in one army or the other.

Q. Did not these counties in the northern panhandle and through that section get their so-called prosperity, which Mr. Anderson spoke of, in the last years of the war, when they were absolutely safe from intrusion, after the formation of the State of West Virginia?

A. Yes, sir; after all fears of the Confederate forces coming in there, they went right on in prosperity, I believe.

Q. Look at the table handed to you and state who made that and where you got it from?

Mr. Anderson: What table is it?

Mr. McClintic: A table made by him from certain reports.

Mr. Anderson: I have not seen a copy, have I?

Mr. McClintic: I will show it to you in a moment.

The Witness: I made this table myself.

Mr. McClintic: The following table shows the capitation returns by the Commissioners for taxation, as shown by Auditor Bennett's report in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the assessors in the same counties for the year 1865, shown by auditor's report for the State of West Virginia. 962

The Special Master: This is a computation from figures already in evidence?

Mr. Anderson: Yes, sir.

The Special Master: You do not care to cross examine on that?

Mr. Anderson: No; I do not suppose so.

The Special Master: Well, if this does not follow the material in evidence, it is of no value, and if it is based on that report, and the reports do not sustain it, that impeaches it.

The Witness: In but two counties, as I remember, the capitations of 1865 are estimated, and that in Greenbrier County, and I believe in McDowell County.

The Special Master: Then with the exception of two counties, Greenbrier and McDowell, that is simply a computation made from a record that is already in the case, and as to Greenbrier and McDowell, you simply made an estimate; is that right?

The Witness: Yes, sir. I think it is McDowell County.

The Special Master: Greenbrier was controlled by the Confederates for a greater part of the time, was it not?

Mr. McClintic: Yes, sir. I will hand this to the stenographer.

The paper referred to is as follows:

"The following Table shows the Capitations returned by the 963
Commissioners for taxation shown by Auditor Bennett's report in the several counties of Virginia for the year 1860, that afterward formed the State of West Virginia, and also the capitations returned by the Assessors in the same counties for the year 1865, shown by Auditor's report for State of West Virginia:

County	1860	1865	Decrease	Increase
Barbour	1,812	1,635	177	
Berkley	1,932	1,742	190	
Boone	846	705	141	
Braxton	1,008	917	91	
Brooke	1,031	883	148	
Cabell	1,495	1,275	220	
Calhoun	420	366	54	
Clay	314	321	....	
Doddridge	936	829	107	
Fayette	1,115	834	281	
Gilmer	646	522	124	
Greenbrier	2,278	1,900	378	
Hampshire	2,663	2,171	492	
Hancock	884	880	4	
Harrison	2,669	2,425	244	
Hardy	1,709	812	897	
Jackson	1,545	1,333	212	
Jefferson	2,045	1,674	371	
Kanawha	2,596	2,966		370
Lewis	1,456	1,187	269	
Logan	824	694	130	
Marion	2,422	2,134	288	
Marshall	2,192	1,958	234	

McDowell	270	185	85	
Mason	1,504	2,103	....	499
Mercer	1,185	1,014	171	
Monongalia	2,420	2,006	414	
Monroe	1,963	1,782	181	
Morgan	777	742	35	
Nicholas	964	787	177	
Ohio	4,132	4,410	....	78
Pendleton	1,180	995	185	
Pleasants	554	515	39	
Pocahontas	829	596	233	
Preston	2,586	2,381	205	
Putnam	1,181	985	198	
Raleigh	642	548	94	
Randolph	941	775	166	
Ritchie	1,176	1,166	10	
Roane	1,010	793	217	
Taylor	1,406	1,414	....	8
Tucker	259	260	....	1
Tyler	1,213	1,094	129	
Upshur	1,273	1,325	....	42
Wayne	1,272	1,082	190	
Webster	138	130	8	
Wetzel	1,236	1,256		20
Wirt	729	623	106	
Wood	2,654	3,076	....	322
Wyoming	455	437	18	
	68,988		7,436	970

[*Vol. 7. July 2, 1909. Certain Exhibits filed.*]

Now, then, we come to 5. As to that, as I understand it, it is a physical impossibility for these accountants, by the exercise of any human diligence, to get together and get results predicated upon the original papers that they feel they ought to 998
refer to. I think it is quite proper for them to be able to go back, and to go back to the original source of information. Neither party is bound by the report of any auditor or referee. They are all entitled to the original sources of information, if they want it. Now, upon that item there is to be predicated, as I understand it, some evidence that is ready to be presented on

the part of the plaintiffs, the result of which will depend upon the results reached by the auditors.

Mr. Anderson: Not entirely, sir.

The Special Master: If the auditors reach one sum, the pro- 999
portion upon which the plaintiffs rely would be one sum. If the auditors reach another sum, that same proportion of course would result in another sum. That is the only change, as I understand it, and the only effect that the advice to be submitted by the auditors could have upon the evidence to be submitted by Virginia. Suppose you claim that a certain one-half of a certain sum to be the sum allowed by me, and if the principal sum, to illustrate, was $100,000 one-half would be $50,000. If the principal sum was $50,000, one-half would be $25,000. Of course you could not have an expert state, without having first the sum upon which you would begin settled so as to go in the record; but the experts could give us the result later, and you could give us your testimony establishing the proportion, and when we print the case we can put in what the experts find in the matter, and the court will see that, and as far as I am concerned it does not make any difference, and it will not make any difference; and the court will never know but what there was introduced here the testimony of the experts giving the sum upon which you make the proportion. The only thing left, as I understand it, is the report of the auditors upon which your percentages are predicated. Am I right?

Mr. McClintic: If your Honor please, there are other things here I intended to prove by Mr. Scoville, which Mr. Dixcy is not familiar with, and knowing his illness and absence, 1000
I am at a loss to know how to proceed.

The Special Master: Let us settle this point first. How does that strike you, Mr. Attorney General?

Mr. Anderson: Part of your Honor's statement presents the position of the plaintiff, but we have other evidence on which we rely, tending to show what was the fair value of all the property in the two States.

The Special Master: What is it; have you got it in depositions?

Mr. Anderson: The depositions of a number of witnesses.

The Special Master: What harm is there is submitting it right now?

Mr. Anderson: That is what we propose to do; and besides that we propose to show a number of sales, taken from the records within the boundaries of the present State of Virginia, which have been tabulated.

The Special Master: There is no objection, then, to your submitting your evidence under this paragraph without waiting for the accounts of the accountants.

Mr. Anderson: I introduced the deposition of Robert W. Hunter and others.

The Special Master: Plaintiff introduces the depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe, taken in the City of Richmond, State of Virginia, on the 4th of June, 1909.

Were the other side given notice?

Mr. Anderson: Yes, sir.

The Special Master: Very well, they can go in.

(The depositions referred to were filed and marked Virginia No. 1.) and will be found at the end of the session.

The Special Master: Have you any more depositions, Mr. 1001
Attorney General?

Mr. Anderson: Yes. I will have some oral testimony in a moment. I wish now to put in a statement showing the depreciation of Confederate money as compared with gold for every month during the War, and particularly to show the depreciation of Confederate money in June, 1863.

Mr. Carlisle: Of course that is a matter upon which the Master can inform himself.

Mr. Anderson: This is a statement approved by the Supreme Court of Appeals of Virginia and has been adopted in thousands of transactions. It is taken from a case decided by the Supreme Court of the State.

Mr. Carlisle: Was West Virginia a party?

Mr. Anderson: No; but this settles the question.

Mr. Carlisle: Let it go for what it is worth. We don't think it is worth a very much.

The Special Master: I suppose as to this, the financial records of that time would probably bear out that statement.

Mr. Carlisle: The records of the Treasury department at Washington would show that, would show it for every day.

The Special Master: I understand that this is objected to and is admitted *de bene*, and I would like to have counsel for West Virginia take it and verify it, so as to be able to tell me 1002
whether the facts are correctly stated.

Mr. Carlisle: I called upon the Treasury Department for information along this same line, and expect to get it from them.

The Special Master: Is it understood by counsel for Virginia?

Mr. Carlisle: I want to say this; that I desire also to give a statement likewise, for your consideration, as to the value of the United States greenbacks in comparison with gold, at the same time.

The Special Master: Well, I suppose if I open the question as to respective values, I should probably go into a maze as to respective values of gold and greenbacks and Confederate money and gold.

Mr. Carlisle: Of course, you would, because West Virginia's money was the greenback.

The Special Master: That is a matter for me to consider. But what I want is this: Will Virginia consent that Mr. Carlisle may submit as a part of the record in the case a statement from the Treasury Department showing, during the period covered by your statement, the value of gold and greenbacks?

Mr. Anderson: Yes, sir.

Mr. Conrad: In Virginia.

Mr. Carlisle: And in West Virginia.

The Special Master: Now, this statement here, this only goes so far as to allow the defendants to submit as a part of the record a statement from the Treasury Department as to financial facts that will make no conclusions whatever.

Mr. Carlisle: No conclusions; only figures.

The Special Master: And whatever that statement is, it 1003 will be submitted to the other side, and whether that proves anything or not, of course is another question.

Mr. Anderson: I suppose that ought to be marked plaintiff's Exhibit E-2.

(The paper referred to was filed with the stenographer and marked "Plaintiff's Exhibit E-2.)

Mr. Anderson: I wish to introduce Plaintiff's Exhibit E-3.

Mr. McClintic: That is introduced over our objection, very strongly.

Mr. Anderson: Read the caption, please.

The Special Master: Without stopping to discuss this, how does a valuation, for instance, in 1867, have any legitimate bearing on what the valuation was in 1863; what kind of a door does that open?

Mr. Anderson: I think we will show the bearing.

The Special Master: I will admit this *de bene*, but with the suggestion that unless some connection is shown which I do not see, it may not be of much value. It cannot do any harm. I shall not give any weight to it to which it is not entitled. It comes right down to 1908. I will hear you on that, I say.

Mr. Harrison: We can show you the bearing, I think, when the time comes.

Mr. Anderson: Are these figures taken from the Auditor's report of West Virginia and Virginia?

Mr. Potter: Yes, sir.

Mr. McClintic: We will not admit anything on that.

Mr. Carlisle: Mr. Potter will testify, I suppose, that these 1004 figures are correct?

Mr. Potter: Yes, sir.

Mr. Anderson: We expect to be able to suggest reasons to your Honor which will be persuasive as to the value of those figures.

Mr. Potter: I said that was taken from the records. It is, with the exception of $9,000,000 introduced as the value of railroads in Virginia between 1867 and 1879, for which we had no report, as covered by the note at the top of the second page.

Mr. Anderson: They were not assessed in Virginia at that time, but we took them—

Mr. Potter: Value in 1880—

Mr. Anderson: Which was probably fifty per cent more—

The Special Master: Do you want to spend any time in inquiring about that?

Mr. Anderson: We wish to introduce this Exhibit as Plaintiff's Exhibit E-4. It is a statement of the value of real and personal property, assessed values, in 1861, taken from the Auditor's report.

(The paper referred to was filed and marked Plaintiff's Exhibit E-4.)

The Special Master: That is all going to be covered by the statements that they are going to get up between them, that we have already agreed on.

Mr. Anderson: If that is introduced, it will be substituted 1005 for this, but we have to have this in order to support the next statement.

The Special Master: Does not this show that you have agreed on the assessed value of real estate for 1863?

Mr. Anderson: Yes.

The Special Master: That is what this shows (Indicating)?

Mr. Anderson: No; personal property.

The Special Master: Then, when you get in the statement that the experts are to agree on—

Mr. Anderson: This is by counties. We do not think we will need the other statement.

The Special Master: If it does not agree with the other statement it will not go for anything, because Mr. Dixcy and Mr. Potter will present a statement signed by both of them, and if this schedule does not agree with that, this schedule will not go for anything. I shall not submit any schedule submitted by Mr. Potter which does not agree with the joint schedule. There is no occasion for duplicating it. Have we not already agreed that Mr. Potter and Mr.

Dixey should give us, first, the assessed valuation of personal property as appears from the official records, in 1860; next in 1861, and next in 1862 and next in 1863; have we not agreed to that?

Mr. Anderson: Yes, sir.

The Special Master: That settles the official valuation by counties for those four years.

Mr. Anderson: Except that we insist that in 1863 it was made with reference to Confederate money. 1006

The Special Master: We will hear your argument on that later, but there is no occasion for duplicating a schedule on that.

Mr. Anderson: Well, we will withdraw that.

The Special Master: Now, then, is there anything else you have to offer?

Mr. Anderson: We wish to introduce testimony to show a number of sales of real estate at that period.

Mr. Carlisle: We object to that.

Mr. Anderson: Sales of property?

Mr. Carlisle: Yes, sir.

Mr. Anderson: I would like to recall Mr. Lightfoot.

JOHN B. LIGHTFOOT, JR.,
a witness previously produced and sworn on behalf of the plaintiff, is recalled for further examination; and took the stand as a witness:

Mr. Carlisle: You have gone to the records and segregated certain sales and found the considerations stated in the deeds, which may be true and may be false. Many deeds are made for a consideration of one dollar, and the consideration named in the deed does not prove the value of the property.

Mr. Harrison: If the evidence is of no value, then it will not do you any harm.

Mr. Carlisle: If there is a deed on record which shows that a certain lot which sold for a certain price on a certain day, that does not prove the value of that lot?

Mr. Harrison: It proves something in reference to that 1007 property, yes.

The Special Master: The defendants object to all the evidence that is submitted to Virginia on this line. The plaintiffs now propose to show what the record shows, as I understand it, with reference to a particular lot in 1863.

Mr. Carlisle: Several lots.

Mr. Anderson: A great number of lots.

The Special Master: Well, a number of lots, then.

Mr. Carlisle: 58 or 60, perhaps.

The Special Master: I propose to submit this evidence *de bene;* but it is subject to all the legal objections made by West Virginia. Now, why do you not put this schedule right in. Mr. Lightfoot, as I understand it, testifies that the computations shown upon that schedule are computations made by him from the original records, and so far as they are made from deeds which purport to show the consideration, they are accurately made.

Mr. Carlisle: From the deeds on record, yes.

The Special Master: Yes, sir. Of course, whether that proves the consideration of that particular sale is another thing, perhaps. Does that cover everything you want?

Mr. Anderson: No, sir. I want to prove by him whether this included all he could trace. We are not only prepared to prove what these properties sold for, but what the assessed value of these properties was.

The Special Master: I understand this schedule states that, and without going over it in detail, I understand it may be stated on the record that Mr. Lightfoot testifies that the figures appearing here are the accurate result of the examination of the 1008 original records, both of conveyances and assessments.

Mr. Anderson: It will not be necessary to encumber the record with the original deeds?

The Special Master: Not unless the other side wishes to do that.

Mr. Carlisle: Oh, no.

The Special Master: That schedule is admitted, and Mr. Lightfoot so testifies.

Mr. Anderson: (Addressing the witness, Mr. Lightfoot.) Please state what proportion of the property that was sold at that time as shown by the records of the State and which took place in Richmond City and Henrico County, Hanover County and Chesterfield County, you show in this schedule?

The Special Master: What proportion of the actual sales that appear upon the record during that period that he has made a note of in this schedule. That calls first for the question whether he examined the record in these various counties for the purpose of determining how many sales were made of real estate.

Mr. Lightfoot: I did, sir, in this way—

The Special Master: Very well. What proportion of the actual sales which you found recorded on the records are represented in this schedule?

Mr. Lightfoot: As to Henrico County, Hanover County and Chesterfield County, they cover all sales which I could find by an examination of the deed books for the year 1863, as to 1009 which I could trace the assessments of that particular property.

The Special Master: Well, now, that does not give any information. How many deeds were on record which you could not trace in the assessments books?

Mr. Lightfoot: I could not give you the number.

Mr. Anderson: What proportion?

Mr. Lightfoot: That would be an estimate.

Mr. Anderson: Have you any idea?

Mr. Lightfoot: That would simply be an estimate.

The Special Master: Well, what is your estimate?

Mr. Lightfoot: I should say over one-half.

Mr. Anderson: Because they were parts of tracts of land—

The Special Master: That is immaterial.

Now, then, anything further?

Mr. Anderson: You did not say about Richmond City.

Mr. Lightfoot: For Richmond City the same applies, except that I have not gone through all of the deed books as carefully as I did in the counties. I may have omitted ten or twelve or fifteen deeds, as to which assessments could have been traced; but as to Richmond City I have not made as careful examination of all the deed books as I made in the other cases.

The Special Master: As to Richmond City, your examination is not exhaustive, as I understand it?

Mr. Lightfoot: That is correct.

The Special Master: Does this schedule show where these various properties are located, in what counties?

Mr. Lightfoot: It does, yes, sir. 1010

The Special Master: Yes, I see it.

Mr. Lightfoot: They show the location within the county or city.

Cross Examination.

By Mr. Carlisle:

Q. What period was covered by your examination?

A. It shows on the outside of the schedule, April, May, June, July, and August of 1863.

Mr. Anderson: I desire to file the certificate as to the assessment of those identical properties in 1863. This is a complementary schedule and follows the other, and is subject to the same objection.

(Paper handed to the stenographer and marked Plaintiff's Exhibit E-5.)

Mr. Anderson: Please explain the connection between Exhibits E-4 and E-5.

Mr. Lightfoot: When you examine the certified assessments made by the auditor, you will find one piece of property stated as for three years, in some instances. That was done for the reason that the description in a deed which is shown on this exhibit will be described by the name of the place, for instance. I will take one instance. In the deed it is described as Peoria. On the land book for the same year, you would not find the description "Peoria," but on the land book for 1862 you would find that property described as "Peoria." In those cases I have taken it for 1863 and then for 1862, and if necessary have gone to 1861, until I have located the same description on the land book as contained in the deed.

The Special Master: Does the land book contain descriptions of the property?

Mr. Lightfoot: Yes; so you can identify it. 1011

The Special Master: When a certain piece of land assessed to A has been conveyed by A, is the description on your tax book so complete that you can identify it with the deed to Mr. A?

Mr. Lightfoot: Yes, sir. In those cases where I could not identify it I have left it out.

The Special Master: When it comes to the books, do you mean assessment books contain such a description by feet and distances that you could identify that with the land conveyed in the deed?

Mr. Lightfoot: Yes.

Mr. Anderson: They give the number of the lot and the number of feet front, and so forth.

The Special Master: Well, does this list you give here give the full description that appears in the assessment books?

Mr. Lightfoot: Yes, sir; it gives the exact description.

The Special Master: The list you have submitted as being complementary contains all the description that appears on the assessment books?

Mr. Lightfoot: Yes, sir.

The Special Master: Then, whether it is identical or not is a matter for argument?

Mr. Conley: Whether or not we are getting more, does 1012 it contain anything that the books do not show; does the exhibit just filed contain anything more?

The Special Master: I understand him to say they are exact copies.

Mr. Carlisle: The question is whether his report contains anything more than appears on the assessment book?

The Special Master: I understood him to say that his report, so far as descriptions were concerned, was an exact copy.

Mr. Lightfoot: Yes, sir.

* * * * * * * * *

The Special Master: Finish on paragraph 5, then— 1013

Mr. Anderson: I have now the exhibit which shows the purpose of that testimony, the exhibits filed under paragraph No 5.

The Special Master: This is simply a computation?

Mr. Anderson: Yes, sir.

The Special Master: That can be made any time. It can 1014 be made after the case is printed as well as any other time.

Mr. Anderson: This will be plaintiff's Exhibit E-6.

(The paper referred to was filed by the Stenographer and marked "Plaintiff's Exhibit E-6.)

Mr. McClintic: We reserve the right to make our computations later on that.

The Special Master: You can make them all in the closing argument.

Mr. McClintic: There is a difference between argument and evidence.

The Special Master: There will not be any distinction as far as I am concerned. The computation made by Mr. Potter is subject to the cross examination of your experts, the same as if it was given as oral testimony. It has no more weight and no less weight.

Mr. McClintic: If evidence does not have any more weight than argument, then I will consent to it.

The Special Master: This is simply a computation made by the expert, and if it is questioned, I will make the computation myself.

Mr. McClintic: I understand, but I also understand that they are offering it as proof.

The Special Master: Well, you may have Mr. Dixey make the same computation, and if he does not reach the same result, submit it to me. A fact that the expert swears to has no more 1015 weight with me than if you stated it in argument.

Mr. McClintic: If that is understood, very well, then.

Mr. Anderson: These figures may be modified.

The Special Master: Either side can put into the case at any time any computations they see fit to make, and they can have experts make them. The computations will not bind me.

Now, is that all?

Mr. Anderson: We reserve the right to file an amended statement—

* * * * * * * * *

Mr. Anderson: We have not finished with number 5. I ask 1017 that this be filed as an exhibit.

(Paper handed to the stenographer and filed in the case, marked Plaintiff's Exhibit E-7.)

Mr. Harrison: This is a statement that supports the summary handed in just now.

The Special Master: This is their computation predicated upon what they have already put in?

Mr. Anderson: Yes, sir.

Mr. Carlisle: It goes in under our objection?

The Special Master: Yes.

Mr. Anderson: You prepared that?

Mr. Lightfoot: Yes.

Mr. Anderson: And it is correct according to the records?

Mr. Lightfoot: Yes.

Mr. Harrison: We have never gotten to F, yet.

Mr. McClintic: I want to put in something on No. 5, if you are through.

[*Vol. 7. July 2, 1909. West Virginia Exhibits 1, 2 and 3.*]

Mr. McClintic: Yesterday I gave each one a copy of a 1018 paper taken from the United States Census reports. We have the Census report here.

Mr. Anderson: We object to that.

The Special Master: Yes; it is objected to, but I will admit it *de bene*.

Mr. McClintic: I also want to file a table showing the slave population by counties in West Virginia in 1860 and over and under the age of twelve years, as shown by the Census of 1860, 1019 and the number of slaves assessed in West Virginia. Also a table showing slave population by counties in Virginia in 1860 over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860. This was taken from the Census reports and the auditor's reports already in.

Mr. Anderson: We know nothing about that.

The Special Master: I understand that. That is admitted, subject to objection by Virginia. We understand that they are to have their experts compare them with the original sources of information, and they can file a contrary report, if they desire to do so, if they do not agree that this is correct.

[*Vol. 7. Depositions on behalf of Virginia taken June 4 and 5, 1909.*]

DEPOSITIONS TAKEN ON BEHALF OF THE COMMONWEALTH OF VIRGINIA.

In the Supreme Court of the United States

1023

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Philip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams and W. Gordon McCabe taken in the City of Richmond, State of Virginia, on the 4th and 5th day of June, nineteen hundred and nine, to be read as evidence on behalf of Virginia in the above entitled cause.

In the Supreme Court of the United States

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Index to the following depositions:

June 4, 1909:
Robert W. Hunter....1025
W. W. Scott....1038
John P. Branch....1048
Philip A. Wellford....1058
William G. Taylor....1073
June 5, 1909:
S. H. Hawes....1079
Charles U. Williams....1089
W. Gordon McCabe....1098

*References are to pages of original transcript of testimony and are indented in this volume.

In the Supreme Court of the United States

1024

THE COMMONWEALTH OF VIRGINIA
Complainant

v.

THE STATE OF WEST VIRGINIA
Defendant.

Depositions of William G. Taylor and others taken at the offices of the Attorney General of Virginia, Richmond, Virginia, on the 4th and 5th days of June, nineteen hundred and nine (beginning at 10 o'clock A. M., on the 4th), pursuant to the annexed notice, to be read as evidence by the Special Master and the Court in Chancery cause now pending in the Supreme Court of the United States in which the Commonwealth of Virginia is complainant and the State of West Virginia is defendant.

Present on behalf of the Commonwealth of Virginia William A. Anderson, Attorney General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia, William G. Conley, Attorney General of West Virginia.

Note: The taking of these depositions was adjourned from 1025 the office of the Attorney General to the Court Room of the Supreme Court of Appeals of Virginia.

Major Robert W. Hunter being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Please state where you reside, and what official position, if any, you now hold?

A. My legal residence is Winchester, Valley of Virginia, and I am now Secretary of Virginia Military Record, with my office in the Capitol at Richmond, Virginia.

Q. 2. Where were you during the War between the States and if you were connected with the Confederate Army, please state with what commands, and what positions or offices you held ?

A. I was Adjutant of the Second Virginia Regiment of the Stonewall Brigade. For a considerable period, especially when James A. Walker was in command, I was acting Adjutant General of the Stonewall Brigade. At the time of the battle of Gettysburg I was promoted Major of Jackson's old Division, then commanded by General Edward Johnson. Was Adjutant General of Edward Johnson's Division until the 12th of May, 1864, when I became the Adjutant General of Major General John B Gordon, commanding the Division in Early's corps, and remained with him until Appomattox.

Q. 3. State what civil office, if any, you held during that period?

A. I was a member of the Virginia Legislature from the County of Berkeley, Virginia (now West Virginia) during 1026 the years 1863 and 1864. It may have been earlier than that. I didn't take my seat except occasionally.

Q. 5. Through what portions of the present territory of Virginia did you travel or march during that period?

A. Our first service was at Harper's Ferry; from there we retired to Winchester, from Winchester transferred to the Battle of Manassas, remained about Centerville until the Command was ordered back to Winchester, in the Valley of Virginia, after Jackson was appointed Major General in command of the Valley.

Q. 6. After that?

A. Then we were chiefly in the Valley of Virginia.

Q. 7. Where did you serve in the year 1862 and 1863?

A. Then came the battle of Kernstown, and afterwards what is known as Jackson's campaign, which covered the entire Valley and extended over towards West Virginia. Then as we returned we crossed over into the Luray Valley—had a fight at Front Royal. I was in the Valley chiefly with Jackson's Army, largely about Winchester and the upper parts of the Valley.

Q. 8. Did you go with Jackson's command to Richmond in July, 1862?

A. Yes, sir.

Q. 9. Did you go with Jackson's command in the march toward Rappahannock?

A. In the battle of Slaughter Mountain I did. I was in that engagement.

Q. 10. Were you with Jackson's command in the campaign 1027 culminating in the Second Battle of Manassas?

A. I was, sir. I was in the railroad cut.

Q. 11. Were you with the Army of General Lee in the march into Maryland—the battle of Sharpsburg?

A. I was, sir.

Q. 12. You remember the date of the battle of Sharpsburg?

A. The 17th day of September, 1862.

Q. 13. You were in the retreat through Northern Virginia back to Richmond?

A. Yes, sir.

Q. 14. Were you in the Fredericksburg campaign of 1862-63?

A. Yes, sir. We were in camp in Caroline County in that winter.

Q. 15. Were you in the army during the campaign of General Lee in 1863?

A. At Gettysburg?

Q. 16. Yes, sir.

A. Yes, sir.

Q. 17. Now, Major Hunter, please kindly state what was the condition of the farms, and generally of the buildings upon the farms, the fences, and real estate generally in the portions of Virginia with which you were familiar during that period, as compared with their condition prior to that period?

A. In the early part of the War property rights were respected to a very considerable extent by both armies. Of course, necessarily the occupation of any territory by an army entails very large damage to that country. A great many fences were destroyed, and a great deal of damage was necessarily done. Now, later on in the War when orders were given to devastate the 1028 country, the country became thoroughly ravaged, fences gone, mills and barns destroyed—a general destruction.

Q. 18. Was there any observable damage done prior to June, 1863, to the fencing, forests and buildings in the portions of Virginia to which you have referred, by reason of the occupation of the country by the two armies?

A. Very considerable damage was done by the occupation of the territory by both armies, necessarily.

Q. 19. What was the effect of the occupation of the country by the two armies upon the forests and timber lands in those regions?

A. A great many of them around Winchester were destroyed almost, and in other parts of the country where our army encamped for a considerable length of time they were almost destroyed. Down in Caroline we made houses of wood. We cut down an enormous amount of timber. We used a large amount of fire wood.

Q. 20. How long were the two armies encamped in the region about Fredericksburg—in 1862-63—prior to the battle of Chancellorsville, which was in May, 1863?

A. McDowell's Army was in the neighborhood of Fredericksburg

during the seven days' fight at Richmond. That country was occupied by the Federal Army very largely. McDowell I think had 30,000 men at least. While The Jackson campaign chiefly was in progress, he occupied that territory.

Q. 21. Where was General Hooker's Army in camp later 1029
in that year?

A. First was Burnside. They were encamped from the Rappahannock to the Potomac—ranged over that whole country. They had a base on the rivers near by, and at Alexandria.

Q. 22. Where was Hooker's Army encamped?

A. Hooker's Army was encamped from Stafford up along about the same region of country that had been occupied by Burnside's Army.

Q. 23. How would you describe, Major Hunter, the effect of the occupation of this region by the Federal and the Confederate Armies respectively?

A. To a very large extent it paralyzed all the agricultural operations. Destroyed fences, and made the pursuit of agriculture almost impossible, except in a very unsatisfactory way.

Q. 24. And now will you kindly state what was the condition of the agricultural interests in Virginia, and industrial interests in Virginia generally, outside of the sphere of occupation by the Federal Army,—inside of the Confederate lines—as to whether the farms were kept up, and as to what was the character of the tillage during that period.

A. The farming operations in other portions of the State not occupied by the Army were indirectly affected, and affected very seriously, but the fact that the labor necessary for carrying on agricultural operations was largely in the Army, or engaged in the support of the Army one way or another. Then there was the negro population—well to their credit it may be said of them that they did remarkably well under all the circumstances—yet a great deal of apprehension in regard to them was felt, and they were being induced away very frequently. 1030

Q. 25. What, within your knowledge and observation, was the result of the operation of the causes that you have mentioned, upon the actual value of real estate in the territory now constituting the State of Virginia—in June, 1863?

A. Well, sir, that is almost entirely a matter of conjecture, but I should suppose that it would be fair—of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State a large. It is like the value of a buggy when a horse is running away with it. There was a condition of affairs existing which made it impossible to base any satisfactory judgment as to values.

Q. 26. Are you prepared to say whether there was or was not a deterioration in value, and whether or not that deterioration was great or small?

A. There was a great deterioration in values. In the first place our currency began to be very valueless at that time. Began to depreciate very decidedly.

Q. 27. Do you happen to know of any actual sales of real estate during that period, in that territory, and if so, how did the prices compare with the prices before the War, taking gold and silver as a standard of value?

A. Well, a small amount of gold would buy—I couldn't say how much—but relatively three or four times as much as it would at any other time. Sometimes a very much larger amount. It had an exceptional value brought about by the condition of affairs.

Q. 28. Please state, if you can, what the value of the Moss 1031
Neck plantation on the Rappahannock River was in sound money before the War?

A. I should say, without knowing certainly as to values in that region of the country, that it would have been worth $50,000.00. I suppose the house on it cost $30,000.00.

Q. 29. Will you now state what, within your knowledge and observation, was the condition of personal property, farming implements, vehicles, household effects, and other tangible personal property, in June, 1863, as compared with its condition prior to the beginning of the War, throughout the present State of Virginia—as far as your observation extends?

A. By that time—1863—pretty much everything was out of repair. Most of the skilled labor was in the Army, and the workshops, wagon shops, except such as were under government control, has, to a very large extent, broken up.

Q. 30. Had there been any destruction of personal property, destruction and carrying off of live-stock and consumption of live-stock throughout the State of Virginia during that time—had it been diminished in quantity?

A. Yes, very largely, very largely.

Q. 31. Was it in as good condition as it was at the beginning of the War, and before the War?

A. Nothing like, sir. Everything was out of repair, vehicles, farming utensils, and things of that sort.

Q. 32. Would you be prepared to make an estimate of the depreciation of that property in value—as to the specific property and as to the value of the total or aggregate property?

A. I don't think my estimate would be of any value. The 1032
fact is my mind was not intent upon those matters at all at that time, and it is only an estimate that I would have to hazard

now at this period. There are other gentlemen here who have given their attention to values. If I could get enough to buy a uniform and horse, that was all I wanted.

Q. 33. What was the currency of the people of what now constitutes the State of Virginia during that time?

A. At first we had a great many bank notes, and then we had Virginia Treasury notes, but Confederate currency was the currency.

Q. 34. What was the currency in 1863?

A. Confederate.

Q. 35. What was the standard of value within Confederate Virginia with reference to which all transactions between man and man and between the government and citizens were conducted, and all values measured—in 1863?

A. I think the impressment began about that time by the government, and I think a scale of prices to be paid for wheat, corn, bacon, and other supplies was fixed. I think that was fixed by the War Department—the Commissary-General under the authority of Congress of the Confederate government.

Q. 36. What was the measure of values then among the people—what currency—in 1863?

A. Well, it was impossible to get gold except in very small amounts. Very frequently Confederate money was 4 for 1, 5 for 1, 6 for 1, 7 for 1, 8 for 1. The Legislature began at $4.00, then went 1033 to $6.00, $12.00, and I think got up to $40.00 per diem.

Q. 37. In what currency were all those transactions to which you refer?

A. Confederate money.

Q 38. In what currency were taxes paid?

A. Confederate money. There were, of course, Virginia treasury notes. I think pretty much all sorts of paper would go to some extent.

Q. 39. As I understand you, you were an officer in the Confederate Army during all that period, but served at intervals in the Legislature of the State?

A. Yes. sir.

Q. 40. While you were in the Legislature was your attention drawn to the economic and financial condition of the State?

A. Yes, sir, in a very general way, but my attendance upon the Legislature was coming and going. I used it in order to get brief furloughs, but that was about all. I was more subject to the Army than I was to the Legislature. It was only when our Army was not on the march that I was here.

Q. 41. Please state, Major Hunter, what was the condition of the highways and bridges, within your knowledge and observation, in

the present State of Virginia during the period to which your testimony has already referred, and particularly during the year 1863?

A. The highways were in a very wretched condition. I don't know that there was any provision for the repair of the roads at all during the War. There were no toll-gates. They were 1034 not kept up. In our marches we did not respect roads. We marched over the country generally—the best ground we could find.

Q. 42. To what extent were the highway bridges kept up?

A. A great many of them were burnt under orders from one Army or the other, and very frequently never repaired until after the War. Never rebuilt. Of course, where bridges were absolutely necessary for Army operations they had to be repaired.

Q. 43. What was the condition of the railroads in the present territory of Virginia during that time, and other lines of communication, both over land and by water?

A. The railroads were in a very wretched condition. The supplies of rails had largely given out. The engines became almost valueless. That is stated very clearly in a paper that will appear in the Times-Dispatch on Sunday, by Professor Mallet. The Ordnance Department of the Confederate government and the railroads helped each other out in every way possible. That is all stated in this article of Professor Mallet's—a very interesting one.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine Major Hunter. 1035

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Major Hunter, you have stated in your direct examination that an order was given to devastate the country during the War between the States—wasn't that order given in 1863?

A. I can't recall the date of the order. I have it in my office. There was an order from General Grant through General Halleck to General Hunter, and that order spoke of devastating the Valley so that a "crow would have to carry its provender."

XQ. 2. That order was issued after General Grant succeeded General McClellan?

A. Yes. sir.

XQ. 3. How long after General Grant succeeded General McClellan or General Meade was this order issued?

A. I can't answer that, Mr. Conley, without reference to the records; but a great deal of damage was done by General Milroy, and other officers in command. General Pope's Army did a great deal of damage. His orders were for the devastation.

XQ. 4. But this was all after June, 1863, was it not?

A. Milroy was in Winchester just prior to the battle of Gettysburg, and Gettysburg was in 1863, and Milroy had issued orders for the indiscriminate use of all property belonging to what he termed rebels. The country was entirely occupied by men of that class. I have a copy of Pope's order which was for the use of prop- 1036
erty of the citizens for Army purposes. This was before the battle of Second Manassas—at the time of the Slaughter Mountain fight.

XQ. 5. In your Army campaigns you have pretended to describe in your direct examination, your mind was particularly directed to the maneuvers of the Army, and not to the condition of the country or property through which you passed, was it not?

A. Yes, sir, almost entirely. It was only incidentally that I observed the property destruction. Of course, it impressed itself on the mind of everyone. You could see it around you wherever you went.

XQ. 6. What territory in the present boundaries of West Virginia did you cover during the period of the Civil War, prior to June 20, 1863?

A. Well, at times we had Berkely and Jefferson Counties—the lower Valley—and we had Hampshire, Hardy Counties, and that country to some extent, then Greenbrier, Monroe and Kanawha, and the counties around Kanawha.

XQ. 7. Were there any bridges destroyed in this territory during your trips through there?

A. The bridges across the Shenandoah were frequently destroyed —sometimes rebuilt and sometimes not. In the retreat of either Army after crossing a river they burned the bridge if was possible—if the pursuit was not too rapid.

XQ. 8. Whose command were you with in the trip through Greenbrier, Monroe and Kanawha counties?

A. Well, I never was there. I just spoke of that from my 1037
knowledge. I was never with any command in that part of the country.

Re-Direct Examination.

By the Attorney-General of Virginia:

Q. 1. What was the number of battles or engagements between the Federal and Confederate forces within the territory embraced by the present State of Virginia, and what were the number in the territory

embraced within the present State of West Virginia, during the War?

A. In the numbers that I give you, you will understand that I range from battles down to outpost engagements and skirmishes—all of them of sufficient dignity to be mentioned in the reports of the Union and Confederate Armies. There were 1,004 in Virginia and 364 in West Virginia. In West Virginia, as a rule, they were of a minor character—not on as large a scale as in Virginia.

Q. 2. In which territory were the engagements of any considerable magnitude and importance, and in which territory were the principal Armies of the two cambatants engaged?

A. In the State of Virginia. There was no great battle within the limits of West Virginia.

The signature of the witness is waived by consent.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers on redirect examination, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in 1038 said questions and answers.

MR. W. W. SCOTT,
being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. Mr. Scott, what official position do you hold in connection with any Virginia office?

A. I am known officially, sir, as the State Law Librarian of Virginia.

Q. 2. Where were you during the War from 1861 to 1865?

A. I was in the Confederate Army, except during the period from about July 17th, 1862, until about the 1st of November, 1863. During that time I was at the Military Institute, and for a short while at my home in Orange County.

Q. 3. Your home was in Orange County, Virginia?

A. Yes, sir.

Q. 4. What portions of the State were you in during the War—prior to 1863?

A. Well, I was at Harper's Ferry in April, 1861, and in all the subsequent operations of Jackson's Army until we came to Manassas. Spent the winter at Manassas, and fell back with the Army to the line of Rappahannock, and when Ewell's Division was detached and joined General Jackson's Command at Swift Run Gap near Elkton. I was in the Valley campaign with Jackson—not partici- 1039 pating in the battle at McDowell—but I was in what was known as the Valley campaign from beginning to end. In the com-

bats with Banks, beginning at Front Royal, through Winchester to Hallltown within a few miles of Harper's Ferry, thence back to the Cross Keys and Port Republic, in Rockingham County, thence to the seven days' battles around Richmond, and thence to Gordonsville, in Orange County, where I was discharged from the Army, being under age, on the 16th of July, 1862.

Q. 5. Have you had occasion in connection with any history or publication that you have gotten up, to pay attention and note the financial condition of matters in the present State of Virginia, during the War?

A. I have, sir, in a history of my own county. I have had occasion to make a comparison of the values as stated officially in the Auditor's reports in 1860 & 1861, and 1866.

Q. 6. From your judgment and observation during that period of the War, was there any increase or diminution in the actual intrinsic value of real estate—from January 1, 1861, to June, 1863—if so, what was the difference?

A. Well, if the intrinsic value is to be estimated at all by the market value, or salable value, there was a very considerable decrease.

Q. 7. What was that diminution—what proportion or percentage?

A. Well, I should say, sir, that lands that would have brought $40.00 an acre in say 1860-61 before the War came on, brought very little in comparison more than that in the currency of the 1040 country along in 1862-63.

Q. 8. What was that currency worth in 1863?

A. Well, that currency was very much depreciated. My recollection is that it got as low as at least 6 for 1. I wouldn't testify from memory what the precise depreciation was.

Q. 9. Then, according to the scale, real estate was worth in 1863 less than one-half of what it was in 1861?

A. Undoubtedly, in gold values. Hard money values. Gold and silver were about the same at that time. Silver was a little higher, I believe.

Q. 10. Well, what was the comparison in values of personal property between those two years, taking into consideration the diminution in amount as well as in value?

A. Well, sir, my recollection is pretty distinct that when I joined the Army in 1863 (you know they appraised the horses of the soldiers in the Cavalry) the horse that I was riding was appraised at $1,200.00 in Confederate money, and $100.00 would have been a good price for him in gold—a big price, but for the scarcity of horses then.

Q. 11. Then what, on the whole, would have been the percentage of diminution in values of personalty, considering the diminution in quantity, and in value also?

A. Well, the way I would look at it, personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils, and very little live stock.

Q. 12. What percentage of diminution in actual value of the 1041 personalty occurred between those periods?

A. Well, I would say that there was ten times as much personal property in 1861 as there was in 1863. When you come to the values, I cannot speak.

Q. 13. Do you mean ten times as much in intrinsic value?

A. Yes, sir. The property was there in 1861 and in 1863 it wasn't there.

Q. 14. What was the currency of the country in 1863?

A. I was paid off once—the first time I think—in State Bank notes; after that I never saw anything but Confederate money, and these little shinplasters. Taxes were paid in Confederate currency—it was all known practically as Confederate currency, except the provision of the Confederate law that one-tenth, I think, of the products of the farm had to be paid in kind—wheat, corn, tobacco, potatoes—on everything that a soldier could eat, you had to pay a tax in kind.

Q. 15. You speak of being paid off in Virginia Treasury notes, was that early in the War?

A. I said I was paid in Virginia Bank notes. The first thing paid to me as a soldier, as I remember, was Virginia Bank notes.

Q. 16. That was in 1861?

A. In 1861. My recollection is that it was paid in Virginia Bank notes.

Q. 17. After that time were all payments in Confederate money?

A. So far as I remember, yes, sir. I saw nothing else during the War but Confederate money, and these shinplasters that I 1042 spoke of, and occasionally Virginia Treasury notes.

Q. 18. Did any of them pass at any higher rate than Confederate money?

A. All on one common level.

Q. 19. All taken as Confederate money?

A. Yes. sir.

Q. 20. Then I understand that Confederate money was the standard measure of value in 1863?

A. There was none other that I know of.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. Mr. Scott, when you speak of the values, you are only speaking as to your opinion, are you not—as to the measure of values?

A. Well, I should say of my own knowledge, sir, as based on facts. Some things would be my opinion, but I was careful to state only facts which came under my personal observation.

XQ. 2. When you stated in your direct examination that 1043
there was ten times as much personal property, and that the property was of ten times the value in 1861 as compared with 1863, is not that simply your opinion?

A. Well, it is my opinion as to matters at large, sir. It is my knowledge as to matters within a restricted area. I know, for instance, the conditions of my own immediate neighborhood, for I was there in 1863. You remember (no, you were too young to remember) that, in the first place, there was a call for contributions of horses and wagons to the army, which were freely rendered, and after the spirit of contribution became exhausted there were impressments. The negro slaves were drafted by a court order. Two hundred at one time were taken from the County of Orange in 1863, which is a small county, and sent down to work on the defenses around Richmond.

XQ. 3. What time in 1863?

A. If you will let me look at this book I will tell you. I have copied the order. I can't give you the exact time without referring to that. I copied it from the court order. At a special term, January, 1863, two hundred able bodied slaves—negro men—

XQ. 4. Mr. Scott, when you spoke of the increased value of horses along about 1863, isn't it true that the value of horses, as a matter of fact, was much more at that time, because they were more in demand?

A. Yes, sir, and fewer of them, that is in my judgment, sir.

XQ. 5. When you spoke of the value of Confederate money, you meant that Confederate money was used as the medium of exchange?

A. Yes, sir, as the medium of exchange.

XQ. 6. And not as a unit of value? 1044

A. It was our only unit of value. The Confederate dollar was the only unit of value that we had. It wasn't considered loyal to traffic in gold and silver in this old Commonwealth during the war.

XQ. 7. On what was the value based?

A. You mean the value of the Confederate money—it was based on an abiding faith, sir, that we were going to be a nation and pay our debts.

XQ. 8. What did you measure the value of the Confederate money by?

A. Well, I don't know that I catch the meaning, Mr. Attorney General. I would be glad to answer frankly, sir.

XQ. 9. You must have had some comparison of value?

A. Well, we expected with absolute faith that the Confederate States would pay these notes dollar for dollar. We thought they meant a dollar measured in gold and silver— the standard value.

XQ. 10. Then is it not a fact your Confederate money after all was measured in value with gold and silver?

A. An abiding faith, yes, sir.

Redirect Examination.

Q. 1. Will you please state what month it was in which your horse was valued at $1,200.00?

A. It must have been sir, the very last of October, or the 1045 very first of November, 1863.

Note: The State of West Virginia, by her Attorney General objects to the foregoing question and answer, because it is not relevant and germane to the issues in this cause, and for other reasons apparent in said question and answer; and without waiving said objection, proceeds to re-cross examine the witness.

Recross Examination.

By the Attorney General of West Virginia:

XQ. 1. By what method was that horse valued?

A. The rule was that when your horse was killed (we furnished our own horses)—when the horse was killed the Quartermaster paid you for it, and in order to have a basis for payment when you joined the regiment your horse was appraised and reported to the Quartermaster as of such a value, and when he was killed, they paid you that much, and you could probably get one-twelfth as good a horse by that time for that amount.

XQ. 2. What was the assessed value of that horse as shown by your assessment books?

A. Well, sir, I was hardly more than a lad in short breeches. It was my father's horse, not mine. I said in my preliminary examination, sir, that $100.00 would have been an excellent price for him.

XQ. 3. And that was about the value it was assessed at in your assessment books?

A. Well, I couldn't tell you about that. I was about 17 1046
years old, I think, in 1863.

XQ. 4. Haven't you obtained the value of the assessment at that time, since then?

A. Hardly of that particular horse.

XQ. 5. Of horses generally?

A. Well, I will say, as I said in the beginning, that horses of that character would sell around about $100.00.

XQ. 6. Were they assessed at more or less than their selling price?

A. That is a matter of the taxpayer's conscience—he takes an oath—

XQ. 7. I am not speaking of any particular horse. I am speaking as to a matter of fact—what the assessment shows during that period.

A. I am wholly unable to answer that question, sir. I never saw a tax ticket until after the war. I don't want to evade the question.

XQ. 8. How long after the war?

A. Well, I was twenty years old the day after Appomattox, and I paid no taxes myself until 1867.

XQ. 9. I believe you stated you were State Librarian of Virginia?

A. I was the State Librarian. Am now the State Law Librarian.

XQ. 10. Will you examine the assessment book of personal property in your county in 1863, and state from it what the assessed value of horses were at that time?

A. If I can have access to that book, sir. I have published a a tabulated statement—

XQ. 11. On page 173 of the book published by yourself, en- 1047
titled "History of Orange County, Virginia," you have for the year 1860, given the number of horses as 2,991, and the total assessed value thereof, $150,328.00, what would be the average assessed value of those horses in that county for that year—would it not be in round numbers about $50.00 each?

A. It would be that sum ($150,328.00) divided by the number of horses. What the apportionment is would be the assessed value —I can't do it in my head.

XQ. 12. Well now, that being true, you would not pretend to say, would you, that horses, cattle, and other personal property were assessed in Confederate money?

A. In 1861 there was no Confederate money. It hadn't come out. The assessment was made as of the first of February, you know.

XQ. 13. Well, in 1866 how were the assessments made?

A. In 1866 they were made on the basis of the United States currency?

XQ. 14. Will you examine the personal property book of your

county for the year 1863, and give me the assessed value of horses and cows for that year?

A. I haven't the access to that book. I will do it if you will give me the book.

The signature of the witness is waived by consent.

Note: Since the taking of these depositions, Mr. Scott 1048 has examined the Commissioners returns to the Auditor of Public Accounts from Orange County, as requested in XQ. 14, just above, and made the following statement:

"I have examined the Commissioner's Returns to the Auditor of Public Accounts for 1863, from Orange County.

The average assessment, for taxation, was about $160.00 for horses, about $40.00 for cattle, for all ages and conditions. This, I think, was about four times as much as the same stock, or stock of like kind, would have been assessed at in 1860, for taxation."

COLONEL JOHN P. BRANCH,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence?

A. Richmond, Virginia.

Q. 2. What is your occupation, and what position, if any, do you hold?

A. I am President of the Merchants National Bank of Richmond, Virginia.

Q. 3. About how long have you been president of that bank?

A. About 28 years, I would say.

Q. 4. Where did you reside during the War between the States?

A. Petersburg, Virginia.

Q. 5. Did you have any connection with any business or 1049 banking house at that time—during the War between the States?

A. Yes, sir. I was partner with my father in business during the war.

Q. 6. What was the style of the banking house?

A. In the early part of the war we were commission merchants representing the farming interests of the State. Afterwards we went in the banking business during the War.

Q. 7. Did you have any connection with the Confederate Army during the War.

A. Was a soldier, and surrendered with General Lee at Appomattox C. H.

Q. 8. Over what portions of Virginia did you travel or march during the War, Colonel?

A. I was stationed mostly around Petersburg—in the Provost Marshal Department most of the time.

Q. 9. State, if you please, what, within your observation and knowledge, was the condition of the fencing and buildings and lands of the present State of Virginia during the War, and particularly during the year 1863, two years after the War had commenced—as to whether they had deteriorated or improved in value during that period?

A. Deteriorated very much.

Q. 10. What was the condition of the fences upon those farms?

A. Worse than they were in 1861 by far.

Q. 11. What was the condition of the buildings?

A. Worse too.

Q. 12. What was the condition of the buildings in the towns 1050
—for instance the City of Petersburg, or other towns with which you are familiar—whether they had been kept in repair or deteriorated?

A. Deteriorated in value very much when General Grant got to Petersburg and shelled the town.

Q. 13. What was the condition of the personal property in the State—live-stock, farming utensils, vehicles of every kind, household effects, furniture, and so on— as to whether it had depreciated in value during that period?

A. Depreciated in value very much.

Q. 14. What was the currency in use in Virginia during that time—in 1863?

A. Just after the War commenced the banks made very large loans to the Government in bank notes, and for a few months that money was distributed, but, of course, that gave out quickly and Confederate money was the currency from that time on, except what was issued by the cities. All of the cities in Virginia issued, most of them, what was known as shinplasters, and all of them were repudiated except Petersburg, where I was born, and she paid every one dollar for dollar.

Q. 15. What was the standard of value with reference to which all transactions were made in 1863?

A. Confederate money.

Q. 16. If gold was used at all, how was it treated—as a commodity?

A. Bought and sold as a commodity. Didn't circulate at all.

Q. 17. Have the books of the firms of which you were a member been preserved?

A. Yes, sir; they are all preserved, but I haven't been able 1051
to find all of them. I have found some of them.

Q. 18. Did you keep yourself informed as to the transactions of your house, upon your visits to your home, and at intervals during the War?

A. I would say that I knew from time to time what was going on, but not all the time.

Q. 19. Not in detail.

A. No, sir.

Q. 20. You were familiar with transactions that were going on in the communities in which you were at that time—Petersburg and Richmond?

A. Yes, sir; a general view of them, yes, sir.

Q. 21. You have said that there was a deterioration in the value of both real and personal property in 1863 as compared with its value before the War began?

A. Yes, sir.

Q. 22. Are you prepared to say what the deterioration in the actual values of personal property in Virginia, and of real property were, between January, 1861, and June, 1863?

A. Personal property was very much depreciated for over two years.

Q. 23. Are you prepared to say as a minimum what that depreciation was—any particular property?

A. Flour sold in May, 1863, for less than $3.00 a barrel in gold.

Q. 24. What was it worth in 1861 about?

A. I would say never less than $5.00 a barrel, and some- 1052
times as high as $10.00. In 1847 it brought over $10.00 a barrel. I remember that, because that was the year of the Irish famine.

Q. 25. Do you remember what flour and wheat sold at in Virginia in 1856, or along there after the Crimean War?

A. I think wheat went up $2.00 a bushel in that year. I would say that the price of wheat in Virginia previous to the War was 90 cents to $1.20, according to the crop. It may be interesting to you for me to state some facts in regard to the South, and Virginia in particular. We were an exporting people. For instance, take the South, the whole cotton crop went up. Now when you come to Virginia, Virginia exported tobacco, wheat, and corn, and when the War commenced all that export business suffered you know. We couldn't get it out. Of course everything was very much depreciated. Farm supplies were very much depreciated in prices because there was no demand, except what we could sell to the Army.

There were one or two exceptions—we might state horses which were very much needed for the cavalry and artillery. Everything got so scarce that General Lee on his retreat from Richmond and Petersburg to Appomattox C. H.—his troops were fed on corn. And when we got up to Appomattox C. H. we didn't have that. We surrendered on Sunday morning. After that General Grant sent in a big supply of corn and everything. Cotton sold as low as 2 and 3 cents a pound on the gold and silver value.

Q. 26. How was it with tobacco?

A. That didn't sell much better. One reason why tobacco sold so low was that there was nowhere to keep it. The barns were all burnt. The negroes were much depressed in prices. I 1053 bought a servant in July, 1863, on the basis of about $225.00 in gold. That servant would have brought certainly $1,200.00 in 1860 previous to the election.

Q. 27. What was the effect of the War upon the value of negro slaves?

A. It depreciated them very much.

Q. 28. It depreciated their actual value with reference to hard money as a standard of value?

A. Yes, sir, very much. As I think I told you, in July, 1863, I bought a servant for about $225.00 in gold.

Q. 29. And he would have been worth at least $1,200.00 before the War?

A. Yes, sir.

Q. 30. What was gold selling for in May and June, 1863, as shown by the books of your house?

A. In April, 1863, it sold for 6 to 1, in July it sold for from 9 to 1 to 10 to 1.

Q. 31. You know what it sold for in May?

A. Gold was appreciating all the time and Confederate money was depreciating, so I would say it certainly sold higher than that in May and June.

Q. 32. In June was it higher?

A. Necessarily, it couldn't have been any less. As you see here in April it sold for 6 to 1, and in July it sold for from 9 to 1 to 10 to 1. So you see in 3 months it had gone up. In August it sold for 15 for 1.

Q. 33. What would you say would be a fair estimate of the depreciation of real and personal property in Virginia in 1054 June, 1863, as compared with its value, say, in January, 1861—I mean its actual value?

A. I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated, and there was some other remarkable cheap sales that were made in Confederate money, but I am satisfied (though I am not speaking of any sale I

now remember) that it depreciated fully one-half. The negro property had depreciated two-thirds. And then provisions were cheap.

Q. 34. Tobacco and cotton and things of that sort?

A. I would say the whole shebang averaged 50 per cent, with some exceptions.

Q. 35. In actual value?

A. In gold, yes, sir.

Q. 36. What was the condition of the highways, roadways and turnpikes in the State in 1863—2 years after the beginning of the War?

A. I don't know very much about the turnpikes. I wouldn't say the country roads were very bad because there was so little travel on them. But the railroads, well they just got worse and worse. To give you some idea. From Richmond to Petersburg after the War—21 miles—the schedule time after the War was 2 hours. It took 2 hours as a general thing to go 21 miles.

Q. 37. What was the condition of the railroads in the Spring of 1863—as to the equipment, track and roadbed?

A. Bad.

Q. 38. How were other lines of communication, for instance, 1055 the water lines, canals and rivers—was satisfactory service furnished by steamship lines?

A. There wasn't any. They stopped running steamboats on the James River in 1861. In 1861 they didn't run them down any further than Jamestown.

Q. 39. How about the Rappahannock?

A. I don't know anything about that. In January, 1863, I wouldn't say that any steamboats were run at all so far as James River is concerned.

Q. 40. Is your estimate of the depreciation in values of real and personal property in the present State of Virginia being as great as at least 50 per cent. in June, 1863, confined to the portion of the territory of Virginia then within the Confederate lines, or do you include the whole State?

A. I have no knowledge on which I could form an estimate of the property in that part of the State in the Yankee lines. I have no knowledge of that at all.

Q. 41. Is your estimate then confined to the territory inside of the Confederate lines in 1863?

A. Yes, sir.

Q. 42. Do you take in account then the destruction of fences, property, and the carrying off of property inside of the Federal lines?

A. I don't think the fences were hurt much except where the army went by (you are trying to find about 1863 now)—I don't say that

the fences had depreciated very much except where the armies went by. You know they took everything as they went along. They camped near the west end of the town here and burnt all the woods.

Q. 43. In what currency were taxes paid in 1863? 1056

A. Confederate money.

Q. 44. In Confederate money?

A. Yes, sir.

Q. 45. With reference to what currency was personal property valued for taxation in 1863?

A. I don't know.

Q. 46. Do you remember anything as to the assessments of personal property?

A. No, sir.

Q. 47. You only know that the taxes were paid in Confederate money?

A. Yes, sir.

Q. 48. And that Confederate money was the currency of Virginia at that time?

A. Yes, sir. Of course there were a few exceptions where a man sold his property for other things. They swapped farms and things for something else.

Q. 49. They bartered?

A. Bartered, yes, sir.

Q. 50. What was the condition of wagons and farming implements at that time?

A. They must have been very bad.

Q. 51. What is your age, Colonel?

A. 78 years of age.

Note: The State of West Virginia, by her Attorney 1057
General, objects to each and all of the foregoing questions and answers, because they are not relevant and germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Colonel, do you remember the assessed valuation of horses in 1863?

A. No, sir.

XQ. 2. What is your best recollection?

A. Well, I would say that they probably sold better than anything else, because they were more in demand. If I had been the

assessor I would have assessed them higher because there was more demand for them.

XQ. 3. In 1863 what would an ordinary horse sell for in Confederate money?

A. I couldn't form any idea of that at all.

XQ. 4. What would a slave sell for in Confederate money at that time?

A. I bought this slave for $2,000.00 in Confederate money. Money was selling at from 9 to 10 for 1, which I estimated to be about $225.00 in gold.

XQ. 5. The value of other personal property was about the same ratio, was it not?

A. No, I think negroes were as much or more depreciated than anything else.

XQ. 6. Well, then, if you had a horse valued at $200.00 1058
in gold, it would sell for more $1,200.00 in Confederate money?

A. In June, just about $1,200.00. I don't know anything, not even a horse, that sold as high in 1863 as it did before the War. In other words, everything was being depressed. No business was being done. The cities issued these shinplasters to support the poor people, and then they repudiated them all afterwards—all except the City of Petersburg, where I was born.

XQ. 7. Wasn't there more demand for horses in 1863 than there was before the War?

A. Of course there was. Everything was low. The idea of flour selling at $3.00 a barrel, but afterwards it went up higher and higher, and finally you couldn't get it at any price. We were starving here in 1863, you know. A great deal of the country was occupied by the Yankee Army, and we couldn't get our supplies. The first thing that General Grant did was to cut off the Southern route, and we only had one road left, and that was this road from here to Danville.

Signature of witness waived by consent.

MAJOR PHILIP A. WELLFORD,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. What is your place of residence, Major?

A. Richmond, Virginia. 1059

Q. 2. Where were you born and raised?

A. Fredericksburg, Virginia, and moved to Richmond about 1857.

Q. 3. What is your age, Major Wellford?

A. 75.

Q. 4. Please state where you were during the War of 1861-65, and what position, if any, you held in connection with the Confederate army?

A. I left Richmond as a Lieutenant in the first company that left the City of Richmond, and was sent to Acquia Creek, on the Potomac, first, where we were about two months. We then came down to Richmond, and after being here for a short we went out to West Virginia to meet Garnett and Pegram. From there we went out to Valley Mountain, where General Lee came to take control, and we were there during that summer. In the fall we came back, and in January, 1862, we marched up to Winchester to join General Jackson, and I was then with him until after he was killed, and the Army was brought back to Mine Run. I was in both campaigns across the Potomac. In 1863 I was brought from the Army and put in charge of the mills here, running them exclusively for the Confederate government, where I remained until the evacuation. At the reorganization of the Army in 1862 I went on General Taliaferro's Staff, and as there was some question about having volunteer aides, I was made Commissary in the 23rd Virginia Regiment, then afterwards was Assistant Commissary in Taliaferro's Brigade.

Q. 5. Did you go through the portions of Virginia through which the command of General Stonewall Jackson marched in 1060 1862 and 1863?

A. Yes, sir, up in the Valley, out to Romney, over into Maryland, back to Fredericksburg, all along there.

Q. 6. You were encamped during the winter of 1862-63 in Fredericksburg?

A. Yes, a few miles below there.

Q. 7. The Confederate Army camped on one side of the Rappahannock and the Federal Army on the other side during the winter of 1862-63, did it not?

A. Yes, sir.

Q. 8. Were you with General Jackson's corps when it came to Richmond just before the seven days' fight?

A. Yes, sir.

Q. 9. Were you with his command when it went from Richmond to Orange County in the summer of 1862, and at the battle of Slaughter's Mountain?

A. Yes, sir.

Q. 10. Were you with it in the campaign ending in the second battle of Manassas?

A. Yes, sir.

Q. 11. And you were with it on its return from Maryland after the battle of Sharpsburg?

A. Yes, sir.

Q. 12. Then in the winter of 1862-63 you were with that Army near Fredericksburg?

Q. 13. Did you accompany that Army in the summer of 1863 1061
after the battle of Chancellorsville, when it marched to Gettysburg?

A. Yes, sir, and on its return to Mine Run.

Q. 14. Please state, Major Wellford, what was the condition of the farms and houses, buildings, fences and orchards in the portion of Virginia which came under your observation, and within your knowledge at that time, during the period to which your testimony refers.

A. Well, they were almost desolated. When I returned from West Virginia the first time and went down the Valley it was a perfect garden spot—all the farms were occupied with everything you could think of. A few years afterwards those farms were in a bad condition, nothing had been done towards the fences, or on the buildings. They had no cattle, no horses, nor anything else.

Q. 15. What was the case in Northern Virginia—the region north of Richmond and the Rappahannock through which you marched in 1863?

A. I didn't go on the north side of the Rappahannock because it was occupied by the Federal Army, but knew that whole country well, having been born and raised in Fredericksburg, and it was completely desolated. Nearly all the woods between the Rappahannock and the Potomac were cut down, all the fences destroyed, all the roads ruined, and all of the country south of the Rappahannock that was occupied by General Lee's Army was very much in the same way. I know when we were camped below Fredericksburg at Stringer's Neck, we didn't follow the roads at all. We had new roads cut right across the fields.

Q. 16. Why were those roads abandoned? 1062

A. Well, the roads were in a terrible condition. Nothing had been done to them, and the wagons were turned out of the road into the fields, and I have seen places there where the roads were one-quarter of a mile wide, made so by the wagons turning out farther and farther trying to get on good ground. And from Gordonsville up to Manassas things were not much better.

Q. 17. How was it in Prince William County and Fairfax that you had to march through in going to Sharpsburg?

A. I didn't go through them, except part of Fairfax.

Q. 18. What was the condition of the railroads in Virginia in 1863?

A. As bad as they could be.

Q. 19. As to their equipment, track and roadbeds?

A. Well, their equipment, you may say the passenger cars were almost entirely done away with. Almost all of the hauling of soldiers and everything was done in box cars. Trains moved very slowly, very irregularly—rates not over ten to fifteen miles an hour.

. 20. What taxes were levied by the government at that time upon the farms?

A. I really can't say about that. I knew nothing about the taxes until I was brought here and put in charge of the mills. The only tax then that I had anything to do with was the tax in kind.

Q. 21. What was that tax in kind?

A. All the farmers had to send in 10% of their crop of wheat and corn.

Q. 22. One-tenth of the gross products of the farm? 1063

A. Yes, sir.

Q. 23. That was exacted by the government?

A. Yes, sir.

Q. 24. Was that in addition to the money tax levied by the State?

A. I think so; yes, sir.

Q. 25. As a result of the causes which you have mentioned, what was the value of the lands in Virginia in June, 1863—the actual value with reference to sound hard money?

A. That is a very hard question to answer. The value of lands had depreciated so much that nobody sold any land unless they were absolutely obliged to. When they were forced to sell, they took the best price they could get. I was not in the real estate business, but I know of the sale of some farms. The Moss Neck farm belonging to a relative of mine, Mr. Corbin, was offered to me in the fall of 1863 for $100,000.00 in Confederate money.

Q. 26. What was that farm worth before the War, Major Wellford?

A. Well, I should say from $40,000.00 to $60,000.00. There had been a house built on it within 3 or 4 years that I know cost $30,000.00. There was another farm belonging to another relative of mine, Dr. William Wellford, that was sold for $100,000.00 in Confederate bonds.

Q. 27. How much was that farm worth before the War?

A. I suppose before the War it was worth $50,000.00 to $60,000.00.

Q. 28. What were the Confederate bonds worth with reference to gold and silver? 1064

A. I don't remember. Then I had a mill near Fredericksburg which I sold in 62 for little over one-half as much as I thought it was worth before the War. I didn't own the mill entirely—I owned one-fourth of it.

Q. 29. You say there had been a great depreciation in the value of real estate. What, as a minimum, would you say was that depreciation in June, 1863, as compared with January, 1861?

A. Well, if you would reduce that Confederate money to gold and compare it with the value before the War, I would say that it wasn't over one-half.

Q. 30. Now this Moss Neck farm that you say was offered to you in the fall of 1863 for $100,000.00 in Confederate money—do you know what the value of Confederate money was at that time?

A. It must have been somewhere from 15 to 20 for 1.

Q. 31. So that it must have been worth then not over $7,000.00 in good money?

A. Yes, sir.

Q. 32. How was it with personal property—had there been any increase or diminution of the quantity of personal property?

A. Yes, sir, an immense diminution in the quantity.

Q. 33. Had there been an increase or diminution in the value of specific personal property as a rule with reference to good money, I mean?

A. It depends upon what kind of personal property you mean. Hogs, if you made them into bacon, would have brought more. Horses, where in the neighborhod of the army, should 1065 you meet one of those dismounted cavalrymen, would bring most any price. You could get all the money he had for a horse. This had very little reference to the price before the war.

Q. 34. As a rule a dismounted cavalryman was not very well supplied with money, was he?

A. No, sir.

Q. 35. How was it with tobacco and cotton, and with negro slaves, as to their value taking good money as a standard of value?

A. I do not know of any direct transactions, but I know the impression that I had after I was brought back to Richmond and living here, was that slaves didn't bring one-half or very little more one-fourth, of what they would have brought before the war.

Q. 36. Lincoln's Proclamation emancipating the slaves was issued in September, 1862, to take effect according to its terms within such portions of the Confederate States as had not then laid down their arms and returned their allegiance to the National Government, on the first day of January, 1863, what effect did that have?

A. Very little until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most of the people. But after Vicksburg and Gettysburg, we began to be a little doubtful.

Q. 37. Taking all the movable personal property, live-stock, farming utensils, vehicles of every kind, household and kitchen furniture, the stores of tobacco and corn, what would you say, as a

minimum, was the depreciated of all personal property in 1066
Virginia in June, 1863, as compared with January, 1861?

A. Leaving out cotton and tobacco, I would say that it was nearly 75%. Carriages and wagons were almost all worn out; broken down. All farming utensils were pretty well worn out. There was very little demand for them. Men did not cultivate more than one-half or two-thirds of the acreage that he had done before. They had no new implements, and all the carriages and farming utensils were almost worn out.

Q. 38. How did the conditions then existing affect the agricultural business of the State as to its profitableness?

A. I was more familiar with the crops along the James River and this section around Richmond, and that down in North Carolina, and I don't suppose that the crops made in 1863 were on the whole more than one-half of what they had been years before. I know that was certainly the case with wheat. I was brought down in September, 1863, and put in charge of these mills. The grain wheat was brought to the mill and it was ground, and we paid the owners of the mill a percentage for grinding it. The balance went to the Confederate government. Very soon after I came I was called on for an estimate of what I thought the wheat crop in Virginia was, and how long it would last, and I remember I made up an estimate that at the then amount of requisitions, the wheat crop would not last until the 15th of December of that year, and that 1067
other means of providing for the men would have to be resorted to. We then went to work and from that time on to the close of the War, the Confederate Army was fed on corn meal ground from corn brought from Southwest Georgia. Sometimes the trains wouldn't come in here until during the night, and I would grind it up during the night and it was issued to the Army for breakfast in the morning. Sometimes it didn't come in and I would have to go around to the Quartermaster's for corn and get him to let me have it. As a matter of fact, from September, 1863, to the end of the War, I never had three days supply of breadstuff on hand at any time for the Army.

Q. 39. Were you in charge of that branch of the Commissary Department at that time?

A. Of the breadstuffs that were used by the Army and hospitals.

Q. 40. What would you say, as a minimum, was the depreciation of all the personal property in Virginia, in June, 1863, upon the basis of any sort of sound money? What was the per cent. of the depreciation in June, 1863, as compared with January, 1861?

A. Not less than 50%. There had been no repairs made to furniture. All the mechanics were in the Army. If a bed broke down,

a man had to fix it the best way he could. The same way with all the farming utensils and everything else.

Q. 41. In that estimate do you take any account of the waste, destruction, and consumption of livestock and other personal property in the portions of Virginia ravaged by the two armies?

A. I suppose by 1863 nearly one-half of the horses that were 1068
in Virginia had been killed—were used up or died in the Army. The same is true as to beef cattle, and as I say, all the other farming utensils, furniture, household effects, and everything of that sort, had deteriorated without any repairs being done.

Q. 42. Can you speak as to the value of securities, the stocks of insurance companies, manufacturing companies, and of banks and other stocks?

A. They had depreciated. I bought, I remember, $5,000.00 $50 shares of the Farmer's Bank stock, and I don't think I paid over $200.00 for it in Confederate money.

Q. 43. What was that the equivalent of in good money at that time?

A. Not more than $30.00 a share.

Q. 44. What would that stock have been worth before the War?

A. Mr. Taylor can tell better.

Q. 45. Do you remember the dividends that were regularly paid upon it before War?

A. Never less than 6%.

Q. 46. In what currency were taxes paid in June, 1862?

A. In Confederate money.

Q. 47. What was the sole measure of values at that time in transactions between the government and the people, and between man and man?

A. In Confederate money, except when there was a barter. 1069

Q. 48. How was gold and silver disposed of at that time?

A. Some of the brokers here had some gold that they would sell.

Q. 49. Was gold sold as a commodity just as any other commodity?

A. Yes, sir. No one called for gold unless they wanted to get across the lines.

Q. 50. From your observation and knowledge at that time, what was the condition of the people of Virginia in the territory now constituting the Commonwealth of Virginia—their financial condition?

A. A large proportion was abject poverty.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and

without waiving said exception, proceeds to cross examine Major Philip A. Wellford.

Cross Examination.

By the Attorney-General of West Virginia:

XQ. 1. In June, 1860, or during the assessment month of 1863, what was the value of horses, cows, hogs, etc., in Confederate money? 1070

A. I can't give any reliable answer to that. I was in the Army at the time that assessment was made.

XQ. 2. Don't you know what horses sold for in Confederate money at that time?

A. Well, as I said a little while ago, it depended upon the necessity. I bought in April or May a very fine horse, a little old—I gave $300.00 in Confederate money for it. I bought it from a person who was anxious to sell.

XQ. 3. From your information as to what other people said as to the value of horses and cattle, what would you say was the value in Confederate money?

A. In the Army we didn't bother ourselves much about the price of anything outside of just what we wanted right then and there.

XQ. 4. Did you have any experience as to the value of them when you were here in charge of the mills?

A. Very little.

XQ. 5. When did you first come here to take charge of the mills?

A. It was in September, 1863. It was just two or three days before the battle of Mine Run. I will say that all the teams for the mill were bought by the owners of the mill.

XQ. 5. When did you first start to use Confederate money?

A. Very soon after the War commenced. The first payment that I received in Confederate money as a soldier was at Valley Mountain in August, 1861. 1071

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. State any experience that you had in your official capacity in regard to any transactions during the War which would have any bearing upon this investigation.

A. As evidence of how complete the country was stripped of everything, I will say that in the Army I very frequently was sent off to try to beg, borrow, buy, and impress provisions for the Brigade, and I very rarely succeeded in getting any. Then on two occasions while I was here in Richmond the railroads were cut and the provisions come from the South were interrupted, and I was sent on

horseback up along the James River & Kanawha Canal to see all the farmers to tell them the situation we were in in Richmond, and to beg, borrow, buy, or impress any meat or corn, and I got very little. The whole country was completely stripped.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers, because they are not relevant or germane to the issues in this cause, and for other reasons apparent in said questions and answers; and without waiving said exception, proceeds to re-cross examine Major Philip A. Wellford.

Re-Cross Examination. 1072

By the Attorney-General of West Virginia:

Q. 1. In purchasing this corn and meat, in what currency was it paid for?

A. Confederate money.

Q. 2. What was the value of the corn and meat?

A. The government had a scale of prices that it fixed, and I wasn't authorized to go beyond that. If they didn't take that price I impressed it.

Q. 3. What was that scale?

A. I forget now. Flour I know was $37.50 a barrel. It was readily sold on the streets here in Richmond for from $75.00 to $100.00 a barrel.

Q. 4. How about your meat?

A. I really forget what the meat was.

Q. 5. Did you purchase any live-stock?

A. No, sir.

By Mr. Moon:

Q. You didn't have charge of the meat department?

A. No, sir. I was just sent out to ask the farmers to help us, and I took it forcibly if they didn't sell at the price fixed.

The signature of the witness is waived by consent.

MR. WILLIAM G. TAYLOR, 1073

being duly sworn, deposes and says as follows:

By Mr. John B. Moon:

Q. 1. What is your age, Mr. Taylor?

A. 73 in March.

Q. 2. Where were you during the War from 1861 to 1865?

A. Most of the time in and around Richmond.

Q. 3. What business and occupation were you in—what was your occupation at that time?

A. In the early part of the War I was connected with a bank—had charge of the Traders Bank at Richmond, and up to the latter part of the year 1862 I had charge of the effects of the bank, that is carried on the business here and then carried the effects away when the raids were made around Richmond where there was supposed to be any danger. In the latter part of 1862 I associated myself with Mr. Isaacs in the broker's business, under the firm of Williams, Isaacs & Company, and afterwards Isaacs, Taylor & Williams.

Q. 4. Did you have any other occupation?

A. Yes, sir. Then I became subject to the orders of the Secretary of War and General Lee as a scout to follow up these raids around Richmond.

Q. 5. You were connected with the Confederate Army?

A. I was connected with it in that way, but not in any official capacity. They would call on me and I would go for a week at a time, and then I was called upon at times to aid them in the Treasury department. They were converting gold into Confederate money—the gold that they would borrow from banks—a 1074
good deal of the time I was taken there. So in all I was rather in an anonymous position—first in the Army, then at my office, and then there. And when there was a raid around Richmond—a fight around Richmond—I would go to the front, and my time was pretty much occupied in that way.

Q. 6. What was the currency used in what is now the State of Virginia—in the Confederate lines—in 1863 what kind of money was used?

A. Confederate money.

Q. 7. Any other kind of money?

A. None at all except these little shinplasters used as change.

Q. 8. They went as Confederate money?

A. Yes, sir. These market men would use them sometimes. They didn't go outside of the State.

Q. 9. They were payable in Confederate money?

A. Yes, sir.

Q. 10. Was that the only kind of money used in dealings between man and man?

A. Yes, sir, except the City of Richmond issued notes payable in Confederate money and receivable in taxes.

Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863?

A. Confederate money. These things that I speak of would not be received in payment of taxes—I mean these little shinplasters. The treasury department would not receive anything except Confederate money, nor would the banks. They were just sim- 1075
ply used for the purpose of convenience. Sometimes these large foundries issued tickets for the time being instead of paying currency. A little due bill or something of that sort for the purpose of making change, there being no gold or silver in circulation.

Q. 12. Will you state whether there was an increase or diminution in the actual value of the personal property in what is now the State of Virginia, between January 1, 1861, and June, 1863, and if so, what it was?

A. Well, I suppose the depreciation was 50% to 75 per cent. on personal property generally, except such things as were absolutely in demand, like horses and provisions, and things that you would have to have. In other words, you could take $1.00 in gold and buy two or three times as much by converting it into Confederate money as you could prior to the War.

Q. 13. What was the value of land in June, 1863, as compared with what it was worth in January, 1861?

A. Well, my impression was this in regard to that—I thought that land was the cheapest thing on the market, and had often thought about investing, but the question in my mind was in buying it whether I would have anything after the War, whether that would not be confiscated—that had some weight with me. If I purchased it, whether it would not be taken from me afterwards. Lands were very cheap—real estate as compared to what it was before the War.

Q. 14. What would you say was the percentage of diminution in value?

A. I can't say, except that I recollect one or two pieces of 1076
property that were sold. As to the date I can't tell you. Now, I remember one little piece of property fronting my place where I reside now. This Irishman came in. I was in the broker's business, buying and selling gold and silver. My recollection is that he had $60.00 in silver—certainly not over $70.00. He asked me to know whether I would advise him to sell it or not. Seemed to come to me as a friend. I asked him if he owned a residence. He said no, but there was a place he would like to own. He told me what he could get it for. I found out that this amount of money that he had, converted into Confederate money, would buy it, and I advised him to buy the property; that I would give him enough money for that to buy this property. They own that property to-day. I suppose that property ought to have been worth $500.00 in good times before the War—the land and the house. I think the property would have been cheap at that. It was just out of town here, and I think it

contained about two acres. It looks about the size of a square in town; but that, of course, may have been just an individual case. I do not say that everything had depreciated in that territory. Then I remember Mr. Haxsall selling a piece of property up here on Franklin Street. My recollection is that he got $40,000.00 for it in Confederate money.

Q. 15. What house was it?

A. That brown stone house on Franklin Street. I suppose it is worth that much now in good money. I suppose it cost him that much. 1077

Q. 16. What Haxsall was that?

A. I think William Henry Haxsall. A year or two afterwards he bought it back again, and had to advance $10,000.00, I think, to get off from buying it. I don't say positively that those were the figures. Just what I heard. I thought then he was making a mistake.

Q. 17. What, on the whole, would you say was the percentage of depreciation in value between January, 1861, and June, 1863—in real estate?

A. It looks to me like it was certainly 50% or 60 per cent. Of course, this is my impression. I can't remember those things accurately. I am only stating from recollection now, just what I heard. I have never talked with Mr. Haxsall about it.

There was no cross examination.

Note.—The State of West Virginia, by her Attorney-General, objects to the foregoing questions and answers, because they are not in harmony with the order of reference in this case, and not relevant and germane to the issues therein.

At 1:30 o'clock P. M. the taking of these depositions was adjourned over until to-morrow morning, June 5, 1909, at 9:30 o'clock A. M., at the same place.

The taking of these depositions is resumed this 5th day of June, 1909, at the hour 9:30 o'clock A. M., at the same place. 1078

Present on behalf of the Commonwealth of Virginia: William A. Anderson, Attorney-General of Virginia, and John B. Moon.

Present on behalf of the State of West Virginia: William G. Conley, Attorney-General of West Virginia.

MR. S. H. HAWES, 1079
being duly sworn, deposes and says as follows:

By the Attorney-General of Virginia:

Q. 1. Please state your age, residence and occupation.

A. I am 71 years old, merchant and reside in Richmond, Virginia.

Q. 2. Where were you and how were you occupied during the War from 1861 to 1865?

A. I enlisted in the Confederate Army on the 19th day of April, 1861, and served in that Army during the whole War.

Q. 3. In what parts of Virginia did you serve?

A. The first of the War I was on the Lower Peninsula—between the James and the York—under Magruder, and the second year in the battles around Richmond, and then in the Valley.

Q. 4. Where did you serve in the summer and fall of 1862, and the spring, summer and fall of 1863?

A. In the summer and fall of 1862 in the Valley of Virginia, in 1863 we scouted and fought from here to Gettysburg, all through Culpepper, near the Town of Winchester.

Q. 5. In what counties?

A. In Culpepper, Orange, Rockbridge, all through those counties. I don't remember the names.

Q. 6. Were you in the counties of Fauquier, Prince William, Fairfax, Alexander, Loudoun, or any of them, during the fall of 1862—that is during the campaign of General Lee and General Jackson against Pope?

A. Yes, sir, I was all through those counties. 1080

Q. 7. In the campaign in the spring of May and June, 1863, did you march with General Lee's Army from the neighborhood of Fredericksburg after the battle of Chancellorsville, through Northern Virginia to Gettysburg?

A. Yes, sir. I have a diary giving the whole march. I took some notes from it last night, showing some places we went by up to the fight of Gettysburg.

Q. 8. In going to and returning from Gettysburg, did you pass through the counties of Spotsylvania, Orange, Culpeper, Fauquier, Warren, Clarke, and Frederick, or any of them?

A. I did, all of those you speak of.

Q. 9. Do you remember whether you were in Prince William and Fairfax counties upon that campaign?

A. I can't remember exactly. I wouldn't like to say. As we moved about so rapidly, I hardly knew where we were.

Q. 10. How long were you camped about Richmond prior to June, 1863?

A. I can't tell you exactly, but we were here some time. After

the retreat from Williamsburg we camped around Richmond a while.

Q. 11. Please state what, within your observation and knowledge, was the condition in which the farms, forests, buildings, &c., in the regions occupied by the Federal and Confederate Armies, were left by those Armies?

A. Well, the conditions were most deplorable. I have seen hundreds of acres of splendid wood land cut down while the Armies were there, and left bare of timber. All the fences in 1081
the neighborhood were burned and the whole country ravaged. It was distressing to see it. What one Army didn't take another did.

Q. 12. What was the effect of the occupation of any portion of the country by either Army in respect to live-stock, poultry, as well as growing crops?

A. Everything was swept off. The farmers tried to hide their horses when the Army would come there, but somebody would report them and they nearly always lost their horses. The fields were pretty well swept of all forage. I know there was no respect for the farmer. I judge by what we did with our artillery horses. Whenever we found forage, we would turn our horses in, and the other Army did the same thing. Had to do it.

Q. 13. Turned their horses in on the growing crops?

A. Yes, sir—well, I will take that back—turned them in on the timothy fields and clover fields. I don't know that I ever saw any one turn them in on the growing crops, but there were not many growing crops to turn them on. In those counties that you speak of growing crops were a rarity.

Q. 14. What was the condition of the highways and highway bridges in the fall of 1862 and during the first half of 1863?

A. The highways in Virginia at best were bad, but they were terrible at that time, because two Armies were passing over them. You may say they were impassable in the Winter. I have been in the mud myself up to my knees, trying to force the artillery through. 1082

Q. 15. What command did you serve in?

A. I served in the First Regiment of Virginia Artillery.

Q. 16. What position did you hold?

A. Lieutenant.

Q. 17. Lieutenant in an Artillery company?

A. Yes, sir.

Q. 18. What was the condition of the railroads—as to their equipment, track, and roadbed—their capacity for efficiently moving crops or products of any kind?

A. Very poor. We rarely went over 12 miles an hour at full speed.

Q. 19. Is that as to passenger trains?

A. As to the trains I was on. The men would jokingly say that

they could jump off and pick blackberries and catch up with the train.

Q. 20. What was the condition of the buildings through the country?

A. Very dilapidated. No one could keep them in order.

Q. 21. What as to vehicles and farming utensils?

A. All of our people were in the War. It was home-made work and very poor. They were in bad condition. Sorry to report that, but they were.

Q. 22. To what extent were the people able to keep their buildings and utensils and vehicles in repair?

A. You know the fighting men were all in the war, and nearly all of those left at home were men of advanced years, and they were not able to look after things as they should. 1083

Q. 23. How was it as to household furniture, household effects?

A. Of course those things go to wreck when they are not repaired and they did go to wreck.

Q. 24. What in 1863 was the currency in use in the territory of the present State of Virginia—what was the measure of all values, the currency in which taxes were paid, and with reference to which all transactions were had?

A. Confederate money.

Q. 25. From your knowledge and observation, would you be prepared to state what, as a minimum, was the depreciation of the real and personal property in Virginia, occasioned by the causes to which you have referred as to June, 1863?

A. I should say about 50 per cent.

Q. 26. You would state that as a minimum?

A. Yes, sir, I think so, from my observation and knowledge of properties that were sold belonging to my own connections.

Q. 27. When I speak of the depreciation in value, I mean in actual value, taking any sound money as a standard, estimating the property of Virginia in June, 1863, and contrasting it with its value at any time prior to April, 1861—in either 1860 or 1861—what would be your estimate as to the depreciation, as a minimum—the lowest estimate that could be fairly made, of this depreciation?

A. Of course, I can't say positively, but I think what I said just now—about 50 per cent.—would cover it.

Q. 28. Is that your estimate of the depreciation of specific 1084 property then in Virginia?

A. I can't exactly understand what you mean. From my observation though, and from what I know that property sold for prior to the War, and what it sold for during the War, I think it was about 50 per cent. as well as I can remember. I heard my father speak of it. I didn't sell any myself.

Q. 29. Can you state approximately what proportion of the movable personal property in the State had been destroyed, carried off by the Armies, or consumed, in June, 1863, as compared with, say, April, 1861—as a minimum?

A. I would not like to make that estimate. I couldn't tell. I want to be as accurate as I can. Everything was in a very deplorable state, and the damage to property had been terrible. In fact, some farms had been destroyed—nothing left. Some had little. So I can't tell exactly. I wouldn't like to make any estimate.

Q. 30. Was the portion of the live-stock and personal property upon the farms in the State which were carried off, destroyed, or consumed, large or small?

A. Large. No question about that.

Note.—The state of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to cross examine the witness.

Cross Examination. 1085

By the Attorney-General of West Virginia:

XQ. 1. Mr. Hawes, did you know the value of horses during the years 1862 and 1863 in Confederate money?

A. It varied very much, Mr. Conley, according to the horse; some of them $400.00, some of them $1,000.00, and some of them $1,500.00.

XQ. 2. Do you know the value of cattle during the same period?

A. No, sir.

XQ. 3. Hogs?

A. No, sir, only horses, because I had to deal with them.

XQ. 4. Do you know how much horses were assessed at during these years—on an average?

A. When an officer's horse was killed in battle, there was a board of appraisement, and according to the value of the horse he was allowed for him.

XQ. 5. I have reference, however, to the assessment made by the assessors of personal property in the various counties throughout the State of Virginia?

A. Oh, no. I don't know anything about taxes during that year. I was in the army all during the War. I don't know anything about taxes.

XQ. 6. What would you say would be the value of those horses in gold during the years 1862 and 1863?

A. I knew nothing about gold at that time. All I knew about was Confederate money. 1086

XQ. 7. Was Dinwiddie County an average county of this State during that period, as to property, according to your best judgment?

A. Dinwiddie county wasn't damaged as much as the other counties, from my point of view, during the War, because the Armies didn't fight over there as they did in the others.

XQ. 8. I note from the original assessment list of Dinwiddie County for the year 1863, that the total number of horses, mules, asses, and genets were 2,202, and that the total assessed value thereof was $211,290.00. I would like for you to state what the average assessment was for that county for the year 1863?

A. I don't know anything about the assessment of property there. I only speak of my knowledge of what happened to me during the War. It is a matter of fact, however, that I don't understand the assessments in the counties. Assessments in the counties are very remarkable things. How in the world they can have the conscience to put things down so low, has always been a mystery to me. I might say the same of personal property in the cities; but I know very well that they never assess things in the counties at the proper value. I know that.

XQ. 9. I hand you the original assessment list for that county for the year 1863 to verify the figures I have given you.

A. I haven't any doubt about that. I don't think they know what they are doing when they assessed them. Somebody must know, but I don't understand it. 1087

XQ. 10. Now, Mr. Hawes, isn't it a fact that the average assessment for that year in that county was, in round numbers, $95 a head?

A. You mean according to these figures. It looks that way.

XQ. 11. To be exact $95.95.

A. It looks like about $100.00 in round numbers. I know nothing in world about that. The mode of assessment in counties is past finding out for an ordinary layman.

XQ. 12. In the same county, and for the same year, there was assessed 6,662 cattle at a total assessed valuation of $92,441.00?

A. Well, as I told you a while ago, when you asked me about cattle, I know nothing about cattle—whether that assessment is right or wrong.

XQ. 13. It would average about $13.87 a head, would it not, according to the figures I have given you as shown by the original book of asessment?

A. I don't know anything about the value of cattle, if you ask me

to say whether I think that is a proper valuation or not. I know nothing in the world about it.

Redirect Examination.

By the Attorney-General of Virginia:

Q. 1. That assessment referred to in the question just propounded to you embraces all the cattle and all the horses in Dinwiddie County—good, bad and indifferent—colts, and old broken down horses, as well as any good horses that might have been left in the county, and so far as to the cattle, it embraces evidently all of the cattle in the county, including calves, old cows—as a rule can you say whether much of the best stock was left on the farms—whether the best horses and the best cattle, and all of the beef cattle generally, were not carried off or consumed? 1087½

A. They were taken off, no doubt about that.

Note.—The State of West Virginia, by her Attorney-General, objects to each and all of the foregoing questions and answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objections, proceeds to recross-examine the witness.

Recross Examination.

By the Attorney-General of West Virginia:

XQ. 1. I will ask you to take the original assessment list for Dinwiddie County and look in Column "42 under the head of the number of horses, &c., together with the assessed value, immediately following, and say whether the average in the columns you examine is below $100.00, and what the highest assessment of any one animal is, together with the lowest assessment of any one animal?

A. Mr. Conley, I told you just now that the assessed values in counties was past my understanding, and I know they are usually wrong; and yet why they allow them to assess that way I do not understand. This is, it seems to me, a mighty low assessment for horses. They nearly always do assess them low. Now, here are two horses at $50, and yet they may have been very poor in 1863. I expect it was miserable stock that those farmers had, because the best horses were taken by the cavalry and artillery for the War, and the rest that were left were very shaky, I expect; but giving them the benefit of the doubt, I would say that the assessment is fair, but I know nothing about that. Here are four for $150 each. There are three items of horses at $150 each. They may 1088

have been young horses. It is all guess work. I don't know anything about that.

XQ. 2. The assessments made at all times take in the good, bad, and indifferent, do they not?

A. Are supposed to, yes, sir.

Signature of the witness is waived by consent.

MR. CHARLES U. WILLIAMS, 1089
being duly sworn, deposes and says, as follows:

By Mr. John B. Moon:

Q. 1. Mr. Williams, what is your age, residence and occupation?

A. I am nearly 59 years old, and my occupation now is a farmer. I have been a lawyer for 41 years, and I have resided in Richmond all my life—within a mile of it. Now I am about 5 miles out, but I hardly consider that my permanent residence. I still have a town house that I rent out while living in the country.

Q. 2. Where were you and what were you engaged in during the War from 1861 to 1865?

A. I went to Harpers Ferry on the 17th of April. I belonged to a battalion of students at the University of Virginia. We went to Harpers Ferry. Took a train to Manassas and then down to Strasburg, and marched from Strasburg to Winchester, thence by rail. After about ten days Governor Letcher ordered us back to the University and refused to permit us to be mustered in as a battalion, and we disbanded at Harpers Ferry, and I went to Winchester and staid for a day or two with a cousin of mine, Phil Williams, and then he drove me in his buggy to Staunton, and then I came back to Richmond. I then went into Richmond Howitzers, and went to Yorktown. I was engaged in drilling artillery during my whole stay at Yorktown. I staid there until the 10th day of February following—1862. I was then ordered to Richmond and assigned as drill master of artillery at the camp out here, and remained there until
July. I then, was appointed on the Staff of Major-General 1090
Leigh R. Jones in 1862, and went with him through the first Maryland campaign. I marched from Richmond all the way to Gordonsville, acting as Adjutant for the artillery battalion—was temporarily assigned to that—and after that marched with the Army to overtake Jackson, and went through Northern Virginia into Maryland. I came back from Maryland and staid a couple of days with Mr. Phil Williams in Winchester, and I rode in a stage from there to Staunton, and then came to Richmond; I came as special

messenger to Mrs. Jones to inform her that her husband had been retired from the Army on account of a probably fatal trouble with his heart. This was in December, 1862, and he died in January, 1863. I went back to the Army after I had found that his death was inevitable. I had done the work that he wanted me to do. He was in bed and I went there every morning and spent several hours writing for him. I returned to the Army about the last week in December, 1862, and went on the Staff of General Corps of Pickett's Division, and remained with him until the close of the War, the last year of which I was his Assistant Adjutant and Inspector General.

Q. 3. This was all in the present State of Virginia except when you went into Maryland?

A. Yes, sir. We crossed at Shepherdstown in returning from Maryland, marched through Martinsburg, and then we came down by way of Bunker Hill.

Q. 4. What was the state of the country and what was the effect upon the country of the occupation by the army and of the existence of the war, in regard to improvements on lands, 1091
and the cultivation of lands, and the condition of personal property on the lands—stock or other personalty?

A. There was a constant state of depreciation. When I was in the valley in April, 1861, it was the garden spot of the earth. Every thing was beautiful, well tilled, and as well cultivated as could be. It was full of fine crops and fine stock. My next trip through the valley was in September, 1862, and the depreciation was very marked in every respect.

Q. 5. Taking the whole of the present State of Virginia what portion of deterioration, in your judgment, was there in actual value of the lands, from January 1, 1861, to June, 1863? What percentage of actual depreciation in the value of lands?

A. Well, the Confederate money at the beginning of the war was practically as good as greenbacks. By 1863 they had become very much depreciated, and the Confederate Government cut off 33⅓ per cent of its treasury notes, thinking, thereby, to enhance the value of the rest, but which had a much more natural effect of rendering the rest almost valueless. The 66⅔, instead of being worth as much as the old currency had been at par, was less than the 66⅔ before it was cut off, and the depreciation was much more rapid from that time on. But the value of land depends upon the employment of personal property upon it, and the personal property was scattered. The horses had been taken, the cattle had been eaten up, and the negroes were, many of them, working on public works. They were carried from Orange and Culpeper counties down to 1092
the Peninsula to throw up the fortifications there. They threw up all these fortifications around Richmond here, so that the farm-

ing operations were very much upset. And then the crops were so often trampled upon and destroyed by the army that the farmers were discouraged, and then a large number of the negroes were sent away. I know of a good many sent to Florida and North Carolina. In my own family there were several hundred sent to Florida, and I know of over 100 being sent by old Mr. George Pendle to North Carolina. I think old Sam Harriston sent over 500 south during the War. All these things tended to destroy the value of land because they could make no profitable use of it, and the farm products in the State were decreasing every day, and this had advanced very far, by June, 1863. There became such scarcity of forage and everything of that sort, that the Confederate Government exempted from service a number of men and appointed them to stay on the farms and work. I recollect that Mr. R. S. Allen, of Tuckahoe, was appointed to stay on the farm and keep his farm going for the benefit of the Confederate Army.

Q. 6. Well, what proportion of diminution was there in the value of the lands from this cause?

A. Well, I can give you a personal example—my father had a place near Richmond that would have brought $50,000 in 1860, that sold after the war for $11,500.

Q. 7. I mean between the dates of 1861 and 1863, as mentioned above?

A. Well, you take the sales that were made at that time, of course they were made in depreciated currency and they look better than they really were. If you take the sales that were made in Confederate money in 1863, there would probably have been 1093 three times as much Confederate money paid for property as would have been paid for the same property in 1861. That is in the cities. In the country the depreciation was more, because it was very hard to sell any land except to men who were making money and who wanted to get rid of the Confederate money and bought largely of lands. But they were selected lands, like that farm of Dr. Welford's on the Rappahanock River, and like Mr. Jerry Morton's place in Orange County. That was sold in Confederate money for a pretty large sum. But the farm was worth in 1860 about $50,000. I think it sold for $300,000. But that was an exceptional transaction. It was a valuable farm, as the Welford farm, but you take the average lands in Virginia, they were not worth 25 per cent of their value in 1860 in good money.

Q. 8. Between those same dates of January 1, 1861, and June, 1863, what was the depreciation, if any, in the amount and value of the personal property in the State, according to your best judgment?

A. I should say that the estimate which Major Hunter gave of 50 per cent, was too high. I think it was less than fifty per cent.

He told you that he would put it at 50 per cent as a minimum. I think even that is too much.

Q. 9. The personal property in the State had diminished more than 50 per cent?

A. Oh, yes, sir. It had disappeared everywhere pretty large- 1094
ly. We had lost enormously in negro property, by the Northern Army taking them and sending them to the rear.

Note: The State of West Virginia, by her Attorney General, objects to each and all the foregoing questions, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers; and without waiving said objection, proceeds to cross examine the witness.

Cross Examination.

By the Attorney General of West Virginia.

XQ. 1. Mr. Williams, the depreciation in property you have just described was brought about mainly by a greatly depreciated currency, was it not?

A. No, I meant that it was destroyed. You know the State of Virginia had already furnished most of the horses and most of the cattle for the Confederate Army. The Southern States were too far off, and we needed our transportation for freight and men. So that very little live stock was brought here from any other State until the close of the war, when it had given out here practically, and we had to bring it from other States. We were foraging cattle in North Carolina in January and February, 1865.

XQ. 2. You have stated that at the beginning of the is- 1095
suing of Confederate money, which I believe was in 1861, it was at par?

A. It was about the same value as the United States greenbacks, but it depreciated steadily.

XQ. 3. What was its value in 1863?

A. The depreciation had advanced pretty far before the 1st of April, 1863, and then when we repudiated one-third of the currency it went much more rapidly. The fact is the credit of the Government was gone at that time. That book (referring to Matthews' Forms, p. 308) will give you the depreciation in January, 1863, three for one, February, four for one; March, five for one; April, five and one-half for one; May, five and one-half to five and three fourths for one; June, seven and one-half to eight for one; July, nine for one; August, twelve and one-half to thirteen for one; September, thirteen

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for one; October, fourteen for one; November, fifteen to seventeen for one; December eighteen to twenty for one.

XQ. 4. How was it in 1861?

A. In 1861—May 1, 10 for 1, up to October, then it was 1.12 to 1.15 for 1; November, 1.15 for 1; December 1.20 for 1.

XQ. 5. In other words you paid $1.20 for a dollar in good money in December?

A. At that time the bank notes that were in circulation were considered pretty good money up until about 1863 or 1862.

Redirect Examination.

By Mr. Moon:

Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid, and transactions of all kind had? 1096

A. The only currency in use was Confederate Treasury notes and State bank notes, but public confidence was a little stronger in State bank notes, and the people who got them in their possession kept them and paid out Confederate Treasury notes. One enormous loss to the State in the value of personal property was that the entire capital and assets of the banks in the State when the war broke out was in gold and silver and bank notes, which all drifted into Confederate money later, most of the gold and silver having drifted into the Confederate treasury.

Q. 2. What currency was the measure of value in 1863?

A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money. There was practically no circulation except the Confederate notes. People held the bank notes because they did not want to part with them. They finally became worthless. But the Confederate currency was the only currency in use. If a man wanted to go abroad he found it very difficult to get gold and silver. He had to buy it at a premium. There was very little of it for sale.

Q. 3. Confederate money, then, as I understand it, was the basis upon which taxes were assessed and paid?

A. Yes, sir.

Q. 4. In which all transactions were conducted? 1097

A. Yes, sir. If you offered a man $500 for a horse it was understood that that was Confederate money. However it was a mighty poor horse you could get for $500 in 1863—

Q. 5. In other words, $1 meant $1 in Confederate money.

A. That was all, sir.

Q. 6. Can you state what effect the causes you have mentioned had upon the value of stocks and other securities in the Common-

wealth—bank stocks, stocks of insurance companies, manufacturing companies, and bonds of corporations, and other like properties?

A. Bank stocks, and the stock of other corporations, including railways, were constantly depreciating, and were finally entirely wiped out—banks, railroads, insurance companies, and everything else. There wasn't a share of any manufacturing or industrial corporation, or any other corporation in Virginia worth a dollar.

Note: The State of West Virginia, by her Attorney General, objects to each and all of the foregoing questions on redirect examination, and the answers thereto, because the same are not responsive to the order of reference in this cause, and for other reasons apparent on the face of said questions and answers.

Signature of the witness is waived by consent.

CAPTAIN W. GORDON McCABE,
being duly sworn, deposes and says as follows:

By the Attorney General of Virginia:

Q. 1. Captain McCabe, will you please state your age, and where you reside?

A. I am 67 years of age and live in Richmond.

Q. Please state where you were during the war between 1098 the States, and what opportunity you had for obtaining knowledge and information as to the condition of the farms, forests, fences, buildings, and lands generally in Virginia, and particularly in those portions of Virginia which were occupied either by the Federal or the Confederate Armies?

A. I believe I have slept in every man's cornfield in Virginia. I first went out with a company from the University when I was a lad at College, marched up the valley to seize Harpers' Ferry. We got all we wanted, and we wanted a good deal. I then came back to college, packed up my things and paid my debts. Then I enlisted in the Richmond Howitzers and served in the Army of the Peninsula. That was in 1861. And there is where I first commenced to see the devastation. I had been prepared for college at the Hampton Academy, and my sister lived there. That was one of the most flourishing places in Virginia. In the first place Magruder issued an order that the people must get out. The Yankees had advanced from Fortress Monroe, and had several times occupied the town of Hampton. He took up the idea that Hampton would be

a most valuable place for them to put their troops in winter quarters, and determined to burn it. We burned everything 1099
in that town except the old church and the Whiting house and the old Hudgins house, and all those people were fugitives. That was a very rich country for trucking. They used to do a great deal of trucking. All that country was just wiped off. All those people had come up here to Richmond. Poor! Why, my sister who kept her horses and carriage, and had everything that a lady could have in those days—she had two children, she had a negro girl,—why she had to do her own cooking. Nobody had any idea how those poor children were.

Q. 3. What was the condition and effect of the occupation of the country by the two armies, upon the fences, forests and fields?

A. Well, in the Peninsula it was devastation. In 1862, after the battles around Richmond, I went into Charles City, New Kent, King William's County, and the next year in the Chancellorsville Campaign I was all up through Orange, Green, Madison—all through Northern Virginia. There were practically no roads at all. We used to drive our guns where we pleased. If we would go in the road they would go up to the hub, you know.

Q. 4. How were the fences in Northern Virginia?

A. They were down.

Q. 5. Did you go with the army through Northern Virginia on the Campaign of 1862?

A. No, sir. Now, in 1863, after the Chancellorsville Campaign, I was ordered to report to the Secretary of War in Richmond, who told me that he understood I had been a student of ordnance and gunnery. A man named Foote from Tennessee had of- 1100
fered them a breech loading gun that was going to do wonders. He ordered me to take a section of those guns to Charleston, South Carolina, where I used them against the enemies' gunboats from James Island. The guns didn't come for some time. I served in Fort Sumpter until that was knocked to pieces. Then I served in Battery Wagner, until it was evacuated.

Q. 6. When did you return to Virginia?

A. I came back that autumn and joined my battalion, and from the Wilderness down, I served through all the campaigns. I was at Appomattox Court House.

Q. 7. Can you mention any transaction or sales which came within your observation or knowledge, of real estate in 1863, which would illustrate the depreciation in the value of such property; if so, please state it.

A. Well, I lived at Westover, which was one of the show places on James River. It was one of the model plantations on the river, with 1,200 acres of land. It had splendid barns on it. Mr. John

Selden, who owned it, was known as one of the best farmers in Virginia. He had a very large family. Westover was built by William Byrd II, who was the most cultured man in the western world of his day, the greatest wit. Had been educated in England. Studied in the Inner Temple. Also educated in France. He was a fellow of royal society. He spared no expense in building Westover. He went to Italy and had the chimney pieces for Westover carved by Italian sculptors and sent to this country. He was a man of enormous wealth. Westover was perfectly kept up before the war. 1101
I lived there in 1858 and 1859—two years. In 1859 John Selden was offered by Mr. Beirn $75,000 in good money for Westover.

Q. Did he accept it?

A. No, sir, he refused it. What did he want to sell Westover for. In 1862 when McClellans army fell back on Harrison's landing after the battle of Malvern Hill, Fitz-John Porter's Horse occupied Westover. While Fitz-John Porter did what he could, they absolutely destroyed everything on that place. They stole the mantle pieces out of the house and sent them to New York. I have been called upon since the war to make a drawing of the mantle piece in the drawing room, and the present owner has had a replica made of it and it is there now. They destroyed everything. Poor old Selden was broken in spirit by living in refuge and poverty and he sold Westover to Major Drury in 1863 for $60,000 in Confederate money, which he put in Confederate cotton bonds and they became worthless.

Q. 9. Do you know what month it was in 1863?

A. No, I do not. I only know that it was in 1863. I can't, of course, tell about that. It is just a matter of memory anyway.

I recall another sale—this is to the best of my knowledge and belief. My father-in-law was a rich man—Mr. Edmund Osborne of Petersburg. His brother was a rich man too. Mr. Osborne had a great deal of money and Judge Gholson was a great friend of his. Dr. Osborne urged his brother, Mr. Edmund, to buy Judge Gholson's place. Judge Gholson had most of his money in England, and Judge Gholson told him he would sell it to him for $100,000 in Confederate money. And the old man believed that the 1102
cause was going to win and he told him that he wouldn't give it to him, the place wasn't worth it. He sold that place for $25,000 in 1865 and was glad to get it.

Q. 10. What was the condition of the farming interests of Tidewater, Virginia, particularly on the Peninsula, in 1863?

A. Well, it was a scene of desolation. The fences were down. The enemy would send raiding parties up from Newport News, where they had a strong base, as well as from Fortress Monroe, and

what they couldn't steal they would destroy, and there were no improvements or repairs.

Q. 11. What was the condition of the country in the region around Norfolk in 1863?

A. I can't tell you anything about it, I wasn't there.

Q. 12. Norfolk was occupied by the Federal troops.

A. Of course, it was. But I do not know what the condition was all through Culpepper, Orange, and the country all down through there. The roads were quagmires. They would take the fences and make fires out of them. The roads made a great impression on me—much more than they would on an infantry officer—because I was an artillery officer.

Q. 13. What was the condition of the highway bridges of Northern Virginia, in the Peninsula and in the valley—the country with which you were familiar—in 1863?

A. You know as well as I do about that. You know what they did. I can only repeat what everybody knows. They were
in a very bad condition. Of course they were very bad. But 1103
you must remember that we had an engineer corps, and we would bring up the engineers when we couldn't pull the guns over, and they would fix them the best they could. Everything was going to the devil—that is the plain English of it.

Q. 14. What was the effect of the operations of the two armies upon the supply of live stock in the regions through which the armies marched?

A. There wasn't any. The live stock was swept away.

Q. 15. What was the financial condition of the people of Virginia generally in 1863?

A. Well, I can't speak of the people of Virginia generally. All I know were dead poor. But nobody thought about money. Nobody had any money. It wasn't considered very genteel to have money. It wasn't very respectable to have money.

Q. 16. What was the condition of the railroads in Confederate Virginia in 1863?

A. Everything was run down. You know the rails were built, some of them, with scrap iron. I can't remember ever having been in a passenger car when I used to come down and go away. I used to ride in box cars pretty much all the time. When the troops were moved we always travelled in box cars or on flats. The trains were never on time and were always running off the track.

Note: The State of West Virginia, by her Attorney General, objects to the foregoing questions and answers,
for the reason that they are not responsive to the or- 1104

der of reference, and for other reasons apparent on the face of said questions and answers.

Signature of witness is waived by consent.

STATE OF VIRGINIA,
City of Richmond, to-wit:

I, T. Gray Haddon, a notary public in and for the City of Richmond, and State of Virginia, do hereby certify that the foregoing depositions of Robert W. Hunter, W. W. Scott, John P. Branch, Phillip A. Wellford, William G. Taylor, S. H. Hawes, Charles G. Williams, and W. Gordon McCabe, were taken before me at the times and place therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this, the 15th day of June, 1909.

(Seal) T. GRAY HADDON,
Notary Public in and for the City of Richmond and State of Virginia.

DEPOSITIONS OF GEORGE W. ATKINSON ON BEHALF OF THE DEFENDANT.

Deposition of George W. Atkinson, taken by the State of West Virginia, to be filed and read as evidence in her behalf in the cause of the Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which deposition is taken by the consent of the parties on the 14th day of July, 1909, at the law office of Mollohan, McClintic and Matthews in the City of Charleston, County of Kanawha and State of West Virginia. 1

Present on behalf of the defendant, the State of West Virginia: George W. McClintic, of counsel.

Present on behalf of the plaintiff, the Commonwealth of Virginia: John B. Lightfoot, Jr., by appointment of William A. Anderson, Attorney-General of Virginia.

JUDGE GEORGE W. ATKINSON,

a witness of lawful age, being first duly sworn, deposes as follows, to-wit:

(Direct examination, conducted by George W. McClintic, Esq.)

Q. State your age, residence and present occupation.

A. I was sixty-four years old a few days ago; my legal residence is Charleston, Kanawha County, West Virginia; my present official residence is Washington, D. C.; Associate Judge of the United States Court of Claims.

Q. What other official positions under the Government of the United States have you held, if any?

A. I was four years United States Marshal and nearly four years United States District Attorney; and a member of Congress at one time.

Q. What official position did you hold, if any, under the 2
Government of the State of West Virginia?

A. I was four years Governor of this State, from March 4, 1897, to March 3, 1901, inclusive.

Q. In what county in West Virginia were you born and raised?

A. Kanawha County.

Q. In what county in West Virginia were you living from the year 1861 to 1865?

A. In Kanawha County.

Q. What official position, if any, did your father, James Atkinson, hold during the period from 1861 to 1863, previous to the formation of the State of West Virginia in 1863?

A. Sheriff of Kanawha County.

Q. In what parts of what is now the State of West Virginia were you familiar—with what parts were you familiar from the year 1861 to June 20, 1863?

A. Kanawha County, Fayette, Nicholas, one or two trips to Greenbrier County, also Jackson and Roane Counties. I was also in Putnam and Mason a time or two.

Q. Was the section of West Virginia with which you were familiar overrun by the armies either of the Confederate or Union side?

A. By both, at times. The section of the state I have mentioned with which I was familiar during that period was most overrun, I think, by home guards of both armies. The Confederate army occupied Charleston at the beginning of the War and soon thereafter was driven from this valley by Federal forces under the command of General J. D. Cox, of Ohio troops. This section, if I re-
member correctly, remained under the control of the Federal 3
army until September, 1862, when the Confederates entered

the valley from the east and drove the Federal forces under the command of General Lightburn across the Ohio River into the State of Ohio.

Q. You spoke of home guards; please explain what you mean by home guards, and what was their usual occupation, on each side?

A. The home guards were composed of militiamen principally under the command of captains, and participated as parts of both armies. Their principal occupation, we used to think during the War, was that of stealing and marauding. The Union home guards pursued the Confederate citizens or those who sympathized with the Confederacy, and vice versa; so that the marauding was pretty general all through these counties during that period; and I remember distinctly that our citizens feared them much worse than they did the army on either side so far as maintaining and protecting their property was concerned.

Q. Was it not a fact that these home guards often took the lives of opponents without any pretense of trial or otherwise?

A. Unquestionably so, on both sides. It was a common occurrence to hear of men being killed all around these adjacent counties, first by Union home guards and also by Confederate home guards.

Q. What was the condition of this section spoken of by you as to security of property during the period from the beginning of the War to the 20th day of June, 1863, and thereabouts? 4

A. There was practically no security of property at all, either of Union people or of Confederate people.

Q. What effect did this state of affairs have upon the value of property, both real and personal, during that period?

A. It necessarily materially reduced the values of all kinds of property all through this region of country.

Q. What proportion of able-bodied men of soldier age were in the two armies from this section of the country, in your opinion?

A. I am quite sure a decided majority of the men of both sides went into one army or the other. I could hardly say with any degree of exactness as to the proportion, but I should say anywhere from sixty-five to seventy-five per cent. of able-bodied men, middle-aged and young men, volunteered on both sides during that period.

Q. State any specific instance of which you may know that the Confederate army took the property of Union sympathizers and confiscated the same during this period?

A. When General Loring came into this section, the leading or prominent men of the Union side left this section in advance of General Lightburn's retreating force, and remained in Ohio until the Federal troops returned to Charleston. The rule, as I understood it then, was for the Confederates to prey off the property of

the Yankee sympathizers; and I can recollect one particular instance of their taking property away, and that was from the dry goods and grocery store owned by my father and Greenberry Slack. They had a right good sized store of goods here in Charleston, and General Loring's forces took it all. They, however, offered to pay for it in Confederate money, but very little or a comparatively small part of it was taken in comparison with the value of the goods, because it was worthless money; so it was on the whole a practical taking. I am quite sure other people here lost property the same way, but I do not recollect any particular instance now.

Q. Do you remember the condition of the roads and bridges in this section of the State of West Virginia at that time, up to the 20th of June, 1863, or thereabouts?

A. My recollection is that practically all of the bridges, if not all of them, were destroyed by one side or the other. I know that General Lightburn destroyed the wire suspension bridge across Elk River after crossing it to prevent the Confederates from pursuing him. I also remember distinctly that the bridge across Coal River was destroyed, but I cannot recollect which army did that job, or whether it was before or after General Loring's entrance into this valley in the fall of the year 1862.

Q. Was there much emigration from this section of the valley with which you were acquainted during the period from 1861 to 1863 by people going to Ohio as Union men or to Dixey or the South as Confederate sympathizers?

A. A very large proportion of our population went West and South, Union people going towards Ohio and into Ohio and the Confederates southward, principally to Virginia. There were times from 1861 to 1863 when there were very few able-bodied men in all this section, round about Charleston.

Q. Do you remember whether or not there was talk or scare of confiscation of property by either Union people or by Confederate people according as to the one who should win, during the period of which we have been speaking?

A. That feeling existed to a very great extent from the beginning to the close of the Civil War, as no one seemed to know then, or at least during the first half of the War which side was going to win. I have always regarded the battle of Gettysburg the decisive battle of the War; and after that event the Union people were quite confident of success. Prior to that time no one knew what the result would be, and there was a great fear of confiscation of property on both sides.

Cross Examination.

By Mr. Lightfoot:

Q. Judge, when the War broke out in the year 1861, you were, I believe, according to your statement of your present age, about fifteen or sixteen years old.

A. Yes, sir.

Q. Were you actively enlisted in the army?

A. I was not.

Q. Your observations or events in the counties and districts you have mentioned were obtained principally by the casual visits which you might have made from one county to another and not as a soldier with the armies? 7

A. That is correct.

Q. In answer to Mr. McClintic's question whether or not the sections you have mentioned were overrun by the armies of both sides you have stated that at times they were subject to the depredations of the home guards. I take it that this answer means that the actual organized force neither of the Confederate nor of the Union army occupied this section for any lengthy period of time between 1861 and 1863; is that correct?

A. The Federal troops occupied this valley practically all the time from early in 1861, indeed, all the time from 1861 until General Loring came in in 1862 and drove them out. Then the Federal forces were reinforced, and, in a very short time after General Loring came in, returned and drove him out, and from that time until the close of the War the Federal forces occupied this entire valley.

Q. When you speak of the valley, please designate the valley to which you refer.

A. The Great Kanawha Valley.

Q. Are these facts which you state as to the occupancy of the valley by the Federal and Confederate organized forces made as a matter of historical information or from your own knowledge and information, seeing the armies there?

A. I speak principally of my own recollection. I do not recollect any return of Confederate troops in this valley after General Loring retreated from it.

Q. That was when? 8

A. 1862. I do recollect a raid made through the Ohio Valley, crossing the Kanawha in the neighborhood of its mouth that created quit a stir down in that section, but that was more confined to the Ohio Valley than the Kanawha.

Q. Who made that raid?

A. General Albert G. Jenkins.

Q. Is it not a fact, after the year 1862, with the exception of the Jenkins raid that you have mentioned and the further exception of

a raid by General William E. Jones, there was no Confederate occupation of this valley west of Greenbrier and the border counties?

A. I do not think Jones came as far west as Greenbrier county. My recollection is that his raid was up in the neighborhood of Philippi, Elkins, Grafton and that region. I do not recollect any raids of regular Confederate soldiers other than those I have mentioned; but all the while the home guards were marauding and had our people scared, terrified, practically throughout the whole of the War.

Q. Judge, the term "home guards" must have been a misnomer if the men who constituted them didn't guard the home, but on the contrary were marauders?

A. The Union home guards were intended to protect the loyal citizens and the Confederate home guards were to protect those who sympathized with the Confederacy. However, the name that followed them all through the War was that they were not much short of pirates on both sides. I do not think that the Union home guards ever stole property from the Union people—they did their capturing from the Confederates, and vice versa. 9

Q. What percentage of the personal property of the section which you have mentioned would you say was absolutely destroyed by the depredations of those home guards?

A. I could not give any correct estimate of the amount of property destroyed. That would be impossible; and personally I know very little about their destruction of property. They confined their action chiefly to capturing property and carrying it off all around Charleston in Kanawha County.

Q. What character of property?

A. Anything they could get their hands on and remove.

Q. Do you think that the extent of these depredations was sufficient to make an appreciable decrease in the total valuation of personal property in this section?

A. Unquestionably so; because no one had encouragement for the production of personal property. They managed to raise enough to live on. There was no such thing as people's producing with a view of increasing their property or their wealth. It was a matter simply of living through the pendency of the War.

Q. Judge, is it not true that the farmers had an open and ready market and sale with the Union forces, and with the markets west of them, and with their home markets, for all the products of their farms, both agricultural and live stock?

A. Yes, to a certain extent in this immediate section and along the Kanawha River while the Federal troops were in control, but the people who lived along this valley did not know what 10 day the Federal troops would be driven out; hence, they had no encouragement to produce property for sale. And my recollection

is quite distinct that very few products of any kind were raised in this section during the entire period of the War. I know this, and I know it well, that not only did the Federal Army supply itself with the necessary supplies for the support of its soldiery, but also that most of the people who lived in this town, if not all of them, got their supplies from Gallipolis, Ohio, by means of steamboats which plied this Kanawha River during that part of the War when the Federal troops were in charge.

Q. When the Federal troops supplied themselves from the farms of the people, did they not pay for the supplies which they obtained?

A. I do not recollect any instance of the Federal army buying any supplies from the farmers in this section. They might, however, have done so. But I recollect vividly the fact that hay for their horses and the bacon, beans and other supplies for the men, were shipped here on steamboats from Gallipolis, Ohio. My recollection further is that none of the farmers, certainly with my recollection, raised anything to sell to the army or to anybody else during the period of the War. My father owned a large farm five miles from Charleston on Elk River, and I am very sure he never sold a dollar's worth to anybody during the entire period of the Civil War, or I would recollect it. 11

Q. Taking the County of Kanawha, would you say that the personal property in that county during the period of the War was, in the aggregate, decreased by reason of these depredations?

A. Unquestionably and materially so.

Q. Going further west, would you say that the same is true of Jackson County?

A. In a general way, I should say yes, although I did not know so much about Jackson County as I did about Kanawha, as I lived here. Yet I often saw people from Jackson County who came to this county.

Q. Mason County?

A. It would be less in Mason County, I think.

Q. How about the Pan Handle—in the northern part of the State?

A. I do not think it was disturbed during the War in any way materially, except the time General Morgan went across the Ohio River and went over or through Ohio and was captured near Steubenville; and I have heard a great many people in Wheeling say that they were badly scared for fear General Morgan might cross into the City of Wheeling and burn the city. I speak somewhat knowingly on this point, because some eight or ten years after the War closed I moved to Wheeling and lived there for twenty years.

Q. When was that raid, Judge—approximately?

A. 'Long about 1864, I think. 12

Q. How long did it last?

A. Morgan was in Ohio—he was engaged in marching through Ohio two or three weeks.

Q. Then, as a matter of fact, the depreciation of property in the Pan Handle resulting from the terrified condition of the people did not last over two or three weeks?

A. Yes; I do not think property very much depreciated up there on account of that raid. The fear was that he might cross into West Virginia and destroy the towns and cities in that section.

Q. Now, Judge, from your information generally as to the situation in West Virginia during the War, did personal property in the whole state depreciate in its valuation during the War?

A. Unquestionably so, taking it as a whole.

Q. Do you know Judge J. M. McWhorter?

A. Very well.

Q. Do you know what position he held immediately after the War?

A. Yes, sir; he was State Auditor of West Virginia. He was the second Auditor elected in West Virginia after the State was formed.

Q. What do you think of Judge McWhorter's opportunities for observations of the conditions which you have mentioned?

A. They were as good as anybody's in the section of the state where he lived and moved among the people.

Q. Was Judge McWhorter reckoned a careful and accurate 13
Auditor?

A. A very competent and able man.

Q. If it were stated to you that Judge McWhorter's report as Auditor to the legislature of West Virginia showed an increase in the valuation of personal property in the County of Kanawha for the period between 1860 and 1865, would it not tend to change your opinion somewhat that you have expressed that personal property in Kanawha County depreciated in that period?

Question objected to by counsel for the defendant, because Judge McWhorter never reported anywhere for the period between 1860 and 1865, but published an Auditor's report for the year 1865.

A. While I have confidence in Judge McWhorter's ability, integrity and correctness, yet I do not believe that such statement was borne out by the facts. If property, as you stated in your question, in this county increased from 1860 or 1861 to 1865, I would account—

Counsel for the Commonwealth of Virginia objects to Judge Atkinson's answer continuing, so far as he attempts to account for Judge McWhorter's report.

(Answer concluded). I would account for it in two ways: First, by the assessors who fixed the value upon personal property and real estate in the county. As every one knows, no two 14
assessors will value property upon the same basis or by the same rule. And, secondly, that this large increase to which Judge McWhorter refers was doubtless created during the last year of the War, after it was practically settled that the Union, in the great conflict, would prevail in the end. Then values began to look upward.

Q. Without waiving the objection made to the answer, I will ask you this: Taking the first of your explanations, that is, that the assessors valued property in Kanawha County different from what other assessors would have done, is it not true that those assessors had greater and more accurate opportunity to ascertain the value of that property than you yourself did?

A. I will admit that an assessor ought to know more exactly the value of personal and real property in the county than I; but I certainly know that no two assessors ever valued the same property at the same rate.

Q. Now, taking the second of your explanations, that is, that the increase shown did, in your opinion, occur in the year 1864, and assuming that this is true for the purpose of the question, does not that indicate that any depreciation was fictitious rather than actual; that is, that the property itself had not diminished, but that its supposed value was lessened by reason of the apprehension of the people? 15

A. To a certain extent, that might be true.

Q. Now, I will ask you further, if it were stated to you that the same report of Judge McWhorter, just referred to, stated that the aggregate increase in values of property, real and personal, in the State of West Virginia, for the period between 1860 and 1865, was $6,170,946.00, would that not tend to change your opinion that property within the whole state of West Virginia depreciated during the War?

Counsel for the defendant objects to the question, because Judge McWhorter never did state in printed report, or otherwise, that the property increased the said sum during the period from 1860 to 1865, but Judge McWhorter did compare the assessment of 1860, as made by the Commonwealth of Virginia, with the assessment of 1865, which assessment was made after the close of the War, as made by the State of West Virginia, and the difference between the two assessments was the sum stated.

A. No, it would not. I have no doubt but that property values did increase in the upper part of the state to some extent during the

period of the War, which part was not burdened by soldiers of either side; but for the southern portion of the state, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the contrary, I am quite confident that it did not do so. Furthermore, the so-called increase to which Judge McWhorter referred, is fully explained in the objection just above made by the counsel for the State of West Virginia.

Q. I now read you from Judge McWhorter's report for the year 1865, part of page 51, second paragraph, of said report, as follows:

> "By the returns of commissioners of the revenue of the several counties of this State in 1860, as ascertained from the report of Mr. Bennett, Auditor of Public Accounts of Virginia, made in the year 1861, the value of real estate assessed for taxation, according to the valuation made in 1856, amounted to the sum of $81,583,891.41. According to the United States census returns of 1860, the aggregate value of the real estate of the resident citizens of the respective counties amounted to the sum of $110,623,845.08, showing an excess of $29,039,933.67 in valuation not assessed for taxation. When we take into consideration that this excess arises from the valuation of the real estate of the resident owners only, several millions would be added to the excess by the valuation of large tracts held by non-residents which are not included in the census reports. This is the result of a comparison of the census returns with the valuation made four years previous, and when we consider that the value of real estate has enhanced each year since in an increased ratio, we might reasonably expect that a valuation made at this time would more than double the aggregate valuation as it now stands."

This is the expressed opinion of Judge McWhorter as Auditor. So far as real estate is concerned, would it not tend to change your opinion, if you have expressed such, that the value of real estate depreciated during the War in the State of West Virginia?

A. I have never said that the value of the real estate in West Virginia, in all of the counties in West Virginia, depreciated during the War. As I have stated, the upper portion of the State did not suffer very materially from the results of the War. But I adhere to my former statement, that in the whole southern tier of counties, with many of which I was familiar during the War as a young man living here in Kanawha County, it did materially depreciate. I do not now recollect, within my own personal knowledge, of the

sale or offering for sale of real estate in this section during that period. A general deadness prevailed because of the uncertainty of the result of the War and because of the scarcity of money with which to purchase property. It was a struggle on the part of most of our people to support themselves and families during that terrible period of the War.

Q. Referring to personal property, I now read you from Judge McWhorter's same report, page 48, as follows:

> "There have been no assessments made in several of 18
> the counties for the year 1865, consequently the figures
> given are but estimates for such counties. The assessments
> for 1860 are taken from the report of Mr. Bennett, Auditor
> of Public Accounts of Virginia, made in 1861. A large al-
> lowance has been made for the loss of property in those
> counties which suffered most during the rebellion. By this
> estimate the value of Personal Property in the year 1865,
> exceeds that of 1860 in the sum of $6,170,946. When we take
> into consideration what has been the prosperity of those
> counties not immediately exposed to the ravages and desola-
> tion of war, to thus overcome the loss sustained by the others,
> and still give this excess, it is highly gratifying."

Calling your attention to the fact that Judge McWhorter, in his estimate of the increase in value of personal property during the period covered by the War, has made "large allowance * * * * for the loss of property in those counties which suffered most during the rebellion," would you not now say that your opinion, as expressed, and which I understand is based on your observations as a young man from fifteen to nineteen years, would be changed by this expressed opinion of Judge McWhorter?

A. Not materially: First, because, as I have heretofore stated, of the inequality of values placed upon property by assessors; and, secondly, that at the beginning of the year 1865 the War was practically settled, and because business of all kinds as well as values of all kinds increased in dimensions. I can not believe that 19 from 1861 to 1864 there was any increase of personal property, not, certainly, in any of the southern tier of counties. On the contrary, I shall always believe, from what I saw myself and heard during that period, that such values decreased.

Q. Excepting the southern tier of counties referred to, you would not be willing to say that said increase did not take place in the remaining counties, would you?

A. No, sir; I would not, especially in the northern tier of counties.

Q. Would you be willing to say that there was not such an increase

in the counties, exclusive of what you term the southern tier of counties, sufficient on the average, considering any depreciation in that southern tier, to cause the increase noted by Judge McWhorter?

A. No; not altogether; because my candid judgment is that the increase to which Judge McWhorter refers was for the entire year of 1865, when the War has closed and when business of all kinds had started up, thus making a demand for the development of all kinds of property.

Q. Did you know Mr. J. R. Dodge, who was an official of the United States Department of Agriculture in 1865?

A. I never knew him personally. I have heard of him. His name is very familiar to me.

Q. Was he a man of accredited reputation in the State?

A. I would take him so to be. 20

Q. In a book written by Mr. J. R. Dodge in August of 1865, in the preface of which he acknowledges valuable information and suggestions from twenty or thirty seemingly prominent men, amongst them Honorable W. T. Willey, Governor A. I. Boreman, Honorable John M. Phelps, J. H. Dis DeBar and Mr. McWhorter, in Chapter 3, discussing the value of lands, I find on page 42 the following paragraph:

> "Indeed, it would be difficult to compute with accuracy, in Federal Currency, the actual appreciation already attained at the present writing, since the census of 1860. It would amount to tens of millions of dollars in advanced rates at which property is held, much of which is founded upon actual cash purchases within the past year. While this advance is mainly speculative, there is energy and enterprise and skill enough, as well as capital, interested and actually engaged in the development of these valuable resources, to insure a steady and permanent progress of industrial improvement."

Do you not think that the opinion of Mr. Dodge thus expressed, and which is substantiated by that of Judge McWhorter, should have the effect to change your own opinion as to the depreciation of realty?

A. Not altogether. That book was written after the close of the Civil War and when industries of all kinds began to start up, when people had turned their eyes in the direction of West Virginia and came into our midst for the purpose of becoming citizens of our new Commonwealth and to take a hand in its development. Property values, of course, increased at a very rapid rate. More- 21
over, the opinion expressed in the book is extremely roseate, and was intended to encourage our own people, to encourage more

than had theretofore been done the development of the natural resources of the counties which composed the new State which were then known to be very great. Our leading newspapers at that time published glowing articles intended to encourage immigration and to encourage our own people, which were laudable, indeed, and which proved to be very helpful. Not only the book of Mr. Dodge, but other pamphlets and publications were made with this object in view. I do not mean to say that the development which they portrayed was incorrect, but at that time, to say the least, such articles and publications were exceedingly roseate.

Q. In view of your reply, I call your attention to the fact that Mr. Dodge had founded his opinion, certainly to some extent, upon his report of actual instances. To substantiate this, I read you from page 44 of the same book, a paragraph which occurs in connection with Mr. Dodge's discussion of the lands purchased by George Washington and other great people.

> "As an evidence of the quality of these lands, it may be stated that George Edwards, upon similar lands in the vicinity, near Moundsville, sold sufficient hay in 1863 and 1864, in addition to pasturage for his cattle, to make an average of one hundred dollars per acre for his farm, a profit equivalent to its cost."

Would not that indicate that Mr. Dodge was not drawing 22
wholly on his imagination?

A. In the first place, our first great president never purchased any lands in West Virginia. He located them and secured them by tomahawk titles. In the next place, I have no doubt that George Edwards in Marshall County, one of the best farming counties in the State of its size, raised and sold the hay Mr. Dodge referred to, and that, as you know, is in the extreme northern part of the State where farmers and other producers were not disturbed during the War. That kind of hay growing did not exist down in this region of the State, I am sure.

Q. Now, Judge Atkinson, as a last reference to this matter, I will read you a paragraph from page 147 of the same book, occurring in Mr. Dodge's discussion of the personal property of West Virginia, as follows:

> "In some counties great losses have been incurred in live stock from marauding, particularly in horses. Yet the State returns for 1862 give an increase in horses, over 1860, in the counties of Barbour, Brooke, Cabell, Doddridge, Harrison, Hancock, Jackson, Kanawha, Lewis, Monongalia, Marshall, Ohio, Preston, and several others. In some cases this increase

is extraordinary, as in Kanawha, from 1402 to 5222, doubtless due to a great influx from Fayette and Greenbrier, on the great highway of Rebeldom and from which there is no report. The same disturbing causes have affected other stock to the same extent. Sheep had already increased 23
in 1862, in Brooke, from 40,620 to 46,200; in Hancock, from 21,402 to 29,932; in Harrison, from 13,202 to 17,991; in Monongalia, from 10,945 to 17,594; in Marshall, from 16,022 to 22,197; in Preston, from 19,084 to 25,980. Since that date there has been a still heavier increase."

I now ask you if this assertion of Mr. Dodge, taking his information from the returns for the year 1862, does not indicate to you a large increase in the values of personal property, at least so far as live stock was concerned?

A. The comparison made by Mr. Dodge is between 1860, when the War was coming on and shaping itself for its horrible disasters, and 1862, before it had well begun. If he had made his comparison between 1860 and 1863, it would have been, in my judgment, materially different.

Q. You spoke of General Loring's offering to pay for the dry goods and grocery store of your father in Confederate money. Did your father accept this offer?

A. I did not mean to say that General Loring himself offered to pay anything. It was his men that supplied themselves with the goods I referred to, and they had, as I was informed, a bountiful supply of Confederate money. My father and his partner, Mr. Slack, were not in Charleston at the time, they having refugeed to Ohio from fear of personal injury of Confederate soldiers. The store was in charge of a clerk. I knew nothing of it myself personally, only I know that when the Confederates left here there were no goods left in the store; and I often heard my father say that he made no inquiry about the Confederate money to pay for the goods, 24
if they were paid for, because such money was of no value here.

Q. At what date was this taking of your fathers property?

A. In September, 1862.

Q. Do you know what the ratio of Confederate money to gold was in September, 1862?

A. I do not, in this section, or in any section for that matter. I know that here it could not be passed as currency at all, at least that is my recollection of it.

Q. Do you know that Confederate money, in September, 1862, passed current in the State of Virginia and all over the South and had purchasing power?

A. I do.

Q. If your father had accepted the Confederate money which was offered him and had demanded enough to have been equal to the gold value of his goods, was it not possible for him to realize value received in September, 1862, for that Confederate currency?

A. I hardly think it was; because he could not go to Richmond or to any place in the South to exchange it for good money. First, he would be afraid to go; and second, he could not get greenback money in the South that would be current here. Moreover, he was not here, as I have stated; and so far as I know, he never received any value whatever from any source for the goods taken.

Q. If he did not receive this value, however, it was not the 25
fault of the parties taking it, as I understand your deposition, so far as that value was estimated in Confederate money?

A. As I was not personally present at the time the goods were taken, I know nothing about the amount tendered or the amount paid to any one in the store. My information was then that General Loring's order was that his troops should not improvidently destroy property of any kind. A number of buildings were destroyed upon his entrance to this town, but they were all burned by the retreating Federal troops. I do not recollect a single building that was destroyed in this section by General Loring's order.

Q. I understood you to say that you do not recollect a single instance of the taking of any personal property by any of the regularly organized forces of either side without payment being made or tendered therefor: is that correct?

A. Of my own personal knowledge, I do not know of the destruction of any personal property by General Loring's troops.

Re-Direct Examination.

By Mr. McClintic:

Q. Was not the year 1865, under the stable government then established in the State of West Virginia and under the protection thus given to all property in this State, a year of great speculation in all sorts of enterprises in the State of West Virginia?

A. My recollection is that it was.

Q. Was not most of the lands up Elk River, for instance, leased or purchased for oil purposes in the year 1865?

A. I knew of a large number of oil leases being made on Elk 26
River, and I knew of one sale of a small tract of land at the mouth of Two Mile on Elk, which tract sold at what we considered a fabulous price, being in the neighborhood of forty thousand dollars. My father owned something like one thousand acres five miles from Charleston on Elk River, and he was offered forty-five thousand

dollars cash for it, but he asked fifty thousand, and allowed the five thousand dollars between them to defeat the sale; and subsequently, after his death, I, as administrator of his estate, sold it for about ten thousand dollars.

Q. Wasn't the period of the spring of 1863 the period of the greatest depression in the values of both real and personal property in this section of West Virginia?

A. I think it was.

Q. If there really were 5,222 horses in the County of Kanawha in 1862, being four times more than there were in 1860, did not that include all the cavalry horses of the Union and Confederacy in the county?

Counsel for the Commonwealth of Virginia objects to this question, on account of the fact that it calls for an expression of opinion by the witness, unless said question is answered from the personal knowledge of the witness.

A. I do not know about that; it may have done so, and yet 27
it may not.

Q. Was there not a considerable influx of people, especially of Union people seeking protection, into the County of Kanawha during the War?

Same objection to this question as was made to the preceding question.

A. There was.

And further dependent saith not.

Signature of witness waived.

Counsel for the Commonwealth of Virginia objects to the answers of the witness to all of the foregoing questions so far as the said answers show that they are not made from his own personal knowledge.

Counsel for the State of West Virginia excepts to all of the questions asked by the counsel for the Commonwealth of Virginia in so far as they assume facts as true from publications or other works not in evidence in this case.

Counsel for the Commonwealth of Virginia here states that in so far as the publications from which he read or quoted were read and quoted, they were considered by him as in evidence in this cause.

STATE OF WEST VIRGINIA, 28

County of Kanawha, to-wit:

I, J. F. Cork, a notary public in and for the County of Kanawha and State of West Virginia, do hereby certify that the foregoing deposition of Judge George W. Atkinson was taken at the time and place as therein set out; and I further certify that said witness was duly sworn.

Given under my hand and official seal this 14th day of July, 1909.

(Seal) J. F. CORK,

Notary Public in and for the County of Kanawha and State of West Virginia.

My Commission expires Dec. 31, 1909.

Notary's Fee $7.75.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT P-1

Prepared by

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THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

F-1
P-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT F-1.

All Moneys Paid into the Treasury of the Commonwealth from the Counties Included Within the State of West Virginia from March 19th, 1863, to December 31st, 1860, Inclusive.

PARAGRAPH VI OF DECREE.

		Amounts agreed upon by Plaintiff and Defendant as credits to West Virginia.	Items claimed by Defendant, agreed to as to amounts, but not admitted by Plaintiff to be credits to West Virginia.
1	Bonus received from Banks in West Virginia Counties		$ 96,253.62
2	Clerks of County and Corporation Courts	$ 161,223.06	
3	Clerks of Superior Courts	96,880.51	
4	Clerks of District Courts	769.28	
5	Clerks of Superior Courts of Chancery	2,797.59	
6	Costs—Civil and Criminal Prosecutions	1,926.36	
7	Dividends from Banks in West Virginia Counties		786,666.98
8	Dividends and Interest from Turnpike Companies in West Virginia Counties		13,595.48
9	Dividends from Bridge Companies in West Virginia Counties		6,028.51
10	Dividends from Interstate Turnpike Companies (Proportion)		1,355.92
11	Dividends from James River & Kanawha Company (Proportion)		352.21
12	Escheats	4,603.57	
13	Fines, Forfeitures and Penalties	57,911.76	
14	Interest from City of Wheeling		571.51
15	Land—Sale of Unappropriated	109,103.64	
16	Land—Redemption of	58,944.10	
17	Land—Sale of Delinquent and Forfeited	17,694.73	
18	Land—Redemption of and Sale of Delinquent and Forfeited	48,699.30	
19	Militia Fines	73,926.39	
20	Merchants and Mechanics Bank Stock sold (Bonus Stock)		43,103.35
21	Northwestern Bank—Profit on 1,082 shares sold		5,471.42
22	Northwestern Turnpike Road—Tolls		126,339.89
23	Staunton & Parkersburg Road—Tolls		17,080.71
24	Taxes—General Revenue	5,037,421.46	
25	Taxes—Capitation	123,111.10	
26	Tax on Free Negroes	4,079.52	
27	Tax on Dividends	53,202.60	
28	Tax on Railroad Travel	49,202.01	
29	Tax on Notarial Seals	48,247.02	
30	Voluntary Enslavement	47.50	
31	Miscellaneous — Unclassified Receipts	4,604.16	

F-1
P-2

SUMMARY.

Total claimed by Defendant	$7,051,215.56
Total admitted by Plaintiff	5,954,395.66
Total not admitted by Plaintiff	$1,096,819.90

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Other Evidence and Proceedings Relating to Paragraph VI of the Decree.

[*Vol. 1. November 16, 1908. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF COMPLAINANT UNDER PARAGRAPH VI OF THE DECREE.

76

ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The next is Plaintiff's Exhibit F-1. This is responsive to the sixth paragraph of the decree. It purports to be a statement of all money paid into the Treasury of the Commonwealth from the counties included in the State of West Virginia during the period prior to the admission of the latter State into the Union.

By Mr. Anderson:

Q. State what you know as to the correctness of that statement, how it was made up, by whom it was made up, and from what sources of information.

A. The figures in the first division, redemption of land and escheats, were taken from the Auditor's ledgers, from 1816 to 1822, and the Literary Fund Journals A, B and C. The redemption of lands and escheats were payments to the Literary Fund.

The second division, public lands and the Land Registrar's Office, were taken from the yearly printed report of the Auditor of Public Accounts.

Q. Fines, forfeitures and penalties is another item?

A. They were taken from the Literary Fund Journals, A, B and C.

Q. And the largest item of that account, contributions to the general treasury of Virginia in the shape of taxes by the counties now constituting the State of West Virginia—from what source did you derive that statement? 77

A. First, from the ledgers of the Auditor of Public Accounts, and afterwards verified by reference to the various journals and day books.

Q. Please state your knowledge, Mr. Potter, as to the correctness of the items and statements embodied in this schedule, in particular and in general?

A. The figures were taken off by my assistants, and—

Q. From what?

A. From the various books I have just mentioned, and then handed to other men who called them back. It was not possible to check them up to any total, so we merely applied the rule of the double check. That is true of all the items contained in the schedule, which I believe are correct.

Mr. Anderson: Please file that.

(The paper referred to, entitled, "Commonwealth of Virginia vs. the State of West Virginia. Receipts from West Virginia counties. Redemption lands and escheats. Public lands and Land Registrar's Office. Fines, forfeitures and penalties. Tax receipts (Less tax refunds). Article VI." is filed herewith, marked "Plaintiff's Exhibit F 1.")

Mr. Anderson: Plaintiff's Exhibit F 2 is the same statement, giving the details a little more fully.

The Special Master: Is it supplementary to Plaintiff's Exhibit F 1?

Mr. Robinson: Yes. 78

By Mr. Spooner: Will you give me the pages of the records from which you compiled these?

A. I don't know whether that is shown in this schedule or not. In a great many instances the journals were not paged. In those cases we show the years—

Q. From what page to what page, of what books?

A. Those do not show any pages at all.

Mr. Anderson: I offer this second statement in evidence.

(The paper referred to is filed herewith, marked, "Plaintiff's Exhibit F 2.")

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

ARTHUR G. POTTER, 382
resumed the stand for further
Cross Examination.

By Mr. McClintic:

Q. In relation to F-1 No. 6—

The Special Master: Do you mean page 6?

Mr. McClintic: Plaintiff's Exhibit F-1.

The Special Master: Relating to the 6th paragraph?

Mr. McClintic: Relating to the 6th paragraph of the decree.

The Special Master: What page are you examining?

Mr. McClintic: I was looking at the first page. I want to 383
ask a general question. This exhibit is in relation to the receipts from Virginia counties.

By Mr. McClintic:

Q. When did you begin?

A. The fiscal year ending September 30, 1820.

Q. The first of the year?

A. The fiscal year.

Q. In other words, the 1st of October?

A. Yes, sir.

Q. And when did you end?

A. December 31, 1860.

Q. That is all I desire to ask on that schedule.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: Please take defendant's exhibit F-1. 567

(The paper referred to was received in evidence and marked Defendant's Exhibit F-1.)

By Mr. McClintic:

Q. Please state if that was made under your direction and signed by you?

A. It was, sir.

Q. Please state if the facts and figures therein stated are correct?

A. They are so far as the items included therein from the books of original entry of the Commonwealth of Virginia.

Q. On the bottom of page 2 of that exhibit I find "Merchant's & Mechanics Bank of Wheeling: sale of 400 shares bonus stock, held by the Board of Public Works, $43,103.35." Please explain to the Master that item.

A. That was bonus stock issued to the Commonwealth of Virginia by this bank located in Wheeling. It was in the nature of a franchise tax. It could be paid for in stock, and in this case the tax was paid by the stock. It was par value $40,000, and it was held by the State until 1853 and then sold for $43,103.35.

The Special Master: That is where you got that item?

The Witness: That is the item, yes. It was entered in the books in 1857, but the sale, I believe, took place in 1853.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey.*]

[Mr. Harrison:]

Q. Next is defendant's Exhibit F-1. This relates to paragraph 6 of the decree—all moneys paid into the Treasury of the Commonwealth by the counties included within the territory of West Virginia. Please state the difference between the result ascertained by you and that shown by the corresponding exhibit for the plaintiff? 655

A. Under paragraph 6, according to the Virginia Exhibit, the receipts from West Virginia counties are $6,111,572.23, and according to West Virginia's Exhibit, $7,081,538.48, an excess on West Virginia's Exhibit of $969,966.25. 656

Q. Did your list of payments include any dividends received on stock of private companies?

A. Stock of private companies?

Q. Yes.

The Special Master: In which the State was a stockholder?

Mr. Harrison: Yes.

A. Yes; it included dividends on stock in banks located within the territory now constituting the State of West Virginia, dividends on stock in turnpike companies, lying wholly within the present State of West Virginia, dividends on stock in bridge companies lying wholly within the present State of West Virginia, and dividends on stock in turnpike companies extending into and between the present States, divided on a mileage basis.

By Mr. Harrison:

Q. Does the schedule show the several amounts under those heads?

A. Yes, sir.

Q. And you can show it in the aggregate. Could you do it readily for us now?

A. I think so.

Q. I want to know how much you have included as payments into the treasury embraced under the heads you have just given us?

A. There are same other items included with those dividends. For instance, there is some interest on loans. 657

The Special Master: Why do you not have them worked out when they work out the other details in connection with the other schedules, unless you want to get the information right now?

Mr. Harrison: His statement, for example, says "Dividends on stocks in banks located in the territory now constituting the State of West Virginia."

The Special Master: That is a large item, $766,666.

Mr. Harrison: That accounts for the biggest part of the difference.

The Special Master: What do you want: The detail of that?

A. You mean from what banks that came?

Mr. Harrison: I want it first to give the items so as to show the aggregate amount received and charged on account of stock dividends, and so forth. Then I wanted the details supporting it.

A. Very well, we can give you that, but it will take some little while, maybe a few hours, to prepare it and have it typewritten.

Mr. Harrison: Evidently the difference between Mr. Potter and himself arises out of the fact that he has charged dividends as money contributed by West Virginia counties to the Treasurer of the State.

The Special Master: Are those the same items involved 658
in the other schedules as to which the investments of the State in the stock are taken into consideration?

Mr. Spooner: Yes, sir.

The Special Master: The same banks?

Mr. Anderson: These were dividends received by the State during that period from those investments.

The Special Master: Upon one side the territory is being charged with the investment, and upon the other side they are taking a credit for the dividends, are they, in the same banks in which the investments were made?

Mr. McClintic: The same banks; yes, sir.

The Special Master: That is, in one part of the schedule West Virginia is charged with investments in the stock.

Mr. McClintic: Virginia charged us with investments in the stocks, and gave us no credit for the dividends.

The Special Master: And you take credit for the dividends on that same stock?

Mr. McClintic: Yes, sir; and we say we are to be charged for the stocks only what we got them for in 1863.

The Special Master: That is a question of amount, but it is a question whether these dividends were predicated upon the stock as to which investments were made, charged against West Virginia in the schedule. That is right, is it?

Mr. McClintic: Yes.

By Mr. Harrison:

Q. I noticed that as a part of your statement of receipts by Virginia from the counties of West Virginia, you have included $153,475 of toll on a mileage basis from the Northwestern turnpike? 659

A. Yes.

The Special Master: Are those the same roads as to which charges are made in some parts of the schedule?

Mr. McClintic: If your Honor please, you asked us yesterday why the northwestern turnpike road had so much more charged to it by West Virginia than Virginia charged. That is practically the difference. Those tolls were paid back on the road, and we charged it.

The Special Master: You took the tolls into account?

Mr. McClintic: Yes, sir.

The Special Master: And they did not take them into account either way?

Mr. McClintic: No, sir.

The Special Master: You gave credit for a larger charge, and here you seek to get allowance for the tolls?

Mr. McClintic: These tolls were spent on the road just as they were collected. They were immediately put back on the road, and as we understood it were chargeable as a part of the money that went into the road, but we claim credit for it, because we paid it.

By Mr. Harrison:

Q. Explain one of the items you have in that schedule under the head of "bonus received from banks within the territory now constituting the State of West Virginia, paid into the treasury out of dividends, being a tax on charter privileges, $96,000."

The Special Master: Is that the franchise tax we have heard about?

Mr. Harrison: That may be. 660

The Special Master: Is it, I say?

A. Yes, sir.

The Special Master: Or the charge for the privilege of exercising the franchise?

A. Yes, sir; that is what it was.

Mr. Anderson: The State charged that to grant a charter to the bank?

A. And a certain amount for refunding. It was a tax on the charter privilege.

By Mr. Harrison:

Q. Was that contributed by any of the counties of West Virginia?

A. So it says—within the territory now constituting the State of West Virginia.

Q. But the decree requires you to render a statement of all moneys paid into the Treasury from the counties?

A. Yes, sir; from the counties.

Q. Did that come from any counties in West Virginia?

A. Certainly.

Q. What counties did it come from?

A. Wherever the bank was located.

Q. You construe that as coming from the county because the situs of the bank was in a particular county?

A. That is it.

Q. You testified when we were on paragraph 3 of the decree, in relation to the expenditures of money by Virginia in West Virginia, that you did not consider it money expended by Virginia in West Virginia where she subscribed to the stock of a joint 661
stock company located in that State?

A. Yes, sir.

Q. I understand you to say now that when that same company paid a dividend to Virginia on the stock so subscribed for, you do consider that a payment by a West Virginia county to the Treasury of Virginia?

A. It is included in that schedule.

Q. How do you reconcile that logic?

A. I think it is not difficult of reconciliation. Where money is subscribed to a stock company, paid out of the Treasury here for a subscription to stock, and stock taken for it and held in the treasury, it can hardly be construed as an expenditure within the counties that now form West Virginia, as I understand it, while the money paid from dividends came indirectly from those counties that form West Virginia.

Q. The money paid on the stock which you do not consider an expenditure in West Virginia, is, however a contribution from the county where the company is located to the Treasury of Virginia?

A. As a matter of fact: yes.

[*Vol. 6. May 7, 1909. Re-Direct Examination of T. B. Dixey.*]

[Mr. McClintic:]

Q. Jumping from the first exhibit to No. F-1. No. 6, in reference to payment of counties, were there any moneys paid into Virginia by a county as a county? 694

The Special Master: You mean as a municipal organization?

Mr. McClintic: As a county or organization of any character. Were not all the funds paid in paid by individuals?

A. A State depository; is that what you mean?

Q. No; Mr. Harrison asked you about the counties paying in money. Did any county ever pay anything as a county, in any instance?

A. I will not say in any instance. I do not think I understand the scope of your question.

Q. The question is—

The Special Master: Did the money that appears to have been paid to the State of Virginia by West Virginia come from the county treasuries, in any case, or did it come from institutions or organizations within the territory. Is not that the question?

Mr. McClintic: No; what I want to get at is this. Mr. Harrison seems to think that that decree meant that in order to get credit from the county it must be paid by the county as a county, and I ask him if these taxes were not levied by State authority and directly paid by the individuals to the agent of the State, for 695
the State?

The Special Master: Without going through the county treasury?

Mr. McClintic: Without going through any county.

The Special Master: Or having any official mark.

Mr. McClintic: Any official mark of the county.

The Witness: No, sir; not in that sense.

The Special Master: What is your answer?

The Witness: Originally the books showed the county from which the money was paid, such and such a county; the clerk of such and such a county.

The Special Master: Let us see what the entries did show.

The Witness: The books show the county in which these payments originated, the original books of entry. I do not recall, without reference to the books, whether they show them as direct payments into the Treasury from the County official as an official act of that official or not. I do not remember about that. That is made clear on the books, perhaps, but I do not remember about that. But the books do show the county in which the receipt originated, or the disbursement was made.

Mr. Mollohan: It was fixed by statute. The sheriff took the tax ticket. There was the same levy over the State. This land book would go into the hands of the sheriff. He made the tickets out and collected in each county and then transmitted it to the Treasurer here.

The Special Master: If the statute shows it, it is easy 696
to develop it.

The Witness: It shows receipts by clerks of county courts, and that sort of thing.

The Special Master: The county paid nothing except her own revenue, and she spent her own revenue?

Mr. Mollohan: Yes, sir.

The Special Master: Is there anything in the way of re-cross examination? There does not seem to be anything else. Call your next witness.

[*Vol. 7. July 1, 1909. Plaintiff's Substitute Exhibit F-1.*]

[The Special Master]:

Now, we come to the sixth paragraph, plaintiff's exhibit F-1. 866
(Reading from decree):

"All moneys paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

You submit Plaintiff's Substitute Exhibit F-1?

Mr. Anderson: Yes, sir.

The Special Master: Do the parties agree upon the items stated in Plaintiff's Substitute Exhibit F-1?

Mr. Harrison: I think we are in accord on the items. It is only a question of inclusion or exclusion.

Mr. Dixey: No, sir; not entirely. I would like to have that put in the class with C-1, and Mr. Potter and I will take it up. It is only a matter of a few hours, I think.

[*Vol. 7. July 2, 1909.*]

The Special Master: Let me make this one inquiry. There 1017
are some reconcilings to be done by the experts, and that is disposed of, because we all agree that we will take what they agree upon. Has Virginia submitted everything they are now prepared to submit on all the paragraphs?

Mr. Harrison: We left No. 6 open—

The Special Master: Between the experts— 1018

Mr. Harrison: Yes, I think so.

The Special Master: If they are not able to report, we will take their report later.

Mr. Dixcy: There is no difference whatever.

Mr. Anderson: They accept Virginia's Schedule as to the amounts.

The Special Master: As I understand it now, so far as Virginia is concerned, they have nothing further to submit on any of these paragraphs.

Mr. Harrison: One moment. Mr. Potter made a slight correction in that schedule of the receipts for West Virginia, and here is where it appears. This is reconciling it.

The Special Master: Did you go over that with Mr. Dixcy?

Mr. Potter: Yes, sir; every item.

Mr. Harrison: There are only one or two immaterial items.

The Special Master: Let Mr. Dixcy and Mr. Potter sign it and hand it to the stenographer.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
56 William Street, New York
For the Plaintiff

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT G-1.

All Money, Property, Stocks and Credits which West Virginia Received from the Commonwealth of Virginia.

PARAGRAPH VII OF DECREE.

A. Money.

From
"LEDGER 1863
TREASURER
WEST VA."

Folio 4, July 2nd, 1863	Received from "Treasury of Virginia by Campbell Tarr" and deposited in the Merchants & Mechanics Bank at Wheeling	$ 92,866.17
Folio 36, July 2nd, 1863	Received from "The Treasurer of Virginia" and deposited in the North-Western Bank at Wheeling	47,734.03
Folio 56, July 9th, 1863	Received from "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wellsburg	9,399.80
		$150,000.00
Folio 100, Feb. 1st, 1864	Received from the "Treasurer of the Commonwealth of Virginia" and deposited in the North-Western Bank at Wheeling	20,771.46
		$170,771.46

B. Property .....
C. Stocks .....
D. Credits .....

The Books of West Virginia, except the Treasurer's Ledger above referred to, not being obtainable, we are unable to ascertain what other property, if any, was taken over by West Virginia.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant certifies to the correctness of the figures shown by the plaintiff in this exhibit, but denies that the total amount, or any part thereof, is a proper charge against West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

MONEY, PROPERTY, STOCKS AND CREDITS RECEIVED BY WEST VIRGINIA.

DEFENDANT'S EXHIBIT G-1.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT G-1.

SUMMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRECEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, for the reason that no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$341,800.00
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 8,000.00	$ 3,193.46			
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
Fish Creek [illegible]d Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
Franklin an[illegible]cleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,[illegible]75.00			
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.60	
						1849	35.50	
						1850	47.20	
			—			1851	83.00	
						1852	94.66	
						1853	59.26	
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	88.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1858	Included in above.	25.00	Included in above.	5,916.67			
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00			
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00			
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1854	306.00	
						1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,489.70			
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1826	22,000.00	50.00	10,200.00	8,856.66			
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
Raleigh and Boone Graded Road Company,	January 28, 1854	5,000.00	25.00	3,000.00	1,800.00			
Smithfield, Charlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
Sheperdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1835	269.37	
						1836	126.00	
						1837	98.00	
						1838	58.20	
						1839	40.00	
						Total,	$1,655.41	
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
St. Mary's Turnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,093.31			
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	340.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1850	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$ 390.26	
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	6,000.00	5,130.65			
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
West Union Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00			
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
Total, Turnpikes and Roads,		$1,407,618.33		$847,163.33	$700,103.49		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00			
Bridge companies, From March 19, 1823, to January 1, 1861.								
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00	
						1854	166.51	
						Total,	$ 540.51	
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00	
						1858	210.00	
						1859	210.00	
						1860	320.00	
						Total,	$1,160.00	
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00			
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852	$ 600.00	
						1853	600.00	
						1854	250.00	
						1855	300.00	
						1856	600.00	
						1857	200.00	
						1858	550.00	
						1859	450.00	
						1860	400.00	
						Total,	$3,950.00	
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charlestowa and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16½ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860 Total,	803.27 405.00 $1,208.27	
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 22 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00			
Mountain Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
North Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,325.00	1857	$ 453.00	
Raleigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)	Number of shares.	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
Northwestern Bank of Virginia, at Wheeling.					
Held by Commonwealth Fund,	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,	$445,315.16	
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:					
Cash, $375,091.33					
Net dividends and interest 24,908.67					
4,000 shares at $100.00 per share, $400,000.00					
In 1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.					
Held by Literary Fund, Purchased in 1832.	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,	$ 89,500.00	
Total, Northwestern Bank stock, January 1, 1861,	3,418	$341,800.00	Total,	$534,815.16	
Fairmont Bank, (Marion County)					
Held by Literary Fund, Purchased in 1860.	1,000	$ 50,000.00	1860	$ 2,000.00	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund.	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividend received by Commonwealth. Date	Dividend received by Commonwealth. Amount.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30	1836	$10,092.00
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00		9,200.00		
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,092.00
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00						
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,542.66	$145,670.45	$181,202.80	$1,022,415.91		
Cash loans, ...				890,000.00		890,000.00		
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00		
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00		
The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—								
Loan of Bank of Virginia stock, ...	$ 37,500.00							
Cash, ...	12,500.00							
Total, ...	$ 50,000.00							
Premium on the above stock, ...	4,078.12							
Total, ...	$ 54,078.12							
Interest on $54,078.12, ...	33,714.69							
Total amount of decree obtained by the Board of Public Works in February 1845, ...	$ 87,792.81							
Interest on $87,792.81 to February 1845, ...	6,336.15							
Total transferred to the Commonwealth Fund in exchange for a certificate of state stock for $100,000.00; the difference being paid in cash, ...	94,128.96							
The total amount of $94,128.96 was received by the Commonwealth, in stock of the James River and Kanawha Company; but this account is charged only with that part thereof, which was expended in cash from March 19, 1823, to January 1, 1861, viz:—$12,500.00.								

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST				Dividends received by Commonwealth	
			Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund	Expended through the Sinking Fund.	Total cost.	Date	Amount.
Capital Stock issued to the Commonwealth, (Continued.)								
Bonds of the State loaned to the James River and Kanawha Company:								
As per act passed March 25, 1842,		$ 250,000.00						
" " " " " 1, 1847,		1,236,000.00				$1,596,000.00		
" " " " January 25, 1850,		110,000.00		$1,596,000.00				
Bonds of the James River and Kanawha Company: Guaranteed by the State and assumed in accordance with the act of March 23, 1860:								
As per act passed March 23, 1839,		$1,400,000.00						
" " " " " 9, 1849		350,000.00						
" " " " " 12, 1849,		150,000.00						
" " " " " 15, 1850,		360,000.00		$2,260,000.00		$2,260,000.00		
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860,	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

Account of construction and subscription to capital stock,	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30
Account of debt due the Commonwealth, guaranteed bonds and annuity assumed,	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181.202.80	$6,130,915.91
Total,	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be correct as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes indicated.

Certified Correct:
ARTHUR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

EXHIBIT "WEST VA. 1."

Table showing value of Real and Personal Property in Virginia and West Virginia by Counties as returned by Individuals on the first day of June, 1860, and published in "Miscellaneous Statistics, Census Reports 1860" and value of Real and Personal Property as assessed in 1860.

VIRGINIA.

		Census Valuation.			Assessed Valuation.		
	Counties.	Real.	Personal.	Total.	Real.	Personal.	Total.
1	Accomack	$ 4,995,240	$ 5,045,355	$ 10,040,595	$ 3,007,903	$ 1,353,505	$ 4,361,408
2	Albemarle	11,112,279	16,124,021	27,236,300	7,465,975	2,716,944	10,182,919
3	Alexandria	4,762,885	2,649,798	7,412,683	4,246,781	816,186	5,262,967
4	Alleghany	1,502,967	1,653,271	3,156,238	876,648	355,465	1,232,113
5	Amelia	2,773,986	7,188,874	9,962,860	518,775	979,016	1,497,791
6	Amherst	3,212,791	5,686,935	8,899,726	363,643	761,320	1,124,963
7	Appomattox	2,135,636	4,929,131	7,064,767	1,510,990	661,245	2,172,235
8	Augusta	13,850,776	10,113,154	23,963,930	10,374,078	3,390,421	13,764,499
9	Bath	1,891,129	1,128,427	3,019,556	1,035,854	425,836	1,461,690
10	Bedford	7,661,370	12,012,616	19,673,986	4,915,177	2,115,884	7,031,061
11	Botetourt	4,223,734	4,549,414	8,773,148	3,065,042	1,044,030	4,109,072
12	Brunswick	2,639,337	9,395,528	12,024,865	1,576,811	1,412,920	2,989,731
13	Buchanan	128,946	100,081	229,027	222,498	81,548	304,046
14	Buckingham	4,187,520	8,421,168	12,608,688	2,416,045	943,428	3,359,473
15	Campbell	8,318,593	16,182,897	24,501,490	5,918,121	2,436,766	8,354,887
16	Caroline	4,821,539	9,894,510	14,716,049	3,442,667	1,460,978	4,903,645
17	Carroll	1,037,626	793,039	1,830,665	1,708,695	291,606	2,000,301
18	Charles City	1,457,472	2,439,864	3,897,336	1,025,610	405,600	1,431,210
19	Charlotte	4,558,899	9,150,516	13,709,415	3,377,079	1,562,782	4,939,861
20	Chesterfield	4,148,519	8,379,685	12,528,204	4,458,984	1,098,072	5,557,056
21	Clarke	3,987,176	3,314,612	7,301,788	3,847,756	748,762	4,596,518
22	Craig	1,060,150	705,693	1,765,843	880,927	262,376	1,143,303
23	Culpeper	5,541,402	6,425,009	11,966,411	3,268,892	928,245	4,197,137
24	Cumberland	2,804,763	7,128,849	9,933,612	2,132,623	937,357	3,069,980
25	Dinwiddie	8,592,624	18,426,290	27,018,914	2,572,589	804,161	3,376,750
26	Elizabeth City	2,390,730	3,244,275	5,635,005	1,041,912	351,365	1,393,277
27	Essex	3,546,912	6,217,528	9,764,440	2,078,259	1,062,457	3,140,716
28	Fairfax	4,071,772	3,285,394	7,357,166	4,414,990	804,195	5,219,185
29	Fauquier	13,308,772	14,052,831	27,361,603	9,262,040	2,578,876	11,840,916
30	Floyd	1,394,658	1,014,772	2,409,430	890,798	305,154	1,195,952
31	Fluvanna	2,793,206	4,987,111	7,780,317	2,151,850	801,182	2,953,032
32	Franklin	3,937,007	6,649,915	10,586,922	2,459,612	1,237,755	3,697,367
33	Frederick	6,711,276	5,168,807	11,880,083	5,728,035	1,754,088	7,482,123
34	Giles	1,973,839	1,501,936	3,475,775	1,204,623	390,735	1,595,358
35	Gloucester	2,515,586	5,089,983	7,605,569	1,924,336	723,846	2,648,182
36	Goochland	2,773,956	5,231,626	8,005,582	2,626,997	882,985	3,509,982
37	Grayson	1,450,756	1,090,911	2,541,667	1,036,652	279,337	1,315,989
38	Greene	1,175,083	1,964,685	3,139,768	955,333	371,965	1,327,298
39	Greensville	1,322,139	3,946,766	5,268,905	820,967	438,350	1,259,317
40	Halifax	7,444,875	14,759,675	22,204,550	5,202,597	2,636,968	7,839,565
41	Hanover	5,191,947	8,463,651	13,655,598	3,204,975	1,408,020	4,612,995
42	Henrico	27,494,537	29,527,908	57,022,445	10,108,513	1,425,038	11,533,551
43	Henry	2,260,965	3,335,553	5,596,518	1,796,238	845,159	2,641,397
44	Highland	1,590,967	1,010,183	2,601,150	1,308,003	314,790	1,622,793
45	Isle of Wight	1,788,975	3,437,216	5,226,191	1,380,501	821,558	2,202,059
46	James City	1,850,822	2,042,825	3,893,647	1,097,809	543,817	1,641,626
47	King George	1,870,093	3,709,367	5,579,460	1,545,465	478,874	2,024,339
48	King and Queen	2,439,834	5,113,472	7,553,307	1,752,784	912,999	2,665,783
49	King William	2,642,081	3,581,000	6,223,081	1,613,712	423,670	2,037,382
50	Lancaster	1,117,950	2,422,280	3,540,230	977,843	313,610	1,291,453
51	Lee	3,322,134	1,152,575	4,474,709	1,690,706	699,153	2,389,859
52	Loudoun	12,545,236	8,626,701	21,171,937	11,647,933	3,590,444	15,238,377
53	Louisa	4,573,166	9,873,828	14,746,994	3,522,707	1,618,875	5,141,582
54	Lunenburg	2,424,820	7,890,000	10,314,820	1,595,692	926,401	2,522,093
55	Madison	2,998,827	4,532,680	7,531,507	346,035	1,156,079	1,502,114

EXHIBIT "WEST VA. 1."—Continued.

	Counties.	Census Valuation Real.	Census Valuation Personal.	Census Valuation Total.	Assessed Valuation. Real.	Assessed Valuation. Personal.	Assessed Valuation. Total.
56	Mathews	1,757,390	3,056,300	4,813,690	762,967	327,884	1,090,851
57	Mecklenburg	4,586,376	12,090,434	16,676,810	3,557,893	1,553,038	5,110,931
58	Middlesex	1,139,736	1,785,685	2,925,421	867,120	324,513	1,191,633
59	Montgomery	4,194,920	3,401,695	7,596,615	2,719,418	753,910	3,473,328
60	Nansemond	2,599,260	4,755,286	7,354,546	1,736,079	1,005,005	2,741,084
61	Nelson	4,891,200	7,302,350	12,193,550	2,703,798	569,377	3,273,175
62	New Kent	1,272,193	2,208,500	3,480,693	926,259	320,945	1,247,204
63	Norfolk	12,101,493	16,826,963	28,928,456	2,385,437	654,166	3,039,603
64	Northampton	2,684,215	3,627,370	6,311,585	1,399,412	680,755	2,080,167
65	Northumberland	2,113,596	3,015,921	5,129,517	1,217,535	426,450	1,643,985
66	Nottoway	2,196,624	6,290,373	8,486,997	2,130,397	354,721	2,985,118
67	Orange	4,512,173	6,624,073	11,136,246	2,766,285	779,770	3,546,055
68	Page	2,678,627	1,799,098	4,477,725	2,133,476	867,587	3,001,063
69	Patrick	1,340,378	2,434,757	3,775,135	1,205,807	527,418	1,733,225
70	Pittsylvania	8,012,555	14,393,348	22,405,903	4,732,416	2,104,281	6,836,697
71	Powhatan	3,175,391	5,631,415	8,806,806	1,953,165	789,892	2,743,057
72	Prince Edward	3,271,213	7,070,474	10,341,687	2,285,055	1,035,329	3,320,384
72	Prince George	2,587,427	4,669,906	7,257,333	1,893,012	787,372	2,680,384
74	Prince William	2,483,400	2,822,626	5,306,026	2,623,791	615,710	3,239,501
75	Princess Ann	1,896,283	2,644,733	4,541,016	1,517,555	562,412	2,079,967
76	Pulaski	2,394,823	2,061,003	4,455,826	1,788,247	765,562	2,553,809
77	Rappahannock	3,074,234	3,720,086	6,794,320	2,702,427	566,869	3,269,296
78	Richmond	1,291,762	1,904,200	3,195,962	1,051,725	361,865	1,413,590
79	Roanoke	3,667,544	3,107,012	6,774,556	2,993,909	879,608	3,873,517
80	Rockbridge	8,290,943	6,170,188	14,461,131	5,269,845	1,991,103	7,260,948
81	Rockingham	10,359,061	6,726,645	17,085,706	8,376,379	2,855,817	11,232,196
82	Russell	3,074,424	1,964,275	5,038,699	1,534,917	628,823	2,163,740
83	Scott	2,112,226	1,284,937	3,397,163	1,261,070	668,486	1,929,556
84	Shenandoah	5,174,207	2,983,918	8,158,125	4,505,626	1,408,912	5,914,538
85	Smyth	2,604,565	1,736,291	4,340,856	2,350,760	502,340	2,853,100
86	Southampton	1,993,011	4,300,346	6,293,357	1,536,733	1,347,193	2,883,926
87	Spotsylvania	4,511,301	9,221,483	13,732,784	3,686,404	1,764,799	5,451,208
88	Stafford	1,950,860	4,024,249	5,975,109	1,702,946	478,025	2,180,971
89	Surry	1,211,927	3,125,621	4,337,548	872,609	348,872	1,221,481
90	Sussex	1,724,989	6,617,752	8,342,741	1,042,099	801,725	1,843,824
91	Tazewell	3,105,251	2,101,677	5,206,928	2,040,822	566,828	2,607,650
92	Warwick	359,451	619,482	978,933	453,539	80,085	533,624
93	Warren	2,347,585	2,316,126	4,663,711	2,084,297	548,143	2,632,440
94	Washington	5,327,245	4,409,650	9,736,895	4,395,420	1,290,488	5,685,908
95	Westmoreland	1,837,762	2,583,458	4,421,220	1,363,055	347,612	1,710,667
96	Wise	522,425	346,735	869,160	393,636	148,505	542,141
97	Wythe	4,677,230	2,877,144	7,554,374	3,354,501	1,143,261	4,497,762
98	York	756,320	1,216,200	1,972,520	897,569	215,671	1,113,240
		$384,453,876	$532,633,947	$917,087,823	$294,168,822	$101,736,704	$395,905,526

EXHIBIT "WEST VA. 1."—Continued.

WEST VIRGINIA.

	Counties.	Census Valuation. Real.	Census Valuation. Personal.	Census Valuation. Total.	Assessed Valuation. Real.	Assessed Valuation. Personal.	Assessed Valuation. Total.
1	Barbour	$ 2,372,090	$ 775,896	$ 3,147,986	$ 1,428,352	$ 516,950	$ 1,945,302
2	Berkeley	5,107,801	2,343,268	7,451,069	5,221,496	797,998	6,029,494
3	Boone	507,032	376,589	883,621	501,364	187,680	689,044
4	Braxton	990,383	418,230	1,408,613	931,716	289,434	1,221,150
5	Brooke	3,040,949	1,480,677	4,521,626	1,015,751	407,487	1,423,238
6	Cabell	2,225,160	1,137,091	3,362,251	1,981,994	605,462	2,587,456
7	Calhoun	392,097	116,665	508,762	319,861	55,955	375,816
8	Clay	183,854	88,338	272,192	258,802	52,440	311,242
9	Doddridge	1,039,599	328,092	1,367,691	758,970	165,220	924,190
10	Fayette	1,364,206	585,205	1,947,411	909,019	219,158	1,128,177
11	Gilmer	783,082	338,013	1,121,095	777,532	161,522	939,054
12	Greenbrier	6,724,245	3,609,556	10,333,801	3,511,292	1,809,005	5,320,297
13	Hampshire	4,317,428	2,586,420	6,903,848	3,958,442	1,082,218	5,040,660
14	Hancock	2,310,024	1,012,557	3,322,581	962,469	262,221	1,224,690
15	Hardy	3,563,232	2,289,434	5,852,666	2,946,309	942,419	3,888,728
16	Harrison	5,035,595	2,473,447	7,509,042	3,841,669	1,083,482	4,925,151
17	Jackson	1,597,727	446,024	2,043,751	1,605,007	294,986	1,899,993
18	Jefferson	7,519,196	4,717,786	12,236,982	6,786,097	1,910,687	8,696,784
19	Kanawha	3,264,375	2,750,530	6,014,905	3,803,359	720,969	4,524,328
20	Lewis	2,384,629	862,546	3,247,175	1,424,843	432,826	1,857,669
21	Logan	655,697	434,685	1,090,382	388,650	239,785	628,435
22	McDowell	102,876	41,565	144,441	159,686	31,138	190,824
23	Marion	3,360,079	1,360,093	4,710,172	2,721,173	717,028	3,438,201
24	Marshall	3,700,576	1,170,092	4,870,668	2,422,094	340,471	2,762,565
25	Mason	2,717,393	1,156,457	3,873,850	2,757,149	548,385	3,305,534
26	Mercer	1,487,427	831,916	2,319,343	679,256	279,050	958,306
27	Monongalia	3,535,232	1,360,800	4,896,032	3,038,051	1,067,084	4,105,135
28	Monroe	4,665,886	3,123,403	7,789,289	3,384,469	1,408,522	4,792,991
29	Morgan	730,967	371,688	1,102,655	741,555	186,232	927,787
30	Nicholas	1,552,470	1,011,240	2,533,710	850,699	264,084	1,114,783
31	Ohio	8,509,524	4,400,512	12,910,036	5,021,349	817,560	5,838,909
32	Pendleton	1,662,607	920,447	2,583,054	1,100,237	523,324	1,623,561
33	Pleasants	680,381	151,152	831,533	584,444	129,035	713,479
34	Pocahontas	1,880,904	1,027,004	2,907,908	1,184,314	436,121	1,620,435
35	Preston	2,612,010	1,460,721	4,072,731	1,671,766	679,170	2,350,936
36	Putnam	1,582,360	1,104,255	2,686,615	1,076,081	299,725	1,175,806
37	Raleigh	552,940	264,256	817,196	521,252	125,355	646,607
38	Randolph	1,747,089	642,608	2,389,697	1,364,590	306,617	1,671,207
39	Ritchie	1,465,987	632,404	2,098,391	1,322,142	261,832	1,583,974
40	Roane	697,115	149,316	846,431	606,217	158,731	724,948
41	Taylor	1,837,933	858,845	2,696,778	1,256,488	361,874	1,618,362
42	Tucker	287,555	94,374	381,929	371,080	77,679	448,759
43	Tyler	1,770,848	762,994	2,533,842	914,502	308,533	1,223,038
44	Upshur	1,834,475	768,691	2,603,136	1,333,164	401,914	1,735,078
45	Wayne	1,014,831	511,471	1,526,302	1,027,443	363,127	1,390,570
46	Webster	204,316	54,690	259,006	83,401	21,554	104,955
47	Wetzel	1,111,952	463,534	1,575,486	866,500	190,611	1,057,111
48	Wirt	550,673	228,449	779,122	515,227	110,893	626,120
49	Wood	2,881,249	1,287,397	4,168,646	2,578,846	683,030	3,261,876
50	Wyoming	338,395	272,981	611,376	292,121	121,083	413,204
		$110,444,451	$55,652,404	$166,096,855	$ 83,778,290	$ 23,457,666	$107,235,956

EXHIBIT "WEST V

WEST VIR

EXHIBIT "WEST VIRGINIA 2."

Table showing slave population, by counties, in Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Accomack	1,601	2,906	4,507	2,645
2.	Albemarle	5,234	8,682	13,916	7,469
3.	Alexandria	383	1,003	1,386	709
4.	Allegheny	271	729	990	589
5.	Amelia	2,903	4,752	7,655	4,269
6.	Amherst	3,316	3,962	6,278	3,211
7.	Appomattox	2,505	2,095	4,600	2,444
8.	Augusta	2,086	3,530	5,616	2,967
9.	Bath	373	573	946	475
10.	Bedford	3,728	6,448	10,176	5,303
11.	Botetourt	1,031	1,738	2,769	1,728
12	Brunswick	3,442	5,704	9,146	5,209
13.	Buchanan	15	15	30	144
14.	Buckingham	3,270	5,541	8,811	4,827
15.	Campbell	3,953	7,627	11,580	6,754
16.	Caroline	3,975	6,697	10,672	6,029
17.	Carroll	98	164	262	127
18.	Charles City	976	1,971	2,947	1,783
19.	Charlotte	3,402	5,836	9,238	5,489
20.	Chesterfield	3,852	5,502	8,354	4,733
21.	Clarke	1,255	2,120	3,375	1,834
22.	Craig	199	221	420	215
23.	Culpeper	2,559	4,116	6,675	3,245
24.	Cumberland	2,358	4,347	6,705	3,899
25.	Dinwiddie	3,904	8,870	12,774	3,918
26.	Elizabeth City	877	1,540	2,417	1,273
27.	Essex	2,441	4,255	6,696	3,921
28.	Fairfax	1,154	1,962	3,116	1,607
29.	Franklin	4,022	6,433	10,455	5,025
30.	Floyd	199	276	475	224
31.	Fluvanna	1,885	3,109	4,994	981
32.	Franklin	2,607	3,744	6,351	2,877
33.	Frederick	831	1,428	2,259	1,174
34.	Giles	271	507	778	444
35.	Gloucester	2,166	3,570	5,736	3,038
36.	Goochland	2,251	3,888	6,139	8,696
37.	Grayson	215	332	547	280
38.	Greene	791	1,193	1,984	3,507
39.	Greenville	1,598	2,569	4,167	2,213
40.	Halifax	5,711	9,186	14,897	2,678
41.	Hanover	3,650	5,833	9,483	4,984
42.	Henrico	6,794	13,247	20,041	4,462
43.	Henry	2,119	2,899	5,018	3,065
44.	Highland	153	299	402	208
45.	Isle of Wight	1,227	2,343	2,570	2,077
46.	James City	819	1,767	2,586	1,546
47.	King George	1,320	2,350	3,673	2,066
48.	King and Queen	2,362	3,777	6,139	2,916
49.	King William	1,874	3,651	5,525	3,288
50.	Lancester	1,100	1,769	2,869	1,605
51.	Lee	348	476	824	486
52.	Loudoun	2,029	3,472	5,501	5,429

Ex. "W. Va. 2."
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53.	Louisa	3,921	6,273	10,194	4,163
54.	Lunenburg	2,785	4,520	7,305	2,408
55.	Madison	1,654	2,743	4,397	7,392
56.	Matthews	1,117	2,991	3.008	1.507
57.	Mecklenburg	4,507	7,913	12,420	3,215
58.	Middlesex	915	1,460	2,375	1.526
59.	Montgomery	862	1,357	2,219	1,141
60.	Nansemond	1,817	3,664	5,481	2,571
61.	Nelson	2,200	4,038	6,238	3,856
62.	New Kent	1,534	1,840	3,374	1,780
63.	Norfolk	2,608	6,396	9,004	1,997
64.	Northampton	1,341	2,531	3,872	2,213
65.	Northumberland	1,334	2,105	3,439	1,733
66.	Nottoway	2,304	4,164	6,468	3,309
67.	Orange	2,390	3,721	6,111	1,026
68.	Page	346	504	850	495
69.	Patrick	1,000	1,070	2,070	8,180
70.	Pittsylvania	5,455	8,885	14,340	8,180
71.	Powhatan	1,995	3,408	5,403	3,177
72.	Prince Edward	2,546	4,795	7,341	4,352
73.	Prince George	1,729	3,268	4,997	2,894
74.	Prince William	926	1,430	2,356	1,269
75.	Princess Anne	1,139	2,047	3,186	1,818
76.	Pulaski	623	966	1,589	918
77.	Rappahannock	1,382	2,138	3,520	1,721
78.	Richmond	904	1,562	2,466	1,373
79.	Roanoke	955	1,688	2,643	1,603
80.	Rockbridge	1,543	2,442	3,985	2,328
81.	Rockingham	912	1,475	2,387	1,268
82.	Russell	466	633	1,099	516
83.	Scott	150	340	490	324
84.	Shenandoah	237	517	753	484
85.	Smyth	326	711	1,037	508
86.	Southampton	1,815	3,593	5,408	3,174
87.	Spottsylvania	2,920	4,866	7,786	4,106
88.	Stafford	1,267	2,047	3,314	1,575
89.	Surry	837	1,678	2,515	1,552
90.	Sussex	3,327	4,057	6,384	3,604
91.	Tazewell	523	679	1,202	676
92.	Warwick	331	688	1,019	602
93.	Warren	588	987	1,575	804
94.	Washington	950	1,597	2,547	1,319
95.	Westmoreland	1,394	2,307	3,704	2,088
96.	Wise	29	37	66	34
97.	Wythe	824	1,338	2,162	1,116
98.	York	697	1,228	1,935	999
	Total	173,851	298,643	472,494	262,617

EXHIBIT "WEST VIRGINIA 3."

Table showing slave population, by counties, in West Virginia in 1860, over and under the age of 12 years, as shown by Census of 1860, and number of slaves assessed in West Virginia in 1860.

	County.	Under 12.	Over 12.	Total.	Slaves assessed as over 12.
1.	Barbour	22	73	95	68
2.	Berkeley	586	1,064	1,650	911
3.	Boone	57	101	158	86
4.	Braxton	46	58	104	54
5.	Brooke	5	13	18	5
6.	Cabell	110	195	305	216
7.	Calhoun	2	7	9	6
8.	Clay	10	11	21	12
9.	Doddridge	13	21	34	17
10.	Fayette	105	166	271	127
11.	Gilmer	15	37	52	21
12.	Greenbrier	532	993	1,525	996
13.	Hampshire (See * below)	434	779	1,213	729
14.	Jackson	12	43	55	42
15.	Jefferson	1,460	2,500	3,960	2,256
16.	Kanawha	769	1,415	2,184	1,238
17.	Lewis	86	144	230	103
18.	Logan	61	87	148	192
19.	Marion	14	49	63	46
20.	Marshall	3	26	29	20
21.	Mason	143	233	376	200
22.	Mercer	151	211	362	70
23.	Monongalia	26	75	101	69
24.	Monroe	423	691	1,114	611
25.	Morgan	38	56	94	60
26.	Nicholas	56	98	154	85
27.	Ohio	25	75	100	23
28.	Pendleton	95	149	244	138
29.	Pleasants	4	11	15	7
30.	Pocahontas	94	158	252	148
31.	Preston	23	44	67	41
32.	Putnam	232	348	580	353
33.	Raleigh	19	38	57	28
34.	Randolph	52	131	183	107
35.	Ritchie	14	24	38	12
36.	Roane	31	41	72	35
37.	Taylor	33	79	112	68
38.	Tucker	4	16	20	17
39.	Tyler	5	13	18	7
40.	Upshur	68	144	212	97
41.	Wayne	45	98	143	74
42.	Wetzel	1	9	10	8
43.	Wirt	5	18	23	17
44.	Wood	68	108	176	82
45.	Wyoming	22	42	64	36
46.	Webster *	0	3	3	0
47.	Hancock	0	2	2	1
48.	Hardy	381	692	1,073	445
49.	Harrison	220	362	582	292
50.	(McDowell not given.)				
	Total	6,620	11,751	18,371	10,476

EXHIBIT "3"

Statement showing Real Estate and Personal Property in Counties and Municipalities and Personal Property in "Territories" as Returned, Values Approved and Assessed for

VIRGIN

	Real	Personal	Total
Counties Values			
Counties			
Municipalities			
Total			

Other Evidence and Proceedings Relating to Paragraph VII of the Decree.

[*Vol. 1. Nov. 16, 1909. Direct Examination of A. G Potter.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.
under Paragraph 7 of the Decree.

79

ARTHUR G. POTTER,
testified as follows:

Mr. Anderson: The statements we have filed in response to the seventh paragraph of the decree are necessarily incomplete, and to some extent tentative. There are certain facts we had hoped to be able to ascertain upon examination of records in West Virginia, where I went personally, accompanied by Mr. Potter and Mr. Robinson and Mr. Lightfoot, and they made careful investigations there. The officials of West Virginia turned over to us all the records which were accessible or which could be found in the State library and in the public offices of the government of West Virginia at Charleston; but the first General Assembly of the Government of West Virginia at Wheeling authorized Governor Pierpont to turn these records over to the new Governor of West Virginia, upon the understanding that whenever called for by Virginia, they were to be returned to Virginia. They have not been returned, and until they are returned we cannot make complete answers to this direction of the decree. I want to say, however, that it is not so important to have these records as it was at one time believed to be. We can file this statement with the understanding that it is tentative and incomplete.

The Special Master: Then as I understand, you offer Plaintiff's Exhibit G-1 with the understanding that you may later desire to supplement it with more complete proof of the Plaintiff's case under that item?

80

Mr. Spooner: If it cannot be supplemented, it is not good, is it?

Mr. Anderson: We want to make additions to it, that is all. We will lose if we are not able to do it.

The Special Master: That is, in presenting this, you do not wish to be understood as conceding that this is all that you are entitled to

recover on that branch of the case, but you reserve the right to put in additional evidence if you are able to obtain it?

Mr. Anderson: If we are able to obtain it.

The Special Master: I see no objection to that.

[See in testimony under Paragraph 2, at page —— of this volume, reference to matter following through indented page 81.]

By Mr. Spooner:

Q. Did you ascertain, during the progress of your investigation, the number of square miles in the Commonwealth of Virginia in 1861?

A. We took that from the report of the Auditor of Public Accounts.

Q. What did you ascertain to be the area in square miles of Virginia in 1861?

A. It is shown in that Schedule No. 2—number of square miles in Virginia, 48,951.

Q. Oh, no; not in 1861. I mean the area of Virginia before she was divided.

A. Before she was divided? Total, 94,488 square miles.

Mr. Anderson: I think that is excessive, but that was the estimate. I suppose it was reached, Senator, by reason of the fact that —

By Mr. Spooner:

Q. Where did you get that? 81

A. From the auditor's report of 1861.

By the Special Master:

Q. What is that; the report giving the list of counties in detail and the area of each county?

A. Yes, sir.

Q. You took the county items and made the aggregate?

A. As per the certificate of the County Surveyors.

By Mr. Harrison:

Q. That was in the Auditor's report of the State of Virginia for 1861?

A. I believe the book is marked, "Reports of 1861."

Q. And that information in detail is given by the Auditor in that report?

A. Yes, sir.

Q. By counties?

A. Yes, sir.

By Mr. Spooner:

Q. Vacant lands that were assessed?

A. I paid no attention to vacant lands that were assessed.

Mr. Anderson: If he had, Senator, it would have been a great deal larger, in all probability, because the same tract of land was sometimes assessed three or four times.

The Special Master: Anything further, Mr. Anderson?

By Mr. Anderson:

Q. State what you know about this statement, "Plaintiff's Exhibit G-1." From what sources was that information compiled.

The Special Master: That is, what were the original sources of your information? 82

Mr. Anderson: Yes, sir.

A. With respect to schedules 1, 2 and 3 under this article, the information was taken from the Auditor's reports of West Virginia, consulted in the library at Charleston. The schedules here show the source of the information.

Q. What are the facts as to the correctness of that statement, as far as it goes, and so far as it comes within your knowledge?

A. The various figures that I have taken off are merely copies from those books. I do not know anything about the accuracy of them, because there was no opportunity for verifying them. I merely know the copies are right, to the best of my knowledge and belief.

Q. They are copies of the public reports of the Auditor of West Virginia?

A. Yes, sir.

The Special Master: File that, please, and let it be marked by the stenographer.

(The paper referred to, entitled "Commonwealth of Virginia vs. State of West Virginia. Summary of Property, Stocks and Credits received by West Virginia under Article VII," is filed herewith, marked "Plaintiff's Exhibit G-1.")

Mr. Harrison: Do you gentlemen want to examine Mr. Potter about this exhibit?

By the Special Master:

Q. Can you state where you got the information in Schedule 5—stock in the Merchants & Mechanics Bank of Wheeling? 83

A. The last page shows that under Section 20 of the Act of March 7, 1834, the Commonwealth of Virginia received from the Merchants

& Mechanics Bank of Wheeling a stock bonus amounting to $40,000.

Q. Then you got that from an act of the Legislature?

A. Yes, sir.

Mr. Spooner: Have you detailed statements to support this exhibit G 1?

Mr. Robinson: We have no details to support that?

Mr. Spooner: Why not?

A. This contains all the detail we could find.

Mr. Robinson: That is all the detail we have.

The Special Master: As I understand Mr. Potter, he found the items upon which he predicates items 1, 2 and 3 in the public reports of West Virginia, and he took those items and assumed them to be correct.

By Mr. Spooner:

Q. Will you indicate the reports where you got that information?

A. The introductory paragraph of this first schedule, Schedule 1, says:

"In a letter in 'Auditor's reports, House Journal 1862-3,' dated Wheeling, July 14th, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we take to be the books of the Restored State.

The second one also refers to that. The third one refers to a number of annual reports, giving the table and page number 84 in the annual reports of the Auditor of West Virginia as far up as 1872. It has to do with arrears of taxes.

[*Vol. 5. May 6, 1909. Cross Examination of A. G. Potter.*]

[By Mr. McClintic]: The next schedule is 7—

The Special Master: Plaintiff's Exhibit G-1.

Q. (Continuing): G-1; No. 7 of the decree. The charge in that schedule, Mr. Potter, $225,279.83 received by West Virginia. What evidence did you have that West Virginia received any such sum?

The Special Master: That is on page one.

Mr. McClintic: Yes.

A .The auditor's report of the house journal 1862-3, dated Wheeling, July 14, 1863.

By Mr. McClintic:

Q. What auditor?

A. I have not the name of the auditor here. I think the report was by Treasurer Hildreth.

Q. Of what state was Mr. Hildreth the treasurer? 384

A. I don't know whether it was the restored state or West Virginia.

The Special Master: What did he say—that he was the treasurer of the Pierpont Government?

Mr. McClintic: I think so.

The Special Master: This schedule does not contain the date. What was that item?

The Witness: On page 2 that is given.

The Special Master: You have your schedules all paged correctly now, have you not?

Mr. McClintic: Yes, sir.

The Special Master: So we can refer now to the new pages?

By Mr. McClintic:

Q. Was not that sum taken by you from a letter written by S. P. Hildreth to Governor F. H. Pierpont, July 14, 1863?

A. Yes, a copy of the letter as the schedule states. In the letter above referred to is the following paragraph, and then it goes on to state the amount of money received and disbursed.

By Mr. Harrison:

Q. Read the paragraph.

A. "In a letter in auditor's report House Journal 1862, line 3, dated Wheeling, July 14, 1863, from S. P. Hildreth, Treasurer, to Governor Pierpont, he reports having made an examination of what we took to be the books of the restored State."

In that letter above referred to is the following paragraph: 385

"In this same journal we find the amount in the Treasury on the 1st of October, 1862, to have been $120,159.01; received to June 19, 1863, $252,529.71; making a total of cash to be accounted for $372,688.72. Out of which there was paid $147,408.89. Leaving a balance in the Treasury June 20, 1863, of $225,279.83."

By Mr. McClintic:

Q. In what part of that letter did you find those words, "Making the total of cash to be accounted for?"

A. I introduced that.

Q. Were you not starting out to read what the letter purported to say?

A. The figures show that there is that charge to be accounted for.

Q. Did you not start out, in answer to a question a moment ago, to read the paragraph?

A. Yes, sir.

Q. And did you not interpolate some language of your own in reading it?

A. Yes, sir; but you had a copy of the report before you.

Q. You were doing that in answer to a question of Mr. Harrison, were you not?

A. Yes, sir, I believe so.

Q. What evidence have you that West Virginia got that $225,279.83?

A. None whatever.

The Special Master: What does this indicate; that it was in the Treasury of the Pierpont Government or in the Treasury of some other government?

The Witness: That the Government of West Virginia took 386
it over from the restored government.

Mr. McClintic: How did it indicate that?

Mr. Anderson: That is rather a matter of argument.

Mr. McClintic: No, it is not; it is a matter of fact.

The Special Master: How would it do to inquire whether there is anything in the letter that is indicative of the place where the money went except the extract he quotes. What is the fact about that? Excuse me for making the suggestion?

The Witness: There is nothing—

By the Special Master:

Q. Have you given all of the letter that tends to indicate where the money was and where the money went?

A. Yes; that was my intention.

Q. And so, wherever it was, it was simply a matter of construction from this?

Mr. Anderson: Will you read your note at the bottom of the page, page 2?

The Witness (apparently reading): Governor Boreman's message of July 23, 1863, says the report of Hildreth shows a balance in the Treasury of June 19, 1863, which is to be transferred to this State under the provisions of an act of the General Assembly, passed February 4, 1863. See page 6, Volume 1; Virginia vs. West Virginia reports.

The Special Master: Of what State was Boreman Governor?

Mr. Harrison: He was the first Governor of West Virginia.

The Special Master: So far as the letter is concerned, the 387
extract shows everything that the letter discloses?

Mr. Harrison: Yes.

The Special Master: And then you supplement it by this extract from the Governor's message?

By Mr. McClintic:

Q. Then you have no other evidence than the message by Boreman and this letter—which message of Boreman says there was so much in the Treasury on the 19th of June, 1863, meaning the Treasury of Virginia, which was to be transferred?

A. That is all.

Q. You have no evidence that it was transferred in any way?

A. None whatever.

Q. In schedule 2, mentioned on page 1, and also page 3, you charge West Virginia with $9,937.86. On what basis do you make that charge?

A. From information read out of the same letter just referred to, in a published report found in Charleston.

Q. Have you any evidence that that money was ever transferred to West Virginia?

A. None whatever.

Q. Have you any evidence that that money was ever in the Treasury at any time?

A. No, sir.

Q. You make a charge on schedule 3 of $1,343.80. The schedule is on page 4. Where did you get that information?

A. The auditor's reports of 1861-70; 1871-76. 388

Q. The auditor's reports of what state?

A. The state of West Virginia.

Q. You do not mean the auditor's report of the State of West Virginia of 1861?

A. Yes; the book was marked "Auditor's report 1861-70" on the back of the book.

Q. You simply mean they were bound together?

A. That is all. The first year was 1862, the year ending 1862, as shown in the schedule, table C, page No. 7.

Q. Why do you charge West Virginia with anything received in 1862?

A. We have not done so under this schedule.

Q. I understand you to say so.

A. I said the first report mentioned in that book was marked 1861-70, the report of September 30, 1862.

Q. Whose report?

A. The Auditor's.

Q. Of what state?

The Special Master: What auditor?

Mr. Anderson: The Pierpont Government, I suppose.

A. I have not that name.

Mr. Carlisle: What state was he auditor of?

The Special Master: Tell us whether he represented Virginia or West Virginia?

The Witness: The restored government. I am not so familiar with the personnel of that Governmental force up there as some of you gentlemen are.

Mr. Harrison: Where did you find the book you referred to? 389

A. In the State Library in Charleston, West Virginia.

By Mr. McClintic:

Q. On the schedule marked page 1, stock in Merchants and Mechanics Bank, Wheeling, $40,000. Please explain what that charge was for.

A. I would like to explain that that item was entered under a misapprehension. I had a memorandum when I came down here at the first hearing to investigaate that, and it was not my understanding that that entire schedule was to be introduced as evidence; but it was introduced, and I overlooked the matter of looking up that particular item. I have since found that those shares were sold by the Sinking Fund in 1857, and we would therefore like to withdraw that item from the schedule.

Q. Did the State pay any money for that stock?

A. I believe it was a stock bonus.

Q. You mean it was given to the State under an act of the legislature?

A. Providing for something in the way of a franchise tax, I presume.

The Special Master: Is it conceded on the part of counsel for the plaintiff that that item shall go out?

Mr. Anderson: Yes, sir; that item goes out.

Mr. Harrison: I understand, Mr. Potter, that this schedule 7 was put in—

The Special Master: Plaintiff's Exhibit G-1—

Mr. Harrison: Was put in before you had fully completed your investigation of the bank stock item referred to?

The Witness: Yes, sir. 390

By Mr. McClintic:

Q. Did you look at the item of the Northwestern bank in reference to the item which you marked "not on annual report?"

A. I have not had time to investigate that?

The Special Master: Do you wish him to investigate that?

Mr. McClintic: Yes; I asked him to do so.

The Special Master: We might suspend, then, with this witness, and go on with some other witness.

[*Vol. 6. May 7, 1909. Direct Examination of T. B. Dixcy.*]

Mr. McClintic: We now offer Defendant's Exhibit G-1. 568

The Special Master: That is offered and received.

(The exhibit referred to is marked Defendant's Exhibit G-1.)

By Mr. McClintic:

Q. Please state if that exhibit was made under your direction and signed by you?

A. That exhibit was made under my direction and is correct, in regard to such items as are included thereunder, as qualified by the caption; and it is signed by me.

Q. On page 2, the first item, total turnpikes, roads, etc., $700,103.49. Please explain what you mean by that?

A. Those were the total amounts in regard to that particular item which the State had invested in the stock of turnpikes and roads lying wholly in the territory now constituting the State of West Virginia. It was the original and full amount of the investment of the State.

Q. That is the purchase of stock in various companies by the State of Virginia?

A. Yes; incorporated companies.

By the Special Master:

Q. When you say total cost, do you mean that is the total capital of the stock?

A. No, sir; not exactly.

Q. You mean that is the aggregate expenditure of the State in the stock of that company?

A. Yes, sir. 569

Mr. McClintic: That class of company, there were a hundred or more of them.

The Special Master: Oh, yes.

The Witness: The State subscription was first two-fifths and then

three-fifths. That was the usual subscription to the capital stock of these various companies.

By Mr. McClintic:

Q. Take the next item, navigation companies, $210,500. Please explain that.

A. The same applies to that. That was the amount that the State paid. I may say that there were sometimes differences between the amount paid and the amount subscribed. This is the amount actually paid in by the State for the capital stock which it purchased, in these incorporated navigation companies, the navigation companies being devoted to the improvement of rivers.

The Special Master: Do you say that as a rule the investment of the State was two-fifths?

The Witness. Yes, sir. In the early part of the period in some instances it was one-fifth, usually two-fifths and later three-fifths.

By Mr. McClintic:

Q. On Plaintiff's Exhibit C-1 there is charged an item, *Monongalia*, $8,180.

Mr. Anderson: What page is that?

Mr. McClintic: Page 11. Please state if you admitted to your account an item, 1822, $5,520.

The Special Master: That is prior to the beginning of his 570
account, is it not?

Mr. McClintic: Yes.

By the Special Master:

Q. Then I may assume that every item that appears on the schedules presented by the plaintiff that antedates March 19, 1823, is not included in the statements made by Mr. Dixey?

A. Yes, sir.

Q. That statement covers the whole series of exhibits and schedules?

A. Yes, sir.

By Mr. McClintic:

Q. Look on page 2 of Defendant's Exhibit G-1 and explain the item Bridge Companies, $78,412.50.

A. On page 2?

Q. Yes.

A. Those were incorporated bridge companies, and that amount is the amount that the State paid for its stock purchased by it in those incorporated bridge companies.

Mr. Spooner: When you say purchased, do you mean subscribed for?

The Witness: Paid; that is, the actual payment by the State. It does not agree in all cases with the subscription.

By the Special Master:

Q. Does the amount paid in any instance exceed the subscription?

A. I recall no such instance.

Q. But in some cases the amount subscribed exceeded the amount paid in?

A. Yes, sir. The payments were made proportionately. 571
When the public paid in so much, the State paid in so much; and sometimes the whole amount was not paid in.

Q. The inference is that when the State did not pay the full amount of the subscription, the public did not pay the full amount?

A. That is the inference.

Q. That is, it was a pro rata payment all around?

A. Usually, yes.

By Mr. McClintic:

Q. The next item is in regard to interstate roads between and in the the territory now constituting the Commonwealth of Virginia and the State of West Virginia; $114,652.84. Please explain that?

A. That amount is the amount paid by the State for its subscription to the capital stock of the Interstate turnpike and roads.

By the Special Master:

Q. That is, the turnpikes leading from one state to another?

A. Yes, built by an incorporated company.

Q. Have you any computation that would apportion that payment to the respective distances that the roads would extend in either State?

A. We have the mileage in the two states figured out in every case. That would not always be necessarily a fair method of apportionment, however. Portions of the road might be more difficult to build than other portions.

Q. That, of course, would be arbitrary.

A. I may say, sir, that those mileages are shown on the details of this exhibit in this report.

Q. Are those facts worked out? 572

A. They have not been applied to the amount spent.

Mr. McClintic: We expect to prove that fact later. The next is $25,000—

The Special Master: I was going to say that all these facts would be admissible. I cannot tell in advance what theory I am going to

adopt. I have to have all the facts before me and then reach a conclusion.

By Mr. McClintic:

Q. That item on page 2; please state, if you know, the facts in relation to that.

A. That is an amount paid to the town of Bath.

The Special Master: Do you understand that it represents an indebtedness to the town of Bath by the State?

The Witness: The inception was it was a loan to the town of Bath.

The Special Master: And so far as you have discovered, it indicates the indebtedness of the town of Bath to the Commonwealth?

The Witness: Yes, sir.

The Special Master: And what has been done with it the books do not disclose.

The Witness: They do not, no, sir.

By Mr. McClintic:

Q. The next item, Northwestern Bank of Virginia, at Wheeling, $341,800. Please turn to that exhibit. Page 9, on the same exhibit; explain that amount and what you mean by that amount, $341,800.

A. The amount is the par value of the stock held by the Commonwealth and Literary Fund of the State of Virginia in 573
the Northwestern Bank of Virginia, which was located at Wheeling. The Commonwealth Fund originally held 4,000 shares, on which they paid $375,091.33 in cash, and the balance of $400,000, amounting to $24,908.67 in dividends and interest accumulated. The amount held by the Literary Fund, 500 shares, was purchased in 1832, so that the total amount was Northwestern Bank stock held January 1st, 1861, was 34,018 shares, with a par value of $341,800, excluding 326 shares held by the Board of Public Works, and which were received as bonus stock without cost to the State.

Q. That bonus stock, you mean, is in the nature of a franchise tax?

A. Yes.

Q. And those 326 shares were based on that?

A. Yes.

Q. I notice you say that in 1857 the Commonwealth sold 1082 shares. That is shown by the books of Virginia?

A. Yes, sir.

Q. So it was shown by the books that the number of shares held by the State of Virginia in the Northwestern Bank was 3418, as of January 1st, 1861, I believe?

A. Held by the Commonwealth and Literary Fund, yes, sir.

Q. Well, that is the same as the state.

A. Yes, sir.

Q. How many branches, if you know, from the Acts, did the Northwestern bank have, and where were they situated?

A. I prefer not to testify on that from memory. The record 574 shows.

Q. Please explain the item Fairmont Bank, Marion County, $50,000, which is also on page 9 of the exhibit?

A. That was the amount of subscription of the State for 1,000 shares purchased in 1860; 1,000 shares of the capital stock of the Fairmont bank in Marion County.

Q. And the par value of those shares was $50?

A. Yes, sir.

Q. And the par value of the shares of the Northwestern Bank was $100, was it?

A. Yes; $100.

Q. On page 2 we find James River and Kanawha Company, $9,542,004.30. Please explain why that was included in that form and what it is.

A. That is shown in detail on pages 10 and 11 of the Exhibit.

Q. On pages 10 and 11 of the complete details?

A. Yes. Do you wish me to go over it in full?

Q. No, unless somebody else wants it; I don't care for it. That sum, $9,542,004.30, represents what?

A. That sum represents the total cash outlay for the Commonwealth of the stock of the James River and Kanawha Company, which it owned.

Q. On the 1st day of January, 1861, what was the relation of the State of Virginia to this company, as to the amount of stock held?

A. It held 104,000 shares, of the par value of $10,400,000.

The Special Master: You get that from the aggregate of 575 72,000 and 32,000 on page 11?

The Witness: Yes, sir; shown in the recapitulation on page 11.

By Mr. McClintic:

Q. Was the James River and Kanawha Company indebted to the State of Virginia the 1st of January, 1861, in any sum that you remember or did you examine into the details of that?

A. I don't remember that sufficiently to testify from memory. I may ask you whether you mean in addition to the amount represented by capital stock?

Q. Yes.

A. I don't remember the amount sufficiently to tell that.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixcy.*]

Q. Now, dealing with your Exhibit G-1, which is responsive 661
to paragraph 7 of the decree, will you please look at that for a moment, Mr. Dixcy?

A. Yes, sir.

Q. On page 1 of that exhibit you say "Appended hereto is a 662
statement of such property as was received by West Virginia and which has not been included in any schedule heretofore prepared and rendered." Now, turning to the next page we find an itemized list of property, footing up $11,079,973.19. Is that the list referred to in the certificate on page 1?

A. That is not the list. That is the property. The footings are not referred to on page 1. It simply refers to the property received. That is the total cost, the money expended for those. Those are still to be valued.

By the Special Master:

Q. That is the summary of the cost of the property, is it?

A. Yes, sir; I have not assumed to put any value on those.

Q. That is, what you have on page 2 is a summary of the cost of the property referred to in the certificate on page 1. Is that right?

A. Yes, sir.

By Mr. Harrison:

Q. My question is, do you state that the property listed there was received by West Virginia?

A. I understand that it was constructively received; yes, sir. These are practically all stocks. Now, I don't understand that the stock certificates were delivered to West Virginia.

Q. Where did you get your understanding from?

A. From that section of the decree. 663

Q. I do not see how you could get it from that.

A. If you will make your meaning a little plainer—

The Special Master: The understanding he is asking you for, as I understand it, is where you get your understanding that all the stock was not delivered to West Virginia. He wants to know where you got that information.

By Mr. Harrison:

Q. Where did you get your understanding that that was constructively held by West Virginia?

A. Well, I have been so advised.

Q. By whom?

A. I know that an amount of the stock of these old Companies was never actually delivered to West Virginia.

Q. Did you get your information from the public records of Virginia?

A. The stock is in the Treasurer's office at this minute of a great many of these companies.

Q. That is not an answer to my question. You have said just now that you had an understanding that this list of stock was constructively delivered to West Virginia?

A. Yes, sir.

Q. I ask you where you got that understanding. If you will answer the question, I will be obliged to you?

A. I think I cannot say I have been actually so instructed by counsel, but I have received that impression from counsel in conversation, in talking this matter over. I certainly did not evolve it myself.

Q. Then when you speak of your understanding on that subject, you refer to the impressions you have received from 664 counsel?

A. I think from counsel; yes, sir. It is a very definite impression on my mind. I cannot locate it absolutely.

By the Special Master:

Q. To what extent did you find the original stock on file?

A. I have not made any attempt to go through it. There were hundreds and hundreds of certificates down there, and they don't know what they have got themselves.

Q. In whose name?

A. I don't even know that. I have only seen a very few certificates.

By Mr. Harrison:

Q. It is impossible for you to tell whether it is West Virginia's stock or Virginia's stock or any other stock?

A. Well, this list, of course, was prepared under instruction of counsel.

Q. The thing I was inquiring about now was the particular matter the stock certificates.

A. I don't actually know. No actual investigation has been made to see just what stock certificates are down there.

Q. You say investigation has been made?

A. Has not been made, on our part.

Q. You have an item of $9,542,004.30 of stocks of the James River and Kanawha Company?

A. Yes, sir.

Q. Which, according to your statement, is constructively held by West Virginia? 365

Mr. McClintic: No, sir; he never made any such statement.

A. No, sir.

Mr. Harrison: That is the explanation he had given?

A. It does not say so. There is the schedule.

By Mr. Harrison:

Q. Just wait one moment. Let us see what it says. You have just stated that was a list of property certified as having been received by West Virginia, and when I asked you how you knew it was received by West Virginia you said your understanding was it had been constructively received by her, and then what you meant by that was that you had derived that impression from counsel. Now, I ask you if I am to understand that that $9,000,000 of stock of the James River and Kanawha Company was constructively received?

A. I think I can make a more definite answer than I have made.

Q. Just answer my question. Then you can make just as definite a one as you choose. I say does that mean, according to your testimony, that $9,000,000 of the stock of the James River and Kanawha Company was constructively received by West Virginia?

A. Certainly not.

Q. Now, what do you mean by your caption. Let me read your caption to you and then you may answer my question. What do you mean by this caption: "Summary of the property received by the State of West Virginia; not embraced in any preceding schedule?" What do you mean by that. Is that true, or does it mean something else than it states?

A. No; that is copied from paragraph 7 of the decree.

By the Special Master:

Q. How did you come to include these items under that heading?

A. May I explain?

Q. Yes, certainly.

A. I understood paragraph 7, and I have been so advised, to cover the property that passed under the act of February 3, 1863, and I have understood that all the stock of the companies incorporated in this State, in which West Virginia had any interest, passed under that act; and this schedule is supposed to represent the property that was passed.

Q. Were you not instructed by counsel to include these items under that heading?

A. That is true.

Q. You were instructed by your counsel to include the items under that heading?

A. To include the items under this heading; yes, sir, but that is not the question Mr. Harrison asked. That is included.

The Special Master: Is there any question raised about that, about the accuracy of the statement?

Mr. McClintic: The heading is a trifle misleading, as it was put there, your Honor. I never paid any attention to it whatever. The instructions of counsel were that all items of stocks should go under what we call G-1, clause 7, and in the reference to the 667
James River and Kanawha Company, Mr. Dixey, instead of making a division, simply put the whole stock down here and put the facts down and left it to us to decide the question. We did not see this exhibit until last Monday, and we did not think it worth while to change it afterwards, as it was susceptible of explanation.

The Special Master: As it stands, it is obvious what inference might be drawn from it.

Mr. McClintic: West Virginia, of course, never received that stock of the James River and Kanawha Company, because there is only a small item of that in West Virginia. The balance is in Virginia, and that is misleading. As to the turnpikes and roads that extended across the line, West Virginia received stock for such portions of the roads as were in West Virginia, and did not receive stock for such portions as were in Virginia.

The Special Master: Both parties must appreciate that these schedules are here before me, and I am quite likely to take them for what they state. They must take such action in relation to the schedules, so far as they do not state what they appear to state, as they are advised the rights and interests of their respective clients require. Do I make myself clear about that?

Mr. Spooner: I did not hear your honor.

The Special Master: These schedules all come here before me, and I take the statements that appear on them as true. If the statements are not in accordance with the ideas of counsel in relation to them, they must take such action in relation to the schedules 668
on either side as they are advised the interests of their clients require.

Mr. Spooner: That shall be done, but the subject had not been brought to my attention.

The Special Master: You appreciate their significance, so far as I am concerned. I take these statements as made by the accountants on either side as practically the admissions and declarations of the parties. If they do not accurately state the ideas of the parties, of course the counsel on either side must be careful to see that they must protect the rights of their clients in connection with the statements with which they do not agree, as they may be advised the interests of their clients require.

Mr. Spooner: It is a question as to the construction of the receipt. That is a question of law. I supposed this was an exhibit containing a list of the stocks.

The Special Master: All you are doing at present is to get the facts presented before me, and as the facts appear, of course you predicate your legal propositions thereon; but a clean statement of what the thing is, unless it is explained in some way, of course will go with me. I cannot take any other course in relation to it.

Mr. Spooner: I suppose the real facts are the important thing, and not a mere headline.

The Special Master: Certainly; but in the absence of a fact that counter indicates a headline, the headline goes with me.

Mr. Spooner: Certainly. 669

The Special Master: I shall not take this and go digging. down to evade headlines. If the attorneys have something that counter indicates a headline, I will read it.

Mr. Spooner: We will try and relieve you of any such labor.

The Special Master: In the absence of explanation or suggestion, the headline will stand.

By Mr. Harrison:

Q. Did you visit West Virginia in the progress of this investigation?

A. I have been to West Virginia; yes, sir.

Q. I did not ask you whether you have been to West Virginia.

A. I have been to West Virginia in the progress of this investigation; yes, sir.

Q. Did you go there for the purpose of conducting an examination of her records?

A. I did not myself go there for that purpose. I sent two representatives over there to make the investigation.

Q. Who were they?

A. Do you want the names?

Q. Yes.

A. Mr. D. E. Balsley and Mr. L. A. Petty.

Q. Then you, yourself, took no part in the investigation of the records in West Virginia?

A. Not of the investigation of the records in West Virginia; no, sir.

Q. Were the two gentlemen you have mentioned just now as having investigated your employes?

A. Yes, sir; Mr. Balsley is my employee. 670

Q. How about the other man?

A. Mr. Petty is employed by the State of West Virginia, under my direction.

By the Special Master:

Q. They are all employed in the common work, I suppose?

A. Yes, sir; he went to assist Mr. Balsley, and do whatever Mr. Balsley told him to do.

Q. He simply was not part of your force?

A. He was not, so far as my pay roll goes.

Q. But he was co-operating with your people?

A. Yes, sir.

By Mr. Harrison:

Q. Do you know what records they examined?

A. Do I know what records they examined?

Q. Yes.

A. Yes, sir; they examined those records that were examined by the representatives of Virginia.

Q. Did they examine the journals sheriff's accounts, license books, and the books of the railroad, banks and express and insurance companies of the restored State of Virginia which are referred to in the letter of treasurer Hildreth, of July 14, 1863?

A. They examined the document in which that letter is.

Q. Now I ask you if they examined the documents referred to in that letter?

A. Will you kindly read the letter. 671

The Special Master: Call attention to the documents.

Mr. Harrison: I do not want to read the whole letter. The letter refers to the documents I have mentioned. It refers to the following books: The Journal, Sheriff's accounts, license books, and the books of the railroads, banks, express and insurance companies.

A. The books of the railroads?

Q. Yes.

A. Certainly no such investigation was made.

Q. Or the registry, I believe it was, of banks and insurance companies?

A. No, sir.

Q. Did they examine any of those documents or books referred to in that letter?

A. No, sir.

Q. How do you know?

A. I know because I know what they examined.

Q. Were you there when they examined?

A. No, sir.

Q. You did not see them examined?

A. No, sir.

Q. How do you know what they examined?

A. Because they examined and made a report and brought it

back with them. The book that contains the report that is quoted from in Virginia's Exhibit—they examined that book and brought it back here to Virginia with them, and copies were made of that and we have them in our papers here.

Q. Is that your only reason for saying that you know they 672
did not examine the documents referred to in that book?

A. It was not reported to me that they did, and if they had it would have been so reported; and for the further reason that they do not exist.

Q. How do you know they do not exist?

A. I think Virginia has so stated.

Q. Is that your only reason for saying so?

A. I accepted that statement.

The Special Master: Who said so?

Mr. Harrison: Virginia, he says.

By Mr. Harrison:

Q. You do not know, then?

A. Not of my own knowledge, no, sir; not by any search I have made, I don't know.

The Special Master: You say Virginia so stated. Who do you mean?

A. I say that is my impression.

Mr. McClintic: If the Court please, I forgot to call the attention of these gentlemen to the fact that some time in the month of April I did find in the vault of the Treasury of West Virginia a book which had in it certain memoranda of the restored government, and you might term it, I presume, accounts. I do not know whether to call it a journal or what. I also found another book which contained other memoranda, both of which are here, and both of which we are ready to give to them any time they want them. I had forgotten it up to this time.

Mr. Harrison: We would like to have them.

The Special Master: Do those books contain anything 673
material?

Mr. McClintic: They contain certain receipts and disbursements of the restored Government of Virginia, beginning, I think, sometime in 1861 or 1862. I don't remember the exact date. I brought them over here a short time ago.

Mr. Conrad: There are three books referred to in several of the State papers connected with that Government, and the Statement is made in one those papers that one of the books will be deposited here in the archives of this State. We have made search for nearly two years for those three books.

Mr. McClintic: I will state further that when General Anderson

and Mr. Potter and others were there last October I had never seen or heard of those books. I went with them to the State officers and also with Mr. Lewis, who had been there longer than any of the others, and they said there were no such books. About three weeks ago—I do not remember just when, sometime in the month of April—I was in the Treasurer's office one day, and I saw an old clerk of the treasurer's office in there. I said, "Did you ever find any books, so and so?" He made a search in the vault and said, "Here are a couple of old books, which you might be looking for." At that time I did not look at them, but a few days afterwards I did go back and look at those books, when I got time to do so, and I brought them over here. The gentlemen can have them any time they went them.

Mr. Harrison: Mr. McClintic, when did you say you dis- 674
covered those books?

Mr. McClintic: Sometime in the month of April.

Mr. Harrison: Of this year?

Mr. McClintic: Yes, sir.

Mr. Harrison: And they are here, and we can have access to them?

Mr. McClintic: Yes; you can have them at any time you want them.

The Witness: Mr. McClintic, may I interrupt you a moment. In thinking this matter over at this minute, I think Mr. Balsley was not the man who made the examination. I think it was Mr. J. C. Pybas. Mr. Balsley was engaged on some other examinations, I think. I was confused.

Q. Did you learn anything in the course of your examination and investigation into this matter of an item appearing in statement F, filed with the report of Jackson, Bennett and Campbell, and exhibited by counsel for West Virginia in this record, showing $539,000 of stock of Virginia in West Virginia banks, received by West Virginia?

A. It is in your Exhibit F?

Q. No; I say filed by counsel for West Virginia.

Mr. McClintic: You mean the Bennett report?

Mr. Harrison: Yes, the Bennett, Jackson and Campbell report.

Mr. McClintic: I do not think Mr. Dixey has ever investigated the Bennett report.

Mr. Harrison: Let him answer the question.

A. I am not entirely sure what you are talking about. 675

Mr. Conrad: Let him see that report. Here is a report filed by the counsel for West Virginia.

Mr. McClintic: No; it is not filed anywhere.

A. I know nothing of that. I have seen that book. I have that book

The Special Master: You mean filed here before me?

Mr. Harrison: No; it is filed in the case.

Mr. McClintic: No, sir; it is not filed in the case anywhere. When we printed that book, we printed it for the information of people in West Virginia, not for anybody in this case or outside of it. In 1871, under a resolution passed by the legislature, three gentlemen, Mr. Bennett, Mr. Jackson and Mr. Campbell made what they called a report, which report was made to the Governor of West Virginia. It never received any attention, you might say, in West Virginia in any way, shape or form. It was for the benefit and information of the people of West Virginia, and when we printed these books, we printed that with it, because that was a document which we wanted people to see, along with the other documents. It is not filed here, in the Supreme Court, or anywhere else.

The Special Master: This is simply cross examination, and cross examination in relation to it does not make it evidence. I was simply inquiring, because I did not know, whether it was something that had been filed before me. Of course I know nothing personally about the Bennett report. I suppose it is competent for them to cross examine in relation to that as well as any other document.

Mr. Harrison: The question is entirely germane to our 676 investigation.

The Special Master: I say he may answer.

A. I have seen this book, Mr. Harrison, and I have run through all the tables there. I have never given any of them very much attention.

By Mr. Conrad:

Q. In the course of your investigations, either direct or through agents in West Virginia, did you learn anything of a sum of between $500,000 and $600,000 in amount which had been derived by the State of West Virginia from the sale of bank stocks, and which appears or did appear a few years ago in their school fund, invested there by the State of West Virginia?

A. At what time?

Q. It was received at the time the bank stocks were sold by the State of West Virginia, whenever that was.

The Special Master: The question is whether you learned in your investigation anything about that item.

By Mr. Conrad:

Q. Did you ever hear of it at all?

A. I would want time to consult our papers on that before I answer it.

Q. Have you any memory about it?

A. What I mean is this paper that is now being printed and which we introduced in carbon form this morning.

By Mr. Harrison:

Q. You mean you have no independent recollection?

A. I have no independent recollection. 677

By Mr. Conrad:

Q. You have no impression on your mind?

A. No, sir; not as to that. I cannot identify it.

Q. You never heard that they had actual sequestered, segregated, a sum approaching $600,000 many years ago, the proceeds of the sale of bank stock, and put it in their school fund for the purpose of preserving it?

A. No, sir; I can say absolutely that I never heard that.

Q. Nor anything like it?

A. No, sir; nothing that made any such impression on me.

[*Vol. 6. May 7, 1909. List of Acts and deeds by Mr. McClintic. Affidavit of J. S. Darst.*]

Mr. McClintic: Just for the convenience of counsel, if they want to look at these acts in the meantime, I want to give the title of a few acts we expect to rely on: 729

Acts of Virginia, restored government, 1861-2, chapter 35, page 20.

Mr. Harrison: Please state as you go along, if it will not inconvenience you, the subject to which the act relates.

Mr. McClintic: That one, as I recollect, gives all the stock of a certain Turnpike Company to the counties through which it passed, called the Marshall & Ohio road.

Acts of Virginia, restored government, 1861-2, chapter 62, page 37. That is in reference to the Kanawha Board.

Mr. Harrison: These are the acts of the restored government?

Mr. McClintic: The acts of Virginia, the so-called restored government.

Acts, 1862, page 13, chapter 15, that is an additional Kanawha Board.

Acts 1862, chapter 18.

Mr. Anderson: We have that volume. That is the compilation made after the war by the West Virginia government—the acts and constitution of Virginia and West Virginia.

Mr. McClintic: Then acts 1862-3, chapter 68, page 58.

The same acts, chapter 72, page 62.
Acts of West Virginia, 1863, chapter 30, page 31.
Also chapter 120, page 178.
Acts 1865, chapter 71, page 61.
Acts 1866, chapter 117, age 115.
Acts 1866, joint resolution No. 8, page 133.

I also want to tender a deed of trust, dated July 30, 1858, between the Coal River Navigation Company of Virginia and James L. Carr and others, trustees.

The Special Master: What is the date of it? 730

Mr. McClintic: July 30, 1858. It grants all the properties and assets of the Coal River Navigation Company to these trustees to secure certain debts therein set out.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 2.")

Mr. McClintic: We also tender a deed dated October 25, 1865, between said trustees and certain other parties, purchasers at the trustees sale of said property.

(The paper referred to is filed herewith, marked "Plaintiff's General Exhibit No. 3").

Mr. McClintic: Also a report made by the trustees, recorded July 30, 1867, explaining the persons to whom the money went that arose from the trust sale.

The Special Master: What is that; a report to the court or a report to the corporation?

Mr. McClintic: It is the report to the court, or to the clerk, under the laws of West Virginia, which required a report by trustees.

The Special Master: Simply making it a matter of public record under the statute?

Mr. McClintic: Yes, sir.

I also desire to offer in evidence a certificate of J. S. Darst, present Auditor of the State of West Virginia, which is short, and I will read it:

STATE OF WEST VIRGINIA,
AUDITOR'S OFFICE,
CITY OF CHARLESTON, TO-WIT:

I, J. S. Darst, Auditor of the State of West Virginia, do hereby certify that I have carefully examined the records of the Board of the School Fund of West Virginia, and that the 731 State received for the benefit of its School Fund in the Na-

tional Bank of West Virginia in the City of Wheeling three hundred (300) shares of stock, in the Parkersburg National Bank of Parkersburg, West Virginia four hundred (400) shares of stock, and in the First National Bank of Wellsburg, at Wellsburg, West Virginia, three hundred and fifty-one (351) shares of stock. That the records of West Virginia show that these three Banks were the successors of the Northwestern Bank of Virginia at Wheeling known as the parent bank and of its branches at Wellsburg and Parkersburg, respectively. That each of these shares of stock was of the par value of One Hundred ($100.00) Dollars each,

And I do further certify that the State of West Virginia received from the First National Bank of Fairmont five hundred shares (500) of the par value of One Hundred ($100.00) Dollars each of stock in said last named Bank, which was the successor of the Bank of Fairmont, and that such stocks were received by said State for the benefit of her School Fund in exchange of stock formerly held by the State of Virginia in said Banks, which stocks were taken over by the State of West Virginia by virtue of the Act of the Legislature of Virginia, passed on the 3rd day of February 1863.

And I do further certify that out of the remaining assets of the said Northwestern Bank of Virginia as a dividend on the stock so held by said State of West Virginia therein, there was paid to the said State on the 9th day of July, 1867, $10,510.00, and 732 on the 12th day of August, 1868, by G. Lamb for and on behalf of the Commissioners of said Bank the sum of $10,510.00, and that I do not find that any other or further sum was ever paid to said State of West Virginia by the Commissioners of said Bank out of the assets remaining after the three said National Banks had been formed out of the same.

Given under my hand and official seal this 27th day of April, 1909.

J. S. DARST,
(Seal) Auditor.

The Special Master: With reference to the three exhibits introduced, I suppose they are introduced for the purpose of showing some specific fact?

Mr. McClintic: Yes, sir.

The Special Master: I do not suppose there is any contingency by virtue of which this record need be encumbered with the documents *in extenso*. As to documents of that character, I would like counsel for West Virginia to prepare as succinct and concise an abstract as they can of the document, which will go into the record in the place of the document, and if Virginia puts in documents of a similar character, I would like to have them do the same thing. There is

no sense in cumbering the record with a great long deed that is only for the purpose of showing one fact. Of course the admitting of the abstract or the admitting of the deed does 733
not foreclose any proposition involved in the case.

Mr. McClintic: The deeds are introduced for just one purpose.

The Special Master: I prefer in cases like that to have counsel themselves make their own abstract rather than undertake to make it myself. I will not cumber this record with a lot of material of that kind. So that counsel on either side can do that and have it assented to by counsel on the other side as a proper abstract.

Mr. McClintic: Those three deeds were with reference to one navigation company, to show that prior to the 1st of January, 1861, the company in which the State of Virginia held stock, of the par value of $96,000, conveyed all its assets to trustees.

The Special Master: You can make a very short abstract to show all that.

Mr. McClintic: Yes, sir.

Mr. Anderson: It became insolvent and lost all its property. That is what you wish to prove?

Mr. McClintic: Yes, sir.

Mr. Harrison: That is a fact established by the deeds, is it not, that the company became insolvent?

Mr. McClintic: Yes.

The Special Master: That can be shown, you see, by a very concise abstract.

Mr. Spooner: They could not foreclose without a mort- 734
gage.

Mr. Anderson: I say a mortgage which was foreclosed and did not satisfy the obligations of the company secured by it.

[*Vol. 6. May 7, 1909, Direct Examination of C. E. Scoville.*]

By Mr. McClintic:

Q. Before I forget it, Mr. Scoville, have you examined the books called the journal and ledger, I presume, of the restored government, which I brought here a few days ago?

A. Yes, sir.

Q. Will you state to the court what amount of money those 744
books show were paid to the treasurer of West Virginia on the 20th of June, 1863, or thereabouts, by the restored State?

A. The books of the restored State to which you refer show that $150,000 was turned over to the new State of West Virginia, in three amounts.

The Special Master: On what date?

A. On July 2, 1863, $92,866.17; on the same date an amount of $47,734.03; on July 9, 1863, $9,399.80; total $150,000.

By Mr. McClintic:

Q. What other moneys if any were turned over to the new State by the restored State of Virginia?

A. The ledger of the new State of West Virginia, which we have here, shows that on February 1, 1864, there was deposited in the Northwestern Bank at Wheeling $20,771.46, as received, according to the entry in that ledger referred to, from the Treasurer of the Commonwealth of Virginia. That last amount, $20,771.46, is not shown as a disbursement in the books of the restored State.

Q. Do the books show for what purpose that sum of twenty thousand and odd dollars was paid?

A. It is not shown on the books of the restored State. It is shown only on the ledger of the new State of West Virginia as a receipt.

Q. The Act of February 4, 1863, of Virginia, made an appropriation to West Virginia of $150,000 in the first section, 745 and in the second provided "that there shall be and hereby is appropriated * * * all balances not otherwise appropriated that may remain in the treasury." Did you examine the books to see if there were any balances of moneys appropriated and not expended on the 20th of June, 1863?

A. Yes, sir.

The Special Master: In the State of Virginia?

Mr. McClintic: In the State of Virginia.

By Mr. McClintic:

Q. What balances if any were shown?

A. The balance shown on June 19, 1863, as being on hand in the restored State was $225,280.07.

Q. I mean the balances of appropriations made for specific purposes and not yet expended. That is what this act says.

A. I have no information as to that.

Mr. Spooner: That is ascertainable, is it not?

The Witness: I don't think so, from the books.

Mr. Harrison: What was the amount you stated just now?

The Witness: $225,280.07.

The Special Master: That is the balance on hand according to the books. That has no relation to these appropriations inquired of. The inquiry was what balances of appropriations that had been made there were on hand and unexpended, upon which this act of the legislature might be predicated. He says he does not know, and I think he said he thought it would be difficult to ascertain.

Mr. McClintic: The letter from S. P. Hildreth to F. H. 746
Pierpont—

Mr. Anderson: What are you reading from?

Mr. McClintic: From the journal of the Senate of West Virginia, 1862.

The Special Master: That is the letter that has already appeared in the case?

Mr. McClintic: Yes, sir. It shows a number of balances. They are not added up, and there is a whole lot of accounts. I will ask Mr. Dixey to add them up. I will call the matter up again when I get that added up. While we are on that point, your Honor, I want to put in evidence or in the case all of page 24 of the journal of the House of Delegates of the Commonwealth of Virginia, extra session, which met on the 4th day of December, 1862, being a part of the report of Samuel Crane, Auditor of Public Accounts. I will see that it is typewritten in some form, to put into the report, so it applies to the question of argument which we will come to later, whether this $150,000 should be in any way charged to us.

Mr. Hogg: It is spoken of in the Act of February 4, 1863.

Mr. McClintic: The report is not spoken of, but it is applicable to that matter on the question of that charge. I suppose, your Honor, in every case where we want to refer to a journal, that will have to be put specially in evidence—the public journal of the legislature. Is that in the same position as a public act?

The Special Master: I think you had better put into the 747
record somewhere the extracts on which you rely.

Mr. McClintic: Yes; I suppose it might be well to do that.

The Special Master: I have not examined to see whether they would be taken judicial notice of.

Mr. Spooner: I do not think they would.

Mr. Hogg: They have to be proved.

Mr. Anderson: What is the date of the journal?

Mr. McClintic: It is the journal of the special session in 1862. This report is dated Wheeling, November 25, 1862.

Mr. Anderson: The decree makes the public acts and records of the two States since the admission of West Virginia evidence, if pertinent and duly authenticated.

Mr. Spooner: It makes them competent, but they have to be introduced and put into the record. The court does not take judicial notice of them.

By Mr. McClintic:

Q. I find, Mr. Scoville, by an addition of the balances as reported in this letter of Mr. Hildreth, the Treasurer of Virginia, that the amount of these balances, added up, is $19,570.71. How much does

that differ from the amount you found was paid to West Virginia by Virginia?

A. Will you give me that again, please?

Q. $19,570.71?

A. As I understand the question, you want to know the difference between that and that last amount of $20,000?

Q. Yes; whatever it was. I do not remember the amount.

A. The amount was $20,771.46. The difference is $1,200.75.

The Special Master: In which exhibit do they charge you 748 with $150,000?

Mr. McClintic: They charge us in their exhibit G-1, under the 7th paragraph of the decree, with $225,000, and also some other sum.

The Special Master: On what page do you find that?

Mr. Anderson: It is on the first page of exhibit G-1.

[*Vol. 6. May 7, 1909. Amendment to heading on Defendant's Exhibit G-1.*]

The Special Master: Have the defendants anything further 789 to submit?

Mr. McClintic: We think not; we have no other witnesses at present; but if your Honor please, we want to correct that heading on Exhibit No. 7, which seems to be a trifle misleading. I will have to admit that as one of the counsel I submitted it without reading the heading.

The Special Master: Leave is granted to amend that. Of course, as far as that is concerned, there is no statement made by counsel on either side that they will be estopped by, and if inadvertently any statement has been made which ought to be qualified or changed, it is quite open for counsel to make such change and amendment as they desire.

[*Vol. 7. July 1, 1909. Amounts agreed to.*]

The Special Master: Have you Plaintiff's Substitute G-1? 866

Now, am I to understand that as to the amounts you agree, but not as to classification?

Mr. McClintic: In G-1? 867

The Special Master: Substitute G-1, yes.

Mr. McClintic: The Plaintiff's Exhibit G-1 and the defendant's G-1 are two very different papers.

The Special Master: I understand there is a profound difference—

Mr. McClintic: We agree with the amount of the plaintiff's G-1, as I understand it, but deny that we owe it; and I don't know whether they agree as to the amount of our G-1 or not. What is that, Mr. Potter?

Mr. Anderson: We don't understand your G-1.

Mr. Harrison: The amounts may be correct.

Mr. Anderson: The amounts are probably correct, but we do not understand what relation they have.

The Special Master: Well, before we start on theirs let me get this settled, if we can settle it. Do the defendants agree that the amounts stated in the Plaintiff's Substitute Exhibit G-1 are accurately stated?

Mr. McClintic: Yes sir.

The Special Master: Then, put it in the record that both parties agree that the amounts stated in Plaintiff's Substitute Exhibit G-1 are accurately stated. They do not agree as to the question as to whether they are chargeable to West Virginia.

Mr. Conley: We deny that they are properly chargeable to West Virginia.

The Special Master: I understand that. West Virginia denies that they are so chargeable.

Mr. McClintic: Then I understand that they agree the amount states in our Exhibit G-1 are also accurately stated?

The Special Master: Let me have that and I will get that into the record. Now, this involves agreement on quite a 868
variety of items, on which there was disagreement before; but the items, I understand are now agreed upon, that is the amounts are agreed upon?

Mr. Anderson: Yes, we should say the amounts.

The Special Master: In defendant's Exhibit G-1, do I understand that the complainants agree that the amounts stated in G-1—

Mr. Anderson: It has not been revised or changed?

Mr. McClintic: No, sir.

The Special Master (Continuing) Are accurately stated as to amount?

Mr. Anderson: That is true.

The Special Master: So that the record may show that as to the amounts stated in Defendant's Exhibit G-1 the parties agree as to the amounts. Virginia does not agree as to the classification?

Mr. Anderson: No, sir; she does not.

Mr. Harrison: No; nor as to the pertinency or relevancy of the statement.

The Special Master. No. Of course that eliminates the amounts from controversy.

That covers every paragraph in the decree.

[*Vol. 7. July 1, 1909. Revised heading for Defendant's Exhibit G-1.*]

Mr. McClintic: If your Honor please, before I overlook it, permission was given for us to change the heading of our Exhibit
G-1, and Mr. Dixey has not written on the heading as we pro- 869
posed to change it yet, but he will do so.

The Special Master: I understand that.

Mr. Dixey: Shall I read the revised heading now?

The Special Master: If you please.

Mr. Harrison: You are changing the certificate now. He has certified to certain facts before. Now do you want him to certify to a different set of facts?

Mr. McClintic: Facts are facts. The heading was the only thing that was wrong. The facts speak for themselves. Everybody knew that the James River and Kanawha Company was not wholly in West Virginia—

The Special Master: I will fix this in just a minute. Let me have the schedule so that I can follow it.

Mr. Dixey: The heading of the schedule— 870

The Special Master: Now, counsel for West Virginia desire to have Mr. Dixey, their accountant, change the heading of Defendant's Exhibit G-1. They wish to strike out the heading that now appears and insert in its place the following. Go ahead, Mr. Dixey, read it.

Mr. Dixey: (Reading):

"Summary of the stocks in banks, turnpike, bridge and navigation companies, whose properties were wholly in the limits of West Virginia, received from Virginia by West Virginia, and also a summary of the stocks in certain turnpike companies, and the James River and Kanawha Company, whose properties were partly in each State; and a certain loan to the town of Bath, not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, April 17, 1861."

The Special Master: This application is in the nature of a change indirectly in the testimony of Mr. Dixey. I shall allow it, and now subject him to cross examination by counsel on the other side. Of course, I would allow any witness to make a change in his testimony if desired to do so.

Mr. Anderson: The point I have in mind is the manner in which this correction should be made. That Exhibit G-1 has already been made a part of his testimony, and he finds now he was mistaken in the caption of that paper, which was a part of the paper as to

which he testified, and to the whole of which his certificate relates, except certain endorsements. Of course he ought to be allowed to correct that, and we cannot make any objection to 871
it now being put into the record that Mr. Dixey desires to correct that caption and the statement implied by the caption, and to make a statement that he is now satisfied agreed with the facts.

The Special Master: What you want is, first the schedule as it was originally put in?

Mr. Anderson: Yes sir.

The Special Master: And then you want the correction to appear?

Mr. Anderson: Yes sir.

The Special Master: I think that is proper. I treat all of these schedules as the testimony of each of these experts. If either expert, before this hearing is finished, has reached the conclusion that he has made a mistake, I shall feel bound to allow him to correct it. If it is a mistake of a character that impeaches the verity or the weight to be given to it, it is open to the other side to comment upon for cross examination, and I will give it all the consideration to which it may be entitled. Now, the present status of this matter is that Mr. Dixey has testified, as appears in defendant's Exhibit G-1, and as to the heading of that Exhibit he desires to make a change in his statement. He desires to make a change and I will allow it.

Mr. McClintic: And no other change. It is not changed in any other manner.

The Special Master: Of course that appears.

Mr. Anderson: What is the revised caption.

Mr. Dixey: The stenographer has it.

Mr. Anderson: I would like to hear that.

(The Stenographer read aloud the revised caption, as here- 872
inbefore recorded.)

Mr. Carlisle: As I understand the situation, that heading which Mr. Dixey now proposed just simply embraces the facts which the paper itself shows?

The Special Master: Well, if they contend otherwise, of course that is open to them. And then in answer to that contention it is open to you to set up the contention you now suggest.

When you say "stocks in banks," do I correctly understand that you mean the particular stock that the State held in the banks?

Mr. Dixey: Yes, sir.

The Special Master: The extent to which the State was a stockholder?

Mr. Dixey: Yes, sir. I may say that is the heading of the summary: The headings of the sub-schedules, of which there are several, of course will be changed accordingly.

The Special Master: Well, if they require it, I think you ought to submit to them such change as you think ought to be made; so they will have an opportunity to criticise it if they desire to do so.

Mr. Harrison: That affects his entire testimony.

The Special Master: If they insist on it, of course I think I would have to require him to make the changes he makes so that the other side may see just what they are. What do you say about that?

Mr. Anderson: I think we ought to know just what changes are made. 873

The Special Master: Very well. Mr. Dixey, then I will have to ask you to submit such changes as you propose to make so that the other side may have an opportunity to see them and cross examine upon them.

[*Vol. 7. July 1, 1909. Agreement relating to depositions on behalf of West Virginia.*]

The Special Master: * * * * * * * We will go to paragraph 7. 877 So far as I can see, and I would be glad to have the suggestion of counsel on either side—down to this stage we are in the condition where we cannot go on with any testimony to-day.

Now, coming to paragraph 7, what do you say as to that, paragraph 7 being—

> "The amount and value of all money, property, stocks and credits, which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored Government of Virginia together with the nature and description thereof."

Mr. Harrison: The amount is agreed to, as it appears of Vir- 878 ginia's Exhibit.

Mr. Carlisle: The amount that Virginia has paid is agreed, but not the value.

Mr. Harrison: But we agree as to the amount.

Mr. Carlisle: We disagree there on the sum of $170,000; and what items does that include?

Mr. McClintic: All the items paid by Virginia.

Mr. Anderson: $150,000 paid at one time, and $20,000 paid at another time. It is not denied that she received that money, but West Virginia denies that she should be charged with it.

The Special Master: Here is the schedule. As to this, I think they agreed on the amount, did they not?

Mr. Anderson: Yes, sir.

The Special Master: Are you prepared to-day to be heard on either side of the question of any additional evidence establishing the propriety or the impropriety of these items being allowed under paragraph 7? Of course, in the first instance, I would hear Virginia. If you have anything to submit on that, you can submit it.

Mr. Anderson: We have not any additional evidence. West Virginia admits that the money was paid.

The Special Master: Have you any additional evidence on the propriety of making the charge, or is everything in the case that you rely on?

Mr. Anderson: In the case or in the record. I mean the acts of Assembly of West Virginia?

The Special Master: You, of course, want to have this in mind, so as not to have any mistake. If you rely on Acts of West 879
Virginia as probative, I think they ought to be submitted now, if they are not already in. Whatever you have in the way of public records that you rely upon to sustain your contention that this ought to be made a part of paragraph 7, you ought to submit.

Mr. Anderson: They are already in the record. That is, they are in the bill.

The Special Master: The bill has not been put in the case yet, not before me.

Mr. Anderson: There are copies of those statutes already in this record.

The Special Master: All right. And if you have the acts on which you rely recited in your bill in equity, that is all right. If that is a fact, I do not think you need anything more; and especially after having called attention to it, so that the other side know what you rely on. Do you disagree about that, Brother McClintic?

Mr. McClintic: I beg your pardon.

The Special Master: They say that all the Acts of the Legislature in connection with this paragraph 7 upon which they rely, the acts of the State of West Virginia, are in record.

Mr. McClintic: They are acts of Virginia.

Mr. Anderson: The restored Government of Virginia.

Mr. Carlisle: The two acts of February, 1863, and (gives another date).

Mr. McClintic: If I have not put those in I want to put them in.

The Special Master: If they are in the bill in equity, if they are simply recitals of acts of public legislation in the pleadings 880
in the case, so that they can be referred to, that is sufficient so far as I am concerned.

Mr. Anderson: Those acts have been filed by both sides.

Mr. McClintic: Those printed books are mere memoranda, a good

deal of them, but the three acts referred to are already in evidence, I think. If not, I want to put them in evidence.

The Special Master: Did you make a memorandum of what acts you relied on?

Mr. Anderson: No, not yet. I called on the Attorney General of West Virginia for an act he wanted, so we would not have duplicates.

Mr. McClintic: That matter was referred to me, and for some personal reasons, which I can state if desired, I was unable to attend to it.

The Special Master: You need not go into the reasons. Then, so far as the plaintiff's Exhibit Substitute Exhibit G-1 either party has any additional evidence to submit, the understanding being that the Acts of the Legislature upon which each party relies are either now in or will be put in and attention called to them by counsel on either side?

Mr. McClintic: The record already shows a report of the Auditor of Virginia, which I called your Honor's attention to, and which I will put in and again call attention to. It is already in the record.

The Special Master: You simply have not pointed it out? 881

Mr. McClintic: Yes, sir.

The Special Master: The book is in?

Mr. McClintic: Yes, sir.

The Special Master: That is already in, then. The question now is whether it is desired on either side to offer any additional evidence on this. I understand that additional testimony is not desired on either side. Subject to the understanding that the Acts of the Legislature are either in or are to be put in, the case is closed so far as that is concerned.

Mr. McClintic: The report of the auditor.

Mr. Carlisle: There is the report of the auditor—

The Special Master: I understood him to say that was in. What do you say about that?

Mr. Harrison: I have not seen that yet.

Mr. Anderson: Mr. McClintic says he will furnish that, an extract from the report of the Auditor.

The Special Master: I understood him to say that the book was in.

Mr. Anderson: The book was produced, but I did not understand that the whole of it was offered in evidence.

The Special Master: Let us find out. Brother Anderson suggests that while the book was here at the last hearing he did not get the impression that it was offered in evidence.

Mr. Carlisle: What book?

The Special Master: The Auditor's book. 882

Mr. McClintic: No, I don't want to put that whole book in. I was just putting in a page or two of it. I have not put the book in. I said that was the book that Mr. Scoville and you wanted—

The Special Master: Is there any objection to this understanding? The whole book is offered and admitted in evidence, but only so much of the book will be printed as counsel on either side desires. Does that cover it?

Mr. Anderson: Yes, sir.

Mr. McClintic: That covers it.

The Special Master: Now, is it feasible to continue the hearing any longer to-day?

Mr. McClintic: I want to introduce some depositions which we took during recess.

The Special Master: And they relate to what paragraph?

Mr. McClintic: The value of stock. They relate principally to paragraph 7. They are depositions of a list of witnesses which the stenographer can take down.

Mr. Carlisle: I do not think it is necessary to print them in full.

The Special Master: You can print so much of them as you desire.

Mr. McClintic: Then we desire an agreed statement between the Attorney General of West Virginia and the Attorney General of Virginia.

Mr. McClintic: As to the condition of the roads there—

Mr. Carlisle: That is not very long, and perhaps we had better put it in the record.

The Special Master: We can do this. We will agree to put 883 in such part of it as you want.

(Counsel for West Virginia submitted the following paper, above referred to):

"Commonwealth of Virginia,

vs.

State of West Virginia.

PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Agreement between Plaintiff and Defendant as to certain matters matters of proof.

It is agreed upon by William A. Anderson, Attorney General of Virginia, of counsel for and on behalf of the Commonwealth of Virginia, and by William G. Conley, Attorney General of West Virginia, for and on behalf of the State of West Virginia, that competent and credible witnesses who can be called on behalf of West Virginia will testify to the following facts:

FIRST—BRIDGE COMPANIES.

(1) That the bridge across the Buchannon River, in the County of Upshur and State of West Virginia, near the Mill of Carper and Post, and owned by the Buchannon Bridge Company, was destroyed in the month of April, 1863.

(2) That the bridge across Cheat River, in the County of Preston and State of West Virginia, at the point where said river was crossed by the Brandenville, Kingwood and Evansville turnpike, and owned by the Cheat River Toll Bridge Company, was destroyed in April, 1863.

(3) That the bridge across the North Branch of the Potomac 884
River at the point where said river was crossed by the Cacapon and North Branch turnpike, in what is now Mineral County, State of West Virginia, and owned by the North Branch Bridge Company, was destroyed in the year 1862.

(4) That the bridge across the South Branch of the Potomac River, in Hampshire County and State of West Virginia, and owned by the South Branch Bridge Company, was destroyed in 1862.

(5) That the bridge across the Potomac River at Shepherdstown, in the County of Jefferson and State of West Virginia, and owned by the Virginia and Maryland Bridge Company, was destroyed in 1861.

(6) That the bridge across the Guyandotte River, at or near its mouth, in the County of Cabell and State of West Virginia, and owned by the Guyandotte Bridge Company, was not destroyed, but that the same did not pay any dividend to the owners thereof after the State of West Virginia was formed.

(7) That the bridge across the Monongahela River at Morgantown, in the County of Monongahela, and owned by the Morgantown Bridge Company, paid no dividend after the State of West Virginia was formed, and that the stock was of no practical value.

(8) That the bridge across the Monongahela River at Fairmont, in the County of Marion and State of West Virginia, and owned by the Fairmont and Palatine Bridge Company, did pay to the State of West Virginia a dividend of six per cent per year for several years after the end of the war, on the par value of the stock of twelve thousand dollars assigned to the State of West Virginia 885
therein.

(9) That the bridge across Elk River at Charleston, in the County of Kanawha and State of West Virginia, and owned by the Elk Bridge Company, was destroyed in 1862.

SECOND—NAVIGATION COMPANIES.

(1) That the Monongahela Navigation Company spent no money on the Monongahela River after the year 1825, and that long before

the year 1863 all evidence of such work had disappeared and that the stock in said company was of no practical value on the 20th day of June, 1863.

(2) That the amount of money spent by the Tug Fork Navigation Company on the Tug Fork of Big Sandy River was of such a small amount that no evidence of such work remained on the 20th day of June, 1863, and that the stock in said Company was of no value as of that date.

THREE—TURNPIKE COMPANIES.

That the turnpikes owned by the turnpike companies in the Counties of Monongahela, Preston, and other counties of northern West Virginia, had no work of repair done at all on them during the war period and that many of them were cut to pieces by the army travel thereon, and by rains, snows, and high waters, and that many of them became in places and for considerable distances before and after the 20th day of June, 1863, practically impassable, during wet weather, and for a considerable period of time, and that no dividends were ever received from any of them after the State of West Virginia was formed. 886

But said counsel for Virginia respectfully excepts to the competency and pertinency of said evidence and facts to any issue in the cause.

May 21, 1909.

WILLIAM A. ANDERSON,
Attorney-General of the Commonwealth of Virginia.
WM. G. CONLEY,
Attorney-General of the State of West Virginia.

[*Vol. 7. July 2, 1909. Statement to Be Made of Roads Paying Dividends.*]

1012

The Special Master: It is understood that you wanted to take the deposition of this other witness?

Mr. McClintic: Yes, sir.

The Special Master: Who is he?

Mr. McClintic: Judge Atkinson.

The Special Master: Is it agreed that the defendants may take the deposition of Judge Atkinson and file it as part of the case?

Mr. McClintic: And possibly Mr. Scoville?

Mr. Harrison: I do not think there is any excuse for Mr. Dixey not being able to answer questions put to him.

The Special Master: What do you want to show by him?

Mr. McClintic: That certain roads paid dividends, and at other times did not pay dividends.

The Special Master: What physical difficulty is there in having Mr. Dixey and Mr. Potter agree on those facts?

Mr. McClintic: I think there is none.

The Special Master: I think there cannot be any. They are 1013 all shown by the books.

Mr. Harrison: We object to the taking of testimony by deposition, from these experts.

The Special Master: This is, to an extent, an incidental matter. It is important, perhaps; but as to this matter I understand that the parties now agree that Mr. Potter and Mr. Dixey may submit a joint statement to become a part of the record, upon this question of—what items?

Mr. McClintic: As to the roads and bridges that paid dividends and those that did not.

The Special Master: There cannot be any difficulty about that. Is that agreed on? Let it be recorded that it is so agreed.

Mr. Harrison: I cannot see the relevancy of that.

Mr. Anderson: We object to it.

The Special Master: That is all right. It is agreed that the experts shall submit, to become a part of the record, a joint statement on the question of the roads and bridges that paid dividends, and the amounts paid; but Virginia objects to its relevancy or competency. That settles that item.

Mr. Anderson: That statement ought to show what became of the dividends.

Mr. McClintic: It is all in the record, as to what became of the dividends. * * *

Mr. Moon: As to the dividends, we ought to put in a re- 1015 port.

The Special Master: In the statement that is to be made by the experts in relation to the dividends received, the experts are to submit at the same time a statement showing what the difference between them is, what the records show as to what application was made. There is no difficulty about that. Is that all?

Mr. McClintic: Suppose it would develop that these experts cannot agree?

The Special Master: Then, if the experts do not agree, we will have another meeting, and I will hear the evidence on both sides. If they do not agree about that, I will pass on it later. I shall pass on it in New York.

[*Vol. 7. July 2, 1909. Further as to Change of Heading on Defendant's Exhibit G-1. Joint Statement Relating to Literary Fund.*]

1019

Mr. McClintic: Exhibit G-1, it seems, was not properly understood yesterday. We put in a change of the heading on page 2.

The Special Master: Yes, with the understanding that you would change the other sub-headings.

Mr. McClintic: And we struck out the heading on the top of page 3.

The Special Master: You need not spend a minute's time on that. If that is a proper subject of criticism I will hear it in the argument.

Mr. McClintic: Then we changed the word "property" to "stock"; and after the word "received", we put the words "wholly or partly".

1020

The Special Master: Any other changes?

Mr. McClintic: That is all.

The Special Master: Is there anything else for me to decide?

Mr. McClintic: On our Exhibit G-1, we withdrew $2,400,000.

The Special Master: I remember that.

Mr. McClintic: I want to have Mr. Dixcy and Mr. Potter make a statement and let it go in afterwards with their other statements, showing the amount of the Literary Fund on the 19th of March, 1823, the amount the first of March, 1861, and where that $24,000 came from.

The Special Master: I understand that a statement may be submitted jointly by Mr. Potter and Mr. Dixcy covering this. I think that settles that.

Mr. Harrison: We do not agree to anything that involves any delay.

The Special Master: You are safe on that, because your expert has got to sign it.

Mr. Harrison: The only other question is how long will they be allowed to take Judge Atkinson's deposition?

The Special Master: I think that has been agreed upon, that it must be taken within the next two weeks, subject to the same conditions fixed by the Master heretofore.

Mr. McClintic: And possibly there will be one or two other witnesses, if you do not object to it.

The Special Master: There will be no other witnesses unless admitted by Virginia. If you want to have other witnesses, and you agree to it—

1021

Mr. Anderson: And we ought to have an opportunity to cross examine.

Mr. Special Master: Certainly. A deposition will not be considered unless you have such opportunity. If they have developed anything in connection with the deposition of Judge Atkinson that it seems

necessary for you to take testimony upon that subject, that, in my judgment, raises a serious question in connection with this case. It would be incumbent that you agree that they might take any deposition in reply; or if it raised a serious question of that kind, I should probably open the case.

Mr. Conley: I suggest you limit them to the same time you limit us.

The Special Master: I do; I limit them to one week. West Virginia may have two weeks' time in which to take the depositions referred to, and any depositions in reply on the part of Virginia must be taken in one week from the time the deposition on the part of West Virginia is taken.

[*Vol. 7. Depositions on Behalf of West Virginia Copied into the Record.*]

In the Supreme Court of the United States

Commonwealth of Virginia,
vs. 1105
State of West Virginia.

Index to the following depositions. May 20, 1909:

Peter E. Love 1107
Frederick Lee Baumgardner 1110
B. F. Swann 1112
William Griffith 1116
Henry V. Sattes 1122
W. F. Gregory 1126
James H. Wright 1128
James M. Payne 1132
Dr. C. I. Lewis 1133
John Slack 1136
William H. Tompkins 1142
Charles W. Dering 1150
May 21, 1909:
J. K. Thompson 1153
Thomas Swinburn 1159

Depositions of witnesses taken by the State of West Virginia 1106
to be filed and read as evidence in her behalf in the cause of the

Commonwealth of Virginia against the State of West Virginia, pending in the Supreme Court of the United States, which depositions are taken by the consent of parties, beginning on the 20th day of May, 1909, at the law office of Mollohan, McClintic and Matthews, in the City of Charleston, County of Kanawha and State of West Virginia.

Present on behalf of the defendant, the State of West Virginia, Wesley Mollohan and George W. McClintic, of counsel.

Present on behalf of the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

PETER E. LOVE, 1107

a witness of lawful age, being first duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. Peter E. Love, I will be 76 years old on the 13th of June; I am a farmer; and live at Martha, in Cabell County, State of West Virginia.

Q. How is your residence situated as to the Guyandotte River?

A. When I first moved there my farm was lying right on the bank of the River; now it is 400 yards back.

Q. How long have you lived at that place?

A. 56 years last February.

Q. How far is your residence from the mouth of the Guyandotte River?

A. Well, by water—Well, I guess it is 13 miles, that is, the way the railroad runs.

Q. Do you remember when the locks and dams were built in the Guyandotte River?

A. When I moved to Cabell County from Putnam County, in 1853, the locks were mostly completed. That is my recollection. I think they were completed then in 1853. I think they finished them that year.

Q. How many of them were there?

A. Six, I think.

Q. How were those locks and dams constructed—of what material?

A. Wood and stone; cribs built of round logs, timber, and filled with stone.

1108

The counsel for complainant excepts to this question and answer as not responsive to any inquiry directed by the decree of reference and as not pertinent to any issue in the cause.

Q. Are any of those locks and dams in the river now?

A. No, sir.

Q. What became of the locks and dams?

A. In September, 1861, the big rise we had in 1861 partially destroyed some of them, filled them up and washed around some of them. I don't know much about some of them above. But I know they weren't much used. I lived at lock No. 3—just about a half a mile above it.

Q. When did they cease to use them?

A. Never used them after the fall 1861.

Q. What finally became of the remains of the locks and dams?

A. In various ways they went out. The timber rotted; the timbers would naturally rot, you know; they rotted down and washed out.

Q. Of what value for navigation purposes was that system of locks and dams after the big rise of 1861?

A. They were worthless after 1861, because they were an obstruction in the way.

Q. Was there any attempt to repair them after the big rise of the year 1861?

A. Not to my knowledge.

Q. Were they cleaned out of the river, and if so, about when?

A. Well, I couldn't tell you. I know there was; but I don't know whether the State made an appropriation for the clean- 1109
ing out of those locks and dams; I know they did make an appropriation to clean out the river, and it occurs to me that they did take out some of those locks and dams. The dam at my place now, after the War closed, was lowered and used for mill purposes, for a mill at that point; but the lock was destroyed and was never used for navigation purposes.

Q. What was the character of the big rise of 1861?

A. You mean as to the amount of water?

Q. The bigness of it, and so forth?

A. Well, I do not remember what the height of that rise was, and I cannot tell you. Mr. Swann can tell you more about that than I can.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Further the witness sayeth not.

FREDERICK LEE BAUMGARDNER, 1110
a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)

Q. Where do you reside, what is your age, and what is your occupation?

A. Well, I live a mile and a half west of Barboursville, in the neighborhood commonly called Pearidge, Cabell County, West Virginia; I am even 60 years old, and my occupation is that of farming.

Q. How far is your residence from Guyandotte River?

A. Only a mile and a half towards Barboursville.

Q. How long have you lived in that neighborhood?

A. Well, I went there when I was six years old; now, to make the calculation, I am 60 years old, so that would be 54 years the 7th day of last March.

Q. You were living in that neighborhood when the locks and dams were built in the Guyandotte River, were you?

A. Yes, sir. They were working there. I don't know how long they had been working on them.

Q. Of what were they constructed?

A. Out of timber, round logs, and broken up stone.

Q. What one of the locks was nearest to you?

A. The second lock—Barboursville.

Q. What became of the locks and dams?

A. Well, that one particularly was closest to my attention in this big rise in 1861. The water got around it on the west side, and the main river ran around it.

Q. Was it ever repaired or used after that time?

A. No, sir.

Q. Had you occasion soon after that rise to observe the con- 1111
dition of any of the other locks and dams?

A. Well, no, sir. Except the lower dam Guyan, or a mile, I believe they call it, above Guyan. I passed it, I suppose, two or three weeks after that, and I didn't see it was damaged any. It may have been, but I didn't pay close attention to it.

Q. Did you ever afterwards observe its condition?

A. At any time afterwards?

Q. Yes.

A. Oh, yes; it finally washed and rotted out.

Q. What use, if any, was made of the locks and dams after the beginning of the war?

A. There wasn't any.

Q. Of what value were the said locks and dams for the purposes of navigation after the rise of 1861?

A. Well, not any.

Q. What finally became of the remains of the said locks and dams?

A. The timbers rotted down, rotted out, and the stones dropped away. That made little islands in the river, and timber grew upon them.

Q. After the War commenced what care was taken or what repairs were made to the said locks and dams?

A. There wasn't any, to my knowledge.

Q. Did you say there wasn't any?
A. Yes, sir; I said there wasn't any.

And further the deponent sayeth not.

The counsel for complainants excepts to all the testimony of 1112
this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

B. F. SWANN,
a witness of lawful age, being first duly sworn, deposes and says:

(Examination conducted by Wesley Mollohan, Esq.:)
Q. State your age, residence, and occupation.
A. I was 76 years old last October; I live in Barboursville, Cabell County, State of West Virginia; I generally follow blacksmithing, wagon-making, and so forth, farm a little, even.
Q. How is Barboursville situated as to the Guyandotte River?
A. Right on the bank of Guyandotte River.
Q. How long have you lived there? How long have you lived at Barboursville or in that neighborhood?
A. I have lived there since 1866. I moved there in 1866.
Q. Where did you live before that?
A. At what we know as the Dusenberry Dam, at Lock No. 3 of the Guyandotte River.
Q. How long did you live there?
A. I have lived there 11 years before I moved to Barboursville.
Q. Do you remember when they constructed the locks and 1113
dams in Guyandotte River before the War?
A. Yes, sir. They commenced working, I reckon it was 1850. The first work that was begun was at Lock No. 3; then Salt Rock in the fall. Salt Rock was the second lock going down the river from the falls. Lock No. 3, they called it, then No. 4. They built a lock between that and Salt Rock.
Q. How were these locks and dams built?
A. What they call crib work—wood work, large round logs, partly hewn, some of them, and some of them were not. Where the planks had to be put on, they were hewn there. They were trimmed together. Then they filled them with broken up stone; then planked over with heavy plank. Piling was drove above to keep the water from cutting.
Q. What connection, if any, had you with these locks and dams?
A. I kept lock No. 3 for five or six years.
Q. What finally became of those locks and dams?

A. They went to naught.

Q. What, if anything, was done to those locks and dams, or repairs made to them after the beginning of the War?

A. None, virtually none; nothing much to do, no use to take care of them.

Q. What, if ever, were they abandoned for navigation purposes?

A. That is hard to tell. They were abandoned, of course, when there was nothing to do.

Q. Were they used for navigation purposes in the year 1861 1114
or thereafter?

A. They were used for navigation purposes a little in 1861, mighty little. They were in the spring. A good deal of timber came out of Guyandotte, in the spring of 1861. They had to go over the locks.

Q. What effect, if any, had the high waters of 1861 upon the locks and dams?

A. Had pretty bad effect; damaged them a great deal first and last. Some of them it didn't damage; others it did.

Q. Was any effort made to repair such damage?

A. No, sir.

Q. What finally became of the locks and dams?

A. Gradually wore out and went under.

Q. What was the condition of those locks and dams in the summer of 1863?

A. Well, they were just about equal to what they were in the beginning of 1862. I didn't see any difference so far as the condition was concerned. They were just about the same. There was no use for them, and they were not used from 1861 to 1863. There wasn't anything to go up or down the river.

Q. Of what value were they as a system of navigation after the year 1861?

A. Well, I couldn't tell you, so far as that is concerned. If they had been looked after and kept up as they had been before that—it took a whole lot of repair work to keep them up before that for the custom and trade of the locks and dams. It took a heap of repair work to keep them up. The lock I kept on the river paid 1115
more than any other one lock on the river. That was Lock No. 3. During high water big pools of water—back water—very often rose over these dams, and they didn't have to go through the locks. They would go over the dam. Of course, steamboats hardly ever went over the dams when they could get to the locks.

Q. Were they used in the navigation of steamboats after 1861?

A. There wasn't any; there wasn't any steamboats used after 1861. There was during 1861 a little trade by steamboats.

Q. What time in 1861?

A. In the beginning of 1861, until about June, I reckon it was. One of the little steamboats sunk between Smith's Creek and Salt

Rock; I think it was in the spring of 1861. There was nothing more to do, anyhow.

Q. What became of the remains of said locks and dams?

A. It would take more people than me to answer that. I don't know what became of them. They disappeared and went to nothing —washed out, washed around, broke. Mr. Love said they rotted, but he is mistaken about that, they weren't rotten. They weren't old enough to rot. But the water cut out a place below to let these loose rock drop, and broke off the plank above. The timber was sound; could not be otherwise. They put in there all oak timber. They weren't old enough to rot.

The counsel for complainant excepts to all the testimony of witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause. 1116

And further the deponent sayeth not.

WILLIAM A. GRIFFITH,

a witness of lawful age, being first duly sworn, deposes and says:

(Examined in chief by Wesley Mollohan, Esq.:)

Q. State your age, residence, and occupation.

A. My age—I cannot swear to my age; but I think it is 82 years. I think I will be 82 years old the 5th day of next month. I reside in Kanawha County, West Virginia.

Q. On what stream?

A. Dry Fork, at Alcott.

Q. What is your occupation?

A. What is my occupation? I haven't got any now. I have always been a river man, but at this time I am only gardening a little at home. I have got no occupation at all. I am not a farmer. I don't think I have got any.

Q. How close is your present residence to Coal River?

A. Four miles.

Q. Did you ever live on Coal River; if so, at what place?

A. I lived a year or about 18 months at lock No. 3 on Coal River, right on the bank. And I might state here that I had charge of the river, or my family did. I had charge of a steamboat.

Q. When did you move to Coal River? 1117

A. I don't remember that.

Q. About what time?

A. Well, I think it was about 1871 or 72; I couldn't tell that very clearly. I could have given you a heap better statement if I had known what I was coming for.

Q. Do you remember the time the first locks and dams were built in Coal River?

A. I cannot give you a perfect date of that; but I think it was about 1856 or 57, somewhere along there.

Q. Where were you living then?

A. I was a young man then, here in Charleston and on the Kanawha River. I didn't have any certain home at all.

Q. Where were you living in the year 1861?

A. I was living in the year 1861 on Brier Creek.

Q. How far from Coal River?

A. Four miles.

Q. What business were you engaged in at that time?

A. I was flat boat piloting on the river, boating for salt companies.

Q. How were those locks and dams constructed?

A. They were built of wood and stone. They made a frame of wood and then filled it with stone.

Q. Do you remember the big rise of 1861?

A. Yes, sir.

Q. What effect, if any, did that rise have upon the locks and dams in Coal River?

A. That rise washed out quite a lot of the locks and dams. 1118
It didn't wash the dams out so much as it washed around the locks and cut in the banks around them.

Q. Where were you living in the year 1862, Captain?

A. I was trying to fight for Jeff Davis.

Q. What time did you go into the Army, Captain?

A. 1862, the first of the year, I think.

Q. What use was made of that old system of locks and dams for navigation purposes, after the beginning of the War?

A. There was none, sir. The locks—some of the locks were entirely dismantled, and there was no lockage through them: that is, so far as I know anything about it. I think I am right.

Q. Of what value was that old system of locks for navigation purposes after 1861?

A. Mr. Mollohan, you are asking me questions, and I will ask you one: From 1861 to when?

Q. Until 1862 or 1863—until you left.

A. From 1861 to 1865 they were of no use to anybody at all. They were dismantled. There was no locking through. You could not get through them. They were a retard actually to navigation.

Q. When were the locks and dams rebuilt in Coal River?

A. Well, I will not be certain, Mr. Mollohan, but I think it was in 1866.

Q. Who rebuilt them? Who rebuilt the locks and dams?

A. Major Cupp was the contractor.

Q. Was it by the same company that built the original locks and dams? 1119

A. That was my understanding, sir. I do not know.

Q. What was the name of the last company?

A. Coal River navigation Company.

Q. What was the name of the old company that built the first locks and dams?

A. The old company—I don't know. The old locks and dams were built, I think, by the Peytona Canal Coal Company. They furnished the money; but they might have had another name for it.

Q. Did you ever hear of the name of the navigation company of Coal River used in connection with the first locks and dams put in the river?

A. I don't know who were the officers of that company; but they had two companies—the Peytona Canal Coal Company, and the navigation company. The Peytona Canal Coal Company put up the money all the time; but there were two names to it.

Q. When did you first become a pilot on the Kanawha River?

A. In 1854.

Q. What was the character of the services you rendered as pilot on the Kanawha River?

A. My services were simply to run boats through the channel to get them to market.

Q. What kind of boats?

A. Flat bottom boats—salt boats. That is what we called them.

Q. What did you ship in those boats?

A. Shipped salt; and latterly before I came they commenced 1120
to ship coal.

Q. When did they commence to ship coal by flat boat?

A. That is another thing I can't tell you by date—perhaps somewhere along about 1856.

Q. How extensive was the shipment of coal?

A. Oh, there wasn't any shipping of coal except by one company—the Fields Creek Company.

Q. Had there been constructed any shoots or channels in the river before you commenced piloting on the Kanawha river?

A. Yes, sir.

Q. What was the character of those shoots?

A. Well, they were very oddly constructed, so far as my knowledge goes. They were crooked and very hard to navigate.

Q. How wide were they?

A. They were supposed to be 24 feet wide. They threw these walls up. Boats 18 feet wide would grind on shores of each wall. They were not wide enough to let boats go though free.

Q. Were they generally used for the purpose of sending boats out of the river, or was it the custom to wait until the river got up to run the boats out on the flood?

A. They were used for shipping salt out in low water; but the boats were held very often for a rise to go over these walls.

Q. What loss or destruction occurred in the navigation of these shoots?

A. Why, a great many times the boats would strike the 1121 walls—men couldn't get them off, and they would sink. They caused a good deal of destruction to the operators, to the salt mines.

Q. What is your opinion, as a pilot, of the way these shoots were constructed for navigation purposes?

A. My opinion is, Mr. Mollohan, those shoots were very badly constructed, and were not in accordance with good sense in making channels. You can take that as you please.

Q. What use was made of them in steamboat navigation?

A. Why the steamboats had in many places to run those channels.

Q. How was it when steamboats were going up the river?

A. Why, they could make the channels a great deal of the way, but there were places they couldn't go through. They had to come around. That is where the great trouble is about that navigation. They made them so crooked. They would rather have a straight channel. I am both a steamboat man and a flatboat man.

Q. What is your opinion as to the effect of the construction of those shoots on the navigation of the Kanawha River as it then existed?

A. Do you mean before the War?

Q. Yes, sir.

A. I believe they were an obstruction to the navigation.

Q. What improvements were made to the navigation of the Kanawha River after the War?

A. I don't know. 1122

Q. Were not many of the shoots changed and widened after the War and before the Government of the United States put in the locks and dams?

A. Mr. Mollohan, I think the shoots haven't been bothered since the contract with Barton was finished. If there was any improvement, I don't know of it. He had a contract to change these shoots. He closed it about the beginning of the War. He and his sons were working here, and his son went off in the Confederate Army, and it hurt the old man very much. The son died in the Confederate Army the same year.

The counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

HENRY V. SATTES,

a witness of lawful age, being duly sworn, deposes and says:

(Examined by Wesley Mollohan, Esq.:)

Q. State your name, age, residence and occupation.

A. I am past 65; I live at the lower falls of Coal River; I am in the milling business at that point.

Q. Where did you live in the year 1861?

A. I lived at the lower falls. 1123

Q. What was your business then?

A. Milling.

Q. At that point?

A. Yes, sir.

Q. Were you acquainted with the locks and dams built in Coal River before the War?

A. I was acquainted with the bigger portion of them on up to No. 4; I had never been above that.

Q. How were they numbered going up the river?

A. They commenced at the first lock at the mouth of the river and numbered up.

Q. How?

A. 1, 2, 3, 4, 5, 6, 7, 8. The lock on Little Coal River was numbered "A".

Q. How were those locks constructed? I mean of what material?

A. Wooden pens filled with stone—cribs.

Q. How were the dams constructed?

A. Same way.

Q. Where were you at the time of the big rise in 1861?

A. I was at the lower falls of Coal.

Q. What effect had that rise on Lock No. 1?

A. I don't think that rise had any particular effect on Lock No. 1. There was a later rise in the winter of 1861-2, that wrecked the lock, and also wrecked No. 2 lock.

Q. How did it wreck them?

A. Well, it washed the top of the dam off of one, I think, to 1124 the best of my knowledge. It broke the cribs of No. 2 and dismantled the gate, and the whole river ran through the crib work above the locks.

Q. When lock No. 2 was rebuilt after the war, was it located at the same place?

A. The lock was located at the same place. They first built on the opposite of the river. They located the lock at the same place, but moved the dam lower down the river.

Q. What effect did it have on lock 3?

A. Well, I don't think that fall had any particular effect on lock 3. It might have lost some of the rigging off of it. But by the end of the war it was gone—knocked and washed to pieces.

Q. How was it as to the locks above that?

A. I don't know, only from hearsay. They were all wrecked above that. There wasn't any locks of any use. People who came to the mill told me that locks No. 4 were all right.

Q. When they reconstructed Lock No. 1 after the War, what did they do to it?

A. Built a new dam; built a new lock.

Q. When the War broke out, what care or attention was paid to those locks and dams?

A. Well, they were working on the locks and dams repairing them, right just at the time the War broke out; but just at the middle of the summer, high water came up, and there wasn't any more done until the end of the War.

Q. Did anybody take care of them?

A. Not that I heard of. 1125

Q. What use was made of them for navigation purposes after the beginning of the War until they repaired and reconstructed?

A. There wasn't any; only one lock on the river they could make any lockage through, and you couldn't get out or in it, because there wasn't any water above or below. That was No. 3.

Q. What use for navigation purposes were those locks and dams in the year 1863?

A. There wasn't any.

Q. What company rebuilt the locks and dams after the War?

A. I think the navigation company of Coal River.

Q. What came of the locks and dams put in the river after the war?

A. Well, they were used until the Peytona Company quit working. They abandoned them. Irons taken off. They were just let go.

Q. Any use made of them now?

A. No, sir; there are no locks in the river.

Q. How is it as to dams?

A. There isn't any but one, No. 1, built in 1867, and kept up by the Bowman Lumber Company.

Q. For what purpose did they use it?

A. To make a pool to handle logs with. By the way, that dam is a few feet higher than No. 7 in the Kanawha.

Q. In the wreckage of these locks and dams, what change did the floods make, if any, to the locks, that is, did it move any of the locks in the river? 1126

A. No, sir; it never moved any of the locks; that is, the foundations. It would just take the tops off and the cribs off.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

W. F. GREGORY,

a witness of lawful age, being first duly sworn, deposes and says:

Questioned by Wesley Mollohan, Esq.:

Q. State your age, residence and occupation.

A. I am 75 past; my residence is Kanawha County, Lock No. 7, West Virginia; and I am a steamboat Captain and Pilot.

Q. How long have you lived on the Kanawha River?

A. Well, I was a year old when I came out from Richmond here. I was born out there, and my father moved over here.

Q. Have you lived on the Kanawha ever since you came to this section of the country?

A. No, sir.

Q. Where else did you live?

A. At Cincinnati, when I wouldn't be on steamboats. I was a young man, then single.

Q. On what river have you been captain and pilot?

A. On the Kanawha and Ohio Rivers; and on Western rivers 1127 as captain.

Q. Were you ever engaged in navigation of flat boats on the Kanawha River?

A. No, sir, only made a few trips with pilots, as a hand. I made the first trip with this man, Captain Griffith.

Q. Were you acquainted with the shoots constructed in the Kanawha River before the War?

A. Well, acquainted, sir, since 1849.

Q. What was their character—how were they constructed?

A. Badly constructed; very crooked and narrow channels.

Q. How extensively were they used in navigation of the Kanawha River?

A. Very little; few steamboats and salt boats.

Q. What parts of the river were used in the navigation of steamboats—the shoots or other parts of the river?

A. I ran the shoots where I had to do it. When there was plenty of water, I didn't have to run them. I ran straight, the way they ought to have been made.

Q. What is your opinion, as a pilot, as to the value of those improvements to the navigation of the Kanawha River?

A. Those old shoots? Very little, sir. They made crooked, the natural course where the waters ran, and crooked they made the channel, the way God Almighty made it.

Q. What improvements were made in the shoots or channels after the War in the Kanawha River?

A. A good deal; made a good river. 1128

Q. How were the new shoots constructed as to the old ones?

A. They were run straight and wider.

Q. After the construction of the new shoots after the War, what use was made of those old shoots?

A. They were stopped up, filled up. They were no account. Steamboats they build now couldn't get into them. If there wasn't bar water, they would have to lay up. The size boats we have now couldn't get in those old shoots.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further deponent sayeth not.

JAMES H. WRIGHT,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.:

Q. What is your age, residence and occupation?

A. I was 74 the 1st day of last April; now going on 75; I live at Scary, Putnam County, West Virginia. I have always been a pilot all my life.

Q. On what river? 1129

A. Kanawha, and as far as Louisville on the Ohio River.

Q. When did you first commence the navigation of the Kanawha River?

A. I guess I was about 18 years old when I went on the Kanawha River. I have had license for 50 years, and I was a pilot before I got my license, before the license came out, you know, long before the War.

Q. Before the War there were constructed in the Kanawha River certain shoots. Were you acquainted with those shoots?

A. Yes, sir.

Q. What was their character, as constructed in the river?

A. Well, we had what we call wing dams on each side of the channel. We would cut a lot of brush and put on these dams and put stone on that to back the water up in shallow places.

Q. Were there some shoots constructed with walls?

A. Yes, sir.

Q. What was the channel width of those shoots constructed with walls?

A. I suppose they were something near forty feet.

Q. What use was made of these shoots in the navigation of the Kanawha River?

A. Well, there was very little use made of them. The river was so low you couldn't do much with the shoots—couldn't do anything at all until there was a rise or something of that kind; couldn't do much of anything when the water got under 1130 three feet.

Q. Were the shoots constructed straight or crooked?

A. Very crooked, sir.

Q. What effect did this crooked construction have upon the use of the shoots in navigation?

A. Well, we had to—when we salt boated we would have to land at the end of these shoots, and take both crews to run through these shoots, then walk back four or five miles to get the other boat. Four men couldn't handle one boat.

Q. Was there much loss or destruction of cargoes in the navigation of these shoots?

A. Well, I don't know of any. Sunk a heap of salt boats, but we did that when the river would rise. They would sink on the piles. They never sunk any of them right in the channel. That is the way they lost their salt.

Q. What do you mean by saying that they sunk them on the piles?

A. They put bouys on the piles. We had bouys set on those piles. That is the way we had to run. When the river would rise they wouldn't show up. The salt they lost was—well, they knowed where the piles were, too; but they couldn't keep off of them in the current.

Q. Who put in those piles?

A. James River and Kanawha Company.

Q. Were they a part of the system of navigation?

A. They had the river—both sides of the river; that is, the turnpike.

Q. What, in your opinion, as a pilot, was this system of 1131 navigation as constructed by the James River Company of benefit to the navigation of the Kanawha River?

A. Well, it wasn't very much. If you will allow me to tell you, I will tell you something. I used to run steamboats here when we would have to put everybody off at the foot of a shoal; and stocked up at New River to get water to drink.

Q. How extensively were those shoots used in the navigation of the Kanawha River?

A. It was very bad.

Q. What improvement was made for navigation purposes in the Kanawha River after the war and before the Government of the United States put in the locks and dams?

A. They straightened the shoots and made them much wider.

Q. Did they not also locate many of them elsewhere in the river?

A. Yes, sir.

Q. Did they not also widen the shoots?

A. Yes, sir.

Q. How extensively were those old shoots user ofter the shoots were so straightened and widened?

A. They weren't used at all, only when there came more water.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference, or pertinent to any issue in the cause.

Without waiving the exception, counsel for complainant 1132 wishes to ask the following:

By Attorney General Anderson:

Q. Were the new sluices or shoots to which you have referred a benefit to navigation during low water?

A. Yes, sir; they were.

Q. And the river could not have been navigated at all in period of low water but for these sluices?

A. Yes, sir.

Q. It could not have been?

A. No, sir; it could not have been.

Further dependent sayeth not.

JAMES M. PAYNE,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Geo. W. McClintic, Esq.:

Q. State you name, age, residence and occupation.

A. James M. Payne; I am 60 years of age; my residence is Charleston, West Virginia; occupation, lawyer.

Q. Where were you born, Mr. Payne?

A. In Giles County, Virginia.

Q. There has been charged by the Commonwealth of Virginia against West Virginia the sum of $2,400 being 50 per cent. of the amount of money which the Commonwealth of Virginia spent for stock in what is known as the Mountain Lake, Salt Sulphur Springs Turnpike Company, which purported to be a turnpike 1133 from Salt Sulphur Spring, in Monroe County, now West Virginia, by the way of Mountain Lake, in Giles County, now Commonwealth of Virginia, to some point on the Virginia & Tennessee Railroad in the County of Montgomery or Pulaski. Please tell what

you know of that turnpike and how much of it is in the State of West Virginia, and how much in the Commonwealth of Virginia.

A. I know of that pike, turnpike, having been born and reared near it. Part of it ran through my father's home farm, near Newport, in said County of Giles. My father also owned a farm east of Newport along the line of this road. The distance from Salt Sulphur to Mountain Lake is about 24 miles. From Mountain Lake to Christiansburg Depot is about 24 miles. The portion of the turnpike lying in Monroe County between Salt Sulphur Depot and Peters Mountain is about 8 miles. The remaining 40 miles is in Giles County and Montgomery County, Virginia.

No questions; no exceptions.

Further deponent sayeth not.

DR. C. I. LEWIS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Mr. Mollohan:

Q. State your age, residence and occupation.

A. I will be 73 years old July next. I live at Lewisburg, in Greenbrier County, West Virginia. I practiced medicine for about thirty years, sir. I am doing nothing now.

Q. Where were you raised? 1134

A. I was born at the mouth of Kelly's Creek, in this County. I was raised principally one mile below St. Albans.

Q. Had you spent much time before the war at the falls of the Great Kanawha River?

A. Yes, sir; my father lived there about five years.

Q. Had you any other relatives living there?

A. Yes, sir; my grandfather and grandmother were living there.

Q. Do you know where was located the bridge across Gauley River?

A. Yes, sir.

Q. Where was it?

A. At the mouth of Gauley. The mouth of Gauley is about one mile above Kanawha Falls.

Q. Upon what road or part of what road or turnpike was that bridge constructed?

A. My understanding was the James River and Kanawha.

Q. How long had you known that bridge before the war?

A. I can't remember back—let me see; commence that in 1840. I

went to school there when I was ten years old. Well, I had known it for many years.

Q. Was there any other bridge across Gauley except that one?

A. No, sir; that is the only one I know of.

Q. Was that bridge burned down or destroyed during the War; and, if so, by whom?

A. I belonged to Wise's command. When Wise retreated 1135
out of the valley here, out of this valley, my company stopped at what is now known as the town of Montgomery. We remained there some three or four days. When we went east, and when we arrived at the mouth of Gauley, the bridge was burned.

Q. In what year was that?

A. 1861.

Q. How did you cross Gauley?

A. We forded the river about a quarter of a mile above what is known as the mouth of Scrabble Creek.

Q. What Wise was that?

A. Ex-Governor Wise, General Henry A. Wise.

Q. What was your position in the army at that time?

A. I was Captain of Troop 1, 8th Virginia Cavalry.

The counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further dependent sayeth not.

JOHN SLACK,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq. 1136

Q. State your age, residence and occupation.

A. I will be 75 years old the 1st day of November; residence—I resided in Charleston, West Virginia; I have no particular occupation.

Q. Where did you reside in the year 1861?

A. Here in Charleston.

Q. Were you acquainted with a bridge that had been constructed across Elk River before the War?

A. Yes, sir.

Q. Where was it located?

A. It was located right where the bridge is now. I forget what the name of the street was then, and I really don't know. But it was on the same spot.

Q. On the line of any turnpike?

A. Yes, sir; on the James River and Kanawha Turnpike.

Q. State what occurred to that bridge, if anything, early in the War.

A. Well, when Governor Wise retreated from here in 1861, his soldiers cut the lower strand, that is my recollection, about half, probably not quite half, in two. The bridge didn't fall, and was repaired by the Federal forces when they came up.

Q. What happened to that bridge after that, and when?

A. The next thing that happened to the bridge—they don't say it was the high rise known as the rise of 1861 that damaged it. My recollection is that it did not do any damage. The drift and water raised it way up, and when the water fell the bridge went 1137
back to the normal position.

Q. What happened to it after that?

A. When Lightburn retreated he cut the strand on the lower side of Elk, on the lower side of the bridge, cut it in two, and let the bridge down. Part of it went down in the water.

Q. When was it rebuilt or reconstructed?

A. Well, I cannot fix the date exactly; but it was not reconstructed until there was some legislation which turned it over to Mr. Joseph Biddle. I don't remember now whether that was by the legislation called the restored Government, or whether it was after the State was made; but I think it was after the State was made. I think it was after the 20th of June, 1863.

Q. From the time Lightburn cut its cables, until it was rebuilt, what was its condition? Was it used for any purpose?

A. None at all. The wires at this end of the bridge held it up; that is, this end of the bridge, but the other end was down. The lower side was in the water.

Q. Do you know anything about the destruction of the bridge at Sissonville?

A. I don't know anything about that.

Q. Do you know what became of the bridge at Sissonville, Kanawha County, West Virginia, over the Pocatalico River?

A. My recollection is that it was down for some time, but when it went down or what made it go down I don't know. 1138

Q. Weren't you sheriff of the county?

A. Yes, sir.

Q. Were you sheriff under the restored government?

A. No, sir; I was elected under the old State Government just as the War was breaking out.

Q. Do you know that it was done before the 20th day of June, 1863?

A. I can't be positive about that.

Q. On what road was that bridge?

A. It was on the road that was called the Kanawha & Jackson Turnpike—The Charleston, Ripley and Ravenswood, built by Henry Chapel.

Q. Were you much through this section of the country before June 20th, 1863?

A. Yes, sir; I was around considerable through this end of the State.

Q. Were you anywhere outside of the County of Kanawha?

A. Yes, sir; I was in Cabell County, Roane County, Jackson County, Mason County.

Q. Were you in Putnam County?

A. Yes, sir; Putnam, and what is now Lincoln, Braxton County, Clay County. I can't remember all of them now.

Q. Were you acquainted with the Kanawha & James River Turnpike, located through Kanawha County and adjoining counties?

A. Yes, sir; I was. 1139

Q. What was the condition of this turnpike in the years 1861 and 62 and up to June 20, 1863?

A. Well, in the winter season they were almost impassable, particularly where the Army had travelled.

Q. How did the Army injure this pikes?

A. Well, the travel over them in the winter time destroyed them, cut them up and made them almost impassable.

Q. What effect did the wagons used by the army have upon these pikes?

A. Cut ditches and holes in the roads; had to fill some of the holes up with stone. The James River and Kanawha Turnpike was one of the streets right through the town here. In the winter time they were almost impassable at times. The army would repair it occasionally by putting rock in the mud holes.

Q. What repairs, if any, were made upon these pikes by any public authority in the years 1861 and 62 and up to June 20, 1863?

A. None, I don't think. There were no good roads through this country during the War.

Q. Did you, during that time, make any trip or trips over the James River and Kanawha Turnpike between Point Pleasant and Charleston?

A. Oh, yes.

Q. What was the condition of that part of the Pike?

A. Oh, I stated before, in the winter time it was very bad. Dry weather, of course, helped the roads.

Q. Were you over any part of the James River & Kanawha Turnpike between there and Kanawha Falls during that time? 1140

A. Yes, sir.

Q. What was the condition of that part of the turnpike?

A. Well, it was bad.

Q. When you say "bad," what do you mean?

A. I mean it was all cut to pieces, particularly in the winter time, and it was almost impassable to get along, even on horseback.

Q. Was there much hauling over that part of the turnpike in connection with the army?

A. Yes, sir; there was a great deal. That is principally what caused the condition of it.

Q. Were you over any part of the Charleston, Ripley and Ravenswood Turnpike during any part of that time?

A. Yes, sir.

Q. What was its condition?

A. The same as the others; in the winter time very bad.

Q. Do you remember what was known as the high rise in the Kanawha River in 1861?

A. Yes, sir; I remember that very well.

Q. Where were you at the time?

A. Here in Charleston.

Q. What effect did that rise have upon the turnpike or the bridges located thereon?

A. Well, it carried out a great many of the bridges. The bridges in the small streams between here and Lewisburg were nearly all destroyed in September, 1861. The bridges from here to 1141
Point Pleasant, my recollection is that they were nearly all taken out. I know some of them were. As I understand, some of them were rebuilt soon. That was in Mason County, and I don't know how that is.

Q. Do you know how far the Charleston, Ripley & Ravenswood Turnpike had been made before the war?

A. Well, it was a pretty good road from here to Sissonsville before the War.

Q. How far had it been made?

A. Well, it was all made before the War. I don't know anything about it about two miles beyond Sissonsville. I think Chapel quit there. It was finished to Fishers. About two miles above Sissonsville, about twenty miles from here.

Counsel for complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the case.

Further deponent sayeth not.

WILLIAM H. TOMPKINS,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by Wesley Mollohan, Esq.: 1142

Q. State your age, residence and occupation.

A. I am 72 years of age; I reside in Charleston, Kanawha County, West Virginia; I have no occupation at present.

Q. Where did you reside in 1861?

A. I was born in Kanawha County and I reside in Kanawha County, and have always lived here. In 1861 I resided in Cedar Grove, Kelley's Creek, 20 miles above here.

Q. On what road?

A. On the old James River and Kanawha turnpike.

Q. How long did you reside there during the Civil War?

A. Until October, 1862.

Q. Where did you go then?

A. I went to Virginia and joined the army.

Q. When you left this country, which way did you go?

A. I went to Lewisburg first, and from there to Dublin depot.

Q. When you went South, what turnpike, if any, did you travel over?

A. Over the James River and Kanawha turnpike to Lewisburg.

Q. What was the condition of that turnpike when you travelled over it? I mean on that trip?

A. Well, it was no good, sir. I would call it bad.

Q. In what respect?

A. Well, the roads were a good deal cut up and the bridges were gone, especially the bridge across Gauley. We ferried 1143 there.

Q. What, in your opinion, had cut the road up, as you saw it?

A. So far as the army went, that was the cause of it, especially to Gauley Bridge. That was in bad condition. The supplies were hauled during the first year of the War from Ten mile house, ten miles above here.

Q. How far was it from Charleston to Gauley Bridge?

A. We always called it 39 miles.

Q. What temporary devices were resorted to by the army to make the roads passable?

A. They would throw rocks in the road, put timber in it. Sometimes it was kind of a corduroy road. They would put anything in it that they could get to fill up the ruts. There were hundreds of wagons passing over it.

Q. What did they corduroy it with?

A. Anything they could get, rails or anything else. I don't mean all the way; but in some places. They put rocks in the ruts that were cut where they could get them.

Q. Were there not very large armies in the early part of the War between Gauley Bridge and Lewisburg?

A. Well, I can't say that they were very large armies. There were troops at times between Lewisburg and Gauley and the top of Gauley Mountain. Of course, they made raids from there frequently.

Q. In the early part of the war wasn't a large Confederate army in that section under General Lee, and also a large Federal army under the command of General Roscrans? 1144

A. Yes, sir; stations there on the Sewell. That was in 1861.

Q. From what point did the army of General Rosecrans get its supplies?

A. Well, I suppose they got most of them passing Gauley from the head of navigation on the Kanawha.

Q. How would General Lee be compelled to get his supplies?

A. He would have to haul them over the road from the other end. from Lewisburg.

Q. Over what turnpike would these supplies have to be hauled?

A. James River & Kanawha turnpike.

Q. Had you occasion during that time to travel over any other turnpikes in this end of the State, and, if so, what?

A. No, sir; I didn't. I stayed right close at home.

Q. When you returned from the War, at the end of the War, over what road or roads did you come?

A. I came by the way of Lewisburg; and from Lewisburg I came over the James River and Kanawha Turnpike, in June, 1865.

Q. What was the condition of the pike at that time?

A. Well, it was bad?

Q. Had any repairs apparently been made to the road?

A. I don't think there had, sir.

Q. What do you remember about the fact that the small bridges on the road had been destroyed and remained unreplaced?

A. My recollection is that when I returned a number of them 1145
were not there. We had to come around where the bridges were. There had been temporary roads built around. There wasn't any bridges of any particular size that were formerly there but were gone. The roads were in very bad condition.

Q. What connection, if any, had you with the navigation of the Kanawha River?

A. When?

Q. Previous to the War; previous to the Civil War?

A. I didn't have any particular connection before the War; I was up and down the river frequently, but I had no position on the river.

Q. After the War what had you?

A. Well, after the War I steamboated a long time on the Kanawha River and down the Ohio to Cincinnati. I was a member of the Kanawha River Board for three years or more. As a salt manufacturer I used to ship salt down the river in flat boats.

Q. Do you remember, generally, the old shoots that had been constructed in the Kanawha River before the War?

A. Oh, yes; I remember a great many of them—most of them, I suppose.

Q. What were their character? That is, as a means of navigation?

A. Well, sir, they were—they served very little if any. They were narrow and swift, badly located; navigation was very dangerous, that is, by flat boats—and even for steamboats.

Q. Were they straight or crooked? 1146

A. Well, they weren't always straight; they were narrow. The boats of the present day couldn't run through at all. Such boats as I ran couldn't get in those shoots at all.

Q. In passing up and down the river before the war with steamboats, how extensively were those shoots used?

A. They weren't used at all times. Sometimes in ascending it was impossible to ascend them. You would have to wind a boat clear through. It would have been better, in fact, to stay in the current. Another thing, I didn't think it was possible for steamboats to ascend them by winding.

Q. Didn't steamboats in coming up through the Elk shoot usually pass around to the left of the shoot?

A. Yes, sir; left, in ascending it. They would come close to this shore until they came up to the mouth of the Elk.

Q. Do you remember the shoot through Johnson's shoal?

A. That was pretty bad and crooked before it was repaired and rebuilt.

Q. What was the trouble with it?

A. Well, it was crooked and narrow; it didn't afford sufficient water for easy navigation.

Q. Do you remember the character of the shoot Knobs Shoals?

A. Yes, sir. It went down through that old shoot in the middle of the river. The old shoot was in the middle of the river, and it was narrow. 1147

Q. How was it located for the purpose of navigation?

A. Well, it was badly located, and very difficult to run. Afterwards a new shoot was made through there.

Q. Do you remember the improvement in Catfish Shoals above Charleston?

A. Catfish Shoals was a very bad place; but before the War very little steamboating, very little of anything, in fact, was done there. Very little coal and very little salt shipped before the War. But it was a very bad place.

Q. How was that improvement located for the purposes of navigation?

A. Well, they were bad, they were all bad.

Q. Was that so with the shoot from Tackett?

A. Yes, sir.

Q. There was an improvement lower down called Dovey's Dam. Do you remember that?

A. Yes, sir; that was way down.

Q. How was that constructed for the purposes of navigation?

A. Well, that was a badly constructed and very dangerous place; that is, dangerous for navigation. It was a common thing to sink salt boats at any of these shoots.

Q. How was the shoot constructed at 13?

A. Well, before the improvement that was a bad place.

Q. How was that for the purposes of navigation?

A. Bad.

Q. Was there any loss to navigation on account of that shoot?

A. Oh, yes; there has been.

Q. For the purposes of navigation, generally, of the Kana- 1148
wha River, what is your opinion of the shoots constructed in the river before War?

A. Well, I consider them of little or no value for navigation. We generally ran things out of here on a tide or rise. They could have done just as well without the improvement as with it. They would hold salt boats here until they accumulated, fifty or one hundred, maybe, and run them out on a rise.

Q. On such occasions, what use was made of those shoots?

A. None, during the rise. They went over the bars—what we call bar water.

Q. What was the character of steamboats, generally, that navigated the river before 1861?

A. They were small, generally, in comparison with the boats of the present day.

Q. What improvements were made in the navigation of the Kanawha River after the war and before the Government of the United States put in the lock and dam system?

A. Naturally, the river was almost entirely remodeled. A new shoot was made at Elk, one at Johnson, one at Knob, and at 13; besides other places. Tackett, for instance, there was an improvement and at Red House. That was a bad place.

Q. Before the War?

A. Yes, sir; that was very bad. That shoot was narrow and 1149
long. I almost overlooked the Red House shoot.

Q. In these improvements made after the War, were the locations of the old shoots largely abandoned?

A. Oh, yes. They were relocated in a great many instances, and in one or two instances they were simply widened, they simply widened the shoot or straightened it, as in the case of Elk here. Tackett, Johnson, Knob, Red House and Thirteen, you might say they were almost entirely relocated. Elk was widened and deepened and strengthened.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for complainant asks the following questions:

Q. What was the principal line of communication between the

Kanawha Valley and the eastern part of Virginia? I mean, for many years prior to the War?

A. Principally by the James River and Kanawha Turnpike.

Q. What was the principal line of communication between Charleston and the Kanawha and Ravenswood on the Ohio, during the same period prior to the War?

A. There were two ways of reaching Ravenswood: By the Charleston, Ripley and Ravenswood Turnpike, or you could go down the Kanawha River and up the Ohio. Ravenswood is right on the Ohio River.

Q. The principal line of communication, if any one went 1150
over-land, was by the Charleston, Ripley and Ravenswood Pike, wasn't it?

A. That was the principal way; yes, sir.

Re-Direct Examination.

By Wesley Mollohan, Esq.:

Q. Do you know how far the Charleston, Ripley and Ravenswood Turnpike had been made before the War?

A. No, sir; I don't. I never knew much about that country. Mr. Slack could tell you more about that than I could.

Further deponent sayeth not.

CHARLES W. DERING.

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your age, residence and occupation?

A. Forty-four; residence, Charleston, West Virginia; occupation, Chief Clerk in the State Auditor's office.

Q. How long have you occupied the position of Chief Clerk in the State Auditor's office?

A. Since March 4th, last.

Q. State, Mr. Dering, if you have examined the books of the Auditor's office as to the First National Bank of Fairmont; and if so, state what shares of stock, if any, the State of West Virginia received from the first National Bank of Fairmont for the shares of stock held by the State in the Bank of Fairmont?

A. Yes, sir; I have examined the records of the Board of 1151
School Fund, and find that the State got 500 shares, of $100 a share, as I am informed.

Q. State if you have examined the books in the Auditor's office and what shares of stock were received by the State of West Virginia

from the Northwestern Bank of Virginia at Wheeling and its branches, and the par value thereof.

A. I have examined the records, the same book, and find that the State received from the National Bank of West Virginia from the Northwestern Bank of Virginia at Wheeling 300 shares, and from the First National Bank of Wellsburg 351 shares, and from the Parkersburg National Bank 400 shares, of $100 a share.

Q. State if the records show that the bank at Parkersburg and the Bank at Wellsburg were originally branches of the Northwestern Bank of Virginia at Wheeling, after the National Banks above spoken of had been formed.

A. The records do not show.

Q. Did the State receive any money or other thing of value besides the stock?

A. Yes, sir. I find in the same record two payments or dividends of 5 per cent., amounting to $10,510 each dividend; same record.

Q. State if you found whether or not the State received anything else, so far as the records show, from these two banks than the stocks and moneys above set out?

A. Nothing that I discovered. They do not show any other 1152 payments or any other stocks.

Counsel for the complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving the exception, counsel for the complainant asked the following questions:

Q. Do you know what the State of West Virginia did not receive any other money or property or thing of value on account of shares of stock formerly owned by the Commonwealth of Virginia in the Northwestern Bank of Virginia at Wheeling and its branches and any other banks located within the limits of what is now West Virginia, in addition to the shares of stock and money you have mentioned?

A. No, sir; I do not know that West Virginia did not receive anything besides this stock; but I find nothing in the records, so far as I have been over them, except what I stated.

Q. That is all.

Further the witness saith not.

The taking of these depositions is resumed this 21st day of May, 1909, at the hour of 10:00 o'clock A. M., at the same place.

Present on behalf of the defendant, the State of West Virginia: Wesley Mollohan and George W. McClintic, of counsel. 1153

Present on behalf of the complainant, the Commonwealth of Virginia, William A. Anderson, Attorney General of Virginia.

J. K. THOMPSON,

a witness of lawful age, being first duly sworn, deposes and says:

Examined by George W. McClintic, Esq.:

Q. Give your name, age, residence and occupation.

A. J. K. Thompson; 66 years old; occupation, farmer, I reckon—as much that as anything else; Winfield, West Virginia, Route No. 1, Putnam County.

Q. What were you doing when the War began in 1861?

A. I was a cadet of the Virginia Military Institute.

Q. If you joined the army, which one and where?

A. When the War broke out, we were ordered to Richmond. I served there as cadet and drill master for a couple of months drilling the Virginia troops that were mobilized there. Some time during the summer I was transferred to this Western Virginia Department. I came here to Charleston, and on Wise's retreat we fell back to White Sulphur Springs. There I organized the 22d regiment. They put 10 companies into that regiment. I served as adjutant until 10th of October, 1861. I resigned that and accepted the first lieutenancy in Company A, 22d Virginia regiment. I served in that company and regiment for the rest of the War.

Q. What parts or counties of what is now West Virginia were you mostly in during the period from 1861 to 1863, inclusive?

A. 1861 to 1863? Putnam, Kanawha, Fayette, Raleigh, Mercer, Monroe, Greenbrier, and Nicholas Counties, and I made one expedition into Randolph, Upshur, Lewis, Braxton and Pocahontas. I was in Pocahontas County frequently during the War. I had a fight or two in there. 1154

Q. What was the condition of the various roads in those counties during the war, as you saw them, in a general way?

A. The roads, it is my recollection—well, I came across from Richmond over the Virginia Central to the Jackson River depot, and from there to Charleston over the James River and Kanawha Pike, and then I tramped that road several times from White Sulphur Springs back and forth. The roads were in pretty fair condition until the armies passed over them. They cut them up. Then they got into very bad condition and remained in that condition until the end of the war; and they were kept up, that is, what keeping was done to them, by the pioneer corps of the Army in what is now West Virginia. The roads from our base of supplies, Doublin Depot and Jackson

River depot, were kept up by the pioneer corps of the Army. They had to keep a force of men on the roads all the time, fixing them up, so that we could get over them with the wagons. Of course, one's recollection is not very vivid after this lapse of time. But we were always in trouble with our wagons and artillery trains moving over these roads.

Q. Tell what you know of the James River and Kanawha turnpikes as to bridges in the West Virginia counties, telling if you know, of any bridges that were burned. 1155

A. Commencing with the Poca bridge—that was burned in 1861, on the James River and Kanawha pike; then, I believe, the bridge over Gauley was burned. I do not remember whether it was burned in 1861 or 1862. I know it was burned, though. The bridge across Greenbrier—the bridge three miles on the other side of Lewisburg—that was burned about the time I got my eye shot out, I think. That was in 1862, I believe. That is my recollection. I swear to anything, hardly as to specific times.

Q. How were the creek bridges on this road, if you recollect, were they left or gone?

A. Well, some of them were left. A great many of them were washed out in the fall of 1861—that big rain that produced the highest the flood we have ever had in the Kanawha River.

Q. How was the year 1861 as to rain?

A. It was very wet, the autumn of 1861, all over the mountains up here. When we retreated from Cotton Hill, over the Kanawha, Fayette and Giles Pike, the roads became impassable for Army wagons. A great many were abandoned on account of the roads, just stick in the mud, cut the teams loose and go on. I saw abandoned wagons, I know, as we went along, abandoned by those who went head of us, of course.

Q. State what you remember of the condition of the roads.

A. Where?

Q. In Randolph, Upshur, Lewis, Braxton and Nicholas, as 1156 you saw them on the expedition of April, 1863.

A. Well, they were in very rough condition. They had been cut up by the two armies in the fall of 1861, up there, and I suppose they had never been repaired afterwards. They very much obstructed us on that light Imboden raid. But we didn't have much to haul then.

Q. When you spoke of joining the army a while ago, you joined what was called the Confederate Army?

A. Yes, sir. I believe we didn't join the Confederate army proper until May, 1862.

Q. What official positions have you held under the State of West Virginia or the United States since the War?

A. Well, I have served a term in the legislature, member of the County Court for twelve years. I believe I was a member of the famous Kanawha Board, that wound up the affairs of the old James

River and Kanawha corporation. I was a member of the West Virginia tax commission that drafted these tax laws.

Q. What position under the United States?

A. United States Marshal for eight years and a half, I believe.

Counsel for the complainant excepts to all the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Without waiving that exception, counsel for the complainant, the Commonwealth of Virginia, asked the following questions: 1157

Q. Was there any extraordinary rain fall in western Virginia in the year 1861?

A. In the fall of the year 1861 there was; yes, sir. It was an extraordinary rain fall. It came on about the time of the autumnal equinox.

Q. Did the wet weather continue for a long time during the fall of 1861 in the mountains of West Virginia?

A. Yes, sir; it continued.

Q. Wasn't it frequent?

A. Yes, sir; it was very wet. I think we went back to Cotton Hill late in November. I don't remember much about it after I got to Raleigh, because I was stricken down with camp fever.

Q. Were not all the turnpikes and roads in the counties of West Virginia referred to by you in your examination in chief dirt roads and turnpikes?

A. Yes, sir.

Q. Not macadamized?

A. No, sir.

Q. They would be liable, then, would they not, to become very muddy in long seasons of wet weather whether Army wagons went over them or not?

A. Well, they would become muddy if used by any kind of wagons. They would be cut up. Of course, if they were not used they wouldn't become cut up.

Q. They wouldn't be cut into holes unless they were used? That is, cut into holes and ruts?

A. You couldn't use them without their becoming muddy. 1158 Of course, in rainy weather they would become wet, but muddy only when they were used. The wet weather would only make them so that they would be cut up if they were used much.

Q. The Kanawha Road was used a great deal, was it not, before the War and in time of peace?

A. Well, that I cannot speak of it to my own knowledge. I was only over it once before the war when I was a child. I came out here

in 1850. I never travelled it again until war broke out. I travelled by rail when I went east; that is, from Charleston.

Q. That was the principal line of communication between the Kanawha Valley and eastern Virginia for many years before the war, was it not?

A. Well, I do not know that I can answer that question from my own knowledge. You see, when the war broke out I was only eighteen years old. I went to Lexington when I was sixteen. I have very little recollection of events prior to the war. I lived in the country.

Q. Wasn't the James River and Kanawha Road the main thoroughfare along the Kanawha Valley and from the Kanawha Valley to Covington after the close of the war until the construction of the C. & O. Railroad?

A. Yes, sir, it was.

Q. Can you state what its condition was after the war?

A. No, sir; I was never over it after the close of the war, except when I went from here to Gauley to go hunting up in the mountains. I believe I never since travelled over the James River and Kanawha Pike except from here to Gauley. That was in 1878, 1159
in the fall of 1878. I came over that road in 1865 from Lewisburg, and it was in bad condition then.

Q. Didn't stages and other vehicles go over it regularly—wasn't there a regular stage from here to Lewisburg after the close of the War?

A. Indeed, I do not know.

Further deponent saith not.

THOMAS SWINBURN,

a witness of lawful age, being first duly sworn, deposed and says.

Examined by George W. McClintic, Esq.:

Q. State, Mr. Swinburn, your age, residence and occupation.

A. I am 69 years of age; I reside in the City of Charleston; I scarcely have any occupation now.

Q. State if you were a member of any army in the year 1861 or during the war of 1861 to 1865; and, if so, what army and what regiment of what army?

A. I was a member of the 7th West Virginia Cavalry.

Q. When did you join the 7th West Virginia Cavalry, if you remember?

A. In fall of 1861. I may state that it was the 8th infantry when I joined it, and it was afterwards converted into the 7th Cavalry.

Q. What counties in what is now West Virginia did you campaign in or be in from 1861 to 1863, so far as you now remem- 1160
ber?

A. First in Kanawha County, a while in Putnam County; from there we went to New Creek, Hampshire County, on the B. & O.; from there we went to Franklin in Pendleton County; then back to Moorfield, Hardy County, and Wardensville in the same county. We passed through Romney on the way to Wardensville, and from there we went to Lost River Bridge in Hardy County.

Q. Were you in Harrison and Randolph counties?

A. Yes, sir.

Q. Upshur, Lewis?

A. Yes, sir.

Q. Braxton?

A. I think, perhaps, I was; yes, I was.

Q. State, Mr. Swinburn, the condition of the roads in these various counties as you saw them from the year 1861 to 1863?

A. They were all dirt roads. I never saw a macadamized road in West Virginia.

Q. What was their condition as to goodness of repair?

A. Well, in the summer time they were generally a string of dust and in the winter time a string of mud. Dirt roads necessarily will be.

Q. Had the army travel cut them up much?

A. Yes, sir; in soft weather it necessarily would. In bad weather they would become almost impassable. A great many mule teams were hauling supplies.

Q. Do you remember the year 1861 as to whether it was a wet 1161 year or not?

A. My recollection is that it wasn't a very wet year here. It was dry until the big flood came.

Q. The flood was the biggest one they had here for some time?

A. The highest flood here that ever was known.

Q. That would affect the small tributaries of the Kanawha River, or would it not?

A. It did to some extent. There wasn't a great deal in that day to be affected.

Counsel for complainant excepts to all of the testimony of this witness on the ground that it is not responsive to any inquiry directed by the decree of reference or pertinent to any issue in the cause.

Further the witness saith not.

AGREEMENT.

It is agreed by the parties hereto that the signatures of the witnesses to these depositions are hereby waived. And it is further agreed that counsel for the complainant could except to any of the testimony at

the close of the deposition of any witness, and that the exception would be of the same effect as if made to each and every question and answer separately at the propounding and making of the same.

STATE OF WEST VIRGINIA, 1162

County of Kanawha, to-wit:

I, J. E. Campbell, a notary in and for the county of Kanawha and State of West Virginia, do hereby certify that the foregoing depositions of Peter E. Love, Frederick Lee Baumgardner, B. F. Swann, William A. Griffith, W. F. Gregory, James H. Wright, Henry V. Sattes, Dr. C. I. Lewis, John Slack, William H. Thompson, Charles W. Dering, J. K. Thompson, and Thomas Swinburn, were taken at the times and places therein set out; and I further certify that each of said witnesses was duly sworn.

Given under my hand and official seal this the 21st day of May, 1909.

(Seal) J. E. CAMPBELL,

Notary Public in and for the County of Kanawha and State of West Virginia.

PLAINTIFF'S GENERAL EXHIBIT 1.

ABSTRACT OF ACTS

OF THE

GENERAL ASSEMBLY OF VIRGINIA

1820 TO 1860 INCLUSIVE.

RELATING TO THE

VIRGINIA STATE DEBT.

Within is an abstract of the Acts of the General Assembly of Virginia, from 1820 to 1860, inclusive,—being acts authorizing subscriptions and appropriations to works of internal improvement, banks, etc., and such other acts, of a general nature, as bear upon the creation, evolution, and administration of the public debt of the State, up to 1861.

It is believed that this list will afford explanations for numerous transactions connected with the matter of this public debt, and will constitute a convenient reference to many authorities needful in the preparation of a statement of the account between the States of Virginia and West Virginia.

The acts are collated into the following divisions:

1. Incorporated turnpike and road companies to the capital stock of which the State subscribed.
2. Roads constructed wholly or partly on State account.
3. Navigation companies, Canals, etc.
4. Railroads.
5. James River Co. and James River & Kanawha Co.
6. Bridges.
7. Banks.
8. Miscellaneous appropriations.
9. Miscellaneous: of a general nature.

EXPLANATORY.

The figures in the left-hand margin indicate the date of the passage of the act and the page of the Acts on which it is to be found. The figures in the right-hand margin show the amounts authorized to be subscribed or appropriated. "B. P. W." means Board of Public Works, under whose direction practically all the works of internal improvement to which the State contributed were conducted. "Incptd." following the name of a company means that the company was incorporated by that act.

Thus:

3/28/51-100 Jefferson & Frederick Tpke Co. Incptd. $10,000. and B. P. W. for 3/5 6,000

The above notation means that by act of March 28th, 1851, page 100 of the Acts of 1850-51, the Jefferson & Frederick Tpke Co. was incorporated, with a capital of $10,000, and that the Board of Public Works was directed to subscribe on behalf of the State for 3/5 of the capital stock, or $6,000.

The within list, being a tabulation of Acts of Assembly, concerns only authorities, and not actual expenditures or transactions; but with the aid of the excellent maps and charts to be found in the office of the Virginia State Corporation Commission, and the annual reports (published in bound volumes) of the Board of Public Works, also to be found in that office and in the State Library, the routes of the various improvements, and the amounts actually expended on them, may be accurately ascertained.

JOS. C. TAYLOR.

May 14/08.

TURNPIKES.

2/10/20- 62 Ashby's Gap Tpke Co. B. P. W. to subscribe for 140 shares of—(Act 1/30/1810-78 shows par val to be $100.) $14,000
(From Little River Tpke Road to Shenandoah River through Ashby's Gap of Blue Ridge.)

2/ 7/25- 63 B. P. W. to subscribe for additional 140 shares, 14,000

2/19/35-131 Augusta Springs Tpke Co., Ineptd., $6,000, and B. P. W. for 2/5 2,400
(In Augusta County.)

3/29/60-302 Back Creek Valley Tpke Co. B. P. W. for 3/5 of $2,500 1,500
(From a point on N. W. Tpke in Frederick Co. up Back Creek Valley to Capon Springs in Hampshire Co.)

3/ 9/53-199 Bellville & Williamsport Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5 9,000
(From Bellville in Wood Co. to Williamsp't in same Co.)

3/ 1/51-103 Berkeley & Hampshire Tpke Co., Ineptd., $20,000, and B. P. W. for 3/5 12,000
(From Martinsburg in Berkeley Co. to point on N. W. Tpke in Hampshire Co.)

3/22/53-205 Amends above act and increases capital to $36,000, and B. P. W. for 3/5 9,600

3/16/49-123 Berkeley & Jefferson Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Martinsburg in Berkeley Co. to Shepherdstown and Smithfield Road in Jefferson Co.)

3/19/31-210 Berryville Tpke Co. B. P. W. for 126 shares of ($10,000 par val. $50.) 6,300
(From Berryville in Frederick Co. to Snicker's Ferry on Shenandoah River.)

3/30/39- 91 Capital increased by $15,000, and B. P. W. for 2/5 6,000

2/ 4/47-117 Capital increased by $5,000, and B. P. W. 2/5. 2,000

3/22/47-117 Berryville and Charlestown Tpke Co., Ineptd., $23,000, and B. P. W. for 2/5.
(From Berryville then in Clarke Co. to Charlestown in Jefferson Co.)

3/12/49-120 Further time allowed to begin; changes B. P. W.'s subscription to 3/5 instead of the 2/5 above 13,800

3/18/50- 84 Capital increased by $12,000, and B. P. W. for 3/5 7,200

4/ 2/58- 95 State appropriation to pay for—account of purchase of—by B. P. W. at a sale thereof 7,150

3/13/47-124 Beverly & Phillipi Tpke Co., Incptd., $9,000, and B. P. W. for 2/5 3,600
(From Beverly in Randolph Co. to Phil. in Barbour Co.)

2/15/60-291 Blacksburg, Catawba Creek & Fincastle Tpke Co., Incptd., $16,000, B. P. W. for 3/5..... 9,600
(From Blacksburg in Montgomery Co. by Catawba Cr. in Roanoke Co. to Fincastle in Botetourt Co.)

3/26/53-209 Blacksville & Worthington Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Blacksville in Monongalia Co. to Worthington in Marion Co.)

3/31/51-113 Black Water Tpke Co., Incptd., $1,800, B. P. W. 3/5 1,080
(Across Alleghany Mountains in Franklin and Floyd Counties.)
This act repeals Act of 3/11/50-91 appropriating $600 for a road across Alleghany Mts.

3/25/48-206 Blue Ridge Co., Incptd., $200,000, and B. P. W. for 2/5.
(From New Market in Shenandoah Co. to Gordonsville in Orange Co.)

3/17/49-118 Capital reduced to $120,000, and B. P. W. for 3/5 72,000

3/ 3/51- 96 Capital increased by $50,000 and B. P. W. for 3/5 30,000

2/11/53- 76 Transfers to—the $1,500 appropriated to a road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co. by Acts 3/15/49- 93. 1,500

3/19/50- 76 Boydton & Petersburg Plank Road Co., Incptd., $160,000, and F. P. W. for 3/5 96,000
(From Boydton in Mecklenburg Co. to Petersburg in Dinwiddie Co.)

3/16/53-178 Capital increased by $20,000, and B. P. W. 3/5. 12,000

3/ 1/53-194 Brown's Gap Tpke Co., Incptd., $18,000, B. P. W. for 3/5 10,800
(From point in Rockingham Co. to point in Albemarle Co.)

3/ 4/53-176 Brunswick & Roanoke Plank Co., Incptd., $70,000, and B. P. W. for 3/5 42,000
(Brunswick and Roanoke Counties)

3/15/56-123 Provides that $6,000 of above appropriation shall go to Dinwiddie Plank Road Co., provided stockholders of Brunswick & Roanoke Pl. R'd Co. consent. See Dinwiddie Plank Road Co.

3/15/49-110 Buchanan Tpke Co., Incptd., $9,000, B. P. W. for 3/5 5,400
(From Dibbrell's Springs to Buchanan in Botetourt Co.)

3/11/50-102 Capital increased by $6,000, and B. P. W. for 3/5 3,600

2/ 9/50- 90 Buchanan & Bedford Tpke Co., Incptd., $10,000 and B. P. W. for 3/5 6,000
(In Botetourt Co.)

3/15/49-131 Buckhannon & Little Kanawha Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Buckhannon in Lewis Co. to point in Braxton Co.)

3/18/53- 75 Revises act next above.

3/28/51- 83 Buford's Gap & Buchanan Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Buford's depot on Va. & Tenn. R. R. to Buchanan in Botetourt Co.)

4/ 3/38-134 Cacapon & North Branch Tpke Co., Incptd., $30,000, and B. P. W. for 2/5 12,000
(From Cac. in Hampshire Co. to point on N. Branch of Potomac Riv. near Cumberland.)

3/20/47-119 Capital increased by $2,500, and B. P. W. for 2/5 1,000

3/29/53-213 Carroll & Pulaski Tpke Co., Incptd., $9,000, and B. P. W. for 3/5 5,400
(From point in Pulaski Co. to point on Jacksonville and Hillsville Tpke.)

2/10/53-189 Cassville & Chapmansville Tpke Co., Incptd., $10,000, B. P. W. for 3/5..... 6,000
(From Cassville in Wayne Co. to Ch. in Logan Co.)

3/30/53-216 Castleman's Ferry Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From C.'s Ferry in Clarke Co. to Berryville & Charlestown Tpke.)

3/24/51-101 Cedar Creek & Opequon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From a point on Cedar Creek to a point on Valley Tpke in Frederick Co.)

1/31/54- 54 Capital increased by $3,000, and B. P. W. for 3/5 1,800

3/17/51-123 Centreville & St. Mary's Tpke Co., Incptd., $8,400, and B. P. W. for 3/5 5,040
(From Tyler Co. to Wood Co.)

1/23/35-133 Charleston & Point Pleasant Tpke Co., Incptd., $40,000, and B. P. W. for 2/5 16,000
(From Charleston in Kanawha Co. to Point Pleasant in Mason Co.)

1/25/39- 87 Capital increased by $12,000, and B. P. W. for 2/5 4,800

4/ 1/48-223 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/15/49-132 B. P. W. to subscribe for additional $8,000... 8,000

3/15/51-113 B. P. W. to subscribe for additional $2,460... 2,460

3/28/48-221 Charleston, Ripley & Parkersburg Tpke Co., Incptd., $40,000, and B. P. W. for 3/5 24,000
(From Charleston in Kanawha Co. to Parkersburg in Wood Co.)

3/25/53-211 Amends above act and changes name of Co. to Charleston, Ripley & Ravenswood Tpke Co. See Charleston, Ripley & Ravenwood Tpke Co.

3/25/53-211 Charleston, Ripley & Ravenswood Tpke., Incptd. Name of Charleston, Ripley & Parkersburg Tpke Co. changed to this. Capital $40,000, with privilege of increase by $10,000, for branch to Parkersburg, and B. P. W. for 3/5 of this $50,000 30,000
(From Charleston in Kanawha Co. through Ripley in Jackson Co. to Ravenswood in Jackson Co.)

3/ 9/60-292 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/21/53-173 Christiansville & Keysville Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Ch. in Mecklenburg Co. to Keysv. in Charlotte Co.)

4/ 1/53-222 Clarke & Warren Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Clarke Co. to Warren Co.)

3/ 9/48-219 Clarksburg & Buchanan Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Clarksb'g in Harrison Co. to Buc. in Lewis Co.)

3/ 5/51-118 Capital increased by $5,000, and B. P. W. for 3/5 3,000
(The name is spelt "Buckhannon" in this act. This is the proper spelling of this town's name.)

3/18/53-70 B. P. W. to borrow and spend on this road the further sum of $20,000 20,000

3/13/49-129 Clarksburg & Phillipi Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 6,000
(From Phillipi in Barbour Co. to Clksbg in Harrison Co.)

3/30/39- 92 Clarksburg & Wheeling Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 6,000
(From Clksbg in Harrison Co. in the direction of Wheeling to connect with Middletown & Wheeling Tpke.)

2/ 2/50- 60 Clarksburg & Wheeling Tpke Co., Ineptd., $7,000, and B. P. W., for 3/5 4,200
(From Shinston in Harrison Co. towards Wheeling.)

3/27/60-286 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/27/58- 99 Clear Fork Road Co., Ineptd., $3,000, with privilege of increasing to $5,000, and B. P. W. for 3/5 3,000
(From Point in Raleigh Co. to point in same Co.)

2/ 9/39- 81 Cox Lane Tpke Co., Ineptd., $12,000, and B. P. W. for 2/5 4,800
(From point in Lunenburg Co. to point in Nottoway Co.)

2/10/53-190 Cranberry Summit & Brandonville Tpke Co., Ineptd., $8,025, and B. P. W. for 3/5 4,815
(From Cranberry Sum. in Preston Co. to Br. in same Co.)

3/31/53-220 Cross Roads & Summit Point Tpke Co., amends incorporating act. Capital $10,000, B. P. W. 3/5 6,000
(From point of intersection of Charlestown & Berryville Tpke at Cross Road leading to Summit Point to Sum. Pt. depot in Jefferson Co.)

2/28/33- 95 Danville & Evansham Tpke Co. Capital reduced to $50,000, but allowed to be increased to $100,000, and B. P. W. for 2/5 of $50,000 ... 20,000
(From Pittsylvania to Wythe Co.)

3/17/51- 85 Danville & Wytheville Tpke Co. Name of Mawbrey's Gap Tpke Co. changed to this. Capital $30,000 and B. Y. W. for 3/5 18,000
Authorized increase by $20,000, of which B. P. W. 3/5 12,000
(From Pittsylvania Co. towards Wythe Co.)
See Mawbrey's Gap Tpke Co.

2/10/53-189 Capital increased by $25,000 and B. P. W. for 3/5 15,000

3/26/60-300 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/15/56-123 Dinwiddie Plank Road Co., Ineptd., B. P. W. for 3/5 of $10,000 6,000
(Dinwiddie Co.)
The above subscription to be paid out of the unexpended balance of the appropriation to Brunswick & Roanoke Plk Rd. Co., provided stockholders of last mentioned road consent.
See Brunswick & Roanoke Plk Rd. Co.

2/ 1/39- 95 Dunkard Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5 .....
(From point in Monongalia Co. to intersect Middletown & Wheeling Tpke.)

3/13/47-124 Capital reduced to $10,000, and B. P. W. for 2/5 of the reduced capital instead of 2/5 of $5,000

2/12/48-216 B P. W.'s subscription increased to 3/5..... 6,000
3/24/48-196 Dunlap's Creek Tpke Co., Ineptd., $4,000, and B. P. W. for 3/5 2,400
(From mouth of Oglee's Creek in Alleghany Co. to White Sulphur & Sweet Springs Tpke in same Co.)

3/31/58- 99 East River & Princeton Tpke Co., Ineptd., B. P. W. to turn over to—the proportionate share of unapplied portion of State's subscription to Mechanicksb'g & Wythe Tpke Co. This to be an independent Co. for that part of the Mechan. & Wytho Tpke lying between East River and Princeton in Mercer Co. See Mec. & Wythe Tpke Co.

3/22/60-278 East River & Princeton Tpke Co., Incptd., $8,000, and B. P. W. for 3/5..... 4,800
(Mercer Co.)

2/18/54- 51 El Dorado Tpke Co., Incptd., $13,000, and B. P. W. for 3/5 7,800
(From Culpeper Co. to Rappahannock Co.)

2/ 9/60-290 Capital increased by $7,000 and B. P. W. for 3/5 4,200

2/27/60-289 Elk River Tpke Co., Incptd., $20,000 and B. P. W. for $12,040 12,040
(From Kanawha Co. to Braxton Co., with branch to Roane Co.)

3/ 9/48-203 Estillville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(Scott Co.)

2/14/23- 78 Fairfax Tpke Co. B. P. W. for 160 shares (Act 2/ 1/1813- 51 shows par val. to be $50.) 8,000

1/ 7/20-67 Fallsbridge Tpke Co., B. P. W. for $24,000 of stock of 24,000

2/22/26- 65 Capital increased and B. P. W. for $8,000 more. 8,000

3/18/53-178 Farmville & Buckingham Plank Road Co. Amends incorporating act and B. P. W. for 900 shares at $50 45,000
(From Prince Edward Co. to Buckingham Co.)

1/13/23- 77 Fauquier & Alexandria Tpke Co. B. P. W. for $30,000 of increased capital 30,000

3/24/51-110 Fayette & Blue Sulphur Springs Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Fayette Co. to Greenbrier Co.)

3/26/60-284 Fetterman & Cove Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Taylor Co. to Barbour Co.)

2/26/33- 98 Fincastle & Blue Ridge Tpke Co. Capital reduced to $8,000, and B. P. W. for 2/5 3,200
(Botetourt Co.)

3/24/51-108	Fincastle & Covington Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 ..... (Botetourt and Alleghany Counties.)	7,200
3/30/53-217	Fish Creek Road Co., Incptd., $10,000, and B. P. W. for 3/5 ..... (Marshall Co.)	6,000
3/10/53-200	Franklin & Circlesville Tpke Co., Incptd., $4,000, and B. P. W. for 3/5 ..... (Pendleton Co.)	2,400
2/ 2/50- 77	Fredericksburg & Valley Plank Road Co., Incptd., $100,000, and B. P. W. for 3/5 ..... (From Spottsylvania to Green and Rockingham Counties.)	60,000
3/31-51- 82	Capital increased by $50,000, and B. P. W. for 3/5	30,000
3/22/53-179	Capital increased by $74,000 and B. P. W. for 3/5	44,400
3/27/48-210	Front Royal Tpke Co., Incptd., $15,000, and B. P. W. for 2/5..... (From Front Royal in Warren Co. to point on the Valley Tpke.)	
2/ 9/50- 83	Capital increased to $40,000, and B. P. W. for 3/5 of all	24,000
2/17/51- 98	Capital increased by $20,000, and B. P. W. for 3/5	12,000
4/ 1/48-209	Front Royal & Gaines Cross Road Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 ..... (From Warren Co. to Rappahannock Co.)	9,000
2/ 1/47-125	Giles, Fayette & Kanawha Tpke Co. B. P. W. for $16,000 (2/5) to be expended in Fayette and Monroe Counties ..... (From Kanawha Co. at Salt Works by the falls of Kanawha Riv. and Vandall's in the Loop to Court House of Giles Co.)	16,000
3/15/49-133	B. P. W. for additional $8,000	8,000

3/ 7/50- 95	B. P. W. for additional $6,000	6,000
2/25/53-193	B. P. W. for additional $15,000	15,000
3/29/53-213	Gilmer & Braxton Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 ..... (From Gilmer Co. to Braxton Co.)	7,200
3/19/50- 95	Gilmer, Ripley & Ohio Tpke Co., Incptd., $50,000, and B. P. W. for 3/5 ..... (From Gilmer Co. to Ohio Riv. and down same to West Columbia in Mason Co.)	30,000
3/20/60-296	Capital increased by $12,000, and B. P. W. $20,000 and B. P. W. for 3/5.....	7,200
3/15/49-132	Glenville & Charleston Tpke Co., Incpted., $20,000, and B. P. W. for 3/5..... (From Gilmer Co. to Kanawha Co.)	12,000
2/16/53-192	Gnatty Creek & West Union Tpke Co., Incptd., $18,000, and B. P. W. for 3/5 ..... (From mouth of Gnatty Creek by Phillipi in Barbour Co., crossing Cheat River in Randolph Co. to W. Union in Preston Co.)	10,800
3/20/50- 82	Goony Gap Tpke Co., Incptd., $1,500, and B. P. W. for 3/5 ..... (Rappahannock Co. to Warren Co.)	900
1/21/54- 50	Gooney Manor Tpke Co., Amends incorporating act. Capital $6,000, B. P. W. 3/5..... (Rappahannock and Warren Counties.)	3,600
4/ 2/39- 94	Graves Creek Tpke Co., Incptd., $12,000, and B. P. W for 2/5. (From Elizabethtown in Marshall Co. to Wheeling in Ohio Co.)	
2/11/48-224	Capital increased to $20,000, and B. P. W. for 3/5 of whole instead of above subscription.....	12,000
3/21/50-101	Grave Creek & Pennsylvania Line Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 ..... (From Grave Creek in Marshall Co. to the Pennsylvania line.)	4,800

3/10/34-173 Greenville & Panther Gap Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 4,000
(Augusta Co. to Rockbridge Co.)

3/30/53-218 Guyandotte Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 9,000
(From Cabell Co. to Logan Co.)

3/15/49-125 Hampshire & Morgan Tpke Co., Incptd., $11,000, and B. P. W. for 3/5 6,600
(From Hampshire Co. to Morgan Co.)

3/11/50- 87 Capital increased by $13,000 for branch from point in Hampshire Co. through Gainesborough to Winchester and B. P. W. for 3/5 7,800

2/24/51-102 The subscribers to the stock authorized in act next above incorporated as a new Co. by name of North Frederick Tpke Co. See N. Fred. Tpke Co.

3/24/51-105 Hardy & Randolph Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Petersburg in Hardy Co. by Pendleton Co. to Beverly in Randolph Co.)

3/ 8/47-118 Hardy & Winchester Tpke Co. Changes par val. of shares from $100 to $50, and B. P. W. for 80 shares.
(From point on Great Cacapon River in Hardy Co. to Winchester in Frederick Co.)

2/22/48-215 Increases B. P. W.'s subscription to 3/5 instead of 2/5 of not less than $16,000, for extension of road from Wardensville to Moorfield (Hardy Co.) 9,600

3/28/48-215 B. P. W. for 2/5 of additional $6,000 for finishing road between N. W. Tpke and Wardensville and for branch to Capon Springs in Hampshire Co. 2,400

3/15/49-122 Capital increased to $33,000, and B. P. W. for such amount as to make its subscription 3/5 of whole $33,000 (which amounts to increase of $7,800) 7,800

3/18/50- 87 Capital increased by $2,000, for branch in Hampshire Co., and B. P. W. for 3/5 1,200

3/27/51-104 Capital increased by $4,000, and B. P. W. for 3/5 2,400

3/26/51- 97 Harrisonburg & Franklin Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Harrisonburg in Rockingham Co. to Franklin in Pendleton Co.)

3/28/48-222 Harrisville Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 4,000
(Ritchie Co.)

3/17/49-134 B. P. W.'s subscription increased to 3/5 2,000

3/ 3/51-119 Capital increased by $3,500 and B. P. W. for 3/5 2,100

3/23/60-286 Harrisville & Ellenboro Tpke Co., Incptd., $6,000, and B. P. W. for 3/5..... 3,600
(Ritchie Co.)

3/28/51- 96 Hazel River Tpke Co., Incptd., $16,000, and B. P. W. for 3/5 9,600
(From Woodville in Rappahannock Co. to head of navigation of Hazel Riv.)

2/18/50- 86 Hedgesville & Potomac Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(Berkeley Co.)

3/ 9/49-121 Hillsborough & Harper's Ferry Tpke Co., Incptd.. $10,000, and B. P. W. for 3/5 6,000
(From Hillsborough in Loudon Co. to Harper's Ferry in Jefferson Co.)

3/ 2/38-135 Holliday's Cove Tpke Co., Incptd., $10,000, but increase allowed up to $25,000, and B. P. W. for 2/5.
(From Ohio River in Brooke Co. to Pennsylvania line.)

3/26/39- 95 Capital increased to $30,000, and B. P. W. for 2/5.

3/17/51- 93 Co. to construct a branch to Wellsburg in Brooke Co. B. P. W.'s subscription changed to 3/5 of am't authorized by Act of 3/2/38-135 (first above) 15,000

4/ 5/58-101 Incorporates Holliday's Cove & Wellsburg Tpke Co. as an independent Co. for the branch to Wellsburg mentioned in act just above; and turns over to this new Co. the unexpended appropriation to Holliday's Cove Tpke Co. See H's Cove & Wellsb'g, etc. Co.

3/29/51-124 Holliday's Cove & New Cumberland Tpke Co., Incptd., $4,000, and B. P. W. for 3/5 2,400
(From a point on Holliday's Cove Tpke to New Cumberland in Hancock Co.)

4/ 5/58-101 Holliday's Cove & Wellsburg Tpke Co., Incptd. This to be an independent So. for building the branch road to Wellsburg in Brooke Co., authorized to be built by the Holliday's Cove Tpke Co. by act 3/17/51-93, and the Co. hereby incorporated to receive the unexpended appropriation to said Holliday's Cove Tpke Co. See H's Cove Tpke Co.

3/31/51-109 Hot Springs & Clifton Forge Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Bath Co. to Clifton Forge in Alleghany Co.)

3/ 9/48-193 Howardsville Tpke Co. Capital increased to $35,000, and B. P. W. for 2/5 14,000
(From Howardsville in Albemarle Co. to forks of Rockfish River in Nelson Co.)

3/17/49-115 B. P. W.'s subscriptions increased to 3/5 7,000

3/31/51-105 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 1/53-221 Capital increased by $15,000, and B. P. W. for 3/5 9,000

3/29/53-215 Huntersville & Monterey Tpke Co., Incptd., $16,000, and B. P. W. for 3/5 9,600
(From Huntersville in Pocahontas Co. to Monterey in Highland Co.)

3/20/32-183 Huntersville & Warm Springs Tpke Co., Incptd., $16,000, and B. P. W. for 2/5 6,400
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co.)

2/15/60-297 Huntersville & Warm Springs Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Huntersville in Pocahontas Co. to Warm Springs in Bath Co. on or near the line of the old tpke from H. to W. Spgs.)

2/27/54- 49 Indian Creek Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Mouth of Indian Creek in Tazewell Co. by best route to point on Price's Tpke and Cumberland Gap Road at Liberty Hill.)

3/28/38-127 Indian Draft Tpke Co., Incptd., $7,000, and B. P. W. for 2/5 2,800
(From Salt Sulph. Springs in Monroe Co. to Blue & Red Sulph. Springs Tpke near mouth of the Indian Draft.)

4/ 2/31-205 Jackson's River Tpke Co., B. P. W. for 2/5 of cap. stock. (Act 2/21/29-112 shows cap. $20,000.) 8,000
From Warm Springs to Kanawha Tpke at Callaghans.)

4/ 1/48-172 B. P. W. to pay to—account bridges across Jackson River 3,000

3/31/48-199 Jacksonville & Bent Mountain Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Jacksonville in Floyd Co. by way of point in Montgomery Co. to Roanoke Co.)

3/15/58- 96 State's interest in—released to Counties of Floyd and Roanoke; to become a free road.

3/24/51- 88 Jacksonville & Christiansburg Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 7,200
(From Floyd Co. to Montgomery Co.)

3/12/53-203 Capital increased by $14,000, and B. P. W. for 3/5 8,400

3/29/51- 81 James River & Clover Hill Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Nelson Co. to Appomattox Co.)

2/24/60-281 Jane Lew & Upshur Tpke Co., Incptd. This Co. to take over that part of the West Milford & New Salem Tpke that lies in Lewis & Upshur Counties. See West Milford and New Salem Tpke Co.

3/28/51-100 Jefferson & Frederick Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From Smithfield in Jefferson Co. to Frederick Co.)

3/26/60-298 Jeffersonville, Marion & Rye Valley Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Jeffville in Tazewell Co. to Rich Valley, thence to Marion in Smyth Co. and thence to Blue Springs Road in Rye Valley.)

3/ 4/50- 92 Jonesville & Little Stone Gap Tpke Co., Incptd., $7,000, and B. P. W. for 3/5 4,200
(From Lee Co. at end of Little Stone Gap Road to Yankham Station, thence to Jonesville, and branch from Yankham Station across Lovelace Gap to Wild Cat Valley Road.)

3/17/51- 93 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/ 7/48-196 Jordan's Furnace & Rockbridge Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Alleghany Co. to Rockbridge Co.)

3/17/49-111 Junction Valley Tpke Co., Incptd., $60,000, and B. P. W. for 3/5 36,000
(From Botetourt Co. to Staunton in Augusta Co.)

3/31/53-221 Capital increased by $25,000, for completing and B. P. W. for 3/5 15,000

12/22/57- 95 Appropriation to pay for—account of purchase of by B. P. W. at sale thereof 25,000

3/25/48-216 Kingwood & West Union Tpke Co., Incptd., $10,000, and B. P. W. for 2/5 6,000
(From W. Union in Preston Co. to Kingwood in same Co. and thence to Monongalia Co.)

3/24/51-116 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/28/53- 71 State appropriation to for macadamizing parts of 28,000

3/22/60-295 Knob Tpke Co., Incptd., $12,500, and B. P. W. for 3/5 7,500
(From point in Washington Co. by Abingdon to Tennessee line.)

3/17/49-127 Knobley Valley Tpke Co., Incptd., $14,000, and B. P. W. for 3/5 8,400
And capital may be increased by $4,000, of which
B. P. W. for 3/5 2,400
(From Hardy Co. line by Ridgeville in Hampshire Co. through Knobley Valley to B. & O. R. R. near Cumberland, Maryland.)

3/11/50- 88 Name of this Co. changed to Patterson's Creek Valley Tpke Co. Extends road to point on Moorfield & Alleghany Tpke and B. P. W. for 3/5 of $2,500, additional capital. See Patterson's Creek Valley Tpke Co.

1/25/39- 83 Lafayette & English's Ferry Tpke Co. B. P. W. for 2/5 of capital of. (Act 3/21/38-121 shows capital $8,000.) 3,200
(From Lafayette in Montgomery Co. by Christiansburg to E.'s Ferry on New River.)

3/31/51-117 Leading Creek & Buffalo Tpke Co., Incptd., $10,000, and B. P. W. for 3/5 6,000
(From point on Beverly & Fairmont Road near Leading Creek Bridge to point in Preston Co.)

3/ 9/53-200 Capital increased by $6,000, and B. P. W. for 3/5 3,600

3/31/48-208 Leeds Manor Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Fauquier Co.)

3/15/58- 96 State's interest in—released to Fauquier Co.

3/19/50- 85 Leesburg Tpke Co., B. P. W. for $7,850, being 2/5 of cost of extension to Fairfax Co. 7,850

2/20/32-177 Leesburg & Snickers Gap Tpke Co., B. P. W. for $20,000 20,000
(Loudon Co.)

3/16/47-119 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/21/60-282 Lenn's Creek & Logan Court House Tpke Co., Incptd., $20,000, and B. P. W. for $12,450 12,450
(From Lenn's Creek in Kanawha Co. by way of Peytona in Boone Co. to Logan C. H.)

2/15/54- 47 Letart Falls & West Columbia Tpke Co., Incptd., $3,500, and B. P. W. for 3/5 2,100
(From Letart Falls on Glenville & Ohio Tpke through West Columbia to lower side of Ten Mile Creek.)

3/ 9/36-214 Lewisburg & Blue Sulphur Springs Tpke Co., B. P. W. for 80 shares of. (Act 3/12/34-166 shows capital $10,000, in shares of $50)..... 4,000
(From Lewisburg in Greenbrier Co. to Blue Sulph. Sprgs. in Monroe Co.)

3/30/37-145 Capital increased by $2,500, and B. P. W. for 2/5 1,000

3/21/53-179 Lewiston Plank Road Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(Lunenburg Co.)

2/19/29- 29 Lexington & Covington Tpke Co., Incptd., $20,000, and B. P. W. for 160 shares (2/5) 8,000
(Alleghany and Rockbridge Counties.)

2/20/32-181 Capital increased by $16,000, and B. P. W. for 2/5 6,400

4/ 8/31-209 Lexington & Mountain Canal Tpke Co., Incptd., $5,000, and B. P. W. for 80 shares (2/5)..... 2,000
(Rockbridge Co.)

2/12/33-101 Capital increased by $5,000, and B. P. W. for 2/5 2,000

3/31/37-153 Little Stone Gap Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(Lee Co. to Russell Co.)

3/17/49-133 Logan, Raleigh & Monroe Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Logan Co. to Fayette Co.)

3/16/53-205 Capital increased by $16,000, and B. P. W. for 3/5 for extension from Raleigh C. H. to Blue Sulph. Springs in Greenbrier Co. 9,600

2/25/50- 85 Loudon & Berlin Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From point in Loudon Co. to point on Potomac Riv. opposite Berlin in Maryland.)

2/25/53-174 Lunenburg Plank Road Co. Amends incorporating act, and B. P. W. for 3/5 (3/5 of $50,000) 30,000
(From Nottoway Co. to Lunenburg Co.)

2/15/54- 55 Capital increased by $30,000, and B. P. W. for 3/5 18,000

3/31/51- 98 Luray & Front Royal Tpke Co., Incptd., $20,000 and B. P. W. for 3/5 12,000
(From Luray in Page Co. to Fr. Royal in Warren Co.)

2/14/53-191 Capital increased by $30,000, for extension into Rockingham Co. and by $10,000, for improvements and B. P. W. for 3/5 24,000

3/14/39- 85 Lynchburg & Buffalo Springs Tpke Co. Capital increased to $25,000, and B. P. W. for 2/5.. 10,000

2/18/32-179 Lynchburg & Concord Tpke Co., Incorporated agreeably to act 2/11/32-71 Capital $12,000, and B. P. W. for 2/5 4,800

1/17/23- 83 Lynchburg & Salem Tpke Co. B. P. W. for 300 shares of 30,000

2/16/56- 31 Releases State's interest in so much of—as lies in Bedford and Roanoke Counties, to said counties.

3/16/47-120 Manassa's Gap Tpke Co., Incptd., $45,000, and B. P. W. for 2/5 18,000
(Fauquier Co.)

3/ 6/24- 74 Manchester & Petersburg Tpke Co., B. P. W. for $8,000 8,000
(Chesterfield and Dinwiddie Counties.)

3/12/53-203 Marshall County Road Co. Incorporated for widening and grading. (The act does not give any name to the Co.) Road extends from Marshall C. H. up Riggs Hill, etc., to point on Fish Creek in Ohio Co. Capital $5,000, and B. P. W. for 3/5 3,000

2/25/58- 97 Releases State's interest in—to Counties of Marshall and Ohio. The name of the Co. is given in this act as Wheeling & Marshall Co. Tpke.

3/17/49-123 Martinsburg & Potomac Tpke Co., Incptd., $30,000, and B. P. W. for 3/5 18,000
(From Martinsburg in Berkeley Co. to point on Potomac Riv. opposite Williamsport, Md.)

3/34/38-129 (131) Martinsburg & Winchester Tpke Co., Incptd., $60,000, and B. P. W., for $33,600.
(From Martinsburg in Berkeley Co. to Winchester in Frederick Co.)

3/24/48-211 Revives above act.

1/20/49-122 Divides the road into sections; capital reduced and B. P. W. for 3/5 in lieu of subscription above 27,000

3/17/51- 92 Martin's Creek Free Road Co., Incptd., $3,400, and B. P. W. for 3/5 2,040
(Lee County.)

3/ 8/53-176 Marysville Plank Road Co. B. P. W. for 3/5 (Act 5/13/52-133 shows cap to be $25,000.) 15,000
(Charlotte Co.)

2/28/54 Capital increased by $35,000, and B. P. W. for 3/5 21,000

3/24/60-285 Mason & Cabell Tpke Co., Incptd., $20,000, and B. P. W. for 3/5 12,000
(From Mason Co. to Cabell Co.)

3/ 7/48-198 Mawbrey's Gap Tpke Co., Incptd., $30,000, and B. P. W. for 3/5.
(From Pittsylvania Co., by Patrick Co. and Floyd Co. to point in Montgomery Co.)

3/17/51- 85 Amends above act, changes name to Danville & Wytheville Tpke Co. Capital $30,000, with authorized increase by $20,000, and B. P. W. for 3/5. See Danville & Wytheville Tpke Co..... 30,000

3/ 4/51-87 Mechanicsburg & Wythe Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Mec'bg. in Giles Co. to Wythe Co.)

3/12/53-204 B. P. W. for 3/5 of $15,000, for extension from Mechanicsburg to Cumberland Gap Tpke in Mercer Co., thence to Princeton, with another branch in Mercer Co. (See act 4/20/52-144 making this route.) 9,000

3/31/58- 99 B. P. W. to turn over to East River & Pinceton Tpke Co., an independent Co., incorporated by this act for the road between East River and Princeton, the unexpended proportion of State's subscription to Mechans'bg & Wythe Tpke Co.
See East River & Princeton Tpke Co.

4/ 2/60-289 With consent of Mecs'bg & Wythe Tpke Co., $500 of State's subscription to said Co. to be transferred to Raleigh & Grayson Tpke Co.

3/15/31-207 Middle Tpke Co. B. P. W. for 239 shares. (Act 2/14/1818-135 shows capital $50,000, but does not show par value.)
(From Fairfax Co. to point on Little River or on line of District of Columbia.)

3/17/51-107 Middlebrook & Brownsburg Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000

3/29/53-214 Capital increased by $5,000, and B. P. W. for
(From Staunton in Augusta Co. to Lexington in Rockbridge Co.)
3/5 3,000

3/25/39- 93 Middletown & Wheeling Tpke Co., B. P. W. for 600 shares (Act 4/6/38-135 shows cap. $30,000 divided into shares of $20 each..... 12,000
(From N. W. Tpke at Tygart's Valley bridge by way of Middletown to Wheeling in Ohio Co.)

2/18/54- 53 Middleway & Gerardstown Tpke Co., Incptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Middleway in Jefferson Co. by Gerardstown to point on Back Creek.)

4/ 2/53-222 Mill Point & Nicholas Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Mill Point in Pocahontas Co. to Cranberry River in Nicholas Co.)

3/24/48-213 Millwood & Berryville Tpke Co., Incptd., $20,000, and B. P. W. for 2/5.
(In Clarke Co.)

3/21/51- 99 Capital reduced to $15,000, and B. P. W. 3/5. 9,000

3/23/60-287 Monterey & Warm Springs Tpke Co., Incptd., $12,500, and B. P. W. for 3/5..... 7,500
(Highland Co. to Bath Co.)

3/31/38-132 Moorefield & Alleghany Tpke Co., Incptd., $15,000, and B. P. W. for 360 shares (at $25).. 9,000
(From Moorefield in Hardy Co. to N. W. Tpke in the Alleghany mountains.)

3/ 7/49-126	Incorporated again, $15,000, and B. P. W. for 3/5	9,000
	And in addition State appropriation of $4,500 for stem in Hardy Co.	4,500
3/11/53-202	Capital increased by $2,000, and B. P. W. for 3/5	1,200
1/20/58-147	Transfers this road, except the Petersburg stem, to County Court of Hardy Co.	
3/22/47-118	Moorefield & North Branch Tpke Co., Ineptd., $25,000, and B. P. W. for 2/5.	
3/10/48-216	Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of above subscription.....	21,000
3/ 7/49-125	Capital increased by $18,000, for extension to Pendleton Co. and B. P. W. for 3/5.....	10,800
3/11/50- 88	Capital increased by $2,500, and B. P. W. for 3/5	1,500
3/11/50- 89	Capital increased by $10,000, for extension from Franklin in Pendleton Co. to Monterey in Highland Co., and B. P. W. for 3/5.....	6,000
2/25/51-100	Morgan & Frederick Tpke Co., Ineptd., $6,000, by individuals and $9,000, by B. P. W.... (From point near Gainesborough on Morgan & Hampshire Tpke to point on Potomac River in Morgan Co.)	9,000
3/15/49-128	Morgantown & Bridgeport Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... (From Morgantown in Monongalia Co. via. Palatine in Marion Co. to Br. in Harrison Co.)	6,000
2/ 7/50-100	Capital increased by $12,000, and B. P. W. for 3/5 for extension into Harrison Co.....	7,200
3/12/53-203	Capital increased by $12,000, and B. P. W. for 3/5	7,200

3/30/39- 92 Morgantown & Clarksburg Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Clarksburg in Harrison Co. by way of Morgantown in Monongalia Co. and Ice's Ferry to Pennsylvania line.)

Morgantown, Kingwood & West Union Tpke Co.
(See Kingwood & West Union Tpke Co.

3/24/60-300 Mountain Lake & Salt Sulphur Springs Tpke Co. Capital increased by $8,000, for completion of road, and B. P. W. for 3/5 (Incptd by Act 3/3/56-137) 4,800
(From Salt Sulph. Springs in Monroe Co., by way of Mt. Lake in Giles Co., to point on Va. & Tenn. R. R. in Montgomery or Pulaski Co.)

3/ 9/60-293 Mount Jackson & Howard's Lick Tpke Co., B. P. W. for $7,200 (2/5) (Incptd by Act 2/6/56-133) 7,200
(From Mt. Jackson in Shenandoah Co. to Howard's Lick in Hardy Co.)

3/31/51-113 Mud River & Valley Tpke Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
(Down Mud River to Jas. Riv. & Kanawha Tpke Road in Cabell Co.)

2/28/37-144 Natural Bridge Tpke Co., B. P. W. for 64 shares (Act 2/29/36-213 shows $16,000 in shares of $100)..... 6,400
(Rockbridge Co.)

3/28/51-121 Newark Tpke Co., Incptd., $6,000, and B. P. W. for 3/5 3,600
(From Court House of Wirt Co. through Newark to Parkersburg & Staunton Road at mouth of Hughes River.)

3/21/53-221 New Castle & Gap Mills Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From New Castle in Craig Co. by best route to Gap Mills in Monroe Co.)

2/25/50- 88 New Creek & Hardy Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Hardy Co. to Hampshire Co.)

4/ 4/48-225 New Manchester Tpke Co., Incptd., $5,000, and B. P. W. for 2/5 2,000
(From Ohio River to Pennsylvania line.)

3/28/48/194 New Market & Buffalo Springs Tpke Co., Incptd., $10,000, and B. P. W. for 2/5..... 4,000
(From New Market in Nelson Co. at James River Canal to tpke road near Buffalo Springs in Amherst Co.)

3/ 6/48-205 New Market & Sperryville Tpke Co., Incptd., $100,000, and B. P. W. for 3/5..... 60,000
(From N. Market in Shenandoah Co. to Sperryville in Rappahannock Co.)

3/ 6/51- 95 Capital increased by $15,000, and B. P. W. for 3/5 9,000

2/10/53-189 New Martinsville & Knob Fork Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From New M. in Wetzel Co. eastwardly to convenient point on B. & O. R. R.)

3/29/53-217 New Martinsville & Proctor Tpke Co., Incptd., $4,400, and B. P. W. for 3/5 2,640
(From New M. in Wetzel Co. to Marshall Co. line.)

2/24/51-102 North Frederick Tpke Co. Incorporation as—of subscribers to the additional stock of $13,-000, of the Hampshire & Morgan Tpke Co., authorized by Act 3/11/50-87 for branch from Hampshire Co. through Gainesborough to Winchester. See Hampshire & Morgan Tpke Co... 7,800

3/15/51-100 Capital increased by $4,000, and B. P. W. for 3/5 2,400

2/25/53-193 Capital further increased by $2,000 for a road to the Hampshire & Morgan Tpke, and B. P. W. for 3/5 1,200

2/17/51-102 North River Tpke Co., Incptd., $9,000, and B. P. W. for 3/5 5,400
(From point on N. W. Tpke in Hampshire Co. to point on Moorfield & Wardensville Road.)

4/ 5/38-133 North River & Moorfield Tpke Co., Incptd., $28,000, and B. P. W. for 2/5 11,200
(From Moorfield in Hardy Co. to point in Hampshire Co. on N. W. Tpke.)

2/27/27- 85 Northwestern Road Co., Incptd., $75,000, and B. P. W. for 2/5 30,000
(From Winchester in Frederick Co. to the Ohio River.)

4/ 1/48-201 Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From Old Court House of Russell Co. to Abingdon in Washington Co., thence up Laurel Fork to Tennessee line.)

3/16/49-120 Orlean & Salem Tpke Co., Incptd., $5,000, and B. P. W. for 3/5 3,000
(From Orlean in Fauquier Co. to Salem & Paris Road.)

2/28/54/ 52 Paris & Piedmont Station Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Fauquier Co.)

3/11/50- 96 Parkersburg & Elizabethtown Tpke Co., Incptd., $8,000, and B. P. W. for 3/5 4,800
(From Elizabethtown in Wirt Co. to Parkersburg in Wood Co.)

3/11/50- 88 Patterson's Creek Valley Tpke Co. Name of Knobley Valley Tpke Co. changed to above, and route of road to be from point on Hardy Co line down Pat.'s Cr. Valley to Patterson's Creek depot on B. & O. R. R., with extension to convenient point on Moorfield & Alleghany Tpke Capital increased by $2,500, and B. P. W. for 3/5 1,500
See Knobley Valley Tpke Co.

2/ 4/48-200 Pepper's Ferry & Holston Tpke Co., Incptd., $26,000, and B. P. W. for 3/5..... 15,600
(From P's Ferry in Pulaski Co. to end of Shannon's Tpke in Giles Co., thence up Walker's Creek Valley to Salt Works in Smyth Co.)

3/ 8/53-175 Petersburg & Jerusalem Plank Road Co., Incptd., $75,000, and B. P. W. for 3/5..... 45,000
(From Petersburg in Dinwiddie Co. to Jerusalem in Southampton Co.)

3/ 7/49-130 Phillipi & Buckhannon Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Phillipi in Barbour Co. to Buckhannon in Lewis Co.)

2/20/38-117 Pittsylvania, Franklin & Botetourt Tpke Co., Incptd., $40,000, with privilege of increasing to $60,000, and B. P. W. for 2/5 24,000
(In Pittsylvania, Franklin and Botetourt Co.'s)

3/16/36-208 Pittsylvania & Lynchburg Tpke Co. Capital reduced to $17,500, and B. P. W. for 140 shares (2/5) 7,500
(In Pittsylvania and Campbell Counties.)

3/30/53-218 Pleasant Valley & Tunnelton Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Ice's Ferry on Cheat River, by Pleasant Valley meeting house in Preston Co. to Tunnelton on B. & O. R. R.)

2/ 5/48-221 Point Pleasant & Ripley Tpke Co., Incptd., $50,000, and B. P. W. for 3/5..... 30,000
(From Gilmer Co. through Ripley in Jackson Co. to Point Pleasant in Mason Co.)

3/ 4/51-103 Potomac Tpke Co., Incptd., $4,500, and B. P. W. for 3/5..... 2,700
(From point on Cacapon & N. Branch Tpke in Hampshire Co. to point not East of the Morgan Co. line.)

3/ 7/50-80 Princeton & Red Sulphur Tpke. Co., Incptd., $7,000, and B. P. W. for 3/5..... 4,200
(From Princeton in Mercer Co. to Red Sulphur Springs in Monroe Co.)

3/21/51-110 Amends above so as to make the subscription of $4,200 an appropriation instead of a subscription, and makes this a free road.

3/ 7/51-82 Providence Branch Plank Road Co., Incptd., $10,000, and B. P. W. for 2/5..... 4,000
(From Fairfax Court House to point on Alexandria and Gordonsville R. R.)

3/28/53-212 Pulaski & Giles Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Giles Co. to Pulaski Co.)

2/28/54-47 Raleigh & Boone Road Co., Incptd., $3,000, and B. P. W. for 3/5..... 1,800
and may increase by $2,000, of which 3/5 by B. P. W..... 1,200
(From Boone Co. to Raleigh Co.)

4/ 2/50-289 Raleigh & Grayson Tpke Co., $2,500 of State's subscription to Mechanicsburg & Wythe Tpke Co. to be transferred to Raleigh and Grayson Tpke Co., with consent of stockholders of former Co.

3/17/56-143 Raleigh & Tazewell Line Tpke Co. Incorporated as an independent Co. for making that part of the Raleigh & N. C. Road lying between the Giles, Fayette & Kan. Tpke in Raleigh County and the Co. line of Wythe & Tazewell Counties.
Capital $4,000. This Co. to receive a proportionate share of the unapplied portion of State's subscription to the Raleigh & N. C. Road.
See Raleigh & N. C. Road.

3/ 3/60-280 Amends above act by changing name of this Co. to Raleigh & Wythe Line Tpke Co., making its capital $8,000 instead of $4,000, and having B. P. W. subscribe for 3/5 instead of giving to this independent Co. a portion of the unapplied subscription of B. P. W. to Raleigh & N. C. Line Road 4,800

3/ 3/ 60-280 Raleigh & Wythe Line Tkpe Co.
See Raleigh & Tazewell Line Tpke Co.

3/25/53-210 Randolph & Moorfield Tpke Co., Incptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Beverly in Randolph Co. to Petersburg in Hardy Co.

2/18/50-98 Ravenswood & Reedy Creek Tpke Co., Incptd., $10,000 and B. P. W. for 3/5..... 6,000
(From point in Reedy Creek in Wirt Co. to Ravenswood on Ohio River.)

3/24/51-121 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000
and authorizes extension to town of California in Wirt Co.

3/20/37-144 Red & Blue Sulphur Springs Tpke Co., B. P. W. for 100 shares (2/5). (Act 1/18/36-214 shows capital $12,500, par val. $50)..... 5,000
(From Blue Sul. Springs in Greenbrier Co. to Red Sul. Springs in Monroe Co.)

3/23/39- 86 B. P. W. for 76 additional shares, being 2/5 of increase allowed by act of 3/27/38..... 3,800

3/15/51-110 B. P. W. to appropriate for bridge over Indian Creek 1,400

3/24/51-117 Reedy & Harrisville Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(From the Three Forks of Reedy through Palatine in Wirt Co. to Harrisville in Ritchie Co.)

3/14/49-113 Rich Patch Tpke Co., Incptd., $12,000, and B. P. W. for 3/5..... 7,200
(Alleghany and Botetourt Counties.)

3/12/51-121 Ritchie & Gilmer Tpke Co., Incptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Schumla on N. W. Tpke through Harrisville in Ritchie Co. to Glenville in Gilmer Co.)

1/28/33-102 Rivanna & Fredericksburg Tpke Co., Incptd., $30,000, and B. P. W. for 2/5..... 12,000
(From Albemarle Co. to Spottsylvania Co.)

3/ 4/53-45 Rivesville & New Brownsville Tpke Co., Incptd., $8,000, and B. P. W. for 3/5..... 4,800
(From Paw Paw Creek in Marion Co. to Pennsylvania line at New Br. in Monongalia Co.)

4/ 2/39-96 Rockfish Navigation & Blue Ridge Tpke Co., Incptd., $60,000, and B. P. W. for 2/5..... 24,000
(Improvement of navigation of Rockfish Riv. and Tpke up same to point in Augusta Co.)
(See same title under head of Navigation Companies.)

3/18/50-81 Rockingham Tpke Co., Incptd., $100,000, and B. P. W. for 3/5..... 60,000
From Standardsville in Greene Co. by Swift Run Gap to point on Valley Tpke.)

2/28/53-193 Capital increased by $50,000, and B. P. W. for 3/5 30,000

3/18/47-111 Rocky Mount Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From point on Lynchburg & Salem Tpke west of New London, by Franklin Court House or Rocky Mount to Jacksonville in Floyd Co.)

2/19/48-197 Capital increased by $30,000, and B. P. W. for 3/5..... 18,000
B. P. W. also for 3/5 of additional increase allowed of $10,000 for branch to Patrick Co... 6,000

3/ 9/53-72 B. P. W. authorized to purchase the mountain section of this road and widen same as recommended by engineer and Sup't of Floyd C. H. & Hillsville Road, provided this can be done at cost not exceeding 4,500
(See Floyd C. H. & Hillsville Road.)

3/ 9/53-198 Russell Old Court House & Abingdon Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... 15,000
(From old Court House of Russell Co. through Little Moccasin Gap to Abingdon in Washington Co., thence up Laurel Fork to Tenn. line.)

3/ 1/54-48 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

3/ 6/48-202 Russell & Washington Tpke Co., Incptd., $10,000, and B. P. W. for 3/5..... 6,000
(Russell and Washington Counties.)

2/ 7/50-93	Capital increased by $1,125, and B. P. W. for 3/5	675
3/15/51-90	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/15/51-90	Capital increased by $1,250, and B. P. W. for 3/5	750
3/24/51-123	St. Mary's Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... (From Parkersburg in Wood Co. to St. Mary's in same Co.)	6,000
3/10/51-120	Salem & Harrisville Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... (Ritchie Co.)	7,200
2/11/39-182	Salem & Newcastle Tpke Co. Changes par val. of shares to $25 (Act 4/6/38-120 shows cap. $10,000, par val. $50) and B. P. W. for 66 shares for every 100 by others (2/5 about)..... (Botetourt Co. to P's Ferry in Montgomery	4,000
3/25/39-82	Salem & Pepper's Ferry Tpke Co. B. P. W. for 2/5 (Act 3/21/38-120 shows cap. $15,000).. (Botetourt Co. to P's Ferry in Montgomery Co.)	6,000
3/25/58-95	B. P. W. to borrow and pay to as appropriation, for paying the debts of—not over $12,000..	12,000
2/27/54-52	Salem Station & Rappahannock Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5..... (From Salem Station on Manassa Gap R. R. to point in Rappahannock Co.)	18,000
3/ 8/34-166	Salt & Red Sulphur Springs Tpke Co. B. P. W. for 80 shares (Act 1/8/34-165 shows cap. $10,000, par val. $50)..... (Monroe Co.)	4,000
3/31/60-303	Saltville & Laurel Tpke Co., Ineptd., $8,000, and B. P. W. for 3/5..... (From Saltville on Va. & Tenn. R. R. to interseet Tkpe from Abingdon to Tenn. line.)	4,800

2/12/53-191 Sand Creek Tpke Co., Ineptd., $2,400, and B. P. W. for 3/5 1,440
(From Jackson Co. to Gilmer, Ripley & Ohio Tpke.)

3/31/51-112 Sandy River Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5 3,000
(From mouth of Big Sandy River up to Cassville in Monongalia Co.)

4/ 6/39-84 Scott & Washington Tpke Co., Ineptd., $20,000, and B. P. W. for 133 shares for every $200 by others (about 2/5) 8,000
(Washington and Scott Counties.)

2/23/21-98 Shepherdstown, Martinsburg & Potomac Tpke Co. B. P. W. for 2/5 (incorporating Act of 1/20/20-59 shows capital $60,000) 24,000
(From Shepherdstown in Jefferson Co. by way of Martinsburg in Berkeley Co. to Potomac River.)

2/20/26-66 Shepherdstown & Smithfield Tpke Co. B. P. W. for $18,575 18,575
(From Sh. in Jefferson Co. to Smithfield in same Co.)
The name of this Co. originally was Shepherdstown & Winchester, but this act changed name to above and made the termini Shep. and Smithfield.

2/11/48-214 B. P. W. for $14,000, being 2/5 of additional capital ($35,000) authorized by Act 3/22/47-116 for extension of road to Winchester in Frederick Co. 14,000

2/ 7/50-99 Shinston Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5 7,200
(From Shinston in Harrison Co. to Doddridge or Tyler Co.)

2/ 9/53-188 Capital increased by $10,000, and B. P. W. for 3/5 6,000

2/26/51-118 Simpson's Creek Tpke Co., Ineptd., $7,000, and B. P. W. for 3/5 4,200
(From Harrison Co. to Taylor Co.)

2/ 4/53-187 Sinking Creek & Craig's Creek Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... 1,800
(Craig Co.)

3/31/60-301 Sir John's Run Tpke Co., Ineptd., $7,000, and B. P. W. for 3/5..... 4,200
(From point in Frederick Co. on Berkeley & Hampshire Tpke to point in Morgan Co. on Bath & Potomac Road.

3/27/51-120 Sistersville & Salem Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5..... 9,000
(For widening and completing the Sistersville & Salem Road.)
See Sistersville to Salem Road.

3/16/31-206 Smithfield, Charlestown & Harpers Ferry Tpke Co. B. P. W. for $14,000 (see Act 2/18/30-86) 14,000
(Jefferson Co.)

2/25/33-99 Capital increased by $10,000, and B. P. W. for 4,000

3/29/53-215 Smithtown Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... 6,000
(From Smithtown in Monongalia Co. to Morgantown & Beverly Road.)

2/27/22-45 Snickers Gap Tpke Co. B. P. W. for 400 shares of—allowed to be increased by this act. (Act 1/29/1810-67 shows par val. $50.)..... 20,000
(From E. bank of Shenandoah River by way of Snicker's Gap to Winchester in Frederick Co.)

2/21/35-129 Southwestern Tpke Co., Ineptd., $100,000, and B. P. W. for 2/5..... 40,000
(From Botetourt Co. to State line in Washington Co.)

3/27/48-204 Sperryville & Rappahannock Tpke Co., Ineptd., $50,000, and B. P. W. for 3/5..... 30,000
(From Sperryville in Rappahannock Co. to head of navigation of Rappahannock Riv.

2/19/51-95	Capital increased by $30,000, and B. P. W. for 3/5	18,000
3/ 8/24-68	Staunton & James River Tpke Co., Incptd. B. P. W. for 2/5 of $200,000. (From Staunton in Augusta Co. to Scott's Landing on James Riv.)	
2/12/25-64	Repeals above act; makes cap. $50,000, and B. P. W. to subscribe for 2/5.....	20,000
2/24/26-66	B. P. W. for additional $20,000.....	20,000
2/ 7/33-102	B. P. W. for 2/5 of additional $50,000.....	20,000
3/ 1/47-112	Capital increased $175,000, and B. P. W. for 3/5	105,000
2/20/33-96	Staunton & Jennings Gap Tpke Co., Incptd., $8,000, and B. P. W. for 2/5. (Augusta County.)	
3/ 7/33-96	Amends above act, reduces capital to $6,000. of which B. P. W. to subscribe for 2/5.	
3/29/37-148	Amends above acts, makes capital $9,000. B. P. W. for 2/5.....	3,600
3/28/51-107	Staunton & North River Gap Tpke Co., Incptd., $25,000, and B. P. W. for 3/5..... (Augusta County.)	15,000
3/24/51-93	Stone Mountain Free Road Co., Incptd., $2,000, and B. P. W. for 3/5..... (From point 18 miles E. of Lee C. H., crossing Stone Mountain to Ky. line in Harlan Co., Ky.)	1,200
3/27/60-278	Strasburg & Capon Tpke Co. B. P. W. for $3.000 of stock of (See incorporating act of 3/3/56-133.) .... (From Strasburg in Shenandoah Co. to point on Winchester & Moorfield Road at Hoff's Gate.)	3,000

3/15/49-112 Sweet & Salt Sulphur Springs Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... 7,200
(From Sweet Springs in Monroe Co. by way of Salt Sulph. Springs to Red & Blue Sulph. Tpke near mouth of Indian Draft.)

3/25/53-211 Capital increased by $5,000, and B. P. W. for 3/5 3,000

3/10/51-91 Tazewell Court House & Saltville Tpke Co., Ineptd., $20,000, and B. P. W. for 3/5..... 12,000
(From Tazewell C. H. by Broad Ford in Smyth Co. to Saltville in Washington Co.)

3/25/39-86 Teay's Valley & Hannansville Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From point on Kanawha Tpke near Hurricane Bridge to Hannansville in Cabell Co.)

1/19/48-207 Thornton's Gap Tpke Co., Ineptd., $75,000, and B. P. W. for 3/5..... 45,000
(Rappahannock Co. to Culpepper Co.)

2/19/51-95 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/ 1/33-94 Thornton's Gap & Warrenton Tpke Co., Ineptd., $30,000, and B. P. W. for 2/5..... 12,000
(Fauquier Co. to Culpeper Co.)

3/12/31-208 Thoroughfare Gap Tpke Co. Capital reduced to $45,000, and B. P. W. for 2/5.
(Salem in Fauquier Co. made the western terminus of the road.)

2/13/33-100 Capital reduced to $31,000, and B. P. W. for 2/5 of reduced capital instead of as above..... 12,400

3/ 1/60-279 Tom's Creek & White's Creek Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... 1,800
(From Tom's Cr. in Wayne Co. to mouth of White's Creek on Big Sandy River.)

3/ 1/56- 65 Tye River & Blue Ridge Tpke Co. B. P. W. for 50 shares. (Incorporating act 3/11/1819-133 does not show par value.)
(From point near Greensville over Blue Ridge Mountains to Tye Riv. in Nelson Co.)

3/22/51-84	Union Hall Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5	9,000
	Increase allaowed by $3,000, of which B. P. W. for 3/5	1,800
	(Bedford Co. to Franklin Co.)	
3/30/53-207	Upperville & Manassa Gap Plank Road Co. B. P. W. for 3/5 of $12,000	7,200
	(Fauquier Co. to Manassa Gap R. R.)	
3/ 3/34-171	Valley Tpke Co., Ineptd., $250,000, and B. P. W. for 2/5.	
	From Winchester in Frederick Co. to Harrisonburg in Rockingham Co.)	
3/34/38-129	Same; incorporated and B. P. W. for 3/5	180,000
2/14/39-89	Capital increased by addition of not over $75,000, and B. P. W. for 3/5	45,000
2/12/41-111	Capital increased by $25,000, and B. P. W. for 3/5	15,000
	and B. P. W. to lend to—(6% scrip) secured by lien	25,000
2/15/45-68	State guarantees loan of—to extent of	21,000
1/31/48-212	Capital increased by 1,000 shares; converts State's loan (above) of $25,000 into stock	25,000
4/ 3/38-122	Walker's Creek Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5	6,000
	(Smyth Co. to Giles Co.)	
2/15/54-46	Walnut Gap Road Co., Ineptd., $3,000, and B. P. W. for 3/5, and also for 3/5 of increase of $2,000 allowed by this act	3,000
	(Wyoming Co. to Boone Co.)	
3/ 2/31-207	Warm Springs & Harrisonburg Tpke Co. Capital reduced to $30,000, and B. P. W. for 2/5.	12,000
	(From east side of Warm Springs Mountain to Harrisonburg in Rockingham Co.)	
3/26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole	15,000

3/26/53-209	Capital increased by $15,000, and B. P. W. for so much as will make State's subscription 3/5 of whole	15,000
3/16/49-118	Warrenton & Rappahannock Tpke Co., Incptd, $20,000, and B.P. W. for 3/5 (From War. in Fauquier Co. to point on Rappahannock River.)	12,000
3/18/50-83	Repeals section of above act authorizing State's subscription, but this act authorizes for 3/5.	
4/10/39- 87	Waynesborough & Greensville Tpke Co., Incptd., $6,000, with privilege of increasing to $10,000, and B. P. W. for 2/5 (Augusta Co.)	4,000
3/15/49-135	Wellsburg & Bethany Tpke Co., Incptd., $15,000, and B. P. W. for 3/5 (From Wellsburg in Brooke Co. to point near Bethany in same Co.)	9,000
3/14/50-101	Capital increased by $12,000, and B. P. W. for 3/5	7,200
2/ 4/23-81	Wellsburg & Washington Tpke Co. B. P. W. for $5,000 of the stock of (From Wellsburg in Brooke Co. to Washington in Pennsylvania.)	5,000
3/23/31-205	B. P. W. for $2,133.33 more	2,133.33
3/ 7/50-98	West Milford & New Salem Tpke Co., Incptd., $12,000, and B. P. W. for 3/5 (Harrison Co. to Lewis Co.)	7,200
3/17/51-119	Capital increased by $6,000 for branch to Clarksburg in Harrison Co., and B. P. W. for 3/5	3,600
3/26/60-293	Capital increased by $5,000, and B. P. W. for 3/5	3,000

2/24/60-281 Jane Lew & Upshur Tpke Co., incorporated to take over such part of this road as lies in Lewis & Upshur Counties.

3/ 9/48-218 Weston & Fairmont Tpke Co., Ineptd., $16,000, and B. P. W. for 3/5..... 9,600
(From Weston in Lewis Co. by Clarksburg in Harrison Co. to Fairmont in Marion Co.)

3/15/49-129 Capital increased to $20,000, and B. P. W. for 3/5..... 2,400

2/17/53-193 B. P. W. for macadamizing and planking—to subscribe not over..... 46,000

3/ 1/54- 46 B. P. W. for additional subscription for bridges and macadamizing..... 40,000

3/25/48-217 Weston & Gauley Bridge Tpke Co., Ineptd., $30,000, and B. P. W. for 3/5..... 18,000
(From Weston in Lewis Co. by Braxton Co. and Nicholas Co. to point on Great Kanawha in Fayette Co.)

3/11/50-97 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000

2/25/53-194 Capital increased by $15,000, and B. P. W. for 3/5..... 9,000
and B. P. W., for improvement of road, to subscribe also for additional stock not exceeding $30,000..... 30,000

2/17/51-114 Weston & West Union Tpke Co., Ineptd., $14,000, and B. P. W. for 3/5..... 8,400
(From Weston in Lewis Co. to W. Union in Doddridge Co.)

2/24/51-114 West Union Tpke Co., Ineptd., $12,000, and B. P. W. for 3/5..... 7,200
(From W. Union in Doddridge Co. by way of Centreville to point on Sistersville & Salem Road.)

2/25/54-45 West Union Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5..... 6,000
(Marshall Co.)

Marshall County Road to Fish Creek. Co. incorporated to grade and widen.
See Wheeling & Marshall Tpke Co.

3/20/47-121 Wheeling, West Liberty & Bethany Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5.
(From point in Ohio Co. by way of W. Liberty in same Co. and Bethany in Brooke Co. to the Pennsylvania line.)

2/29/48-224 Capital increased to $35,000, and B. P. W. for 3/5 of whole instead of as in act next above... 21,000

3/ 8/34-166 White & Salt Sulphur Springs Tpke Co. B. P. W. for 80 shares of—(Acts 1/8/34-165 shows cap. $10,000, par val. $50)..... 4,000
(From White Sulph. Springs in Greenbrier Co. to Salt Sulph. Springs in Monroe Co.)

3/15/49-135 Williamsport Tpke Co., Ineptd., $5,000, and B. P. W. for 3/5..... 3,000
(From Williamsport in Wood Co. to point on Parkersburg Road east of Parkersburg.)

2/18/51-118 Capital increased by $5,000, and B. P. W. for 3/5..... 3,000

4/ 7/58-97 State's interest in—released to Wood Co.

3/ 8/53-196 Wilson Creek & South Fork Tpke Co., Ineptd., $15,000, and B. P. W. for 3/5..... 9,000
(From Grayson Co. to Smyth Co.)

3/21/60-305 Capital increased by $10,000, and B. P. W. for 3/5 6,000

4/ 8/39- 90 Winchester & Berkeley Springs Tpke Co., Ineptd., $20,000, and B. P. W. for 2/5..... 8,000
(From Winchester in Frederick Co. to point on C. & O. Canan near Bath in Morgan Co.)

4/ 6/39- 91 Winchester & Berry's Ferry Tpke Co., Ineptd., $15,000, and B. P. W. for 2/5.
(From Winchester in Frederick Co. to Berry's Ferry on Shenandoah River.)

1/21/48-211	Revives above act and changes State's subscription from $6,000 to $10,000, and increases capital to $25,000.	
1/30/50- 87	Changes State's subscription to 3/5.....	15,000
1/23/54- 53	Capital increased by $6,000, and B. P. W. for 3/5	3,600
2/23/21- 98	Winchester & Frankfort Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows $200,000)..... (From Winchester in Frederick Co. by way of Frankfort in Hampshire Co. to N. Branch of Potomac River.)	80,000
2/23/21- 98	Winchester & Romney Tpke Co., B. P. W. for 2/5 (Act 2/15/20-62 shows capital of $150,000). (From Winchester in Frederick Co. to Romney in Hampshire Co.)	60,000
4/ 2/53-223	Winfield & Thompsonville Tpke Co., Ineptd., $7,500, and B. P. W. for 3/5. (From Winfield in Putnam Co. by Hurricane Bridge, etc., to Wilson's Creek and Kanawha Road.)	
3/12/56-141	Capital reduced to $6,000.....	3,600
3/29/53-216	Wolf Creek Tpke Co., B. P. W. for 3/5 of $15,000 ..... (From mouth of Wolf Creek in Giles Co. up valley of said Creek to point in Tazewell Co.)	9,000
3/12/53-202	Wytheville Tpke Co., Ineptd., $10,000, and B. P. W. for 3/5 ..... (Wythe Co.)	6,000
3/21/53-206	Wytheville & Grayson Tpke Co., B. P. W. for 3/5 of $20,000 ..... (Wythe Co. to Grayson Co. and branch to Carroll Co.)	12,000
3/26/53-208	Yellow Sulphur Springs Tpke Co., Ineptd., $3,000, and B. P. W. for 3/5..... (Montgomery Co.)	1,800
2/27/54- 48	Capital increased by $600, and B. P. W. for 3/5	360

ROADS.

2/19/50- 68	Abb's Valley & Tug Road, from Abb's Valley in Tazewell Co. to Thos. Cook's in Wyoming Co., B. P. W. to construct and may borrow therefor.	5,000
3/ 1/50- 68	Road from Abingdon in Washington Co. to Pattonsville in Scott Co., B. P. W. for 3/5 of cost of (cost not to exceed $15,000).....	9,000
3/11/50- 91	Road across Alleghany Mountains in Franklin and Floyd Counties, B. P. W. to pay towards—	
3/31/51-113	Repeals act next above and makes B. P. W. subscribe for stock of Blackwater Tpke Co., incorporated to build this road ..... See Blackwater Tpke Co.	
3/ 4/34-105	Road across Alleghany Mountains in Pendleton and Pocahontas Counties, State appropriation for	6,000
3/13/49- 92	Alleghany & Huntersville Tpke Road from point on Jackson's River Tpke in Alleghany Co. to Warm Springs & Huntersville Tpke in Bath Co., to be built by B. P. W., appropriation of..	5,000
2/ 1/50- 59	B. P. W. to borrow the further sum for—of..	600
3/31/51-109	B. P. W. to appropriate to—for extension to Covington, the further sum of.....	4,500
3/22/53- 71	B. P. W. to appropriate to—for completion of—to Covington	1,500
1/19/34-158	Road from Bath Co. to Chimney Run above Warm Springs, State appropriation for opening.	1,600
3/ 8/47- 92	Road from Bath in Morgan Co. to mouth of St. John's River on Potomac Riv., B. P. W. to contribute	2,500
3/14/36- 73	Tpke Road from Beverly in Randolph Co. to Clarksburg in Harrison Co., B. P. W. to contribute	8,000

2/14/48-174 Beverly and Fairmont Road, from Beverly in Randolph Co. by Philippi and Pruntytown to Fairmont in Marion Co., B. P. W. to build—and may borrow 24,000

2/ 2/50- 60 Further sum appropriated to—..... 18,000

2/ 2/50- 60 Further sum to—for continuing road from Fairmont by Barracksville and Bassetteville and Paw Paw City to Warren in Monongalia Co., thence through Monongalia, Wetzel, Marshall and Ohio Counties to Wheeling..... 25,800

2/23/53- 70 Further appropriation to for completion of bridges 9,000

2/10/53- 71 Further sum to be spent on by B. P. W. for completion to Warren in Monongalia Co..... 30,000

2/15/54- 47 Further sum to 1,500

3/ 6/51- 89 Black Lick & Plaster Banks Tpke Road, from Wythe Co. to Plaster Bks in Smythe Co., B. P. W. for 3/5 of $16,000 for..... 9,000

3/15/49- 93 Road from Eastern base of Blue Ridge in Madison Co. to Western base in Page Co., State appropriation for 1,500

2/11/53- 76 Above appropriation transferred to Blue Ridge Tpke Co.
See Blue Ridge Tpke Co.

2/25/36- 69 Road across Blue Ridge at Milan's Gap, State appropriation for— 800

4/ 5/38- 96 Road across Blue Ridge from Port Republic to Harris Mills in Albemarle Co., State appropriation to— 1,000

2/ 2/50- 59 Road across Blue Ridge from Rappahannock Co. to Warren Co., B. P. W. to construct and may borrow for 1,500

4/ 7/38- 99 Road from Brandonville in Preston Co. by Kingwood to a point on N. W. Tpke near Evansville in Preston Co., State appropriation for.... 10,000

2/16/47- 91 Capital increased by $15,000, of which the State subscribes for 2/5 6,000

1/15/48-254 $4,000 of the appropriation next above to go to Cheat River Toll Bridge Co.
(See Cheat River Toll Bridge Co.)

3/ 8/49-127 $2,000 more of the above appropriation to go to Cheat River Toll Bridge Co.
(See Cheat River Toll Bridge Co.)

3/21/51-116 Capital increased by $10,000, and B. P. W. for 3/5 6,000

3/ 5/33- 97 Road across Cheat Mountains in Randolph Co. from Tygart's Valley River to Greenbrier Riv., State appropriation for 6,000

2/ 7/32- 88 Cumberland Road—State to take over—whenever U. S. Government shall surrender so much thereof as lies in Virginia.

Fishing Creek, Morgantown & Brandonville. Road.
(See Ohio River & Maryland Road.)

2/25/50- 62 Floyd Court House and Hillsville Tpke Road, from Court House of Floyd Co. to Hillsville in Carroll Co., B. P. W. to construct 9,000

3/ 8/51- 88 Further sums appropriated to—for extension 4,500
into Floyd Co. and bridge in Carroll Co..... 6,000

3/ 1/53- 72 Further appropriation for extension into Grayson Co. 10,000

3/ 9/53- 72 Further appropriation to— 1,500
and B. P. W. authorized to purchase from Rocky Mount Tpke Co. the mountain section of its road and to widen same as recommended by the Engineer & Supt. of Floyd C. H. & Hillsville Road, at cost not over..... 4,500

3/13/58- 97 Transfers the parts of—in Floyd and Carroll Counties to said Counties.

2/14/53- 77	Road from Franklin in Pendleton Co. to Monterey in Highland Co. B. P. W. to construct and may borrow for	14,000
4/ 8/39- 63	Road from Guest's Station to Tennessee line, State appropriation to	6,000
3/ 2/46- 77	Road from Guyandotte River in Logan Co. to point on Kanawha River near Charleston, State appropriation to—	3,000
2/ 2/50- 63	Extends road to Logan C. H. and further State appropriation to	5,000
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Franklin in Pendleton Co., State appropriation account of	667
3/12/49- 94	Road from Harrisonburg in Rockingham Co. to Moorfield in Hardy Co., State appropriation account of	333
3/10/36- 71	Road from Huntersville in Pocahontas Co. to Parkersburg in Wood Co., State appropriation for Eastern section of	3,000
2/19/40- 62	Further appropriation to	1,000
2/25/50- 59	Huntonsville & Huntersville Road, from Hut. in Randolph Co. by way of Concord in same Co. to Hun. in Pocahontas Co. B. P. W. to construct	15,000
2/28/53- 70	B. P. W. for further sum for extension and completion of—and bridge in Pocahontas Co.	8,000
2/ 8/53- 70	B. P. W. further sum for completion	7,500
3/22/53- 71	B. P. W. further sum for extension into Greenbrier Co. to Lewisburg	20,000
3/30/37- 86	Road from Ice's Ferry on Cheat River in Monongalia Co. to Pennsylvania line in direction of Monroe, B. P. W. to pay for—and may borrow up to	4,200

3/ 9/53-199 Road from Jacksonville & Cove Spring Tpke in Floyd Co. across Alleghany Mountains and down South Fork of Roanoke Riv. to Va. and Tenn. line in Montgomery Co., B. P. W. to open and construct, and to spend on..... 2,500

3/26/31-159 Road from lower end of James River Canal at the mountain section to point near North River at upper end, State appropriation for construction of 9,000

3/ 7/48-178 Little Stone Gap Road, from head of Powell's Valley in Lee Co. to nearest and best point on Pound Gap Road, State appropriation for..... 3,000

3/17/49- 95 State appropriation for completion of... 650

3/17/49- 88 Road from Logan Court House at Shannon's house by best route to the Bluffs between Logan and Mercer Counties, State appropriation for 2,000

2/ 7/50- 64 Extension of road from Bluffs to Cumberland Gap Tpke in Giles Co., and State appropriation to 2,000

3/ 4/51-112 Road to start from Wyoming Court House instead of from Shannon's house,, and B. P. W. for additional appropriation for completion.... 3,000

3/23/31-161 Road from Middlebourn, on Middle Island Creek in Tyler Co. to point in Green Co. of Pennsylvania, State appropriation for..... 5,000

2/19/34-109 Additional State appropriation 1,000

2/28/54- 54 Middle Fork Tpke Co., from Randolph Co. to Point in Barbour Co., B. P. W. to construct—and may borrow for same 15,000

3/19/32-166 Road from Monroe Co. line to Kentucky line in Cabell Co., State appropriation for..... 5,000

Morgantown & Beverly Road.
(See Road from Penn. line by Morgantown. etc.)

3/21/37- 88	Road from Nicholas Court House to Gauley Bridge on line of Kanawha Tpke, State appropriation for—	1,500
1/17/48-177	Road from N. C. line through Carroll Co. to Valley Road near Wytheville, State appropriation for completing—	2,000
3/19/31-153	Northwestern Tpke Road, from Winchester in Frederick Co. to point on Ohio River. The Governor, Treasurer, Atty. General, and Second Auditor of the State incorporated as—for purpose of building and maintaining this road; and empowered to borrow on credit of State at 6%.	125,000
2/ 6/34-104	Authorized to borrow on credit of State	86,000
3/ 1/34-105	To subscribe not over $8,000 to Northwestern Road of Maryland	8,000
3/30/37- 82	Authorized to borrow on credit of State	50,000
3/29/37- 82	Authorized to borrow on credit of State for macadamizing and widening parts of between Winchester and Lockharts	15,000
4/ 9/38- 99	Authorized to borrow on credit of State	28,000
1/26/39- 70	Authorized to make temporary loan for amount necessary to rebuild bridge over South Branch of Potomac River.	
1/ 5/40- 61	Amends act next above; allows loan to be made through B. P. W. instead of being a temporary loan, amount not to exceed	11,484
3/14/40- 61	Authorized to borrow on credit of State	7,000
1/29/44- 66	B. P. W. to pay a claim against—	2,130.97
2/29/48-173	B. P. W. to macadamize certain parts of from Taylor Co. to Parkersburg and may borrow for same not $30,000 a year for two years	60,000
3/17/49- 91	B. P. W. to spend on for macadamizing the further sum of	60,000

2/15/36- 76	Road from Ohio River at mouth of Fishing Creek in Tyler Co. by Morgantown in Monongalia Co. and Brandonville in direction of Smithfield in Jefferson Co., State appropriation to—through B. P. W. which is to borrow and pay	12,000
2/14/38-101	B. P. W. to lend to—for completion of to be secured by mortgage	12,000
3/30/39- 69	State appropriation toward completion of—..	12,500
1/13/48-175	B. P. W. to foreclose mortgage on—securing State loan, and authorized to bid it in at sale for any amount not over the mortgage, and if B. P. W. bid it in then State appropriation to—for completion	15,000
2/ 4/50- 60	B. P. W. to borrow and spend on—for comcompleting and repairing	30,000
2/10/53- 72	B. P. W. to borrow and spend on for bridges over Buffalo, Pile's Fork, and Little Fishing Creek	22,000
	and the further sum for planking and macadamiz[illegible]	6,000
3/30/37- 85	Road from Pennsylvania line in Monongalia Co. by Morgantown in same Co. to point on N. W. Road West of Cheat River, State appropriation for.	
4/ 9/38-100	This appropriation increased to $12,000.....	12,000
3/39/48-176	Further appropriation to	3,000
3/ 1/53-195	Capital increased by $8,000 for finishing and repairing road, and B. P. W. for 3/5.....	4,800
3/25/37- 93	Road from Pound Gap of Cumberland Mountain on Kentucky line to intersect Fincastle & Cumberland Gap Road in Russell Co., State appropriation for	5,000

3/ 5/34-106	Price's Tpke and Cumberland Gap Road from Price's Turnpike in Botetourt Co. by way of valley of East River or up Wolf Creek to Cumberland Gap on dividing line between Va., Tenn. & Ky. To be built by County Courts and B. P. W. B. P. W. for 2/5 of $100,000. Raised to 3/5 or $60,000 by Act Mar. 21, 1837.....	40,000
4/ 2/39- 63	B. P. W. to appropriate to..... (See act 2/28/42-71 declaring this $3,600 to be in addition to State's subscription.)	3,600
3/ 8/42- 72	B. P. W. to borrow to pay towards construction of that part of—which passes through Mercer Co.	4,000
1/29/44- 67	B. P. W. to pay 3/5 of amount ($8,416.67) due on construction of that part of—passing through Counties of Lee, Scott, Russell, Tazewell & Giles	5,050
3/21/51-110	Princeton & Red Sulphur Road, in Mercer and Monroe Counties. Made a free road, and State's subscription to Princeton & Red Sulphur Tpke Co. ($4,200) an appropriation to this free road.. (See Princeton & Red Sulphur Tpke Co.)	4,200
2/19/50- 65	Pulaski & Giles Tpke. To be constructed; B. P. W. for 3/5 of estimated cost (cost not to exceed $10,000)	6,000
3/ 3/54- 48	Capital increased by $3,000, and B. P. W. for 3/5	1,800
3/28/53-212	(See Pulaski & Giles Tpke Co.)	
2/ 4/50- 65	Raleigh & North Carolina Road. From Raleigh Co. by way of Princeton in Mercer Co., Wytheville in Wythe Co., Grayson C. H. to N. C. line in direction of Jefferson in Ashe Co., N. C. B. P. W. for 3/5 of cost of (cost not to exceed $44,000)	26,400
2/25/53-194	B. P. W. for 3/5 of additional $20,000.....	12,000

3/17/56-143 Incorporates Raleigh & Tazewell Line Tpke Co. to construct part of this road. This Co. to receive proportional share of unapplied portion of State's subscription to this road.
(See Raleigh & Tazewell Line Tpke Co.)

3/ 3/60-280 Changes name of above Co. to Raleigh & Wythe Line Tpke Co.
(See Raleigh & Wythe Line Tpke Co.)

3/ 8/47- 89 Tpke Road from Richlands in Tazewell Co. down Louisa Fork of Sandy River to Ky. State line. B. P. W. to construct and may borrow therefor not over 10,000

1/17/48-178 State appropriation for completing 6,500

3/ 7/49- 96 State appropriation for 2,500

1/30/50- 63 State appropriation for road connecting this road with Tazewell C. H. & Fancy Gap road.... 8,000

3/ 2/53- 72 State appropriation for completing Richlands & Ky. line Tpke Road..... 3,000

2/16/53- 77 B. P. W. to appropriate, for completing the connecting road provided for by 1/30/50-63 (the second above) 2,000

3/12/49- 90 Road from Forks of Sandy River in Wayne Co. to Kanawha Tpke in Cabell Co., State appropriation for 3,500

3/19/50- 70 Graded Road in Scott Co. B. P. W. for 3/5 of $6,000 for 3,600

3/3 /37- 83 Road from Sistersville in Tyler Co. by Middlebourn to the N. W. Tpke Road near Salem in Harrison Co. State appropriation to—of not over 6,000

2/ 1/47- 90 State appropriation for 6,000

3/30/48-220 Further State appropriation for completing.

2/ 9/49- 91 State appropriation for completing. This to be in lieu of the $2,500 by act next above..... 5,000
(See Sistersville & Salem Tpke Co.)

3/12/34-160 Road from Skidmore's Fork in Rockingham Co. to South Fork in Pendleton Co., State appropriation towards 1,000

2/12/53- 75 Road from Slavins Cabin on West side of Greenbrier River on Staunton & Parkersburg Road to Summerville in Nicholas Co., by way of Point Mountain and Fork Lick. B. P. W. to construct and may borrow therefor..... 25,000

3/23/60-294 Further appropriation to—by State for completing and for extension from Nicholas Co. to Hunstonsville & Huntersville Tpke 12,000

3/30/38- 95 Road from Smyth Court House to Plaster Banks in Rich Valley across Walker's Mountain, State appropriation for..... 3,000

2/ 9/50- 63 Further appropriation for completion..... 1,500

2/ 7/50- 64 Road from South Fork in Hardy Co. to Brock's Gap in Rockingham Co. B. P. W. to spend on 1,400

2/ 7/50- 64 Road from South Fork of S. Branch of Potomac near Brakes to Petersburg in Hardy Co. State appropriation for 900

1/28/46- 79 Southwestern Tpke Road (in Roanoke, Montgomery, Pulaski, Wythe, Smyth and Washington Counties) B. P. W. incorporated as—and may draw on State Treasury for..... 75,000
Also authorized on certain conditions to purchase the stocks of Salem & Pepper's Ferry Tpke Co., Lafayette & Ingles Tpke Co., and Alleghany Tpke Co.

1/12/47- 85 State appropriation towards construction.... 75,000

1/17/48-176 State appropriation for completion 300,000

1/24/48-177 State appropriation for extension from Eastern terminus to Buchanan in Botetourt Co..... 90,000

3/19/50- 62 B. P. W. to borrow for completion of between Salem and Buchanan 8,000

3/16/38- 97 Staunton & Parkersburg Tpke Road. From Staunton in Augusta Co. to Parkersburg in Wood Co. B. P. W. directed to construct and allowed to borrow therefor not exceeding..... 150,000

2/19/45- 68 B. P. W. to borrow for that part of between Weston in Lewis Co. and Beverly in Randolph Co. 30,000

3/ 5/46- 75 B. P. W. to erect bridge over Valley River in Randolph Co. and appropriation for this purpose of 5,000

3/13/47- 85 B. P. W. to build certain bridges in Randolph Co., Lewis Co., over N. & S. Fork of Hughes River, over Stone Creek and other creeks, and appropriation for this purpose 15,000

2/ 2/48-174 Additional $10,000 for bridges 10,000

3/12/49- 92 B. P. W. to macadamize parts of and may borrow therefor 60,000

2/ 7/50- 59 B. P. W. to build bridge over Polk Creek and may spend therefor 800

3/ 1/53- 70 B. P. W. to spend on for macadamizing, planking and bridging 100,000
Not over $25,000 of this in any one year.

4/ 7/58-138 B. P. W. to build open bridge over File's Creek in Randolph Co. on line of this road and pay for same out of the appropriations made by act of 3/1/53-70 (next above).

3/30/60-304 B. P. W. to use $12,000 of the unexpended money heretofore appropriated to—for repairs in several Counties that are necessary, and for changing location of road in Wood Co.

3/17/49- 96 Tazewell Court House & Fancy Gap Tpke Road. From Tazewell C. H. by Wytheville in Wythe Co. and Hillsville in Carroll Co. to N. C. line at Fancy Gap. B. P. W. for 3/5 of $32,000 for 19,200

1/30/50- 63	State appropriation for road connecting this road with Richlands and Ky. line Road. (See Richlands & Ky. Line Road.)	
3/ 8/51- 91	Amount to be spent on Tazewell C. H. & Fancy Gap Road increased by $15,000, of which B. P. W. 3/5	9,000
2/16/53- 77	Further appropriation for the connecting road mentioned in second act above. (See Richlands & Ky. Line Road.)	
2/11/53-190	B. P. W. for 3/5 of additional $25,000	15,000
1/15/23- 81	Road from Virginia and Kentucky dividing line on Louisa Fork of Sandy River, by way of Prestonburg to Clinch River. State appropriation for opening	3,000
1/19/36- 79	Road between Weston in Lewis Co. and Charleston in Kanawha Co. State appropriation for	6,000
3/25/42- 69	B. P. W. to see to construction of—by appointing a commissioner who is to draw warrants on State Auditor	1,500
1/30/50- 93	Road from mouth of Wilson's Creek in Wayne Co. to Cabell Co. and thence to Kanawha Tpke. State appropriation for	4,000
3/31/53-220	Additional subscription by B. P. W.	3,000
3/15/58-101	Confirms act next above.	

CANALS, NAVIGATION COMPANIES.

3/ 1/47- 93	Alexandria Canal Co. B. P. W. to buy 2/5 of stock of, and State bonds to issue therefor (2,720 shares at $100)	272,000
4/ 4/48-168	State guarantees bonds of—to am't not exceeding	43,520

2/20/33-59	Chesapeake & Ohio Canal Co. State Treasurer to subscribe for 2,500 shares of stock of—and to issue State certificates therefor..... (Act 1/27/24-41 shows capital $6,000,000 par value $100.)	250,000
3/ 8/47-92	State guarantees bonds of—to extent of $300,000, to be endorsed on bonds.....	300,000
3/15/49-81	State guarantees bonds of—not exceeding $200,000	200,000
3/22/53-65	B. P. W. to pay interest on bonds of—guaranteed by State and may borrow therefor.....	24,315
3/24/53-65	Amount in act next above increased by $276.78	276.78
2/22/53-34	B. P. W. to pay $15,450 interest on bonds of—guaranteed by State to 7/1/53 and $15,000 interest to 1/1/54.....	30,450
2/13/56-85	State pays interest due and to become due on bonds of—guaranteed by State (7 installments of $15,000 each, interest July 54 to July 57 inclus.....	105,000
12/23/57- 16	Second Auditor to pay interest bonds of guaranteed by State to 1/1/58, 7/1/58, 1/1/59 and 7/1/59 of $15,000 each.....	60,000
3/17/49-149	Coal River Navigation Co., Ineptd. For improvement of navigation of Big Coal River from its mouth in Kanawha Co. to Boone & Fayette Counties, and Little Coal Riv. to Boone C. H. Capital $10,000, and B. P. W. for 3/5.....	6,000
3/ 9/53-168	Capital increased by $50,000, and B. P. W. for 3/5.....	30,000
3/17/56-86	Capital increased by $100,000, and B. P. W. for 3/5.....	60,000
2/27/54-55	Craig's Creek Navigation Co., Ineptd. (Craig Co.) Capital $50,000, and B. P. W. for 3/5...	30,000

3/ 2/21-55	Dismal Swamp Canal Co. B. P. W. to lend to—$50,000	50,000
2/26/24-56	B. P. W. to lend to—to be secured by mortgage	37,500
2/17/37/131	Capital increased to 1,944 shares and B. P. W. for such amount of as will increase State's stock to shares of whole, and may borrow therefor.	
4/ 3/38-142	Dragon Swamp Navigation Co., Ineptd., $5,000, and B. P. W. for 2/5	2,000
4/ 5/38/151	Goose Creek & Little River Navigation Co. B. P. W. for 2/5. (Act 4/14/36-226 shows cap. $60,000).	
3/27/48-234	Makes B. P. W.'s subscription 3/5 of whole capital of $100,000	60,000
3/16/49-148	Guyandotte Navigation Co., Ineptd., $75,000, and B. P. W. for 3/5 For improvement of Guyandotte River from its mouth in Cabell Co. to Logan C. H.	45,000
3/ 4/51-76	Capital increased by $125,000, and B. P. W. for 3/5 (If Co. does not accept provisions of this act, then Upper Guyandotte Nav. Co., Ineptd., with cap. of $125,000, and B. P. W. 3/5. See Upper Guyandotte Navigation Co.)	75,000
1/31/50-112	Hazel River Navigation Co., Ineptd., $75,000, and B. P. W. for 3/5 For improving navigation of Hazel Riv. from Rappahannock River to point in Culpeper Co.	45,000
3/22/51-75	Capital increased by $16,000, and B. P. W. for 3/5	9,600
3/30/53-171	Capital increased by $15,000, and B. P. W. for 3/5	9,000

4/ 9/39/98 Holston Navigation Co., Ineptd., $30,000, and B. P. W. for 2/5..... 12,000
(Washington Co.)

3/23/60-113 Kanawha Board of Directors. For improvement of navigation of Kanawha River from the mouth of Loup Creek shoals. Issue to of $300,000 of State stock bearing 6 per cent. int..... 300,000

3/15/51-72 Kempsville Canan Co. Capital increased to $12,000, and B. P. W. for 3/5..... 7,200
(Princess Anne Co.)

3/26/60-120 Capital increased by $30,000, and B. P. W. for 3/5..... 18,000

3/11/48-232 Little Kanawha Navigation Co. B. P. W. for 3/5 ($30,000).
For improving navigation of Lit. Kan. Riv. from its mouth to point in Braxton Co.

3/ 1/53-164 Revives and amends incorporating act (3/9/47-127) and incorporates with capital of $50,000, of which B. P. W. for 3/5.

2/ 8/60-122 Revives and amends incorporating act. Capital $25,000, and B. P. W. for 3/5..... 15,000

2/24/27-72 Lower Appomattox Co. B. P. W. for 160 shares 16,000

3/28/51-72 Turns over to City of Petersburg State's interest in this Co. on payment by said city into State Treasury of $588.82.

3/22/47-136 Mattaponi Navigation Co., Ineptd., $5,000, and B. P. W. for 2/5..... 2,000
(King & Queen and King William Counties.)

3/ 8/48-226 Meherrin Navigation Co., Ineptd., $100,000, and B. P. W. for 2/5..... 40,000
(Mecklenburg and Lunenburg Counties.)

3/10/47-125	Monongahela Navigation Co., Incptd., $200,000, and B. P. W. for 600 shares for every 1,000 taken by others. Navigation of M. River from Penn. line to Elk Creek in Harrison Co.	
3/19/47-127	Supplementary to act next above. Additional capital of $100,000, for Cheat River in Monongalia Co., and B. P. W. for 2/5.....	40,000
3/ 7/49-147	Amends act of 3/10/47 (second above), changing par val. of shares and making B. P. W.'s subscription 3/5 of said capital.	
4/ 7/58-133	Revives and amends acts of 3/10/47 and 3/7/49. In this act nothing is said about State subscription.	
3/ 8/60-119	Revives and amends previous acts incorporating. Makes capital $80,000, and B. P. W. for 3/5.....	48,000
3/ 2/21-87	Monongalia Navigation Co. B. P. W. for 2/5 of $35,000.....	14,000
	For navigation of Monongalia and West Fork Rivers.	
3/27/37-135	New Shenandoah Co. B. P. W. for 2/5 of—($500,000)	200,000
1/24/48-233	B. P. W. for 2/5 of $500,000, new stock.....	200,000
2/ 2/50-111	North River Navigation Co., Incptd., $100,000, and B. P. W. for 3/5.....	60,000
	(Rockbridge Co.)	
2/17/51-75	B. P. W. for $45,000, being 3/5 of additional capital by this act.....	45,000
3/15/53-168	Capital increased by $60,000, and B. P. W. for 3/5.....	36,000
3/16/58-93	To be taken over by James Riv. & Kanawha Co.	
2/20/34-111	Nottoway Navigation Co., Incptd., $30,000, and B. P. W. for 2/5.....	12,000
	(Nottoway River.)	

3/27/37-94 Potomac River—for improvement of South Branch of—in Hardy Co. State appropriation. 2,000

1/21/28-78 Rappahannock Co. B. P. W. for 2/5 of $50,000 of stock of..... 20,000

1/15/29-60 B. P. W. for 2/5 of additional $20,000 of stock. 8,000

2/23/30-87 B. P. W. for 2/5 of $30,000 additional stock... 12,000

3/31/31-207 B. P. W. for 2/5 of additional $15,000 of stock 6,000

3/ 4/36-224 Authorizes B. P. W. to pay out as an advance on State stock in—not over $75 per share, or to sell State stock for $25 a share, or both, or if neither of these, then to turn said stock over to the Co.

3/ 1/38-149 B. P. W. to borrow money to pay its subscriptions to—

12/13/45-97 Surrenders State stock in—

2/ 3/48-236 State Treasurer to issue State certificates to—for construction of its work, to amount not over $100,000, to be secured by mortgage..... 100,000

2/25/53-166 B. P. W. directed to foreclose mortgage of State, and purchase money converted into stock, to which State subscribes for amount due it.

3/ 2/21-56 Richmond Dock Co. B. P. W. to pay further sum of $12,500 on its subscription to stock of... 12,500

3/13/23-67 B. P. W. to lend to—375 shares of stock in Bank of Virginia, and also $12,500, to be secured by lien.

4/ 7/31-246 Rivanna Navigation Co. B. P. W. for 600 shares of— (Act 3/2/27/58 shows $100,000, par val. $50.)..... 30,000
(Albemarle and Fluvanna Counties.)

3/27/37-134 B. P. W. for 200 shares, making with former amount 2/5 of whole..... 10,000

4/ 8/39-98	Capital increased by $40,000, making whole $160,000, and B. P. W. for 2/5 of increase, also for 2/5 of the increase of $20,000 by act 4/41/38-149	24,000
2/15/51-73	B. P. W.'s subscription to such amount as will make 3/5 in all of the aggregate formed by said subscription added to the amount already subscribed by individuals and State; also for $20,000 of the increase by act 3/8/49-151.	
5/26/53-164	B. P. W. for $100,000 of stock of	100,000
2/ 9/60-121	B. P. W. for 1,200 shares at $50	60,000
4/ 2/39-96	Rockfish Navigation & Blue Ridge Tpke Co. (See under Turnpikes.)	
1/24/24-57	Slate River Co. (Buckingham Co.) B. P. W. for 69 shares of. (Act 1/29/19-68 shows par val. $100.)	6,900
3/ 3/51-74	Slate River Co., Incorporated. B. P. W. for $21,000	21,000
3/24/48-231	Smith River Navigation Co., Ineptd., $12,000, and B. P. W. for 3/5 (Patrick Co.)	7,200
3/27/37-94	South Branch of Potomac River. (See Potomac River.)	
3/15/53-170	Tug Fork Navigation Co., Ineptd., $8,400, and may increase to $15,000, and B. P. W. for 3/5.. (Tug Fork of Sandy River up to Logan Co.)	9,000
3/ 9/49-86	Twelve Pole River in Wayne Co. State appropriation for improving navigation of	1,800
3/ 1/53-167	Twelve Pole River Navigation Co., Ineptd., $6,000, and B. P. W. for 3/5 (Wayne Co.)	3,600
2/21/20-56	Upper Appomattox Co. B. P. W. for 150 shares at $100	15,000

2/28/37-133 B. P. W. for 277 shares of new stock of..... 27,700

1/25/39-101 Capital increased to $120,000, and B. P. W. for enough to make its subscription 2/5 of whole.. 5,300

3/ 4/51-76 Upper Guyandotte Navigation Co. This Co. to be incorporated with capital of $125,000, of which B. P. W. subscribes 3/5, in the event the Guyandotte Navigation Co. does not accept provisions of this act increasing its capital by $125,000..... 75,000

(See Guyandotte Navigation Co.)

RAILROAD COMPANIES.

3/15/53-148 Alexandria, Loudoun & Hampshire R. R. Co., Ineptd. Amends acts relating to Alexandria & Harper's Ferry R. R. Co., which name is changed to this. B. P. W. for 3/5 of $1,200,000 .... $720,000

(From point at or near Leesburg in Loudoun Co. through Clark's Gap and by most eligible route through Bloomery Gap in Hampshire Co. to Paddytown in Hampshire Co.)

Authorized to purchase or unite with Winchester & Potomac R. R. Co.

2/15/54-40 Authorized to extend the road to point in Hampshire Co. west of Paddytown.

2/26/56-110 Provides that not more than $120,000 shall be expended in construction and equipment of the road west of Shenandoah River.

3/25/58-89 B. P. W. for 3/5 of $500,000..... 300,000

3/28/37-129 Baltimore & Ohio R. R. Co. B. P. W. for $302,100.

4/ 2/38-113 B. P. W. subscription.

3/ 6/47-86 Repeals State's subscriptions to—under above acts.

3/20/48-179 State guarantees bonds of City of Wheeling to amount of $500,000 to pay said city's subscription to B. & O. R. R. Co., to be secured by mortgage from said city.

2/22/60-264 B. & O. R. R. Co. and N. W. Va. R. R. Co. authorized to be consolidated under name of B. & O. R. R. Co.

3/ 5/49-99 Blue Ridge R. R. Co. B. P. W. incorporated as— Not to contract for more than $100,000 in any one year and may borrow same on credit of State. Louisa R. R. Co. may take over this R. R. by paying for same out of its tolls.

Increases capital of Louisa R. R. Co. $150,000, and B. P. W. for same proportion as act 3/8/47 (3/5) for road from Staunton. If Louisa R. R. Co. does not accept provisions of this act, then Blue Ridge R. R. Co. stock to be issued ($150,000) for the road to Staunton and B. P. W. for 3/5..... 90,000

3/ 3/52-125 Amends above provision as to borrowing on credit of State so as to allow borrowing of not over $150,000 by July 1/52, $150,000 by 1/1/53, $100,000 by 7/1/53 and $100,000 by 1/1/54..... 500,000

3/27/37-122 City Point R. R. Co. B. P. W. for 600 shares of— (Act 1/26/36-141 shows cap. $150,000, par val. $100.)..... 60,000

4/ 6/39-72 B. P. W. to lend to—to be secured by mortgage 50,000

3/25/43-71 Increases capital to $210,000. Increase to be subscribed for by B. P. W., provided does not exceed debt due State by the Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.

2/15/53-66	Covington & Ohio R. R. Co. B. P. W. incorporated as—for constructing a R. R. from point at or near Covington or Clifton Forge by best practicable route to point on Ohio River between mouth of Big Sandy and town of Point Pleasant. 3rd section of this act provides that B. P. W. shall commence at western terminus and work eastwardly at the same time they are working from the eastern terminus westwardly. B. P. W. authorized to borrow for—on credit of St.....	1,000,000
3/13/56-83	B. P. W. to borrow and appropriate to—to be expended within present and succeeding year, for tunneling, grading, masonry, bridges, etc.....	500,000
4/ 3/58-87	B. P. W. to borrow and appropriate to—to be expended in years 1858 and 1859..... Repeals 3rd section of act of 2/15/53-66.	800,000
2/29/60-107	B. P. W. to borrow for—$2,500,000, but not over $1,000,000 to be expended in any one year.....	2,500,000
3/ 3/60-113	Rail Road from point on Covington & Ohio R. R. near White Sulphur Springs in Greenbrier Co. to Grafton in Taylor Co. B. P. W. to have surveys made, and appropriation for that purpose of not over.....	4,000
3/21/50-55	Experimental R. R. in Richmond, between depots of R. & P. R. R. and R. & F. R. R., not over two miles long. B. P. W. to build, for which appropriation of.....	10,000
3/30/37-129	Falmouth & Alexandria R. R. Co. B. P. W. for 2/5 of stock of— (Act 3/9/35-89 shows capital $600,000.)	
3/30/38-111	Amends above act and changes State's subscription from 2/5 to 3/5.....	360,000

4/ 1/48-189 Fredericksburg & Blue Ridge R. R. Co., Ineptd. Provides that majority of stockholders of Swift Run Gap Tpke Co. may sell that road to—and if this is done State to be a stockholder in, to the extent of the value of its stock in Swift Run Tpke Co.

3/ 1/53/136 Fredericksburg & Gordonsville R. R. Co., Ineptd., $460,000, and B. P. W. for 3/5..... 276,000

3/ 8/53-140 Loudon Branch R. R. Co. To be incorporated on certain conditions.
See Manassa Gap R. R. Co.

2/25/37-125 Louisa R. R. Co. B. P. W. for 1,200 shares (2/5). (Act 2/18/36-168 shows cap. $300,000.)..... 120,000

3/27/38-110 Capital increased and B. P. W. for 3/5 of not over $200,000..... 120,000

3/ 8/47-103 Capital increased by $250,000, and B. P. W. for 3/5 150,000

3/24/48-187 Capital increased by $250,000, and B. P. W. for 2/5..... 100,000

3/ 5/49/99 Authorizes—to take over Blue Ridge R. R. Co. and increases capital $150,000 for road to Staunton, should it decide to build such road, and B. P. W. 3/5..... 90,000
(See Blue Ridge R. R. Co.)

1/30/50-51 Capital increased by $700,000 for extension to Covington, and B. P. W. for..... 420,000
Or, if stockholders fail to accept this, then new Co., to be called Staunton & Covington R. R. Co., to build the road and B. P. W. to subscribe this $420,000 to it.

2/ 2/50-52 Name changed to Virginia Central R. R. Co. and State guarantees its bonds to extent of $100,000.
(See Virginia Central R. R. Co.)

3/30/37-119	Lynchburg & Tennessee R. R. Co. B. P. W. for 2,000 shares. (Act 3/11/36-89 shows capital $2,500,000, par val. $100.).....	200,000
3/ 6/49-101	Amends last incorporating act (3/24/48-184) and changes name to Virginia & Tennessee R. R. Co. (For subscription under this act see Va. & Tenn. R. R. Co.)	
2/10/51-69	Manassa's Gap R. R. Co. B. P. W. for 2/5 of $800,000	320,000
12/ 6/52-69	B. P. W. for $160,000 to make its subscription 3/5.....	160,000
2/ 7/53-69	Capital increased by $800,000, and B. P. W. for 3/5	480,000
3/ 8/53-140	Authorizes—to take over R. R. to be built from Snickersville, Middleburg, Purcellville or Waterford to Manassas Gap R. R. Capital necessary $300,000, & B. P. W. 3/5..... If Man. Gap R. R. Co. fail to accept this act, then independent Co. incorporated as Loudon Branch R. R. Co.	180,000
3/10/53-158	Capital increased by $500,000, and B. P. W. for 3/5	300,000
1/25/54-35	Capital increased by $400,000, and B. P. W. for 3/5.....	240,000
3/25/58-88	Capital increased by $250,000. B. P. W. for all of it; to constitute preferred stock..	250,000
2/10/60-109	Capital increased by $350,000, and B. P. W. for all, to constitute a 6 per cent. preferred stock	350,000
3/12/53-139	New River R. R. Co. To be incorporated on certain conditions. (See Virginia & Tennessee R. R. Co.)	
2/ 9/53-137	Norfolk & Petersburg R. R. Co. B. P. W. for 4,800 shares (3/5).....	480,000

2/13/54-34	Capital increased by $700,000, and B. P. W. for 3/5.....	420,000
3/25/58-88	B. P. W. for additional subscription of $300,000 in 6 per cent. State bonds.....	300,000
3/ 2/60-112	Capital increased by $300,000, and B. P. W. for all.....	300,000
3/27/48-191	Orange & Alexandria R. R. Co., Ineptd., $900,000, and B. P. W. for 2/5.	
3/ 6/49-107	State's subscription increased to 3/5.....	540,000
3/15/50-235	Resolution transferring claim of Va. against U. S. ($120,000) to this R. R., and when same recovered said R. R. to issue stock therefor to Literary Fund.	
3/ 7/51-66	Capital increased by $100,000, and B. P. W. for 3/5	60,000
2/ 9/53-69	Capital increased by $420,000, and B. P. W. for 3/5.....	252,000
3/25/58-87	B. P. W. to lend to—to be secured by mortgage	400,000
3/22/31-205	Petersburg R. R. Co. B. P. W. for 2/5 of $400,000 of stock of.....	160,000
2/27/32-163	Amends above, State's subscription to be payable in two installments.	
3/29/38-105	B. P. W. to lend to, borrowing for the purpose, and take mortgage to secure it.....	150,000
2/25/43- 71	Increases capital to $769,000. This increase to be subscribed for by B. P. W. provided said increase does not exceed the debt due State by said Co. with interest. This is an exchange of equivalent amount of stock for the debt and interest.	
4/ 2/53-142	Authorizes—to unite with Greensville & Roanoke R. R. Co. as Petersburg R. R. Co.	

1/30/34-149	Portsmouth & Roanoke R. R. Co. Increases capital to $475,000, and B. P. W. for 2/5....	190,000
3/14/37-115	B. P. W. for $50,000 of $150,000 increase..	50,000
3/31/38-103	B. P. W. to lend to—to be secured by mortgage	150,000
3/20/39- 71	Capital increased by $150,000 and B. P. W. for	16,650
3/25/43- 71	Increases capital to $817,850, to be subscribed for by B. P. W. This an exchange of equivalent amount of stock for the debt due State with interest.	
2/27/46- 90	Directs B. P. W. to sell—and incorporates the purchasers as Seaboard & Portsmouth R. R. Co.	
3/ 9/47-108	Richmond & Danville R. R. Co., Inceptd., $1,500,000, and B. P. W. for 3/5.....	900,000
3/15/50- 57	State guarantees bonds of—	200,000
3/20/51 -63	Capital increased by $500,000, and B. P. W. 3/5	300,000
2/ 9/53- 68	B. P. W. to lend to.....	600,000
2/10/60-107	B. P. W. for additional stock.....	350,000
1/23/35- 86	Richmond, Fredericksburg & Potomac R. R. Co. B. P. W. for 2/5 (Act 2/25/34-127 shows cap. $700,000)	
3/23/36-167	Amends above State's subscription changed to 48 shares less than 2/5, making it 2,752 shares	275,200
4/ 6/39- 76	Authorizes—to borrow on credit of State $250,000 on condition that it surrender its exemption from taxation	250,000

1/17/37-123	Richmond & Petersburg R. R. Co. B. P. W. for 2,000 shares (Act 3/14/36-146 shows capital $300,000 exclusive of B. P. W.'s subscription)	200,000
3/30/38-107	B. P. W. to lend to—to be secured by mortgage	150,000
3/25/43- 71	Capital increased to $685,600 to be subscribed by B. P. W. This an exchange of debt due State for an equivalent amount of stock.	
3/24/53-141	Authorizes—to convert its debts into stock at $50 per share. B. P. W. to have option of concerting all State's loans into this stock.	
1/31/53-135	Richmond & York River R. R. Co., Inceptd., $500,000 and B. P. W. for 3/5.....	300,000
3/25/58- 89	Capital increased by $200,000 and B. P. W. for all of it; to constitute preferred stock....	200,000
3/31/37-116	Roanoke & Danville Junction R. R. Co. B. P. W. for 2/5 (Act 3/10/36-113 shows $2,500,000)	800,000
3/ 4/51- 61	Roanoke Valley R. R. Co., Inceptd., $300,000 and B. P. W. for $100,000.	
3/10/53-137	B. P. W.'s subscription changed to 3/5 of $300,000	180,000
3/ 1/54- 35	Capital increased by $130,000 and B. P. W. for all	130,000
2/27/46- 90	Seaboard & Roanoke R. R. Co. B. P. W. directed to self Portsmouth & Roanoke R. R. Co. and the purchasers thereof incorporated as Seab. & Roan. R. R. Co.	
2/20/51- 62	Southside R. R. Co. B. P. W. for 3/5 of $800,000	480,000
2/ 5/53- 65	B. P. W. to borrow money to lend to—....	800,000
4/ 6/39-77	Staunton & Charlottesville R. R. Co., Inceptd., $800,000, and B. P. W. for 2/5.....	320,000

1/30/50-51	Staunton & Covington R. R. Co. To be formed in certain event. (See Louisa R. R. Co., this act.)	
2/ 2/50-52	Virginia Central R. R. Co. Name of Louisa R. R. Co. changed to this. State guarantees bonds of..... (See Louisa R. R. Co.)	100,000
3/22/51-65	B. P. W.'s subscription made 3/5 of whole.	
12/15/52-66	Capital increased by $150,000, and B. P. W. for 3/5.....	90,000
3/22/53-67	Capital increased by $1,000,000; B. P. W. for 3/5.....	600,000
2/ 9/60-110	B. P. W. to lend to—.....	600,000
3/ 3/53-138	Virginia & Kentucky R. R. Co. To be formed in certain event. (See Va. & Tenn. R. R. Co.)	
3/ 6/49-101	Virginia & Tennessee R. R. Co. Name of Lynchburg & Tenn. R. R. changed to this. (See Lynchburg & Tenn. R. R. Co.)	
2/20/51-65	B. P. W. for so much as will make its holding 3/5.....	1,800,000
2/ 9/53-68	B. P. W. to lend to.....	1,000,000
3/ 3/53-138	Capital increased by $1,500,000, with power to further increase by $1,000,000, and B. P. W. for 3/5..... If Va. & Tenn. does not accept provisions of this act, then independent Co. established as Va. & Kentucky R. R. Co., with same powers, etc.	1,500,000
3/12/53-139	Capital increased by $1,500,000 for branch from Montgomery Co. to point on New River near mouth of Greenbrier Riv. or to other suitable point for intersection with Covington & Ohio R. R. B. P. W. for 3/5..... This additional stock to be kept separate and to constitute a separate fund from	900,000

capital of said Co., and shall be applied only to the road for which it is subscribed. If Va. & Tenn. R. R. Co. does not accept the provisions of this act, then independent Co. incorporated as New River R. R. Co., subject to same provisions as to subscriptions to stock, etc.

3/18/56-83 Capital increased by $500,000, and B. P. W. for all 500,000

3/20/47-79 Washington & New Orleans Telegraph Co. In case of failure of R. R.'s to subscribe, then B. P. W. for so much as they deem expedient.

3/14/32-161 Winchester & Potomac R. R. Co. (From Winchester in Frederick Co. to point on Potomac River at or near Harper's Ferry in Jefferson Co.) B. P. W. for stock of—not exceeding 75,000

1/31/33-72 B. P. W.'s subscription increased to 2/5 of whole. (Act 4/8/31-187 shows capital $300,000.)..... 45,000

2/ 6/34-153 B. P. W. to borrow to pay its subscription to—

12/13/34-118 B. P. W. to borrow the money to pay its subscription to—

2/13/38-112 B. P. W. to borrow the money to lend to—to be secured by mortgage from the R. R. Co..... 150,000

3/25/43-71 Capital increased to $481,220, the increase to subscribed for by B. P. W. This an exchange of the debt due the State for an equivalent amount of stock.

3/15/53-148 Alexandria, Loudon & Hampshire R. R. Co. authorized to purchase or unite with this R. R. Co.

BRIDGES.

2/15/52/182 Buckhannon Bridge Co., Ineptd., $3,000.00 and B. P. W. for 3/5..... 1,800
(Across Buckhannon River in Upshur Co.)

3/ 3/21-56 Cartersville Bridge Co. B. P. W. for stock of..... 5,000
(Bridge over James River at Cartersville.)

3/20/37-156 B. P. W. to pay to for repairs..... 1,700

1/15/48-254 Cheat River Toll Bridge Co., Ineptd., $10,000, and B. P. W. for 2/5.
(Bridge over Cheat River in Preston Co.)
This payment is to be made from remainder of subscription by act 2/16/47 to Brandonville, Kingwood & Evansville Road.
(See Brandonville, Kingwood & Evansville Road.)

3/ 8/49-127 Changes B. P. W.'s subscription to 3/5..... 6,000
This increase on same terms and conditions as in act next above.

2/26/53-183 Elk River Bridge Co. B. P. W. for 2/5 of of $15,000 9,000
(Bridge over Elk River in Kanawha Co.)

3/15/51-132 Fairmont & Palatine Brjdge Co. Amends incorporating act, makes capital $20,000, and B. P. W. for 3/5..... 12,000
(Bridge over Monongahela Riv. in Marion Co.)

3/17/51-133 Fish Creek Bridge Co., Ineptd., $3,500, and B. P. W. for 3/5..... 2,100
(Bridge over Fish Creek in Marshall Co.)

3/30/53-183 Guyandotte Bridge Co. Capital made $15,000, and B. P. W. for 3/5.
(Bridge over Guyandotte River in Cabell Co.)

1/23/54-59	Repeals above. Capital $25,000, and B. P. W. for 3/5	15,000
4/ 1/58-94	B. P. W. for 3/5 of additional $15,000....	3,000
1/23/33-58	Bridge over Jackson's River opposite Covington. B. P. W. to build.....	3,500
3/ 9/41-93	B. P. W. to pay on account of.....	344
4/ 9/39-104	Jude's Ferry Toll Bridge Co., Ineptd., $20,000, and B. P. W. for 2/5..... (Bridge over James River at Jude's Ferry.)	8,000
2/16/54-60	Loudon & Berlin Bridge Co., Ineptd., $50,000, and B. P. W. for 3/5..... (Over Potomac River opposite Berlin in Frederick Co., Maryland.)	30,000
3/11/50-107	Morgantown Bridge Co., Ineptd., $18,000, and B. P. W. for 3/5..... (Toll Bridge over Monongahela River at Morgantown in Monongalia Co.)	10,800
3/15/51-132	Capital increased by $10,000, and B. P. W. for 3/5.....	6,000
2/28/54-60	Capital increased by $8,000, and B. P. W. for all.....	8,000
3/19/50-71	Bridge across New River in Giles Co. B. P. W. for 3/5 of $12,000.....	7,200
1/14/48-252	North Branch Bridge Co., Ineptd., $5,000, and B. P. W. for 2/5. (Over North Branch of Potomac River in Hampshire Co.)	
3/14/50-103	Changes B. P. W.'s subscription to 3/5...	3,000
3/19/50-102	Potomac Bridge Co. B. P. W. for 2/5 of capital. (Act 3/22/47-144 shows $40,000.).. (Over Potomac River at Point of Rocks, Md.)	16,000

2/15/51-129 South Branch Bridge Co., Incptd., $7,000, and B. P. W. for 3/5..... 4,200
(Over S. Branch River in Hampshire Co.)

4/ 6/38-139 South Shenandoah Toll Bridge Co., Incptd., $5,000, and B. P. W. for 80 shares at $25.... 2,000
(Over Shenandoah River in Rockingham Co.)

3/26/39-111 Capital increased to $40,000, and B. P. W. for 2/5 of increase..... 14,000

3/17/49-154 Virginia & Maryland Bridge Co. B. P. W. for $10,000 of stock of..... 10,000
(Bridge at Shepperdstown in Jefferson Co.)

JAMES RIVER CO. AND JAMES RIVER & KANAWHA CO.

2/17/20-39 James River Co. to be agent for the State in carrying out the work, and State to finance it. Work to be carried out as follows, and in the following order:

1. Improvement of navigation of Great Kanawha River from the falls to Ohio River.
2. Improvement of navigation of James River.
3. $100,000 road from mouth of Dunlap's Creek to Great Falls of Kanawha River.
4. Navigable canals and locks from Pleasant's Island to mouth of Dunlap's Creek.
5. Communications from the river to accommodate trade.

When works completed to be public highways. Treasurer of State to be ex-officio Treasurer of Co.

Co. to borrow annually $200,000, or such greater or less sums as hereafter authorized by law, which borrowing shall continue until otherwise directed by law. Co. to issue certificates and register them; to be irredeemable for 20 years, and then at pleasure of General Assembly. Int. not over 6 per cent.

State guarantees interest up to $12,000 a year.

2/28/21-48	Jas. Riv. Co. authorized to borrow $300,000 in addition to the $50,000 borrowed from the Literary Fund. State guarantees interest up to $18,000 a year.	
3/ 2/22-38	210 shares of stock in Bank of U. S. ($23,370.59) to go to credit of fund for payment of interest of James River Co. loan; certificates of Jas. Riv. Co. loan to be bought at par with proceeds of sale of this stock.	
2/24/23-50	Authorized to borrow so much of the $350,000 heretofore authorized as has not yet been borrowed, and also $80,000 in addition; State to issue bonds for same, interest at 6 per cent.; $18,000 a year pledged by State to pay the dividends to stock holders, or 12 per cent. for 12 years from 1820 and 15 per cent. thereafter forever.	
3/28/24-12	Authorized to borrow on credit of State, and State bonds to issue therefor at 6 per cent....	400,000
2/16/25-38	Authorized to borrow on credit of State not over.....	200,000
3/ 1/26-26	Authorized to borrow on credit of State not over $200,000, and State to issue 6 per cent. certificates for.....	200,000
3/ 7/27-37	Directs Jas. R. Co. to dispose of $40,000 of its surplus and appropriation fund to be expended in rebuilding bridge over Gauley River, and $28,000 of it to enable Jas. Riv. Co. and Commissioner of Kanawha road & navigation to complete works already contracted for and furnished, and to pay what is due on existing contracts.	
1/30/29-45	Authorized to borrow on credit of State not over ..... for extending western termination of Kanawha Take Road to mouth of Big Sandy.	50,000
2/28/29-48	Authorized to borrow on credit of State....	10,000

12/18/29-45	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy.....	8,000
3/31/31-158	Authorized to borrow on credit of State for extension of Kanawha Tpke Road to mouth of Big Sandy	15,000
3/16/32-73	James River & Kanawha Co., Inceptd. Recites inadequacy of measures heretofore adopted for connecting navigable waters of Ohio River and James River. Capital $5,000,000, par val. $100. State subscribes for $1,000,000 and pays same by transfer of State's whole interest in works and property of James River Co. When 3/5 of the stock has been subscribed for by others than State for residue.....	2,000,000
2/20/33-59	James River Co. authorized to borrow on credit of State for building bridge and embankment over ravine of Campbell's Creek on Kanawha Road.....	4,000
3/11/34-99	Jas. Riv. Co. authorized to borrow on credit of State for Kanawha Tpke Road.....	10,000
2/14/34-101	James Riv. & Kan. Co. State's subscription to—to be one-half (i. e., $2,500,000), which is $500,000 more than by act 3/16/32-73 (above)	500,000
1/24/35-70	Makes State's subscription 3/5 (additional amount of $500,000).....	500,000
3/21/37-95	B. P. W. to borrow on credit of State to meet requisitions on State stock in—	
3/23/39-59	Authorized to borrow and State to guarantee principal and interest.....	1,500,000
3/17/40-21	Old James River Co. Sum in State Treasury ($3,757.07) to credit of—and retained to meet probable unpaid dividends, transferred to credit of State.	

3/20/41-94	James Riv. & Kan. Co. State to issue new bonds in U. S. currency in lieu of sterling money (£123,801=$550,226.66).	
3/25/42-72	State loan for.....	250,000
3/ 1/47-81	State Treasurer to turn over to—State bonds to be secured by mortgage.....	1,236,000
2/16/48-169	Converting guaranteed bonds into new stock (registered bonds).	
3/ 9/49-83	State guarantees bonds of—not exceeding..	350,000
3/12/49-85	State guarantees bonds of—not exceeding..	150,000
1/25/50-46	Loan to—of State bonds.....	110,000
3/15/50-46	State guarantees bonds of.....	360,000
6/ 5/52-124	B. P. W. to borrow and lend to—for payment of interest and annuity.....	120,000
3/ 2/53-63	Loan to—by B. P. W. of $640,000 at $50,000 a month. To be raised by acts 3/27/51 and 5/25/52 (coupon bonds acts), and to be expended in extension of water line from Buchanan to point near Covington or Clifton Forge	640,000
3/29/53-64	B. P. W. to lend to—for completion of tidewater connection; money to be raised by coupon bond act of 1853.....	70,000
1/ 7/53-64	B. P. W. to borrow to pay interest on bonds of—guaranteed by State.	
3/ 3/54-33	B. P. W. to borrow and lend to for completion of tidewater connection.....	60,000
1/19/56-83	State pays interest (paid out of Sinking Fund) on bonds of—guaranteed by State. Int. due July 1/55 of $46,000, 1/1/56 of $67,675, and due 7/1/56 of $67,675 ($181,350).	

3/15/56-84 Auditor of Pub. Accts. directed to pay interest on bonds of—guaranteed by State, due 1/1/57.

12/22/57-15 Auditor directed to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/57, and same amount due 1/1/58, 7/1/58 and 1/1/59 ($271,200).

3/16/58-93 To take over North River Navigation Co.

12/20/59-159 Auditor to pay interest on bonds of—guaranteed by State; $67,800 due 7/1/59 and same am't due 1/1/60.

3/23/60-113 Capital increased to $12,400,000, par val. $100, and B. P. W. to subscribe for 74,000 shares, which is to be a 6 per cent. preferred stock. Of this subscription 72,000 shares to be taken in satisfaction of the debt due from the Co. to State and for the assumption by State of the debt for which State is bound as surety for the Co. and the annuity of the old James River Co., and balance of 2,000 shares to be paid for in State bonds. This $200,000 to be expended to extinguish Co.'s floating debt..... 200,000

State to take up the guaranteed stock of the Co. and to issue in place thereof State bonds at 6 per cent., payable 34 years after this date.

Provides for issue to Kanawha Board of Directors of $300,000 of 6 per cent. State bonds, to be used for improvement of navigation of Kanawha River from mouth of Loup Creek shoals.

BANKS.

4/ 4/48-87 Branch Bank at Abingdon (Washington Co. Exchange Bk. authorized to establish—capital not less than $100,000 nor more than $500,000, and may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half..... 250,000

3/31/58-60	Branch Bank at Beverly (Randolph Co.) Bk. of Va., Farmers Bk. of Va., Bk. of Valley, Exchange Bk., North Western Bk., or Merchants & Mechanics Bk. of Wheeling authorized to establish—with capital not over $200,000, to be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State subscribes for one-half	100,000
4/ 1/58-61	Branch Bank at Buckhannon (Upshur Co.) Farmers Bk., Exchange Bk., Bk. of Va., Bk. of Valley or N. W. Bk., authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of the Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/15/56-57	Branch Bank at Clarksburg (Harrison Co.) Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes one-half.....	100,000
3/25/37-68	Exchange Bank of Virginia, Ineptd. Capital $1,800,000, and State takes one-half..... To establish offices of discount and deposit at Richmond with capital of $500,000, Petersburg with capital of $500,000 and Clarksville $200,000.	900,000
3/19/39-52	State Treasurer to subscribe for 4,500 shares of at not over $100 per share, and may borrow for of No. Western Bk. of Wheeling and Exchange Bank.....	450,000
3/25/37-68	Farmers Bank of Virginia. Capital increased by $1,010,000, and State takes 1/2... This new stock to be divided between said Bank and its branches as follows: For Bank at Richmond.....$ 40,000 For Petersburg discount and deposit office ..... 32,500 For Lynchburg discount and deposit office 212,500	505,000

For Fredericksburg discount and deposit office 112,500
For Winchester discount and deposit office 62,500
For Danville discount and deposit office 50,000
For Farmville discount and deposit office 200,000
For Scottsville or Charlottesville, etc..... 150,000
For Abingdon or Evansville, etc. 150,000

3/16/49-74 Authorized to furnish additional capital for office at Wytheville (Wythe Co.), so that whole capital of said branch will not exceed $500,000. Capital may be increased for this purpose, and State for 1/2.

3/15/49-72 Branch Bank at Fincastle (Botetourt Co.) Farmers Bk. or Exchange Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 150,000

3/16/50-40 Amends above so as to allow Bk. of Va., Farmers Bk., Exchange Bk., or any other bank, to establish office of discount and deposit at Fincastle, Salem, Christiansburg or Blacksburg; capital same as above.

3/30/60-217 Branch Bank at Harrisville (Ritchie Co.) Authorizes Bk. of Va., Farmer's Bk. of Va., Bk. of Valley, N. W. Bk., or Mer. & Mec. Bk. of Wheeling, to establish—with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 75,000

3/23/60-229 Branch Bank at Huntersville (Pocahontas Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Exchange Bk., N. W. Bk., or Mer. & Mec. Bk. of Wheeling, authorized to establish—with capital of not over $200,000, which may be raised as in 5th and 11th sections of Act of 3/25/37-68, by which State takes 1/2.. 100,000

3/15/49-73	Branch Bank at Jeffersonville (Tazewell Co.) Bk. of Va., Farmers Bk., Bk. of Valley or N. W. Bk. authorized to establish, with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	150,000
3/ 9/60-230	Branch Bank at Liberty (Bedford Co.) Bk. of Va., Farmers Bk., Exchange Bk., Bk. of Valley or Bk. of Commonwealth authorized to establish—with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	100,000
3/24/60-228	Branch Bank at Marion (Smyth Co.) Bk. of Va., Farmers Bk., Bk. of Valley, Bk. of Commonwealth, N. W. Bk. and Mer. & Mec. Bk. of Wheeling authorized to establish, with capital of not over $150,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	75,000
3/25/37-68	Merchants & Mechanics Bank at Wheeling (Ohio Co.) Capital increased by $300,000, of which State subscribes for 1/2.....	150,000
	This capital to be distributed as follows:	
	For Bank at Wheeling.....$220,000	
	For Morgantown office of disc. & deposit 80,000	
5/17/52-87	Branch Bank at Newbern (Pulaski Co.) Exchange Bk., Bk. of Va., Farmers Bk. or Bk. of Valley authorized to establish—with capital not over $300,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	150,000
3/25/37-68	North Western Bank of Virginia (at Wheeling, Ohio Co.) Capital increased by $500,000, and State takes 1/2.....	250,000
	This new stock to be divided as follows:	
	For N. W. Bk. at Wheeling....$315,000	

For Wellsburg discount and deposit office 85,000
For Parkersburg discount and deposit office 100,000

3/19/39-52 State Treasurer to borrow money to pay State's subscription to—

3/12/49-70 Branch Bank at Scottsville (Albemarle Co.) Exchange Bk. or Bk. of Va. authorized to establish, with capital not less than $75,000 nor more than $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.... 100,000

3/13/47-69 Branch Bank at Staunton (Augusta Co.) Bank of Valley authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2..... 50,000

3/25/37-68 Bank of Valley. Capital increased by $740,000, and State takes 1/2..... 370,000
The new stock to be divided between said Bk. and its branches as follows:
For Bk. at Winchester.....$150,000
For Leesburg office disc. & deposit 80,000
For Charlestown office disc. & deposit 80,000
For Romney office disc & deposit. 95,000
For Staunton office disc. & deposit 200,000
For Warrenton office disc. & deposit 135,000

3/25/37-68 Bank of Virginia. Capital increased by $650,000, of which State takes 1/2..... 325,000
This new stock to be divided as follows:
For Lynchburg office disc. & deposit $150,000
For Charleston office disc. & deposit 200,000
For Fredericksburg office disc. & deposit 50,000
For Danville office disc. & deposit 50,000

3/18/40-55	Issue to—of new certificates in place of old.	
5/27/52-88	Branch Bank at West Columbia (Mason Co.) Bk. of Va., Farmers Bk., Exchange Bk. or Bk. of Valley authorized to establish, with capital not over $200,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2....	100,000
3/31/48-86	Branch Bank at Weston (Lewis Co.) Farmers Bk., Bk. of Va., Bk. of Valley of Exchange Bk. authorized to establish—with capital not over $100,000, which may be raised as in 5th and 11th sections of Banking Act of 3/25/37-68, by which State takes 1/2.....	50,000
3/ 1/56-22	Act separating State from banks by providing for sale of State's stocks therein, except the stocks held in name of the Literary Fund, and application of proceeds to redemption of State debt. Fourth section of above act amended by act 4/3/58-9, which provides that the proceeds shall go into Sinking Fund.	

MISCELLANEOUS APPROPRIATIONS.

3/16/32-7	State appropriation to Brooke Co. for repairs to roads and bridges damaged by freshet in Ohio River.....	1,600
3/16/32-7	Same as to Cabell Co.....	600
3/16/32-7	Same as to Jackson Co.....	250
3/16/32-7	Same as to Mason Co.....	1,000
3/16/32-7	Same as to Ohio Co.....	4,500
3/16/32-7	Same as to Tyler Co.....	600
3/16/32-7	Same as to Wood Co.....	1,000

12/13/33-27	Law Library at Lewisburg (Greenbrier Co.) established and appropriation to of.... And Librarian at Richmond to transmit to—one copy of each of the books now constituting the Library Fund or which may hereafter be added to same.	1,200
3/10/35-16	State appropriation to.....	1,200
3/21/36-8	State appropriation to	1,250
3/28/39-13	State appropriation to.....	1,000
2/21/45-17	State appropriation to	500
3/16/50-13	State appropriation to.....	2,000
3/26/53-358	Joint resolution directing that in future, after making purchases necessary for State Library, such books as may be required by the judges shall be purchased out of Library Fund.	
3/22/58-117	Trans-Alleghany Lunatic Asylum. State appropriation for establishing—not over.....	25,000
1/ 6/60-105	Same to extent of $100,000, not over $50,000 of which to be paid in one year.....	100,000
2/ 9/44-23	West Liberty Academy (Ohio Co.) Loan to out of Literary Fund, to be secured by lien..	5,000
3/20/48-179	City of Wheeling (Ohio Co.) State guarantees bonds of to extent of $500,000 to pay City's subscription to stock of Baltimore & Ohio R. R. Co., to be secured by mortgage of said City	500,000
3/29/58-16	State Auditor to pay interest on these bonds due 1/1/58 ($15,000)	15,000
1/31/60-158	State Auditor to pay interest on these bonds due 1/1/59 ($15,000)..... This act affirms State's claim to the lien.	15,000

MISCELLANEOUS.

2/20/28-15 Repeals provision of 12th section of act to create fund for internal improvement that all dividends shall go to other subscribers than the State, and puts State on equal terms with other subscribers.

2/11/32-71 General conditions on which future subscriptions to joint stock companies to be made.

Must appear that at least 1/4 of the private subscriptions of not less than 3/5 of the capital has been paid and the remainder either paid or made by solvent persons.

When in any year funds of B. W. P. inadequate to pay installments due on State subscriptions actually made, then B. P. W. to pay, as far as funds will go, the installments of such subscriptions as stand first according to date of subscription, and fund not to be chargeable with interest.

All companies to make annual reports to B. P. W.

4/9/38-24 Act providing for negotiation of loans for purposes of internal improvement.

All loans heretofore or hereafter authorized on account of works of internal improvement to be negotiated according to the provisions of this act, except so far as otherwise specially provided by the acts authorizing such loans.

In effecting the loans the B. P. W. to borrow on credit of State, at most favorable rate of interest, not over 5 per cent. On payment of the money so borrowed into the treasury certificates of State to issue, with interest payable semi-annually.

"All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly."

The stock of any joint stock co. purchased with the money so borrowed, and all dividends and net incomes which may accrue are pledged for payment of interest and principal of amounts so borrowed. Surplus dividends, etc., remaining after payment of interest to be devoted to purchase of certificates.

3/27/39-9 Amends above act. State Treasurer, on requisition of B. P. W., to issue certificates for any loans which they are now or may hereafter be authorized to procure for purposes of internal improvement and without requiring the previous payment of any money into the State treasury on account thereof.

4/8/39-11 Authorizing loans for payment of subscriptions and appropriations.

B. P. W. authorized to borrow such sums as may be necessary for payment of subscriptions and appropriations made by law to works of internal improvement. Interest not to exceed 6 per cent. and in other respects the loans to conform to provisions of the act of 4/9/38-9 and amendments thereof.

3/22/50-5 Negotiation of loans for internal improvements.

B. P. W. may provide, if they deem it expedient that certificates to be issued by Treasurer shall be irredeemable for 25 years, and thereafter redeemable at pleasure of General Assembly. Interest not to exceed 6 per cent. Not necessary to show on face of certificate specifically what improvement it is for.

3/17/56-20 Act providing for redemption of outstanding drafts on B. P. W. on the internal improvement fund.

To be redeemed by issue of 6 per cent. registered bonds.

3/18/58-86 Act for the relief of certain internal improvement companies and holders of debts on account of construction of State works by an issue of State bonds.

Second Auditor to issue 6 per cent. registered bonds in payment of amounts due on account of construction of internal improvements on State account and on account of State's subscriptions to stock of internal improvement companies.

1/19/25-26 Act calling in the old 6 per cent. certificates.

2/24/32-13 Cancelling 7 per cent. certificates amounting to $319,000, held by Literary Fund, being part of the stock issued to Bank of Va. and to Farmers Bank (loan by act 2/1/1814 and issuing one new certificate for whole amount at same rate of interest.

3/25/37-68 Act Increasing Banking Capital of Commonwealth.

Makes State subscribe to 1/2 capital of several banks whose capital is increased in accordance with this act, for establishing offices of discount and deposit throughout the State; and providing how capital to be raised.

3/1/56-22 Act separting State from the Banks.
(See last act under Banks.)

3/4/53-77 Act authorizing State Treasurer to receive from banks as securities for their issues any bonds guaranteed by State.

3/11/37-101 General regulations for incorporation of Rail Road companies. State reserves right to subscribe for 2/5 of stock and increases of stock of any such Co., subject to provisions of this act.

3/18/41-91 Act authorizing B. P. W. to appoint agents to purchase property sold under execution, mortgage, etc., by direction of B. P. W.

2/26/56-289 Joint Resolution in relation to sale of works of internal improvement companies in which State is interested.

B. P. W. directed have some representative or agent attend the sale of such works and to purchase same for the State if in judgment of B. P. W. State's interests would be protected or promoted thereby.

3/15/48-353 Resolution providing for the map to be prepared by Crozet.

3/29/51-6 Coupon Bonds.

Act authorizing issue of—B. P. W. authorized to borrow from time to time on credit of State money necessary to pay State's subscriptions to chartered companies, and certificates (coupon bonds) for same to be issued therefor, the principal of which to be payable at a day fixed by B. P. W., not less than 35 years from date of bond. Coupons for interest to be attached. But the bonds for money so borrowed may, at option of purchaser, be issued in the form heretofore used.

5/25/52-22 Amends above. Changes redemption date from 35 to 34 years. Bonds may at option of purchaser be in the form prescribed in 67th Chapter of Code of Va. (See next below). No bond to be sold at less than par.

Chap. 67 of Code, 1849, Provides for issue of registered bonds bearing interest at 6 per cent., payable semi-annually, the principal to be payable so soon after 20 years from date of bond as the General Assembly may desire.

4/9/53-33 Further amends Coupon bond act above. Bonds to be made payable at a day named therein, not more than 34 years from date of bond. Bonds may, at option of parties to whom issued, be in the form prescribed in 67th Chap. Code of Va. No certificate to be sold at less than par if the interest it bears be 6 per cent. or more. Coupon bonds not to be issued for less amount than $500 nor greater than $5,000 apiece.

3/18/56-21 Act providing for and regulating issue of registered bonds in lieu of coupon bonds.

3/18/56-18 Act authorizing issue of Treasury Notes.

These notes to be made payable not more than one year from their respective dates. Limit to amount outstanding at any one time. When sale and delivery of—to cease. This limit changed by amendment of 4/2/58-9.

3/9/60-305 Act authorizing transfer of certain turnpike companies and plank road companies to the counties in which they lie.

B. P. W. authorized to turn over to the counties in which they lie any turnpike or plank road that in the judgment of said B. P. W. can not be made productive. Counties must consent, and so must stockholders of said companies.

Literary Fund.

2/12/1811-8 Created.

3/25/53-- Capitation tax appropriated to.

Sinking Fund.

3/10/35-7 Sinking Fund Created.

Sum of $50,000 appropriated to, to be applied to redemption of such portions of State bonds as are held by individuals and corporations and can be purchased at par.

The Governor, Treasurer, Auditor, and Second Auditor constituted a corporate body as Commissioners of Sinking Fund.

2/21/45-11 Act providing for redemption of 6 per cent. public debt by issue of new bonds at 5 per cent.

3/15/49-8 Act providing for gradual redemption of public debt.

Repeals act 3/10/35 (above). All certificates of State stock purchased by Commissioners of Sinking Fund cancelled. Bonds of James Riv. & Kan. Co. guaranteed by State heretofore held by Commissioners of Sink. F. transferred to B. P. W.

3rd Section. Sum of $100,000 to be annually set apart and paid over by warrant of Auditor to order of B. P. W., to be applied by the Board for the gradual redemption of so much of the public debt as shall be due or redeemable from time to time.

4th Section. If the annual appropriation be insufficient to redeem any bonds falling due, the B. P. W. authorized to raise temporary loans enough to effect such redemption. All State bonds so redeemed to be cancelled and filed in Treasurer's office.

Va. Constitution 1851, Art. IV, sections 29, 30, 31, (Acts 1852-3, p. 331) Provides that there shall be annually set apart from the accruing revenues a sum equal to 7 per cent. of the State debt existing on 1/1/52. The fund thus set apart to be called the Sinking Fund, and to be applied to payment of the interest of the State debt and the principal of such as may be redeemable. If no part be redeemable, the balance after paying the interest to be invested in bonds of Va. or of U. S. or some of the States of the Union, and be applied to payment of the State debt as it should become redeemable. Whenever a debt hereafter shall be contracted by the State, there shall be set apart annually for 34 years a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon, which shall be a part of the Sinking Fund and be applied in the manner before directed.

Legislature authorized to sell the stock held by State in internal improvement companies, but the proceeds to be a part of the Sinking Fund.

Legislature not to contract loans or cause to be issued any State bonds or certificates irredeemable for a period greater than 34 years.

3/26/53-29 Act creating Sinking Fund for payment of semi-annual interest on and redemption of the public debt.

Appropriation annually, commencing with 1853, out of accruing revenues of State the sum of $838,028.68, that being 7 per cent. on $11,971,838.30, the ascertained debt of the State on January 1, 1852. The sum so set apart to be called the Sinking Fund, and shall be applied to the payment of the interest on the State debt and the principal of such part as may be redeemable, and if no part be redeemable, then residue of Sinking Fund, after payment of interest, to be invested in bonds of Va., U. S. or some of the States of the Union, and applied to payment of said debt as it shall become redeemable.

Whenever a debt is contracted by State there shall be set apart in like manner annually for 34 years a sum exceeding by one per cent. the aggregate amount of interest agreed to be paid, which sum shall be a part of the Sinking Fund and be applied in the manner before directed.

If Legislature should sell State stock in any internal improvement and other companies, the proceeds of such sales to constitute a part of the Sinking Fund and be applied in like manner, etc., etc.

4/8/53-32 Act providing for transferring and cancelling certain stocks held by B. P. W.

Recites passage of Sinking Fund Act of 3/26/53 (supra). Repeals third and fourth sections of the act 3/15/49-8 (supra), etc.

3/15/56-21 Act regulating the application of the Sinking Fund to the redemption of the public debt.

Sinking Fund Commissioners to annually apply entire residue of the fund after the payment of interest on the public debt to the redemption of such part of said debt existing on 1/1/52 as may be redeemable, and if no part thereof be redeemable, said residue shall be devoted to purchasing and canceling any other outstanding bonds or certificates of said debt which may have been issued prior to 1/1/52.

2nd Section. Said Commissioners to appropriate any State bonds issued since 1/1/52 which they have heretofore purchased to the redemption of such outstanding State bonds as were issued prior to said date, in like manner as the annual residue of said fund after payment of interest on public debt is hereinbefore directed to be appropriated thereto.

3/27/58-6 Act to make State investments more profitable by forcing payment of interest and Sinking Fund on loans to internal improvement companies of dividends on preferred stock and the interest on bonds of such companies guaranteed by State.

4/3/58-9 Act providing for proceeds from sales of bank stocks owned by State to go into Sinking Fund.

4/6/58-9 Amending Act 3/15/56 (supra).

Sinking Fund Commissioners to annually apply entire residue of said fund after payment of interest on public debt as follows:

So much as arises from the ⅞ per cent. on the debt existing 1/1/52, together with the proceeds of sales of bank stocks, shall be applied to redemption of such part of said debt as may be redeemable; and if no part be redeemable, said residue to be devoted to the purchase at their market value and cancellation of any outstanding bonds or certificates of said debt; and so much of said fund as arises from 1 per cent. on the debt created since 1/1/52 to be invested in the outstanding bonds or certificates of said debt at their market value and held by said Commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with the fund applicable thereto, the same shall be invested in the stocks or bonds of other States of the U. S..

Section 2 of act 3/15/56 (supra) repealed.

[*Vol. 5. May 6, 1909 Plaintiff's General Exhibit No. 1. Abstract of Acts.*]

AFTERNOON SESSION.

The hearing was resumed pursuant to the taking of recess.

Mr. Anderson: We desire now to tender an abstract of the acts of the General Assembly from 1828 to 1860, inclusive, relative to the State debt. I have stated to my friends on the other side that there is nothing in this abstract of a controversial character.

The Special Master: Does it duplicate the material already in where these various indebtednesses are related to and connected with the legislation?

Mr. Anderson: It is a synopsis of all the legislation in reference to the public debt. It recites the legislation upon which the debt is created, and it is really an answer to that part of the decree which directs an ascertainment of information as to the authority under which the debt was contracted.

Mr. Carlisle: This was put in a long while ago. We have no objection to it. It is simply an index.

Mr. Anderson: That is all; or at least it is very little more than that.

The Special Master: Is there any objection to it?

Mr. Carlisle: No.

The Special Master: There is quite a good deal of material here that does not seem to relate to the legislation. I suppose this is a duplication of facts already in?

Mr. Carlisle: Yes.

The Special Master: On the left-hand margin are marks indicating what it is, as I understand it.

Mr. Anderson: Yes, sir.

Mr. Spooner: Of course we cannot take the time now to verify it; but we will let it go in subject to revision.

The Special Master: Then that is understood.

Mr. Spooner: If you want to prove anything from the act of course you will have to take the act; but this will help in finding the act.

The Special Master: This would be plaintiff's exhibit A-2, would it not?

Mr. Spooner: If I did say so, I did not mean to say that it goes in subject to objection; I meant it goes in subject to correction.

Mr. Robinson: You have the A exhibits running to A-13 now, I think?

Mr. McClintic: I would suggest you apply another letter to it, the letter H, if that is right.

The Special Master: No; if this relates to paragraph 1—or does it relate to all the paragraphs?

Mr. Anderson: It relates to all the paragraphs.

The Special Master: We will make it plaintiff's general Exhibit No. 1, then.

(The document was accordingly marked by the stenographer plaintiff's general Exhibit No. 1.)

DEFENDANT'S GENERAL EXHIBIT NO. 2.

This deed, made this 30th day of July in the year Eighteen hundred and fifty eight (1858) between the Coal River Navigation Company of Virginia party of the first part, and James L. Carr of the County of Kanawha & State of Virginia, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York, parties of the second part.

Whereas the said Coal River Navigation Company is at present justly indebted by bond, note & otherwise to certain persons & parties, as will hereinafter be designated & enumerated. And whereas the said Coal River Navigation Company being desirous to secure more effectually the payment of all its present indebtedness. Its Board of Directors did *therefor* at a called meeting held in the town of Charleston Kanawha County on Monday the 26th July 1858 unanimously pass resolutions authorizing & empowering Thomas L. Broun President of the said Company, to make execute & acknowledge for record, for & in behalf of the said Coal River Navigation Company a proper trust deed or mortgage on the entire works & property of the said Company, and on the works hereafter to be constructed. And also on the tolls accruing therefrom after first deducting from the said tolls; current expenses, repairs & expenditures, necessary to be made to keep Coal River in a navigable order. As will more fully appear by reference to a copy of the said resolutions hereafter annexed.

Now this deed witnesseth that in consideration of the premises & in pursuance of the said resolutions, the Coal River Navigation Company aforesaid, by & through its President Thomas L. Broun, duly authorized & empowered as aforesaid, doth hereby grant unto the said James L. Carr, William A. Drown, Isaac A. Storm & Abraham B. Clark the following property to-wit:

(1) The Locks & Dams, and all other works made, erected & constructed on Coal River (meaning thereby Coal River proper and Little Coal River and Big Coal River) by the said Coal River Navigation Company for the purpose of improving the navigation of the said Coal River in and also all other works & improvements to be hereafter made, erected & constructed, on the said Coal River, for the purpose of repairing damages, restoring navigation, & making said Coal River navigable. Which said Locks & Dams are known & designated as follows to-wit"

Mouth Lock & Dam". Locks & Dams, No. *one*, No. *Two*, No. *Three* & No. *Four* located below the forks of Coal, and on Coal River *proper* Locks & Dams No. *Five*, No. *Six*, No. *Seven*, & No. *Eight*, located

above the forks of Coal & on Big Coal River, and finally Lock & Dam No. *A* located above the forks of Coal & on Little Coal River.

(2) All other property real or personal belonging to the said Coal River Navigation Company & in any wise appertaining to the navigation or the navigation improvements aforesaid.

(3) And also all tolls arising & accruing from the said navigation works & improvements, after *first* deducting from the said tolls; current expenses, repairs & expenditures necessary to be made to keep Coal River aforesaid in a navigable order.

In Trust to secure to the following persons & parties the payment of the following indebtedness to-wit:

To Henry S. Kupp of Pennsylvania the sum of Thirty three thousand, three hundred & thirty three dollars & thirty three cents ($33.-333.33c) for bonds of the Coal River Navigation Company issued as follows thirty three bonds dated July 15th 1858 bearing 8 per cent interest per Annum, each for $1000. & payable on the 1st July 1863, to the said Henry S. Kupp or bearer. And one other bond for $333.-33/100 dated and made payable in like manner to the said Kupp or bearer.

To J. Brice Smith of New York & others the sum of Nine Thousand dollars ($9000) for bonds of the said Company issued as follows. Five bonds dated July 15th 1858, bearing 8 per cent interest per Annum each for $1000 & payable on the 1st July 1863 to the said J. Brice Smith & to others And Eight other bonds of $500, each dated & payable in like manner. Which bonds ($9000) were issued for the purpose of completing the Lock & Dam at the mouth of Coal River & in persuance of a subscription made thereto.

To the Coal River & Kanawha Mining & Manufacturing Company the sum of Two Thousand six hundred & seventy eight dollars & sixty cents ($2678.60/100) for five bonds of the said Coal River Navigation Company, dated August 1857, bearing 8 per cent interest per annum each for $535.72/100 & payable on the 1st day of July 1862.

To Du Bois & Vandervort of New York the sum of one thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of $535.72 Each, dated & payable as the bonds last aforesaid.

To Isaac A. Storm of New York the sum of One thousand & seventy one dollars & forty four cents ($1071.44) for two bonds of, $535.72 each dated & payable as the bonds last aforesaid.

To Charles M. Connally of New York the like sum of one thousand & seventy one dollars & forty four cents ($171.44) for two bonds of $535.72 Each dated & payable as the bonds last aforesaid.

To B. A. Munford of New York the sum of Five Hundred & thirty five dollars & seventy two cents ($535.72) for one bond, dated & payable as the bonds last aforesaid.

To John C. Thatcher of New York, the like sum of Five Hundred

& thirty five dollars & seventy two cents ($535.72) for one bond dated & payable as the bond last aforesaid.

To Henry A. Hurlburt, the sum of Five hundred & thirty five dollars & seventy two cents ($535.72) for one bond, date & payable as the bonds last aforesaid.

To William H. Webb of Kanawha the balance due on a judgment rendered in the United States Court held at Charleston Kanawha Co. in the Spring of 1856. The said balance being now about two thousand dollars ($2000)

To the Western Mining & Manufacturing Company, the sum of two thousand dollars ($2000) for four bonds of $500 each dated November 1857 payable on the 1st July 1861 & bearing 8 per cent interest per annum.

To J. Brice Smith of New York the sum of one thousand dollars ($1000) for bonds issued as follows; one bond for $500. dated June 6th 1857, made payable on the 1st July 1861 & bearing 8 per cent interest per annum and two other bonds for $250, each, dated & made payable in like manner as the last bond aforesaid.

To Ackerman & Mixer of New York, the sum of Five Hundred dollars ($500) for one bond dated & payable as the bonds last aforesaid.

To G. W. Coster of New York the sum of Five Hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Isaac A. Storm of New York the sum of Five hundred dollars ($500) for one bond dated & payable as the bond last aforesaid.

To Cornelius Dubois of New York, the sum of Five hundred dollars ($500) for one bond dated & made payable as the bond last aforesaid.

To Hazen Lathrop of Ohio, the sum of Three Thousand three hundred & eighty nine dollars & ninety four cents ($3389.94/100) for bonds issued as follows, three bonds dated May 24th 1858 each for $929.98 payable in 6, 12 & 18 months from date, with interest thereon from Oct. 13th 1857. And one other bond dated June 11th 1858 for $600 payable two years after date with interest likewise from Oct. 13th 1857.

To Watt & Jordan, the sum of one thousand, seven hundred & twelve dollars & nine cents ($1712.09) for bonds issued as follows: one bond dated 11th June 1858 for $1112.09 & payable six months after date, with interest thereon from the 7th Oct. 1857, and one other bond dated likewise 11th June 1858 for $600 & payable two years after date.

To Robert Blaine, the sum of One hundred & twenty five dollars & fifty cents ($125.50) for written order of Watt & Jordan on the C. R. N. Co. & accepted, dated October 5th 1857.

To H. Campbell & Co. of Ohio, the sum of Forty six dollars & forty

three cents ($46.43) for written order of Watt & Jordan on the C. R. N. Co. & accepted dated October 30th 1857.

To Ruffner Hale & Co. the sum of Five Hundred & thirty five dollars & twenty five cents ($535.25) for written order of Watt & Jordan on the said C. R. N. Co. & accepted for $689, but subject to a credit of $153.75 thereon dated November 2nd 1857 payable in six months after date to F. Walker agent of the said Ruffner Hale & Co. & bearing interest from date.

To W. F. & J. H. Goshorn, the sum of three hundred & twenty four dollars & seventy cents ($324.70) for written order of Watt & Jordan on the said C. R. N. Co. & accepted dated November 2nd 1857, payable six months after date & bearing interest from date.

To Benjamin F. Scott the sum of One Hundred & twenty six dollars & sixty cents ($126.60) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 18th 1857 & payable six months after date.

To Thomas B. Swann, the sum of three hundred & twenty five dollars & eighty-one cents ($325.81) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated Nov. 2nd 1857 & payable six months after date, with interest from date.

To Henry H. Neal, the sum of Eighty seven dollars & Fifty seven cents ($87.57) for written order of Watt & Jordan on the said C. R. N. Co. & accepted, dated May 12th, 1858, & payable sixty days after date:

To James Gillespie, the sum of three hundred & twenty five dollars ($325) for note executed 13th July 1857, & payable 12 months after date, with interest thereon from date:

To Elliot R. Thomas, the sum of two hundred & seventy five dollars ($275) for note executed, dated & Payable as last aforesaid:

To James Canterbury & Ralph Thompson the sum of Three hundred dollars, ($300) for note executed, dated & payable on the 16th June 1858.

To Henry Roberts Thomas the sum of Two hundred & fifty dollars ($250) for bond dated 11th June 1858, & bearing interest from 17th August, 1857.

To Clement Smith of Peytona, the sum of Three hundred & ninety eight dollars & twelve cents ($398.12) for note executed & dated the 13th day of November, 1857 & payable nine months after date.

To the Western Mining & Manufacturing Co., the sum of three hundred dollars ($300) for bond dated & executed the 26th July 1858, & payable six months after the date thereof.

And finally to secure the payment of any other indebtedness of the said Coal River Navigation Company now due & not hereinbefore enumerated & specified.

In Trust nevertheless upon the following terms & conditions to-wit:

First: That no sale of the said works & property or any part *the* thereof shall take, place under & by virtue of this conveyance, before the 1st day of July in the year Eighteen hundred & sixty three (1863)

Secondly. That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, thence the said James L. Carr William A. Drown Isaac A. Storm & Abraham B. Clarke may thereafter, at the request of any of the said creditors, offer for sale & sell the works & property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the said Works & property shall however take place unless notice thereof shall first have been given, and the work & property advertised for a period of ninety days previous to the sale, in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond; and also unless personal notice of the said sale, shall have been served on the Board of Public Works, ninety days previous to the sale.

And Fourthly That the entire controul, direction & management of all the works & property aforesaid and every part thereof of the said Coal River Navigation Company, shall notwithstanding this conveyance, be, remain, & continue under the power & authority of the stockholders, & Board of Directors of the said Coal River Navigation Company, as heretofore until a sale of the said works & property shall have been made as aforesaid.

It being the object intent & purpose of this deed to place all the creditors of the said Coal River Navigation Company on the same footing, and to create a lien, that will operate alike for the benefit of all the said creditors, on all the present work & property both real & personal, belonging to the said Coal River Navigation Company, and in any wise appertaining to the navigation improvements thereof, and also on all the works to be constructed & erected hereafter by the said Coal River Navigation Company, for the purpose of repairing damages, restoring & improving the navigation of Coal River as aforesaid, from its mouth to Manningsville on Little Coal River, and to Peytona on Big Coal River.

In testimony whereof the said Coal River Navigation Company has caused these presents to be signed in its behalf by its President Thomas L. Broun and its common & corporate seal to be hereunto affixed, at Charleston Kanawha County Virginia this 30th day of July 1858.

THE COAL RIVER NAVIGATION COMPANY

(SEAL) By THOS. L. BROUN. Pres'dt.

Teste:

J. M. DODDRIDGE.
Keeper of the Seal.

Extract from the minutes of a called meeting of the President and Directors of the Coal River Navigation Company held at the office of the said Company in Charleston Kanawha on Monday the 26th July 1858.

Present: Thos. L. Broun, President; John D. Vanhorn, William D. Pate, Henry W. Goodwin, Clement Smith, Directors.

"On motion it was unanimously resolved:

(1) That the President Thos. L. Broun be & is hereby authorized & empowered for & in behalf of the Coal River Navigation Company to make, execute & acknowledge for record a proper Trust Deed or Mortgage, on the entire works & property of the Company, and the works hereafter to be constructed, and also on all the tolls accruing therefrom; after *first* deducting from the said tolls current expenses, repairs, & expenditures necessary to be made, to keep the river in navigable order, in order thereby to better secure the payment of all the present indebtedness of this Company.

(2) That the said deed shall include & embrace all the present indebtedness hereinbefore enumerated, and it shall also contain a clause giving to any creditor that may be omitted the full right & benefit to share & participate in the said Deed in common with the other creditors:

(3) That James L. Carr of Kanawha, William A. Drown of Pennsylvania, Isaac A. Storm & Abraham B. Clarke of New York shall be the persons to whom the works & property aforesaid shall be conveyed as aforesaid to be by them held in trust for the benefit of the creditors aforesaid.

(4) That no sale of the said works & property or any part thereof shall take place before the 1st day of July, Eighteen hundred & Sixty three (1863)

(5) That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863; The *the* said James L. Carr William A. Drown Isaac A. Storm, & Abraham B. Clarke, may thereafter at the request of any of the said creditors, offer for sale & sell the works & property aforesaid, of the Coal River Nav. Co.

(6) That no such sale of the said works & property shall however take place, unless notice thereof shall first have been given & the works & property advertised for a period of ninety days previous to the sale, in the Kanawha Newspapers & in the principal newspapers published in the city of Richmond and also unless personal notice of the said sale shall have been served on the Board of Public Works ninety days previous to the sale.

(7) That the entire control direction & management of all the works & property aforesaid & every part thereof of the Coal River Nav. Co., shall notwithstanding the conveyance aforesaid, be, remain & continue under the power & authority of the stockholders & Board

of Directors of the said Company as heretofore until a sale of the said works & property shall have been made as aforesaid.

J. M. DODDRIDGE.
Secretary Coal River Nav. Co.

Virginia: Kanawha County Court Clerk's Office 5th August, 1858.

The foregoing deed with the resolutions thereto appended was this day presented to me and duly acknowledged by Thomas L. Broun Esq., President of the Coal River Navigation Company and is thereupon admitted to Record.

Teste: A. W. QUARRIER. Clk.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed of Trust Book No. 1 Page No. 310.

(SEAL.)

DEFENDANT'S GENERAL EXHIBIT NO. 3.

This Deed, made this Twenty fifth day of October, Anno Domini Eighteen Hundred and Sixty five, Between James L. Carr of the County Of Kanawha and State of West Virginia, William A. Drown of the City of Philadelphia, in the State of Pennsylvania Isaac A. Storm of the City of New York and Abraham B. Clark of the Said City of New York of the first part, and Clement Smith of Peytona in the County of Boone State of West Virginia, William F. Johnson of the Said City of Philadelphia and J. Eugene Flandin of the Said City of New York parties of the second part, WITNESSETH: That Whereas, "The Coal River Navigation Company" of the Counties of Boone and Kanawha State of West Virginia, by a certain Deed bearing date the thirtieth day of July Anno Domini Eighteen Hundred and Fifty Eight and recorded in the Clerk's Office of the Said Counties of Kanawha and Boone, did grant unto the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, the following property to-wit;

(First) The Locks and Dams and all other works made erected and constructed on Coal River (meaning thereby Coal River proper, and little Coal River and Big Coal River) by the said Coal River Navigation Company, for the purpose of improving the navigation of the said Coal River and also, all other works and improvements to be hereafter made, erected and constructed on the said Coal River for the purpose of repairing damages, restoring navigation and making the said Coal River navigable, which Said Locks and Dams are known and designated as follows to-wit: "Mouth Lock and Dam", Locks and Dams, No. one, No. two, No. three and No. Four located below the forks of Coal River and on Coal River proper Locks and Dams No. Five, No. Six, No. Seven and No. Eight located above the forks of Coal and on Big Coal River and finally Lock and Dam No. A located above the forks of Coal on Little Coal River.

(Second) All other property, real or personal, belonging to the Said Coal River navigation Company, and in anywise appertaining to the navigation or the navigation improvements aforesaid;

In Trust to secure the payment of Henry S. Kupp of Pennsylvania the sum of Thirty Three thousand three hundred and thirty three dollars and thirty three cents ($33,333.33) for bonds of the Coal River Navigation Company, issued as follows: Thirty three Bonds dated July 15th, 1858, bearing eight per cent interest per annum, each for $1000 and payable on the 1st July 1863, to the said Henry S. Kupp or bearer and one other Bond for $333.33 dated and made payable in like manner to the Said Kupp or bearer and also to secure cer-

tain other indebtedness of the Said Company particularly Specified and Set forth in the Said Trust Deed, upon the following terms and conditions, to-wit;

First: That no Sale of the Said works and property, or any part thereof, Shall take place, under and by virtue of this conveyance before the 1st day of July, in the year Eighteen Hundred and Sixty three (1863)

Secondly: That in default of the payment of the indebtedness aforesaid by the 1st day of July 1863, then the said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark may thereafter at the request of any of Said Creditors, offer for Sale and sell the works and property aforesaid of the Coal River Navigation Company.

Thirdly: That no such sale of the Said works and property Shall however take place, unless notice thereof Shall first have been given, and the works and property advertised for a period of ninety days previous to the Sale in the Kanawha Newspapers, and in the principal Newspapers published in the City of Richmond And also unless personal notice of the Said Sale Shall have been Served on the *Bord* of Public Works, ninety days previous to the Sale.

And Whereas the Said Coal River Navigation Company, failed to perform the requirements contained in Said Deed, and was on the first day of July Anno Domini Eighteen hundred and Sixty three in default of the payment of its indebtedness, Specified as aforesaid and of every part thereof; And the Said James L. Carr, William A. Drown, Isaac A. Storm and Abraham B. Clark, Trustees, were thereafter to-wit; on the fourth day of July A. D. Eighteen hundred and Sixty five requested and required by Sundry Creditors mentioned in Said Trust Deed, to offer for Sale and Sell the works and property aforesaid of the Coal River Navigation Company, according to the terms and conditions Specified in Said Deed of Trust: Whereupon the said James L. Carr, William A. Drown Isaac A. Storm and Abraham B. Clark, in execution of the said Trust, did on the Twenty fifth day of October A. D. Eighteen Hundred and Sixty Five after giving ninety days notice of the time and place of Sale by advertising the Same in the Kanawha Republican and West Virginia Journal two Newspapers published in the Town of Charleston, County of Kanawha, aforesaid, and also by advertising the Same *the Same* in the Richmond Whig, the Commercial Bulletin and the Register, three newspapers published in the City of Richmond, State of Virginia, and also by Serving Personal notice of Said Sale, ninety days previous thereto, on the *Bord* of Public Works, for the State of West Virginia. and by Serving a Similar notice of at the Same Time upon the *Bord* of Public Works, for the State of Virginia. Offer for Sale all the locks and dams and other works, made, erected, and constructed,

by the Said Navigation Company on Coal River, including Little and Big Coal Rivers and also all the Estate real and personal, belonging to the Said Company, together with all rights, privileges, franchises, and appurtenances, thereunto belonging or in anywise appertaining, At Public Auction to the highest bidder for cash in front of the Court House door of Kanawha County on Wednesday the Twenty fifth day of October, aforesaid, at which Sale the said Clement Smith, William F. Johnson and J. Eugene Flandin being the highest bidders became the purchasers, for the Sum of Six thousand Five Hundred Dollars ($6500.00)

Now Therefore This Deed further Witnesseth: that the said James L. Carr, William A. Drown, Isaac A. Storm, and Abraham B. Clark in performance of their duties as Trustees of and for the Said Coal River Navigation Company, and for and in consideration of the Sum of Six Thousand five hundred dollars to them the Said James L. Carr William A. Drown Isaac A. Storm and Abraham B. Clark, Trustees in hand paid by the Said Clement Smith William F. Johnson and J. Eugene Flandin before the Sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given granted, bargained, and sold and by these presents do give, grant, bargain, and Sell unto the said Clement Smith, William F. Johnson and J. Eugene Flandin, under the name of "navigation Company of Coal River" (which they have adopted by virtue of authority granted or *confered* upon purchasers of any public works by Section 27 of Chapter 61 of the Code of Virginia, of 1849) All the locks and dams and other works, made erected and constructed by the Said Coal River Navigation Company on Coal River including Little and Big Coal Rivers and also all the estate real and personal belonging to the Said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in anywise appertaining to the Said Coal River Navigation Company (For a fuller description of the property hereby conveyed, reference is here made to the Said Trust Deed recorded in the Clerk's Office of the County of Boone in Book 13 page 435 &c and in the Clerk's Office of the County of Kanawha in Book "W" page 310 &c.

Witness the following Signatures and Seals.

JAMES L. CARR. (Seal)
WILLIAM A. DROWN. (Seal)
ISAAC A. STORM. (Seal)
ABM. B. CLARK. (Seal)
Trustees.

State of West Virginia, County of Kanawha SS:

I, John A. Truslow, a Justice of the Peace for the County aforesaid in the State of West Virginia, do certify that James L. Carr whose name is signed to the foregoing writing bearing date on the

Twenty fifth day of October, A. D. Eighteen hundred and Sixty five has acknowledged the same before me in my County aforesaid.

Given under my hand this Twenty fifth day of October A. D. 1865.

JOHN A. TRUSLOW. J. P. (Seal)

State of Pennsylvania, City of Philadelphia, SS:

I, William V. Archer a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that William A. Drown whose name is Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. 1865 has acknowledged the same before in my city aforesaid.

Given under my hand this Eleventh day of November, A. D. 1865.

[W. V. Archer commissioner of deed Philadelphia, Penn.]

W. V. ARCHER. (Seal)
Commissioner for West Virginia,
Philadelphia, Penn.

City and State of New York SS:

I, Henry J. Cullen Jr. a commissioner appointed by the Governor of the State of West Virginia, for the Said City and State, do certify that Isaac A. Storm and Abraham B. Clark whose names are Signed to the foregoing writing bearing date the Twenty fifth day of October, A. D. Eighteen Hundred and Sixty Five have acknowledged the Same before me in my City aforesaid.

Given under my hand this Fifteenth day of November, A. D. 1865.

(Seal) HENRY J. CULLEN. Jr. (Seal)
Commissioner for West Virginia in N. York.

Kanawha County Recorder's Office November 23rd, 1865,

This Deed was this day presented to me in this Office & together withe the Several Certificates of acknowledged thereon endorsed, and being duly Stamped according to Law was thereupon admitted to record.

Teste: JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY Clerk.
Kanawha County Court.

Deed Book "Y" Page No. 546.

(SEAL)

DEFENDANT'S GENERAL EXHIBIT NO. 4.

To the Recorder of Kanawha County West Virginia:

The Undersigned Trustees, respectfully report, That in pursuance of the provisions of a certain Deed of Trust made by the Coal river Navigation Company dated July 30th 1858, and at the request of some of the creditors therein mentioned, They offered for sale, on the 25th day of October, 1865, after giving ninety days notice of the time and place of sale, by advertising the same in the Kanawha Newspapers, and in three of the newspapers published in the City of Richmond, State of Virginia, and also by serving personal ——— of said sale ninety days previous thereto on the Board of Public Works, for the State of West Virginia, and for the State of Virginia, all the Locks and Dams and other Works made, erected, and constructed by said Navigation Company on Coal River, including Big and Little Coal Rivers, and also all the Estate real and personal, belonging to the said Company, together with all rights, privileges, franchise and appurtenances thereunto belonging, or in any wise appertaining, at Public Auction, to the highest bidder for cash, in front of the Court House door of Kanawha County; at which Sale, Clement Smith, William F. Johnson and J. Eugene Flandin, being the highest bidders, became the purchasers, for the Sum of Six *Hundred* five hundred dollars ($6500)

And the undersigned Trustees, thereupon made, executed and acknowledged for record, a Deed of conveyance of the property thus sold, to the said purchasers, under the name of the "Navigation Company of Coal River," which they had adopted by virtue of authority conferred upon purchasers of any public Works, by Section 27 of Chapter 61 of the Code of Virginia of 1849.

After paying the expenses attending the sale, and the execution of the Trust which amounted to three hundred and ninety-four dollars and fifty cents ($394.50) Vouchers for which are herewith filed, there was left a balance of Six thousand one hundred and five dollars and fifty cents ($6,105.50) to be divided amongst the creditors of the Coal River Navigation Company, whose aggregate claims, with interest thereon to the 25th day of October, 1865, Amounted to the sum of Eighty five thousand Six hundred and ninety eight dollars and Seventy nine cents ($85,698.79c)—Shortly after the sale was completed, a notice was published in one or more newspapers, requesting the creditors of the company to present their claims for settlement and receive payment therefor in money, or Stock, in the Navigation Company, as each might elect.

The following Statement Shows the payments in money, thus far made by the Trustees.

Claim.	Amt. of Prin.	Creditors.	Amt. pro rata.	To Whom Paid.
2 Bonds	$ 1,071.44	J. A. Storm		
1 "	1,000.00	H. S. Kupp	$229.67	J. B. Storm
3 "	1,000.00	J. B. Smith	119.05c	H. Young
2 "	2,000.00	H. S. Kupp		
1 "	500.00	J. A. Storm		
2 "	1,071.44	Du Bois & al.		
2 "	1,071.44	C. M. Connally		
1 "	500.00	J. A. Ackerman		
1 "	250.00	H. A. Du Bois	627.11c	T. L. Brown Agt. &c.
3 "	2,789.94	H. Lathrop		
1 Note	600.00	H. Lathrop		
1 "	398.12	C. Smith		
1 Judgment	325.81c	T. B. Swann	434.15c	T. L. Brown Agt. &c.
2 Bonds	1,712.09	Watt & Jordan	180.90c	T. L. Brown Agt. &c.
1 "	535.72	H. A. Hulbut	63.25	D. DuBois Prest. &c.
26 "	26,000.00c	H. S. Kupp		
4 "	2,000.00c	Westn Ming & M. Co.	3,162.48	D. DuBois Prest. &c.
1 Judgt.	535.25	Ruffner, Hale & Co.	56.35c	J. L. Brown on suggestion.
1 "	325.00	I. Gillespie	34.65	I. Gillespie
1 "	125.50	R. Blaine	13.25	C. Blain, Ad. &c.
1 "	275.00	E. R. Thomas	25.00	E. R. Thomas
1 Note	250.00	H. R. Thomas	26.55	D. DuBois Prest. &c.
1 Judgt.	2,075.57	W. H. Webb	112.21	Smith & Knight on Sug.
1 "	324.70	W. F. & J. H. Goshorn	34.20	D. DuBois Prest. &c.

Amounting to the sum of $5,128.82, and leaving a balance (————) in the hands of James L. Carr one of the Trustees of nine hundred and Seventy six dollars and sixty eight cents ($976.68c), which is still unappropriated. The claims thus extinguished with the receipts and other vouchers are herewith returned, and the Trustees file also a report made by the "Navigation Company of Coal River" *compamy* a statement of the entire indebtedness of the Coal River Navigation," and showing what each creditor was entitled to in money on the 25th day of October, 1865. This report has been delayed in consequence of the inability of the Trustees to get together the Bonds and notes of the "Coal River Navigation Company" which were held by parties scattered from Kanawha to New York, and some of which is thought are now in Europe and not withstanding the time which has elapsed since **since** the sale was made; and the persistent efforts which have been used by advertisement and otherwise to procure all the bonds, several thousand of them are still out standing and unsettled.

All of which *us* respectfully submitted by

JAMES L. CARR for himself
and the other Trustees.

Kanawha County Recorder's Office, 30th July 1867.
This Report of Sale by James L. Carr Trustee was this day presented in this office and thereupon admitted to record.

teste. JNO. SLACK. Recr.

A true copy from the record.

Teste: L. C. MASSEY, Clerk.
Kanawha County Court.

T. D. No. 2 page 237.

(SEAL)

WEST VIRGINIA GENERAL EXHIBIT NO. 5.

AUDITOR'S REPORT.

AUDITOR'S OFFICE,
Wheeling, Nov. 25th, 1862.

The Governor of the Commonwealth having summoned the representatives of the people to meet in Extraordinary Session, on Thursday, the 4th day of December, 1862, the Auditor of Public Accounts, although not required so to do, deems it a duty, as a full fiscal year has passed since the last Session of the General Assembly, to lay before the Legislature the financial condition of the State, at the close of the fiscal year ending the 30th of September, 1862.

The whole amount of Revenue received from all sources, as well as the whole amount disbursed, for the fiscal year ending the 30th of September, 1862, is as follows:

Amount received for 1862	$205,251.80	
Amount disbursed for 1862	165,450.17	
		$ 39,801.63
Add surplus in the Treasury at the close of the fiscal year of 1861		80,355.84
Net surplus in the Treasury, 30th September, 1862		$120,157.47

Table A, will exhibit the amount paid into the Treasury in the fiscal year 1862, by each County of the State, with the miscellaneous payments from Banks, &c.

TABLE A.

Amount received from the following Counties for Tax on Land, Personal Property, License, and Tax on Deeds, &c.

Jackson County	$ 1,428.57	Marshall County	2,772.25
Upshur County	6,249.02	Tyler County	4,651.78
Northampton County	954.09	Wetzel County	4,288.73
Accomac County	3,069.72	Brooke County	929.76
Alexandria County	2,978.47	Pleasants County	2,573.46
Randolph County	160.00	Kanawha County	4,437.18
Barbour County	4,762.16	Taylor County	5,690.15
Tucker County	733.00	Hancock County	2,548.27
Lewis County	9,354.69	Marion County	11,670.59
Wirt County	3,753.37	Preston County	14,199.76
Mason County	8,614.95	Ohio County	25,968.20
Doddridge County	2,228.14	Monongalia County	10,644.09
Wood County	14,557.94	From Banks, Saving Banks, Insurance Companies, Railroads, Notary Publics, Redemption of Delinquent Lands	30,698.07
Harrison County	15,534.19		
Ritchie County	5,789.93		
Putnam County	4,420.25		
Roane County	191.02		
			$205,251.80

Table B, will exhibit the amount expended under the different appropriations for the fiscal year ending 30th September, 1862.

TABLE B.

Salaries of Officers of Civil Government	$ 10,711.35
Contingent Expenses of Auditor's and Treasurer's office	1,653.74
Contingent Expenses of Secretary's and Adjutant General's office	388.65
Board of Public Works	22.25
Salary of Adjutant General	1,403.06
Public Printer	2,888.18
Clerks in Auditor's office	900.00
*Appropriation for Military purposes	11,507.69
Janitor to Executive offices	339.60
Messenger to Executive	159.65
Executive Council	936.00
Adjutant General's Clerk	305.51
Expenses of Elections	376.63
*Civil Contingent Fund	16,884.86
Pay of Judiciary	10,829.43
Contingent Expenses of Courts	2,391.32
Commissioners of Revenue	10,503.47
Expenses of Legislature, July 1st, 1861	99.31
Expenses of Convention, August 6th, 1861	271.41
Sale of Uncurrent Funds	558.79
Lunatics in Jail	3,207.55
Criminal Charges	6,503.43
Sheriff's Commissions	250.66
Lunatic Asylum at Weston, under resolution of 1861	4,371.23
Lunatic Asylum at Weston, under Act of General Assembly of January 14th, 1862	21,684.00
Expenses of Militia of State	2,425.29
Expenses of Convention of Nov. 26th, 1861	16,399.25
Expenses of General Assembly, December 1st, 1861	20,592.90
Delinquent Taxes, 1861	2,430.77
*For Patrols of State	5,404.51
Thomas Hornbrook, per Act of 13th February, 1862	490.33
Coroner's Inquests	28.00
Expenses of General Assembly, 6th May, 1862	4,229.56
*Lunatic and other Asylums of the State	3,722.63
Miscellaneous account for which there was no appropriation	563.31
	$165,450.17

Items marked with a * were disbursed by order of the Executive, by special provisions of the Acts of the General Assembly.

Table C, will exhibit the amount of money received into the Treasury (as near as the Auditor can ascertain) for Capitation Tax, during the fiscal year of 1862. It is also proper to remark that other counties than those mentioned, have paid upon this fund, but owing to the absence of their Delinquent Lists, no proper estimate can be made of the amount.

TABLE C.

Amount of Capitation Tax, less Sheriff's Commission, paid into the Treasury by the following Counties, viz:

Doddridge County	$ 736.56	Monongalia County	$ 1,562.79
Wood County	1,436.76	Hancock County	584.82
Wetzel County	734.60	Wirt County	464.76
Preston County	1,756.27	Ritchie County	755.75
Brooke County	696.93	Pleasants County	388.34
Tyler County	821.67	Lewis County	600.00
Marshall County	1,192.34		
Ohio County	1,921.00		$13,795.44
Upshur County	232.85		

Table D, will show the amount received into the Treasury from Fines imposed by the Courts of the Commonwealth, and like the Capitation Tax, is a Fund for Educational purposes.

TABLE D.

Harrison County	$ 50.00
Ohio County	190.00
Mason County	6.00
Preston County	3.00
Wood County	10.00
	$259.00

Table E, will exhibit the amount paid into the Treasury, for Literary purposes, by the North Western Bank at Wheeling, on stock held by the Board of Literary Fund in that Bank.

TABLE E.

Dividends on 500 shares stock in North Western Bank, at Wheeling, Va.	$ 1,500.00

Table F, will exhibit the whole amount in the Treasury at the close of the fiscal year, 1862, subject to distribution for Educational purposes.

TABLE F.

Capitation Tax	$13,795.44
Fines imposed by Court	259.00
Dividends on Stock	1,500.00
	$15,554.44

The monies received into the Treasury for Literary purposes, are subject to distribution and apportionment under the 79th Chapter, page 416 of the Code of Virginia. The especial attention of the Legislature is requested to this Chapter and its provisions. It will be seen that by the 3d section of this Chapter, that the Auditor of Public Accounts is directed on the first day of January, in each year, upon the order of the Second Auditor, to set apart and pay into the

Treasury, to the credit of the Literary Fund for the purposes of Education, the amount of Capitation Tax received into the Treasury for the preceding year. The Second Auditor is then to apportion it out among the several Counties, Cities and Towns having Corporation Courts, under the provision of the 4th section of the same Chapter. The Second Auditor is to apportion it out by the white population of each County, City and Corporation of the State. Under this rule there would not be much for any County, and much the largest share would go to Counties, Cities and Towns of the Eastern part of the State, that have paid no part of the Fund into the Treasury. I think, therefore, the whole Chapter ought to be repealed.

Table G, will exhibit the amount received from the Banks of this Commonwealth, as a bonus, under provision of Chapter 59, page 348, section 48 of the Code of Virginia, and by that section, is a fund for the payment of the interest on the public debt of the State.

TABLE G.

Bonus from Bank at Fairmont	$ 269.87
Bonus from Merchants' and Mechanics' Bank, Wheeling	4,325.54
Bonus from North Western Bank, Wheeling	2,170.25
	$6,765.66

This section ought to be repealed and this money thrown into the Treasury, for while the law remains, the money arising from bonus now in the Treasury, or hereafter to come into the Treasury, cannot be made available for any other purposes.

Table H, will exhibit the money in the Treasury for Internal Improvement purposes.

TABLE H.

Dividends on 326 shares of Stock in the North Western Bank in the name of the Board of Public Works	$978.00

Table K, will exhibit the amount received from Militia Fines for the fiscal year 1862.

TABLE K.

Militia Fines for 1862	$134.87

At the regular session of the General Assembly of 1861-62, there was appropriated $5,000 to pay expenses of the Militia of the State. Under the appropriation, up to this date, over $3,000 have been paid to Drummers, Fifers, Adjutants, Mustering Officers, &c. The Legislature will see that only $134.87 have been received from Militia Fines altogether.

Under the late order of the Executive calling out the Militia of the State, there have been presented to this office large claims for services rendered under this order, as Drummers, Fifers and other charges, that the Auditor has been compelled to reject, there being no law authorizing the Auditor to pay them; many of these claims

amount to over one hundred dollars for one county. At this rate the sum necessary to meet these claims, if they are to be paid, will need not less than $10,000. It is a subject that the Auditor dare not venture an opinion upon, but hopes that the Legislature will give to it their proper attention.

Having furnished the Legislature with a true statement of the Finances of the State at the close of the last fiscal year, I now beg leave to call the attention of the Legislature to the necessity of some more legislation to enable the Auditor to have the Revenues of the State more properly collected. Without some additional legislation upon the subject, the Revenues of many of the Counties of the State will never be collected. The highest rates of commission now allowed to Sheriffs and Collectors of the Revenue, is 5 per cent. This is far too small a consideration for Sheriffs and Collectors, where there is no other business for the Sheriff and Collector to do. In many of the Counties it would not give the Sheriff or Collector over $150 or $200 for a whole year's work. The Legislature will see at once that an officer, competent to discharge the duties of Sheriff or Collector, cannot be obtained for so paltry a sum. Many of the Sheriffs and Collectors at work, are only temporarily engaged in the work, under the promise from the Auditor that some provision would be made by the Legislature to increase their compensation, and unless the Legislature does increase their compensation, it will be impossible for the Auditor to hold them.

I would, therefore, as a matter of justice, recommend that the Legislature pass a provision increasing the compensation of Sheriffs and Collectors of the tax on Lands and Property throughout the State, to 10 per cent., where the sum collected does not exceed Ten Thousand Dollars, and where the revenue exceeds Ten Thousand Dollars, 7 1/2 per cent. To pass anything but a general law, would only involve the Auditor in trouble, for the Counties of the State are so unequal in the amounts collected, that it would be impossible to pass laws that would equalize the compensation.—Some Counties would pay the Sheriff or Collector more than others. But the great object to be kept in view, is the collecting and paying of the Revenues into the Treasury; it is for the Treasury and not for the Collector, that this recommendation is made. No injustice is done by General Laws: injustice would be done by passing laws for each County. The Sheriffs and Collectors of the State have been exceedingly prompt, under all the circumstances, in paying into the Treasury; and by a provision of law, such as I have recommended, the Auditor is convinced that in many of the Counties that are now paying nothing into the Treasury, Sheriffs or Collectors could be procured, but without some such provision no hope can be entertained of our getting the Revenue of those Counties collected. The Auditor therefore hopes that his promises, heretofore made to many of these officers now engaged in the collecting of the Revenues, will not be

denied them by the General Assembly. If the experience of the Auditor is worth any thing to the Legislature upon any subject, surely it is upon this, the most important of all his duties. I need not assure the General Assembly (for they all know) that the Auditor has labored most assiduously to collect the public Revenues and place them in the Treasury; and I ask the Legislature to pass the provision referred to and make it retrospective, so as to embrace the Revenue of 1862.

The Auditor would most respectfully call the attention of the General Assembly to a provision of law passed by them at the last regular session, Chapter 59, page 55, of the Acts of the General Assembly, passed February 15th, 1862. The law, (as it is short,) will be copied into this report, it is as follows:

Be it enacted by the General Assembly, That the expenses incurred in prosecutions for Misdemeanor, shall be chargeable to the Commonwealth.

The interpretation placed upon this law by Clerks, is that all the expenses incurred by them, such as issuing Subpoenas, Docketing Indictments, Continuance Cases, and such like, in cases of Misdemeanors, are chargeable, under this law, to the Commonwealth, and payable under this law. Many of the Clerks have demanded payment for services, such as above mentioned, of the Auditor.—Even the witnesses for the Defendants have claimed their attendance fees under this law. Fortunately, for the Auditor, the Legislature did not make any appropriation by which prosecutions for Misdemeanors could be paid. The law must be repealed or changed, so as to designate what expenses are meant. The clear presumption is that it only intended to embrace expenses incurred by the Commonwealth in prosecution, and not all the expenses incurred by the Commonwealth and the Defendants; but without some interpretation of the Legislature, this statute must give trouble to the Auditor. If it is the intention of the General Assembly that the Commonwealth is to be chargeable with all the expenses of witnesses, jailor's fees and other expenses, in drunken riots and peace warrants, the Auditor hopes the Legislature will so frame a law that will make it plain what charges are to be paid and what not to be paid by the Auditor.

The attention of the General Assembly is especially called to the Act of the General Asembly, passed February 10th, 1862, called the "Military Fund Bill." The first section provides that the Governor of the Commonwealth shall receive from the United States, the monies heretofore advanced by the State for military purposes, and place them to the credit of the State Treasury. Nothing has been received into the Treasury of the State from that fund. The second section provides that in addition to the monies so to be collected and placed to the credit of the State, as in the first section

provided for, the additional sum of Forty Thousand Dollars was appropriated to aid in the further organization, arming, transporting and supporting the military forces of the State, in the service of the United States, or that might hereafter be mustered into the service of the United States. Under this provision, the Executive has paid $11,507.69 since the regular session of the General Assembly. In the opinion of the Auditor, this law ought to be repealed. Surely there can be no use for the State to be paying bills belonging to the National Government, when she has here, at the seat of Government, an officer whose business it is expressly to provide for the support, arming, equipping and transporting of her own troops. While this law remains, it is only a temptation to persons who cannot obtain payment for their claims of the regular army officers, to hope for relief under this provision. And with all due deference to the Legislature, the Auditor would venture the opinion that $50,000 already paid in aid of this object by the State, and not likely to be returned again, is quite enough for the paying Counties of the State.

The Legislature will see that for Lunatics in Jail and Lunatic Asylum, there was paid during the last fiscal year, $6,930.18. The Lunatic Asylum at Weston, Va., being now nearly completed, ought to be furnished as rapidly as possible, so that the lunatics of the State might be better provided for than many of them now are, by being confined in some cell in the Jails of the State. A large number of the female lunatics of the State have been kindly provided for at the Lunatic Asylum, at Columbus, Ohio. The generous offer of the State of Ohio, to take the female portion of these afflicted of our citizens, and provide for them, is deserving the thanks of the Legislature. Without this provision, many of them must have suffered sorely, if indeed, death had not taken them away. The State can now afford to make ample provision for them, and it is to be hoped that the General Assembly will not omit this important duty to the afflicted lunatics of the State.

As a matter of interest, I herewith present a Table showing the several amounts paid by each of the proposed Counties of the New State, into the Treasury of the State. This Table is taken from the Report of Auditor J. W. Bennet, for 1859-60. This Table shows only the Tax on Land, Property, Capitation and Licenses. To this may be added, at least, One Hundred Thousand Dollars more, for Taxes on Banks, Railroads, Express, Insurance and other companies, which would give a grand total of at least Six Hundred and Twenty Thousand Dollars, paid into the Treasury of the State by the Counties of the proposed New State, in 1860.

Monongalia County	$ 21,211.61	Pocahontas County	$ 8,013.56
Hancock County	5,967.85	Kanawha County	25,827.92
Brooke County	8,838.03	Clay County	1,351.50
Ohio County	43,562.75	Nicholas County	6,286.24
Marshall County	14,388.68	Cabell County	14,050.44
Wetzel County	6,036.41	Wayne County	7,402.27
Marion County	18,956.80	Boone County	4,040.22
Preston County	14,252.13	Logan County	3,360.45
Taylor County	9,755.61	Wyoming County	2,473.31
Pleasants County	3,940.95	Mercer County	5,315.35
Tyler County	6,721.24	McDowell County	970.10
Ritchie County	7,642.86	Webster County	not reported
Doddridge County	4,946.32	Fayette County	6,682.98
Harrison County	26,339.69	Raleigh County	3,712.21
Wood County	20,684.65	Greenbrier County	28,662.74
Wirt County	3,411.71	Monroe County	27,680.59
Jackson County	10,155.98	Pendleton County	8,622.70
Roane County	4,573.07	Hardy County	20,128.07
Calhoun County	2,150.60	Hampshire County	26,253.63
Gilmer County	4,587.45	Morgan County	5,901.11
Barbour County	10,654.64		
Tucker County	2,147.18		$520,061.29
Lewis County	10,074.01	Add from Banks, Railroads, Express and other Companies of the State.	100,000.00
Braxton County	6,895.90		
Upshur County	8,583.82		
Randolph County	8,753.32		
Mason County	18,892.00		
Putnam County	8,600.64		$620,061.29

By reference to Table B, exhibiting the whole amount disbursed by the Auditor in the fiscal year, 1862, the Legislature will find the following items paid by the Auditor that do not properly belong to the ordinary expenses of the State, and in looking to a time of peace, will not be counted as part of the expenses of State to be provided for.

Table No. 1 will show the items referred to in Table B.

TABLE NO. 1.

Paid upon the order of the Governor for extraordinary purposes, as follows:

For Military purposes for the Government of the United States	$11,507.69
Civil Contingent Fund	16,884.86
Pay of Patrols of State	5,404.91
Pay of Lunatic and other Asylums of State	3,722.63
	$37,520.09
Appropriation for Lunatic Asylum at Weston	21,684.00
Appropriation for the Convention to frame Constitution of New State	16,399.25
	$75,603.34

Deduct this amount from the sum disbursed in the fiscal year, as shown by Table B, as follows:

Whole amount disbursed in the year 1862	$165,450.17
Deduct as stated in Table No. 1	75,603.34
	$89,846.83

Eighty-nine Thousand Eight Hundred and Forty-six Dollars and Eighty-three cents ($89,846.83) is the actual expenses of the State if reduced to a state of peace; and the amount ought to be still further reduced, when the Legislature remembers that during the past fiscal year there was one Regular and One Extra Session of the General Assembly. The Legislature will see by referring to the Table enumerated, that there was a little more than one-half of the money disbursed in 1862, paid for extraordinary purposes, and shows the actual expenses of the State, for the fiscal year ending September 30th, 1862, at only $89,846.83. It will be remembered that this expenditure was not alone for the counties in the proposed New State, but embraces payments made for Alexandria, Accomac and Northampton counties.

If these figures can be relied upon, and when it is recollected that only twenty-nine of the forty-eight counties of the proposed New State, have as yet, paid anything into the Treasury, is it not clear, that with the New State formed and peace restored, the taxes could be reduced one-half, and then produce more revenue than would be required for an economical administration of the State. And here let me state that there will be outstanding and uncollected, due the State from Sheriffs, Collectors, and other persons, of the Counties of the proposed New State, when the State shall have been formed, a sum of not less than $200,000. This, with the balance in the Treasury, will give a sum almost equal to the whole expense of the erection of the Public Buildings of the New State. In this connection permit me to call the attention of the General Assembly to the necessity, if a New State is formed, to some legislation necessary to vest the power in the Courts of the New State to recover the outstanding balances in the hands of Sheriffs, Collectors, Banks, Saving Banks, Railroad Companies, Express Companies, Insurance Companies, Notary Publics, Clerks of Courts, Bridge Companies, Toll Gathers, Superintendents of State Roads, Canal Companies, Escheators or Escheated Lands, and other property, within the boundary of the proposed New State; as also the right to receive dividends on stocks standing in the name of the Commonwealth, Literary Fund, or Board of Public Works, in Banks and other Corporations, within the New State; as also the power to control these stocks until a settlement can be had with the Old State. Would it not be well for the Legislature to repeal the Acts of May last, making an appropriation of One Hundred Thousand Dollars to the New State, and re-enact it, so as to avoid the last clause requiring the New State, in its settlement with the Old State, to account for the One Hundred Thousand Dollars. The money in the Treasury, out of which this One Hundred Thousand Dollars is appropriated, was collected from the Counties of the New State, and the Old State has

nothing to do with it. The settlement with the Old State ought to go back to the beginning of the rebellion, and settlement made from that time, if so, the New State is entitled to, and ought to have, not only the One Hundred Thousand Dollars, but all that shall be in the Treasury at the time of its admission. An Appropriation Bill to that effect ought to be framed. The money belongs to the Counties of the New State, and by any just rule, ought to remain with them. By this rule and with the uncollected balances due the State from Counties within the proposed New State, the New State would have the money ready to put up all of her Public Buildings, or nearly so.

The State has about Four Hundred Thousand Dollars worth of stock in the North Western Bank at Wheeling, standing in the name of the Commonwealth, part in the name of the Board of Public Works, and part in the name of the Literary Fund. The State has Fifty Thousand Dollars of stock or loan, in the name of the Literary Fund, in the Bank of Fairmont, and from Fifty to Seventy Thousand Dollars in the Exchange Bank at Weston, making about Five Hundred Thousand Dollars in all. She is also a stockholder in the improvement of the Kanawha river, how much, the Auditor does not know. The State is the owner of several important turnpike roads in the North-Western part of the State, and is a stockholder in many other turnpike and bridge companies. The power to control and use this stock, before and pending, the settlement with the Old State. Some legislation therefore, upon the subject, will be necessary.

Under the provisions of the Bill now pending before the Congress of the United States for the admission of the New State, the Convention that framed the Constitution for the New State, will have to again assemble, and it is respectfully submitted, whether the Legislature ought not to make a small appropriation to meet the expenses of that body while sitting.

All of which is most respectfully submitted,

SAMUEL CRANE,
Auditor of Public Accounts.

DEFENDANT'S GENERAL EXHIBIT NO. 6, A, B, AND C.

(Being Extract From the First Executive Journal of Governor Boreman, 1863.)

Special Message of Governor Arthur I. Boreman to the Legislature of West Virginia.

A.

Executive Department,
Wheeling, July 28th, 1863.

Gentlemen of the Senate and House of Delegates:

I have received from His Excellency, F. H. Peirpoint, Governor of Virginia, the enclosed communication and the accompanying report of S. P. Hildreth, Esq., on the subject of the Auditor's office and the state of the finances of the State of West Virginia at the time of the organization of the State of West Virginia, which I submit to you for your consideration and action. The report of Mr. Hildreth contains a statement showing as nearly as he could ascertain, the balance in the treasury on the 19th day of June, 1863, which is to be transferred to this State under the provisions of the Act of the General Assembly, passed February 4th, 1863: and also a statement showing the amount of money paid into the treasury by the counties of the State of Virginia outside the boundaries of this State, and the amount drawn therefrom for those counties, and the balance in their favor. The report also shows that some of the appropriations made by the General Assembly of Virginia have been overdrawn, and, as the money in the treasury after paying the appropriations, is the property of this State, it will be necessary for the Legislature to make an appropriation to meet the amount overdrawn, and thereby legalize what has been done. It will also be seen that many of the appropriations have not been exhausted.

It will also be seen from the communication of Governor Peirpoint, that there is a large number of claims against the State of Virginia, held by persons within the boundaries of this State, for the payment of which no appropriations have been made: and that there are no such claims held by persons in the remaining State of Virginia. As the balance in the treasury is to be transferred to this State, it may

become necessary to make provision for the payment of those claims due our own citizens, when they are ascertained. At present, I am unable to state their character or amount, but would suggest that the subject be referred to th proper committee to inquire into and report thereon, and the several sums that it is proper, should be paid out of the treasury in discharge of the claims referred to.

It will also be seen from the communication of Governor Peirpont, that he appreciates fully the difficulties that might occur in the absence of the books, papers, &c., of the Auditor's office, or of copies of the same, and, therefore, he proposes to leave those books, papers, &c., in the hands of the officers of this State for the present, but requests that you pass an Act directing that they be all delivered to the proper authorities of the State of Virginia, if they shall be demanded. He does not know that they will or will not be demanded. I recommend that such an Act be passed, and, in view of the contingency mentioned, and of the very great injury that must result to this State, if we should be left without those books, papers, &c., or copies of them, I recommend that provision be made to have copies of them made, in the event that they shall be called for by the proper authorities of Virginia.

By section 6th of the Act passed February 3d, 1863, page 65, of Acts 1862-1863, these books, papers, &c., were directed to be copied, and the copies to be delivered to the Governor of this State "when his election should be officially declared:" and I am informed that the appropriations of the same session of the General Assembly, included a sum sufficient, and was enlarged for the purpose (although not expressed) of copying the same.

But from some cause, unknown to me, the copies have not been made, and, of course, the money appropriated to pay for the same passes to this State by the Act transferring the balance in the treasury of the State of Virginia. The money intended to be used for this purpose thus remains in the treasury.

As these books, papers, &c., or copies of them, are needed almost daily for the purpose of ascertaining balances due from collecting officers, making settlements, &c., I hope the Legislature will take speedy action on this subject. I may say that had it not been that my attention, as well as the attention of the Legislature, has been given to military matters for a few days past, the necessity for which is known to all, this communication would have been made at an earlier day.

LETTER OF GOVERNOR F. H. PEIRPOINT, SENT TO GOVERNOR ARTHUR I. BOREMAN, AND BY HIM TRANSMITTED TO THE LEGISLATURE OF WEST VIRGINIA WITH HIS SPECIAL MESSAGE OF JULY 28, 1863.

B.

Wheeling, July 22d, 1863.

To his Excellency A. I. Boreman,
Wheeling, West Va.:

Sir,—By act of General Assembly of Virginia, passed February 3d, 1863, page 64, it is provided among other things, that all property and debts due the State lying within and owing from persons resident in the boundaries of the new State, should belong to the State of West Virginia, without further transfer. Provision is made also in the same act, requiring the Auditor of Public Accounts of the State of Virginia to procure fit blank books and transcribe therein true copies of all the records, &c., which may be useful to the State of West Virginia. These copies were to be certified by the executive and "**delivered to the Governor of West Virginia, when his election was officially declared,** for the use of said State of West Virginia." There was also an act passed on 4th of same month (page 68) appropriating one hundred and fifty thousand dollars to the State of West Virginia, and also the residue in the treasury after certain deductions therein named.

The Auditor and Treasurer of the State having resigned on the 19th day of June, 1863, it became my duty to appoint successors. I was informed that the copies of the records required by the General Assembly for use of West Virginia had not been made out by the Auditor of Public Accounts—nor had any statements of moneys received and expenditures made, &c., in accordance with the second section of last Act, been made, to ascertain the proper payment to be made to West Virginia out of the Treasury. I therefore directed the Treasurer and Auditor, by the assistance of Mr. Hagans, the Secretary of the Commonwealth, to examine the books, &c., of the Auditor's office and report to me their condition, with a view to ascertain whether any copies were needed of books and papers, &c. Also to ascertain and make statements in regard to the money in the treasury and sources whence derived, &c.

The Treasurer, S. P. Hildreth, furnished me the enclosed report, which I herewith send you.

I suppose it will involve the State of West Virginia in great difficulty to arrive at its rights, under the Acts of Assembly, above referred to, without the original books and papers for reference.

I find there is a number of claims against the State, held by persons in the bounds of the new State, which cannot be paid without further appropriation, the money appropriated, applicable to that subject, having been all expended. You will see from Mr. Hildreth's report the appropriations which have been overdrawn and the amounts. There is also a large number of accounts not audited, connected with the delinquent list and other papers, and with this is the unascertained school fund belonging to counties. (See report.)

There are but four counties in the State of Virginia from which any revenue has been derived. There are no unsettled claims from that sections that I am aware of. If there are any, I can have them arranged, if it is by further legislation. But as the money which is now in the treasury, derived from the counties in West Virginia, will be handed over to the treasury of the State, and as the officers cannot pay a portion of the claims without further legislation, and as it would subject the parties residing in the west to great inconvenience and delay to await legislation in Virginia, and then bring their claims there for payment, it occurs to me that this business should all be settled here by such legislation as may be necessary. Mr. Hildreth states that some of the delinquent lists are not returned, and others incorrect. It occurs to me that there might be difficulty on the part of the State of Virginia, now that the State is divided, to enforce the returns, &c., that may be necessary to settle the accounts with the different counties in regard to the literary fund derived from capitation tax.

I am anxious for the welfare of the new State of West Virginia. I desire to furnish the greatest facilities for securing her interests, and in view of that, I propose to leave the books, papers, &c., with you for reference and settlement, asking that your Legislature will pass an Act directing that they all be delivered to the proper authorities of the State of Virginia when demanded. They may be demanded and may not. I have no authority to say that they will not.

With sincere desire for the future welfare of your new State of West Virginia,

I am yours, &c.,

(Signed) F. H. PEIRPOINT,

Governor.

STATEMENT MADE TO GOVERNOR FRANCIS H. PEIRPOINT BY MR. SAMUEL P. HILDRETH, CONCERNING THE FINANCIAL TRANSACTIONS BETWEEN THE NEW STATE OF WEST VIRGINIA AND THE COMMONWEALTH OF VIRGINIA, JULY 14, 1863.

C.

Wheeling, W. Va., July 14, 1863.

His Excellency F. H. Peirpoint:

Dear Sir,—In accordance with your request, I would respectfully report that, with the assistance of Messrs. L. A. Hagans and Dr. Webb, I have examined the papers, vouchers, and memorandums of accounts kept in the Auditor's office of the Commonwealth since the restoration of the Government.

In a book called "Sheriff's Accounts," we found where the amount of taxes reported annually by Commissioners of the revenue were charged to the Sheriffs of the Commonwealth, we compared the Land and Property Books with the accounts as charged, and found the following errors:

Sheriff of Brooke county is overcharged tax on town lots, in 1861, $21; Sheriff of Putnam county, overcharged tax on town lots, $252.80, in 1861; Sheriff of Jackson county is charged tax on personal property, $754.98; it should be $2,241.07; Sheriff of Upshur county is charged tax on personal property for 1862, $506.27; it should be $2,552.50. This Sheriff, according to the account, had paid his indebtedness to the State, and his account has been closed.

Sheriff of Gilmer county is charged tax on lands, $3,093.16; it should be $3,039.16.

Sheriff of Kanawha county is charged tax on town lots, $9,078.94; it should be $1,456.32, and $3, in same account, an undercharge in tax on personal property. For some of the accounts we could not find any land books or property books to compare with.

We next examined a book called "License Book" in which was charged the taxes on licenses. In this we also found some errors, the largest of which was $20, and we concluded to take no account of them.

Next came a book (without any index) called "Railroads, Banks, Express and Insurance Companies," in which was charged the taxes on dividends; in this we found that on the 14th of March, 1863, the Sheriff of Ohio county collected from three Institutions (here in the city) taxes amounting (less his commissions) to $866.59. The whole amount was credited to each of the institutions, in addition to which they were credited with commissions, 5 per cent.

While on the subject of licenses, we omitted to mention that in some instances the Sheriffs owed largely for 1861, while they were over credited for 1862. The proper plan, we think, would have been to have made the Sheriffs pay all that they owed for one year before crediting them anything for the taxes of a subsequent year.

We have no doubt that a number of the accounts in both the sheriffs and license tax books could be closed if they were credited with their delinquent lists and commissions. It is true that owing to the disturbed state of affairs in the State, a number of delinquent lists have not been sent to the office, and it is also true that those which have been sent are not properly credited. After a great deal of patient examination we failed to understand the subject of delinquent lists. In some instances we found them credited to the account, direct, while in others the accounts were credited with the Auditor's warrant for the amount, which was charged to an appropriation called "Erroneous Assessments and Delinquent Tax," in a book called "Journal," (we could find no such appropriation,) whether or not this is the correct plan we are not unable to say.

In a book called "Journal" to which we have referred, we found the amount in the Treasury on the 1st October, 1862, to have been	$120,159.01
Amount received since that time to 19th June, 1863	252,529.71
Total	$372,688.72

Out of which the following have been paid:

Salaries of Officers of Civil Government	$ 6,264.10
Salaries of Judges and Atty's for Commonwealth	12,091.71
Contingent Expenses of Court's Commonwealth	1,635.65
Criminal Charges	8,078.24
Civil Contingent Fund	17,052.57
Militia of State	1,785.45
Lunatics in Jail	3,126.73
Public Printing	1,626.11
Patrols and State Volunteers	134.00
Expenses of Auditor's and Treasurer's Office	1,469.74
Expenses of Secretary and Adj't General's Office	105.68
Contingent Expenses Adj't General's Office	430.67
Pay of Auditor's Clerks	900.00
Pay of Adjutant General's Clerk	374.97
Pay of Treasurer's Clerk	100.00
Pay of Adjutant General	862.27

Pay of Janitor of Executive Offices	225.00
Expenses of Elections	33.82
Coroner's Inquests	70.85
Military Purposes	1,144.03
Lunatic and other Asylums	2,377.83
Erroneous Assessments and Delinquent Tax	1,650.54
Miscellaneous Appropriations	518.05
Expenses of General Assembly 4th December, 1863	18,322,67
Expenses of Board of Public Works	6.50
Expenses of Convention 26th November, 1861	25.00
Expenses of Convention 12th February, 1863	7,000.00
Special Appropriations	1,146.91
Expense of Collecting Arms	86.30
Weston Lunatic Asylum	40,000.00
Educational Purposes	11,984.72
Commissioners of Revenue	6,778.58
	$147,408.89
Balance in Treasury 20th June, 1863	$225,279.83

Which is deposited in the following banks:

North Western Bank, Wheeling	$ 94,785.59
North Western Bank, Parkersburg	27,776.62
North Western Bank, Wellsburg	9,399.80
Merchants and Mechanics Bank, Wheeling	79,002.35
Merchants and Mechanics Bank, Clarksburg	7,271.16
Merchants and Mechanics Bank, Morgantown	7,044.55
	$225,280.07

Observe a difference of 24 cents between the amount in Bank and what there should be. We hunted for the cause of the difference, but were unable to find it.

The following appropriations are overdrawn:

	Amts. paid.	Appropriated.	Overdrawn.
Judiciary	$12,091.71	$10,000.00	$2,091.71
Criminal Charges	8,078.24	6,000.00	2,078.24
Lunatics in Jail $3,126.73			
Lunatics other Asylums 2,377.83			
	5,504.56	5,000.00	504.56
Public printing	1,626.11	1,500.00	126.11
Expense of General Assembly	18,322.67	17,000.00	1,322.67
			$6,123.29

In the appropriations of Salaries of Officers of Civil Government an item appears. Voucher No. 945, S. Crane's salary is charged $466.66, which is an error; it should be $441.95. He has overdrawn $24.61. In pay of Auditor's Clerks, Vouchers No's 948 and 949, it appears that both the Auditor's Clerks have been paid from April 1st to July 1st, 1863, overdrawn in one case, $22,23, and the other, $11.12. The following table will show the amount yet unexpended of the different appropriations:

	App.	Expended.	Balance.
Salaries officers Civil Government	$12,500.00	$ 6,264.10	$6,235.90
Contingent expenses Courts Commonwealth	5,000.00	1,635.65	3,364.35
Commissioner's Revenue	10,000.00	6,778.58	3,221.42
Civil Contingent Fund...$15,000.00			
Credited by Gov. Peirpont 2,630.43			
	17,630.43	17,052.57	577.86
Contingent expenses Auditor and Treasurer's Offices	2,500.00	1,469.94	1,030.96
Pay Auditor's Clerks	1,500.00	900.00	600.00
Pay of Adjutant General's Clerk	625.00	374.97	250.33
Janitor Executive Offices	400.00	225.00	175.00
Pay Treasurer's Clerk	200.00	100.00	100.00
Expenses of Elections	200.00	33.82	166.18
Coroner's Inquests	100.00	70.85	29.15
Pay of Adjutant General	1,200.00	862.27	337.73
Expenses taking care of arms	1,000.00	86.30	913.70
Contingent exp. Adjt. Gen. Office	500.00	430.67	69.53
To defray expenses of sick and wounded soldiers	2,000.00	.....	2,000.00
Vaccine Agent	500.00	.....	500.00

The amount received from the counties outside the State of West Virginia is as follows:

From Alexandria County	$16,920.91
From Accomac County	6,370.28
From Fairfax County	219.75
From Northampton County	1,063.65
	$24,574.59

Paid out in same counties:

Members General Assembly	$4,501.60	
Convention August, 1861	128.00	
Salary Judge Circuit Court	2,675.90	
Lunatics	4,420.69	
Commissioners Revenue	1,332.75	
Courts	98.00	
Criminal charges	1,479.79	
		$14,636.73
Receipts over expenditures		$ 9,937.86

It would require too much time to endeavor to ascertain the amount set aside by law for educational purposes, (which is the capitation tax,) as it would necessarily involve another examination of delinquent lists, and we doubt very much that it could be ascertained correctly. There has been no capitation tax account kept in the books. In conclusion we would say that if the Legislature of West Virginia would pass an Act by which you could get possession of them whenever you require it, we would deliver the books to the Executive of West Virginia, so that the accounts in them might be properly settled, for they can be of no manner of use to you unless they were demanded by the General Assembly of Virginia hereafter.

Very respectfully,

(Signed) S. P. HILDRETH.

Other Evidence and Proceedings Relating to the Several Paragraphs of the Decree and the Case Generally.

[*Vol. 1. Nov. 16, 1908. Plan for marking Exhibits.*]

The Special Master: I will mark the first paragraph of the decree A, the second B, and so on. So I will say the first exhibit offered will be "Plaintiff's Exhibit A 1", and the one that is now offered will be "Plaintiff's Exhibit B 1", B representing the second paragraph. 56

[*Vol. 1. Nov. 16, 1908. Procedure as to objections.*]

The Special Master: Let me see if I get this right. I understood Attorney General Anderson to state that they were willing to agree to adopt a suggestion made by Mr. Spooner with reference to the time when the objections should be finally settled and passed upon, but they would much prefer as we go along for you to 13 make such salient objections as occur to you, without stopping to discuss them, so that they might be in a way advised, but not foreclosing you from raising other objections, and leaving all the objections to be finally passed upon. Do I get your meaning correctly?

Mr. Anderson: That is satisfactory. That is a fair statement of our position.

Mr. Spooner: Then I did not understand the gentleman.

The Special Master: I suppose the idea of the Attorney General is that if there is something that it is quite obvious ought to be objected to, they ought to have your objection at the time, in order to save time and make progress, because they might pursue another course if they knew a certain thing might be objected to which was obviously inadmissible. Do I state it correctly? 14

Mr. Anderson: Yes; that is satisfactory.

The Special Master: Then we will have that understanding, that the case may go on and evidence may be introduced by either party to be subject to all objections, objections to made *de bene* so far as they may occur to counsel as they go along, but not to be argued or discussed, though perhaps the grounds should be set forth; that the making of an objection of that sort is not to foreclose either party making any objections they may have to make ultimately, the ques-

tion of objections to be passed upon later by the Master with the understanding that if testimony is excluded coming from either side, such side will be given fair opportunity to submit other evidence bearing upon that same point, as they may be advised is necessary in order to protect their rights. Either party or both parties will have full opportunity to bring into this case any evidence that has any legitimate connection with it or any legal bearing upon the issues, that is, within reasonable limits. Now, does that state the understanding satisfactorily?

[*Vol. 1. Nov. 16, 1908. Plaintiff's Exhibit H-1. Auditor's Report 1860-1861.*]

85

TESTIMONY ON BEHALF OF THE COMPLAINANT.

In reference to Exhibit H 1.

Mr. Conrad: We now offer in evidence, if your Honor please, the biennial report of the Auditor of Public Accounts for the years 1860 and 1861 of the Commonwealth of Virginia. It was transmitted by the Auditor of Public Accounts to the Governor in November 1861. It gives the statement by counties, each county in the state, and a summary at the close, showing the number of square miles, the personal and real property, the number of slaves taxed, and so on.

Mr. Mollohan: Whose Auditor was he?

Mr. Conrad: He was a native of West Virginia, and perfectly loyal to Virginia and to the Confederacy until that calamity occurred in 1865. Then he returned to the State of West Virginia which had become a state in the meantime and became just as loyal to West Virginia as he had been to Virginia; and he appeared on behalf of West Virginia and made another report of this very debt, some years later. That is as much of his biography as I think appropriate to the submission of this book and the suggestion of my brother.

Mr Mollohan: At the proper time, we expect to object to the book.

Mr. Conrad: Do you object to the book now? It is an official publication.

Mr. Mollohan: We object now, because he is nobody's Auditor.

The Special Master: The book is admitted, subject to objection, under the agreement we have already entered into; 86
and if the counsel for West Virginia see fit at this time to indicate in a general way the character of their objection, it is perfectly open to them to do so. That will give notice to the other side.

Mr. Mollohan. We rely on a number of documents which we will present at the proper time.

The Special Master. Very well; it is admitted *de bene*, according to the understanding.

Mr. Anderson. I do not suppose you object to this as being the Auditor's report, but you object to the Auditor's report being competent evidence.

Mr. Mollohan. No; he was no Auditor.

Mr. Anderson. He was the Auditor of the Richmond Government, which our friends claim was only a *de facto* government of Virginia at that time, but still it was a government. The Supreme Court of the United States has decided it was a government.

Mr. Mollohan. This was before the State of West Virginia was formed.

Mr. McClintic: Samuel Gray was the Auditor of Virginia at that time.

Mr. Anderson. A portion of this is the Auditor's report for 1860, when he was the Auditor of the undivided State of Virginia.

Mr. Mollohan. Not in 1861.

Mr. Anderson. Part of this is for 1860. These items here are for 1860, the ones we rely on chiefly, when he was undoubtedly the Auditor of the undivided State. 87

Mr. McClintic: He was only a private citizen, making a report.

Mr. Anderson: Not in 1860.

Mr. McClintic: He did not make the report until 1861.

The Special Master: I suppose the significance of the information depends upon whether or not you both agree upon the facts as stated. If you disagree, then the question comes as to what is the best evidence of the facts.

Mr. Mollohan: We disagree as to this statement. He has our counties all wrong. If you take the map to-day and measure it, you will see it is wrong. He evidently arrives in that book at his area by taking the acreage of land and supposing that every acre charged represented an acre of territory. Our land is charged sometimes three and four times over.

The Special Master: All those suggestions will be entitled to weight, so far as they have weight in impeaching the validity of any computations that may be made.

Mr. Spooner. I was not trying to impeach the witness.

The Special Master: I understand. I remember now the allegations of the bill, and of course the facts stated are quite diverse.

Mr. Anderson: I do not think there will be any controversy between us as to the area. It is a question that cannot be accurately determined from those records. It can only be approximated. The witness took it from the best sources of record he could find.

The Special Master: This will make a start on it, anyway.

Mr. Spooner: Here is a map of West Virginia, prepared by 89
the Auditor of Virginia before the State was divided. It gives the number of square miles of the old State of Virginia as 61,352 square miles.

Mr. Anderson. West Virginia is only 24,000 square miles instead of 45,000.

The Special Master: That book will be marked, "Plaintiff's Exhibit H-1".

(The book referred to, entitled, "Biennial Report of the Auditor of Public Accounts, 1860 and 1861," is filed herewith, marked "Plaintiff's Exhibit H-1.")

Mr. Robinson: That has evidence in it on all the paragraphs of the decree.

Mr. Anderson: If the Master please, we have no further evidence to offer at present on behalf of Virginia.

[*Vol. 6. May 7, 1909. Defendant's Balance Sheet of Receipts* 575
and Disbursements.]

Mr. McClintic: If your Honor please, I wish to make a short statement. We desire to file, as soon as we get the copies here—and we expect to have them ready by noon today—a statement of all the cash receipts and disbursements of the State of Virginia from March 19, 1823 to January 1st, 1861, beginning with the balances that stood in the various funds on the books of Virginia March 19, 1823; the total of which shows $85,002,130.72. Then we have the counter part of that. I spoke of receipts and disbursements; I should have said those figures represented the receipts. Then we want to show the disbursements from March 19, 1823 to January 1st, 1861, having of course the same balance, a general detail of all those things. This copy that I have here is a preliminary copy. As I have
said, we will have complete and correct copies here, probably 576
by 12 o'clock.

The Special Master: In what way will that affect the schedules already put in?

Mr. McClintic: We want to show by that the character of the examination made by Mr. Dixey and his assistants in this case, that he took up each item from books of original entry, beginning March 19, 1823 and running to January 1st, 1861, and this is the complete balanced account which shows, as they say in accountants' language, control of the figures during that time.

Mr. Anderson: I do not understand that this paper Mr. McClintic has referred to has been introduced in evidence.

Mr. McClintic: Not yet; but we will introduce it as soon as the copies of the same, to which I have referred, arrive. I have simply been making a statement from this copy that I have.

Mr. Anderson: We have not seen it and of course we reserve the right to object to it.

The Special Master: But there is no objection to his making the statement?

Mr. Anderson: Not at all. We simply reserve our rights.

By Mr. McClintic:

Q. Please look at this paper and state what it is (handing witness paper).

A. I am holding a carbon copy of the statement prepared by me and under my direction, showing balances of the various funds March 19, 1823; the total receipts of the Commonwealth of Virginia from that date to January 1st, 1861; the total disbursements from March 19, 1823, to January 1st, 1861; and the cash balances in the various funds at the end of that period; together with the supporting schedules showing the details of those receipts and disbursements. 577

Q. Does that account show an absolute balance between the receipts and disbursements?

A. Yes, sir.

Q. And you believe it to be absolutely correct?

A. I have verified it, yes.

Mr. McClintic: We will offer it, then, as soon as we get the copies.

[*Vol. 6. May 7, 1907. Nature and Effect of agreement between accountants.*] 726

Mr. Spooner: Your Honor has suggested that these accountants get together and reconcile differences. I suppose that means mathematical differences?

The Special Master: Certainly.

Mr. Spooner: That does not go to any principle?

The Special Master: Not at all.

Mr. Spooner: And if they cannot agree on mathematics, then it will be referred to you. 727

The Special Master: The suggestion is this. The way these accounts have been stated, there are a good many items, which, in the first place, do not appear to be quite identical. In the second place, there seems to be some controversy as to the amount. Now,

the great bulk of those things, I suppose, if the accountants get together, can be reconciled and agreed upon, so far as they are able to agree upon them. That will eliminate them as subjects of controversy in the various schedules. So far as they can not agree upon them, I will hear the controversy as to those particular items, and of course pass upon the question of amount myself.

Mr. Spooner: That is where the items are identical, while they differ in total?

The Special Master: Yes; but so far as the principle involved that underlies either schedule or anything the accountants submit is concerned, there is nothing the accountants will do between themselves that will bind the parties, so far as I am concerned.

Mr. Spooner: Before you decide at all any of those things, either party will be heard.

The Special Master: Absolutely; yes. I will hear you in regard to everything in controversy between the parties, involved in every schedule.

Mr. Spooner: That is what I assumed.

The Special Master: Certainly; the parties are to be heard. The only purpose of the accountants getting together is to eliminate elements of controversy in detail. Of course we could 728
sit here and try out each individual difference, but that would be interminable, and entirely unnecessary if the accountants between themselves can agree.

[*Vol. 7. July 2, 1909. Introduction of Official documents into evidence.*]

Mr. Moon: At that meeting in New York I understand we 1016
are to be allowed to introduce official documents that have a bearing—

The Special Master: Each party will be allowed to introduce anything that is not already in; but the auditor's books are in the case already, the acts of assembly are in, and all official records are in, as I understand it. All the acts of West Virginia and Virginia that have any relation whatever to any part of this controversy, are a part of this controversy and will be in. Does that cover your ground?

Mr. Moon: I am not sure that they are all in.

Mr. Harrison: I do not know that we have referred to all of the auditor's reports.

The Special Master: I will say this. Now, after looking the case over, after the case is printed, if either counsel discovers that

they have left out anything that is important, I will re-open the case and give them an opportunity to put it in. I appreciate, of course, that we have gone very rapidly here to-day, and it may possibly be that counsel have inadvertently overlooked something. I do not say that I will open the case for any thing trivial, and of course counsel would not ask that, but if there is something of importance that you find you ought to be heard on and ought to have evidence on, the case will be opened, and you will be given an opportunity to be heard. That may be a little unusual, but I think that is the proper thing to do in a controversy of this magnitude. So you need not eitner of you feel that you are by any inadvertence prejudicing either side. Is that agreeable to both of you?

Mr. Anderson: Yes, sir.

Mr. Conley: Yes, sir. 1017

Mr. McClintic: It applies to both sides?

The Special Master: Certainly; it applies to both sides.

[*Vol. 1. Nov. 16, 1908. Direct Examination of A. G. Potter. His qualifications.*]

TESTIMONY ON BEHALF OF THE COMPLAINANT.

Under Paragraph 1 of the decree.

26

ARTHUR G. POTTER,

was called as a witness for the complainant, and being duly sworn by the Special Master, testified as follows:

By Mr. Anderson:

Q. What is your professional occupation, Mr. Potter?

A. Public accountant.

Q. State how many years experience you have had as a public accountant.

A. Eight years.

Q. What has been the character of that experience and how extensive has it been?

A. It has extended over general mercantile accounting mat- 27
ter, manufacturing and financial.

Q. Have you done work of that kind in connection with litigated cases?

A. I never did.

Q. Have you any diploma or certificate or license of an official character from any government?

A. I have a certificate of the Regents of the State of New York, making me a certified public accountant.

Q. What are the requisites for granting that certificate? Is there any examination made of the party?

A. There is an examination in the theory of accounts, practical accounting, commercial law, and auditing—four subjects.

Q. Have you had experience, and if so what, in auditing accounts of corporations, firms or individuals?

A. I was an auditor for five years prior to entering the duties of a public accountant. Since that time my work has been of a general public accounting nature, which includes auditing as well as other lines of accounting work.

Q. Please state to the Master whether you have made any investigation—

The Special Master: Just one moment, Mr. Anderson. I do not know whether the counsel for West Virginia raise any question as to the qualifications of the witness. If they do, it will be open to them now, I suppose, to cross examine Mr. Potter upon that point. I do not know that they will raise any question.

Mr. Spooner: No.

The Special Master: You may proceed, then. 28

By Mr. Anderson:

Q. Have you made up any statements or accounts relative to the matters in controversy between the Commonwealth of Virginia and the State of West Virginia in this cause?

A. I have.

Q. How long a time have you devoted to those investigations, and to that work?

A. Approximately seven months and a half.

Q. Did you have assistants in the conduct of those duties?

A. I did.

Q. Were they trained accountants?

A. Yes, sir.

[*Vol. 4. May 5, 1909. Cross Examination of A. G. Potter. Methods and Sources.*]

ARTHUR G. POTTER, 213
resumed the stand for
Cross Examination.

By Mr. Carlisle:

Q. Mr. Potter, you are the accountant who made the accounts for the State of Virginia in this matter?

A. I am.

Q. Will you state about how long you were engaged in that work; —actively engaged?

A. About seven months and a half. I have not the exact length of time, but about seven months and a half. 214

Q. Do you mean you were actually engaged in the work about seven months and a half, or that it was seven months and a half from the time you began until the time you quit?

A. No, sir; seven months and a half actual work.

Q. Not continuously, as I understand, but counting the time that you were actually engaged it makes seven months and a half?

A. Yes, sir; we started on the 1st of February and completed our work at the time of the first hearing, with one or two months intervening that we did not work.

Q. From what sources did you procure the information which you embodied in your report?

A. As to the board of public works, from the board of public works' published reports, and later checked those with the internal improvement books, the original manuscript books.

Q. All of them?

A. All of them.

Q. All of those accounts?

A. Yes, sir.

Q. From what sources did you get the other accounts, excluding now the accounts of the board of public works?

A. The Commonwealth accounts we took from the published reports of the treasurer, and the auditor of public accounts, and verified some of them from the original records.

Q. About what proportion did you verify from the original records?

A. Well, if we had occasion to get further description as to roads, internal improvements companies, &c, we referred to 215 the original books. Otherwise we took the accounts of the treasurer and auditor of public accounts.

Q. What proportion of those accounts, as nearly as you can state, did you ascertain by an examination of the original books?

A. We ascertained the amounts paid in by the counties of West Virginia entirely from the original manuscript books. The items of ordinary expenses of government, we took from the published reports?

Q. Did you go to the books of original entry for all the items which are included in the debits and credits to West Virginia?

A. Yes, sir.

Q. What books do you mean?

A. The ledgers and day books of the auditor of public accounts, in which there were accounts with sheriffs, coroners, clerks and so forth.

Q. From what source of information did you get the data which you put in the ordinary expenses of State government?

A. The published reports of the auditor of public accounts.

Q. From what source did you procure the information embodied in your report concerning the amounts expended in West Virginia?

A. The reports of the board of public works and the original manuscript books, as I have explained before.

Q. What proportion did you procure from the published re- 216
ports, and what proportion, as nearly as you can state, from the original books?

A. I believe I have testified that we verified all the figures we took from the published reports by the manuscript books.

Q. What do you mean by manuscript books?

A. The books of original entry.

By the Special Master:

Q. The books on file in the State Department?

A. Yes, sir; as to the auditor's office.

Q. Of the Commonwealth of Virginia?

A. Yes, sir; as to the auditor's office.

By Mr. Carlisle:

Q. Did you examine the ledgers and journals, or only one?

A. The ledgers and the journals.

Q. You examined the journals?

A. Yes.

The Special Master: Let him state, Mr. Carlisle, what books were kept at that time.

Mr. Carlisle: Yes; I was going to come to that.

By Mr. Carlisle:

Q. Will you state now what books were kept and what books you found among the public archives of the state?

A. There was ledger A and ledger B of the board of public works, and the journals that went with them. I think there were three journals for those two ledgers. There were two or three ledgers of the literary fund, I don't recall which. I think there were three, and the journals that went with those. There 217
were the books of the James River Company, ledger and journal, the books of the Northwestern Turnpike Company, ledger, journal and minute books, the books of the James River Company, ledger, journal, minute book and an old minute book which was not filed in the library, but which I found in the top of the Capitol building here, and the ledger, journal and minute book of the Covington & Ohio Railroad. I believe those are all the books.

Q. What other books of original entry, if there are any, did you examine?

A. Ledgers and day books, I believe, and journals in the office of the auditor of public accounts.

Q. Did you examine all of them?

A. I think we examined all of them; yes, sir.

Q. Did you examine all you could find? What do you mean when you say you think you examined all of them?

A. We examined all the books that were necessary to find the receipts from the various counties during the period under review. I think they embraced all of the books in the office of the auditor of public accounts.

Q. There were no original books there except those which showed the receipts from the original counties. Is that what you mean to say?

A. I don't understand your question.

Q. Do you mean to say you found no books there of original entry, or examined no books of original entry, except those books which showed receipts from various counties?

A. These same books showed disbursements, many of them, 218
but as I testified before, we examined the books of the auditor of public accounts for the purpose of ascertaining the amounts paid by the counties into the public treasury.

Q. What counties?

A. The counties of Virginia and West Virginia.

Q. You see, Mr. Potter, I think you misunderstand the scope of my question. I am asking you not what books you examined with respect to any particular matter, or any particular account. I want to ascertain from you, if I can, all the books of original entry which you examined—about what proportion of them, putting them all together.

A. I believe we examined them all in both the office of the auditor of public accounts and the second auditor's office. In other words, we covered the entire bookkeeping system for the period.

Q. Did you afterwards balance your accounts, balance everything, to see whether you had examined all the entries as to receipts by the state during that time, and all the disbursements of the State during that time, and whether they balanced or not?

A. We did make such a balance.

Q. Have you that balance?

A. I haven't it with me; no, sir.

Q. Did you submit it with your report?

A. No, sir.

By the Special Master:

Q. You have it in your notes?

A. Yes, sir.

Q. Are the notes here in Richmond? 219
A. Yes, sir.
Q. But not present here in court?
A. No, sir; I haven't them with me. They are in the library.

The Special Master: Do you wish those produced?
Mr. Carlisle: Yes.

By the Special Master:
Q. Will you produce them after the intermission today?
A. I would like to have a copy made of them. I have only one copy of the balance.

By Mr. Carlisle:
Q. Have you any memorandum showing the books of original entry you examined?
A. No, sir.
Q. You did not make any memorandum?
A. No, sir.
Q. Have you any memorandum showing the printed official reports which you examined?
A. Showing the what?
Q. The printed official reports you examined?
A. We examined all of the printed official reports of the board of public works, of the Commonwealth and of the literary fund.
Q. Will you tell us how you know you examined them all?
A. By starting in with the figures with which, for instance, the board of public works started, adding the total receipts for that year, deducting the disbursements, and arriving at a new balance at the end of the first year. Taking that balance, we added the receipts for the second year, deducted the disbursements, and ar- 220
rived at a new balance for the second year. Taking that balance, we went to the third year, and so on during the forty years.
Q. That is not shown in your report?
A. No, sir; that is the balance statement I have referred to.

By the Special Master:
Q. You have that on your notes?
A. Yes, sir.
Q. You had better have your notes here in the afternoon, so that if they have occasion to inquire about them, you can produce them without delay.
A. Yes, sir.
Q. Could you send for them now, Mr. Potter, without any trouble?
A. No, sir; my assistant does not know where they are.
Mr. Carlisle: We would like to have them.
The Special Master: Get them during the intermission.

Mr. Conrad: He can get them in twenty minutes.

The Special Master: Do not suspend for that purpose now. He can get them during the intermission and have his notes here with him. Counsel on both sides had better keep that in mind, and have their original notes here, so that if any question arises about the notes, that can be produced without any delay.

By Mr. Carlisle:

Q. When you examined the published official reports, did you find a detailed itemized statement of receipts and expenditures in those books? 221

A. It was somewhat summarized. It was not a detail statement.

Q. Somewhat summarized? What do you mean by that?

A. Well, the criminal charges for one year were given in one item for the whole year.

By the Special Master:

Q. Do you mean for the whole State?

A. Yes; for the whole State?

By Mr. Carlisle:

Q. Now, take that item, for illustration. Did you itemize that item by reference to the books of original entry, to see whether it was correct or incorrect?

A. We did not.

Q. Was that the only item you found on the official reports summarized in that way?

A. There were other items of general expense, such as court charges, the penitentiary charges, and such things as that.

By the Special Master:

Q. They were lumped instead of being summarized, as I understand?

A. There was one total for each year in the published reports.

Q. They aggregated the year instead of giving the details?

A. Yes, sir.

By Mr. Carlisle:

Q. When you found that to be the case in regard to any other official report, did you simply take that total as stated there and include it in your account, or did you analyze that item to see that it did cover? 222

The Special Master: To get at the details from which it was made?

By Mr. Carlisle:

Q. Yes; to get back to the original source?

A. No, sir; we did not.

Q. Did you do that in any case?

A. We did that with respect to the board of public works expenses. We analyzed all the board of public works expenses.

Q. How about the literary fund?

A. Not the literary fund.

Q. How about the Commonwealth fund, as it was called?

A. No; we did not analyze the details of those general headings.

Q. There were very large expenditures which you have included in your account under those?

A. There were.

Q. And very large as to all these others you speak of?

A. Yes; they were very large.

[*Vol. 5. May 6, 1909. Direct Examination T. B. Dixcy. His Qualifications and Methods.*]

THOMAS B. DIXCY,

produced as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

466

By Mr. Carlisle:

Q. What is your occupation or profession?

A. I am a professional accountant, a certified public accountant, under the laws of the State of New York.

Q. How long have you been engaged in that business?

A. I have been actively engaged in professional accounting since 1900, as an active professional accountant.

Q. What were you doing before that time; were you an accountant?

A. Not a professional accountant. I have been an accountant all my life; yes; but not a professional accountant; not practicing personally.

Q. State, in a general way, what your experience as an accountant has been?

A. I have been manager for Haskins and Sells, an accounting firm of New York. I left them in order to go in a special capacity with the Delaware & Hudson Company of Albany, to take charge of their accounting department and do special work. I returned to professional accounting after leaving the Delaware & Hudson Company and have practiced it since. I was in a professional capacity with the Delaware & Hudson Company, but not generally. 467

Q. State whether or not you have made any examination of

the accounts in the States of West Virginia and Virginia under the decree of the Court.

A. I have, sir, made such an examination.

Q. How long a time were you engaged in that?

A. We have been engaged in it for approximately 15 months. It will be 15 months the middle of May.

Q. In what way did you ascertain the items in the charges and credits?

A. We took the books of original entry in the Commonwealth of Virginia in all cases where such books of original entry were in existence. They were in existence without any commission so far as this account was concerned, but we had reference to other books in reference to the examination and the accounting.

Q. Did you examine any public papers and documents in connection with the accounts?

A. All such papers and documents as had reference to the information that was required under the decree.

Q. State to the Court whether you and your assistants personally examined the items upon the books of original entry which entered into your accounts?

A. Yes; we went directly to the books of original entry.

Q. About how many items do you think you examined?

A. I estimated in round numbers;—and carefully estimated. 468
it was not a guess—about 750,000.

Q. And you took them off the books, did you?

A. Yes; we took them off our books. They are tabulated in what we call our working papers.

Q. And you have what you call your working papers?

A. Yes, sir.

Q. How many men did you have with you?

A. I had from five to nine.

Q. That many all the time?

A. All the time; varying between those numbers.

[*Vol. 6. May 7, 1909. Cross Examination of T. B. Dixey. Methods and Sources.*]

Cross Examination.

By Mr. Harrison:

Q. I understood you to say that you were the professional 579
accountant, who had charge of the investigation of records here for the State of West Virginia?

A. They were made under my supervision and direction, yes, sir.

Q. And you say you occupied in the performance of that work approximately sixteen months?

A. Fifteen months, I think I said. It will be fifteen months the middle of this May.

Q. You began when?

A. We began the 14th of February. 580

Q. And concluded when?

A. The men are still here. They are working on some of the details now; but we turned in our last schedule completed, I think, on May 3rd.

Q. May 3rd of this year?

A. Of this month, yes, sir.

Q. And you began in February, 1908?

A. A year ago this last February, yes.

Q. How much of that time did you spend here in connection with the work ?

A. You mean personally?

Q. Yes, personally.

A. I cannot answer that with definiteness. I was here during some months a longer period than during other months. I have no idea without referring to my diary, so as to state it in specific terms.

The Special Master: State it approximately.

The Witness: I have always said that I have spent about half of my time here. I think that would be approximate. Latterly I have spent more of my time here. I have been here continuously for the last six weeks or so.

By Mr. Harrison:

Q. Did not Mr. Potter, who was in charge of the work for Virginia, propose to you that you unite and collaborate together?

A. I don't recall that. My recollection of that incident is that Mr. Potter suggested that we accept a certain amount as shown in one of the Acts. I think the Sinking Fund Act of 1853, as establishing the debt September 30, 1852, and as I knew 581 the books themselves did not substantiate the amount shown in the Act I refused to accept that. I also said to Mr. Potter that our method of examinations, that is the principle on which ours was conducted was so different from his that it would be impossible to collaborate on the other features.

Q. How did you know that; how did you know on what principle he was conducting his examination?

A. I had a very fair idea of the principle on which he was conducting it. I knew what books he was examining.

Q. He was examining the same books you were, I presume?

A. No; he did not examine all the books that we did.

Q. He must have examined some of them.

A. He did examine some of them.

Q. You were at work in the same capitol?

A. No, sir; he was working here and we were in the State Library Building.

Q. You were examining together the public records of Virginia, were you not?

A. We were examining them at the same time.

Q. And had a common object in view, did you not?

A. I don't know that the object was a common one.

Q. You do not? You say you had a general idea of the principle upon which he was working, and am I to understand that you derived that idea solely from the fact that you knew some of the books he was examining? 582

A. Not at all. Mr. Potter and I saw more or less of each other when we were down here, and in a general way there was no secret about what we were attempting to do; but the differences were such that it was impossible to collaborate and get along together—differences of principle.

Q. Did not Mr. Potter suggest as the reason for his proposal to you that it would insure a uniformity of plan in the statement of the accounts that you both were engaged in examining?

A. I do not recollect any such suggestion. Certainly I could not have acceded to it in any event.

Q. You could not have acceded to it?

A. No, sir.

Q. Then, if he had made a proposal, you must have declined it?

A. If the proposal was made I certainly should have declined it.

Q. Why would you have declined it?

A. Mr. Potter was acting under instruction of counsel for Virginia and I was acting under instruction of counsel for West Virginia.

The Special Master: In what respects did your methods differ?

The Witness: Our methods differed as to the detail in which we went into the accounts and the classification of the items.

By the Special Master:

Q. You say you differed in the details. That does not illuminate me very much. In what particular did you differ as to how you went into the details? 583

A. Am I qualified to testify as to what Mr. Potter did? I can tell you what I did.

Q. If you do not know I will not bother you.

A. I was not familiar, of course, with all the details of Mr. Potter's work. I know we examined books that Mr. Potter did not examine, books of original entry, ledgers and journals.

Mr. Anderson: Can you specify what books?

Mr. Conrad: This is important.

The Witness: I can specify, but I will have to look it up.

The Special Master: Was the principal respect in which your methods differed the fact that Mr. Potter took the aggregates in many instances, and that you examined the details.

The Witness: Very largely that was the difference.

The Special Master: I rather inferred that. So that, in substance, was the difference in method between the two. Excuse me for interrupting.

Mr. Harrison: We are very much obliged to you for bringing that out.

The Witness: I should fancy—well, I don't want to guess.

By Mr. Harrison:

Q. You don't want to guess?

A. No.

Q. You did no guessing in your examination? 584

A. I tried not to.

Q. For the purpose of considering for a moment the degree of work expended by yourself in this compilation, I will refer you to page 4 of the defendant's exhibit D-1, 4, 5, and 6, which relates to the expenses of the Government of Virginia, classified there as Ordinary Expenses. You stated in your examination in chief that you did not make the examination which is the foundation of that summary?

A. That is true, sir.

Q. But that you did compare the totals and verify them.

A. Yes, sir.

Q. With what did you compare the totals?

A. I said I verified—I don't think I said I compared the totals. If I did say that it was an inadvertence. I verified them, and my verification is right there.

Q. What do you mean by verifying them?

A. I mean, to put it specifically, as to the amounts charged to the various accounts.

Q. Verified them as to the amounts charged to the various accounts?

A. Yes.

Q. Well, did you examine every item?

A. I certainly did not; I made no attempt to.

Q. You did not compare the totals, then, with the books from which the items were taken?

A. Certainly, absolutely. We used every method of verification—

Q. I ask you if you did it?

A. I personally? 585

Q. Yes.

A. I did not in all cases.

Q. We are talking about the case that I have called to your attention.

A. I did not so far as all the items are concerned. I have already testified, I think, that in regard to details my personal examination was confined to an examination about some questions which arose in the course of examination.

Q. Then you have no personal knowledge of the details that enter into and make up the summary of this statement, Exhibit D-1?

A. I should say that was rather a broad statement.

Q. You can answer it in as broad a way as you choose.

A. I think that I have a rather intimate knowledge of the details that enter into the account; but as to specifying the exact amount of each one of the items that went into the account, or to say that I extracted that myself from the books of original entry or that I examined it after it had been extracted from the books of original entry would be very wide of the mark, because in the tremendous volume of items examined that would be impossible for one man to accomplish.

Q. My whole object is simply to ascertain how much you know about foundation of these summaries.

A. I understand that. 586

Q. I am not questioning the fact that they have been correctly taken off.

A. I understand that. I am trying to give you fully my personal relation to the matter.

Q. If I understand correctly, you did not compare the totals that you speak of having verified with the books yourself?

A. Not in all cases, no, sir.

Q. The books of original entry I am referring to now.

A. Yes, sir.

Q. And you did not have any part personally in the investigation of the books of original entry that resulted in the summary shown in Exhibit D-1?

A. I would like to add something there, if I may. You speak of comparing totals with the books of original entry .

Q. Yes.

A. I hardly know what you mean by that, because the books of original entry do not contain totals. They contain items. The

books of original entry do not contain totals, but are made up of individual items.

Q. That is what I presumed.

A. And it would be impossible for me to compare totals with the books of original entry.

The Special Master: What he wants is just exactly what you mean when you say you verified these items. Now, he wants to know, first exactly what you did in the verification. That is what Mr. Harrison wants to get at, just exactly what processes you went through when you did what you say you did and verified these items. Now, what did you do with reference to that which resulted in verification? 587

The Witness: May I explain how the work was done?

The Special Master: Of course that is exactly what he wants, as I understand it.

Mr. Harrison: That is exactly what I want.

The Special Master: Explain exactly what you did when you say you verified these items. What did you do personally. That is what he wants to get.

The Witness: First, the total amounts were drawn off very similarly to the manner in which the Virginia totals were drawn off, I imagine, from the public records. Then we took the books of original entry, and an accountant and an assistant were assigned to abstract from the books of original entry all the items entered therein under a certain heading. For instance, Court charges, criminal charges, civil prosecutions, and various items of that kind. Each account was assigned to a team of accountants, or to an accountant and an assistant, and they went through the books of original entry and abstracted all the items in the period under examination from that account. Another set of accountants, another team, took some other accounts; and in that way all the items of receipts and disbursements were abstracted from the books of original entry and segregated. Then the total of those items, the individual items of each account, made the total account as appears on these schedules.

By the Special Master:

Q. Where did you come in; what did you do in the verification? 588

A. My work was supervisory, and in case any question arose or any question came up I examined that particular account personally, as I did in a number of cases, and passed on the matter where I could pass on it. When I could not pass on it it was submitted to counsel.

Q. Is that what you mean by verification?

A. No, sir; that is not what I mean by verification. Then the accounts were brought together in this final schedule, which we ex-

pect to introduce, showing the total of all these accounts, and the balances at the beginning and at the end of the period, and that account being in balance is an absolute verification of all the work that was done, and that I verified.

Q. Then I understand that you verified these various aggregates in connection with this general statement?

A. As a whole.

Q. For the purpose of ascertaining whether the thing balanced in the end?

A. Yes, sir.

By Mr. Harrison:

Q. The classification of the work and the detail work was done by the gentlemen who were employed under you?

A. Under the constant direction of Mr. Scoville, who was my chief of staff, and who was here all the time.

[*Vol. 6. May 7, 1909. Direct Examination of C. E. Scoville. His qualifications and methods.*]

CLIFFORD E. SCOVILLE,

was produced as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

696

By Mr. McClintic:

Q. State your occupation?

A. I am a public accountant.

Q. State how long you have been engaged in the business of public accounting?

A. I have been engaged as a public accountant continuously for the last nine years.

Q. State where you are registered, if you are registered, if that is the proper term?

A. I have not taken the State examination in any State.

Q. State when you came to Virginia to engage in this 697 present work?

A. On the 14th of February of last year.

Q. How much time have you given it since the 14th of February, 1908.

A. Continuously.

Q. You have been here continuously from that time to this time?

A. Yes, sir.

Q. Giving your full time and attention to this particular work?

A. Entirely ,sir.

Q. What position did you occupy in relation to the work?

A. Chief of Mr. Dixcy's Staff of accountants, engaged on this examination.

Q. There has been filed here a number of accounts as exhibits. Please state generally what you had to do with all those exhibits and the making thereof, if anything?

A. A considerable portion of the work I did personally, and all of the work in preparing the details, working up to the schedules, was prepared under my direct supervision. I was present while all the work was done, and closely in touch with it all the time.

[RECORD OF THE OPENING AND ADJOURNMENT OF THE SESSIONS BEFORE THE SPECIAL MASTER.]

[*Vol. 1. Nov. 16, 1908.*]

In the Supreme Court of the United States

No. 4 Original. October Term, 1907.

Commonwealth of Virginia, Complainant,

vs.

State of West Virginia, Defendant.

PROCEEDINGS BEFORE THE SPECIAL MASTER.

Richmond, Virginia,
November 16, 1908.

Counsel for the respective parties appeared before the Special Master, Charles E. Littlefield, Esq., at the rooms of the Corporation Commission of the State of Virginia, Richmond, Va., at 10 o'clock A. M.

Appearances:

W. A. Anderson, Esq., Attorney General of the Commonwealth of Virginia, Holmes Conrad, Esq., Randolph Harrison, Esq., John B. Moon, Esq., and Sanford Robinson, Esq., for the Commonwealth of Virginia. 106

William G. Conley, Esq., Attorney General for the State of West Virginia, John C. Spooner, Esq., William Mollohan, Esq., George W. McClintic, Esq., and Mr. Hogg, for the State of West Virginia.

1.

[*Vol. 1. Nov. 16, 1908.*]

The hearing was thereupon, at 4 o'clock P. M., adjourned until February 15, 1909, at 10 o'clock A. M.

[*Vol. 2. February 15, 1909. Second Session.*]

Richmond, Va.,
February 15, 1909,
10 o'clock, A. M.

The hearing was resumed, pursuant to adjournment, at the rooms of the Corporation Commission of the State of Virginia. 107

Present: Hon. Charles E. Littlefield, Special Master.

Hon. William A. Anderson, Hon. Holmes Conrad, Mr. Randolph Harrison, and Mr. John B. Moon, on behalf of the Commonwealth of Virginia.

Hon. William G. Conley, Hon. John G. Carlisle, Hon. John C. Spooner, Mr. Wesley Mollohan, and Mr. George W. McClintic, on behalf of the State of West Virginia.

[*Vol. 2. February 15, 1909.*]

(The hearing, at two o'clock P. M., was adjourned until May 4, 1909, at ten o'clock A. M.)

206

[*Vol. 3. May 4, 1909. Third Session.*]

Richmond, Va.,
May 4, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 207

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic and William M. O. Dawson, for the State of West Virginia.

[*Vol. 3. May 4, 1909.*]

(The hearing, at 10:30 o'clock A. M., was adjourned until Wednesday, May 5, 1909, at 10 o'clock, A. M.)

212

[*Vol. 4. May 5, 1909. Third Session Continued.*]

Richmond, Va.,
May 5, 1909,
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 213

Present: Hon. Charles E. Littlefield, Special Master.

Appearances: Hon. William A. Anderson, Attorney General, and Messrs. Holmes Conrad, Randolph Harrison, and John B. Moon, for the Commonwealth of Virginia.

Hon. William G. Conley, Attorney General, Hon. John G. Carlisle, Hon. John C. Spooner, and Messrs. Wesley Mollohan, George W. McClintic, William M. O. Dawson, and Charles E. Hogg, for the State of West Virginia.

[*Vol. 4. May 5, 1909.*] 381

The hearing, at 4:55 o'clock P. M., was adjourned until Thursday May 6, 1909, at 10 o'clock A. M.

[*Vol. 5. May 6, 1909. Third Session Continued.*]

Richmond, Va.,
May 6, 1909,
10 o'clock A. M.

The hearing was resumed pursuant to adjournment of yesterday.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. William A. Anderson, Holmes Conrad, Randolph 382
Harrison and John B. Moon for the Commonwealth of Virginia.
Messrs. William G. Conley, John G. Carlisle, John C. Spooner, Wesley Mollohan, George W. McClintic, William M. O. Dawson and Charles E. Hogg, for the State of West Virginia.

[*Vol. 5. May 6, 1909.*]

The hearing, at 5 o'clock P. M., was adjourned until Friday, May 7, 1909, at 10 o'clock A. M.

536

[*Vol. 6. May 7, 1909. Third Session Continued.*]

Richmond, Va., May 7, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to adjournment. 537

Present: Hon. Charles F. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon for the Commonwealth of Virginia.
Messrs. Conley, Spooner, McClintic, Mollohan and Hogg, for the State of West Virginia.

[*Vol. 6. May 7, 1909.*]

Thereupon, at 11:30 P. M., the further hearing of this cause was adjourned until June 22nd, at 10 o'clock A. M., at the same place.

[*Vol. 7. June 22, 1909. Fourth Session Adjourned. Fifth Session.*]

Richmond, Va., June 22, 1909.
10 o'clock A. M.

Owing to engagements of the Special Master and counsel, the meeting set for this time and place was adjourned until Thursday, July 1, 1909, at ten o'clock A. M., at the same place. 819

Richmond, Va., July 1, 1909.
10 o'clock A. M.

The hearing was resumed, pursuant to agreement.

Present: Hon. Charles E. Littlefield, Special Master.
Appearances:
Messrs. Anderson, Conrad, Harrison and Moon, for the Commonwealth of Virginia.
Messrs. Conley, McClintic, Carlisle, and Dawson, for the State of West Virginia.
Mr. Potter and Mr. Dixey, the accountants, and other former witnesses were also present.

[*Vol. 7. July 1, 1909.*] 942

(Thereupon, at 2:10 P. M., a recess was taken until to-morrow. Friday, July 2nd, 1909, at 9 o'clock A. M.)

[*Vol. 7. July 1, 1909.*] 1022

Richmond, Virginia, Friday, July 2, 1909.
9 o'clock A. M.

Met, pursuant to the taking of recess, at 9 o'clock A. M.

Present, the Special Master, and counsel for the respective parties.

[*Vol. 7. July 2, 1909.*]

We will now adjourn to meet in my office, 11 Pine Street, New York, on the 21st of September, for the argument of this case, at 10 o'clock in the forenoon.

Mr. Anderson: In the meantime we shall proceed with the printing?

The Special Master: Yes.

Thereupon, at 11:50 A. M., the adjournment was taken as above noted.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$ 180,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$ 295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1....		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
Shares		
Held by the Board of Public Works....284		
Held by the Literary Fund.....138		
Total 422		
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.93	
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56	
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2.....	38,482,170.14	
Obligations of the Commonwealth of Virginia, other than the debt for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3.....	2,204,898.19	
Other receipts, per Schedule No. 4.....	3,702,135.98	
Total receipts		84,360,283.80
Total		$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"	$ 1,251,288.92	
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"	18,207,684.29	
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"	11,083,051.04	
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5	27,586,527.60	
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6	24,356,330.05	
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7	306,375.64	
Total disbursements		$82,790,257.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,062,502.97
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	819,250.03	1,104,374.48
Total		$84,957,134.99

Net Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund		$ 1,110.00
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835		872.39
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books		12,091.04
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books		65,905.42
On State bonds purchased by the Literary Fund, and held uncanceled		13,422.00
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.23
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia; Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds and expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc.		307,004.68
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.68
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,362.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		362,659.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States; amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823..		37,500.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company.....		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc.....	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds.....	2,713.83	
On United States five per cent. stock of 1821....	388.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,123.51
James River Company (on State account):		
Tolls and other income, net	$557,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed....	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.03

Northwestern Turnpike Road:		
Profit on Investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions.....	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00	
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22	
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16	
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17	
On account of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55	
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04	
On account of the construction of the Blue Ridge		

railroad		1,604,824.79
On account of appropriation for bridge at Covington		6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis		247,289.33
Alexandria Canal Company stock subscription		272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861		2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel		2,787,128.32
Winchester and Potomac Railroad Company:		
Subscription to capital stock	$120,000.00	
Money loaned by the State	150,000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83.333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expenditure amounting to $270,000.00 is charged to West Virginia.		
Total		$27,586,527.60

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1"		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.03
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.33
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co.		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.38
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.13
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton):		
Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, land, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:			
Bonds of the James River Company, issued under act passed February 17, 1820			$31,300.00
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00		
under act of March 16, 1847	25,300.00	65,300.00	
			$ 96,600.00
Through the Literary Fund:			
Virginia Revolutionary 6% bonds		$ 3,074.77	
Bank of Virginia, stock		18,449.12	
University of Virginia, loan No. 5		40,000.00	
University of Virginia, loans No. 6 and No. 7		20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Souther:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

SCHEDULE NO. 8.

INDEX

A.

Acts, abstract of (Plaintiff's General Exhibit 1) 890
Agreement between counsel as to Defendant's Depositions 862
Answer of West Virginia to Bill of Complaint 141
Answer of West Virginia, Exhibits with:
Exhibit No. 1, Act May 13th, 1862, giving consent of Legislature of Virginia to formation and erection of a new State within the jurisdiction of this State 165
Exhibit No. 2, letter of Asa Rogers, Nov. 16, 1871 166
Exhibit No. 3, report of Senate finance committee of 1873 166
Area, agreement as to 349
Atkinson, Geo. W., deposition of 786

B.

Bath, loan to Trustees of town of 412, 491, 838
Baumgardner, Frederick Lee, deposition of 869
Berryville & Charlestown Turnpike Company 386, 389, 416, 454
Bill of Complaint of Virginia 1
Bill of Complaint of Virginia, exhibits with:
Exhibit No. 1, Act March 30, 1871, for funding public debt 17
Exhibit No. 2, Act March 28, 1879, plan for settlement of public debt 21
Exhibit No. 3, Act February 14, 1882, to ascertain Virginia's share of debt existing at time of partition and to provide for issuance of bonds, etc. 26
Exhibit No. 4, Act February 20, 1892, to provide for settlement of debt not funded under Act of February 14th, 1882 38
Exhibit No. 5, Resolution March 6, 1894, providing for adjustment with West Virginia of common debt 47
Exhibit No. 6, Act March 6, 1900, providing for settlement with West Virginia of her proportion of common debt 49
Exhibit No. 7, statements of amounts paid off since January 1, 1861, or assumed and carried by Virginia on account of the old debt of the undivided State 51
Exhibit No. 8, report of Commission appointed under resolution of March 6, 1894, dated January 9, 1906, and including address of Randolph Harrison to committees of Legislature of West Virginia 52
Bonds: Form of (Plaintiff's Exhibit A-2) 219
Boreman, Gov. A. I., letter of 831, 1074
Branch, John P., deposition of 753
Brandonville, Kingwood and Evansville Road 408, 451, 480

BLEED THRU

C.

Page.

Capitations: statement of returns..... 725
Covington & Ohio Railroad, testimony concerning
386, 421, 433, 438, 441, 445, 465, 476, 485
Clarksburg & Buchanan Road.....408, 451, 481

D.

Darst, J. S., Auditor, affidavit of..... 850
Debt, agreement as to..... 335
Decree referring the cause to a Special Master..... 173
Defendant's motion to modify..... 179
Order amending 207
Demurrer of West Virginia..... 109
Petition for leave to file..... 107
Amended 114
Amended, notice of..... 112
Amended, petition for leave to file..... 113
Opinion of Court overruling..... 119
Order overruling 138

Depositions, Defendant's:

Agreement as to..... 862
Geo. W. Atkinson, July 14, 1909..... 786
Peter E. Love..... 868
Frederick Lee Baumgardner..... 869
B. F. Swann..... 871
Wm. A. Griffith..... 873
Henry V. Sattes..... 877
W. F. Gregory..... 879
James H. Wright..... 880
James M. Payne..... 882
Dr. C. I. Lewis..... 883
John Slack 884
Wm. H. Tompkins..... 887
Chas. W. Dering..... 892
J. K. Thomoson..... 894
Thos. Swinburn..... 897

Depositions, Plaintiff's:

Robt. W. Hunter, etc., filed July 2, 1909..... 726
Ro. W. Hunter..... 739
W. W. Scott..... 747
John P. Branch..... 753
Philip A. Wellford..... 759
Wm. G. Taylor..... 767
S. H. Hawes..... 771
Chas. U. Williams..... 777
Capt. W. Gordon McCabe..... 782
Dering, Chas. W., deposition of, for Defendant..... 892
Differences in Schedules..... 602
(Effect of agreement of Accountants).....1027
Dividends, statement to be made of roads paying..... 862
(See Defendant's Exhibit G-1)

Dixcy, Thomas Bird: Page.
Par. I. May 6, 1909, direct examination 305
Par. I. May 7, 1909, cross examination 312
Par. I. May 7, 1909, re-direct examination 330
Par. I. July 1, 1909, re-direct examination 333
Par. II. May 6, 1909, direct examination 359
Par. III. May 6, 1909, direct examination 451
Par. III. May 7, 1909, cross examination 466
Par. IV. May 7, 1909, direct examination 569
Par. IV. May 7, 1909, cross examination 575
Par. V. May 7, 1909, direct examination 682
Par. V. May 7, 1909, cross examination 694
Par. VI. May 7, 1909, direct examination 809
Par. VI. May 7, 1909, cross examination 810
Par. VI. May 7, 1909, re-direct examination 813
Par. VII. May 7, 1909, direct examination 835
Par. VII. May 7, 1909, cross examination 840
Qualifications and methods used.....1036
Documents, introduction of official.....1028

E.

Exhibits, Defendant's:
D-2 (Literary Fund) 538, 866
E-1 (testimony concerning) 682
E-2 (computation of slave values for 1860 and 1861).....672 A
G-1 .....820 A
G-1 (amendment of heading) 855, 857, 866
General Exhibit 2, In re Coal River Navig. Co..... 990
General Exhibit 3, In re Coal River Navig. Co..... 997
General Exhibit 4, In re Coal River Navig. Co.....1001
General Exhibit 5, Auditor Samuel Crane's report Nov. 25, 1862..1004
General Exhibit 6:
"A", Gov. A. I. Boreman's message July 28, 1863.....1014
"B", Letter of Gov. F. H. Pierpont July 22, 1863.....1016
"C", Report S. P. Hildreth July 14, 1863.....1018
"West Virginia 1", Comparison of assessments of real and personal property with census of 1860..... 821
"West Virginia 2", Slave population Virginia 1860..... 823
"West Virginia 3", Slave population W. Va. 1860..... 825
Testimony concerning "West Virginia "1", "2" and "3" 736
Summary of cash receipts & disbursements from Mar. 19, 1823 to January 1, 1861.....1053
Testimony concerning same.....1026

Exhibits, Plaintiff's:
A-1 Supplementary—(Guaranteed Bonds) 289
A-2 (Forms of Bonds)..... 219
E-2 (Scale of Confederate money)..... 647
E-3 (Va. and W. Va. assessments 1867-1908)..... 651
E-4 (Comparison of assessed valuation and sales of real property 1863) 653
E-5 (Auditor's certificate assessments real property 1863)..... 659
E-6 (Computation based on E-7)..... 667

Page.
E-7 (Alternative estimate of Fair Valuation of Real and Per. Prop. June 20, 1863) 667
G-1 819
Explanation of 829
General Exhibit 1 (Taylor's Abstract of Acts) 900
Testimony as to same 988
H-1 (Va. Auditor's report 1860-61) 1024
Revised C-1 (Testimony concerning) 503
Substitute C-1 (Testimony concerning) 505
Revised D-1 (Testimony concerning) 599
Substitute F-1 815
Exhibits, Joint:
A-1 215
B-1 347
C-1 371
D-1 515
E-1 639
Discussion of E-1 711
F-1 805

F.

Fair estimated valuation 695
Further evidence, introduction of 601

G.

Gregory, W. F., deposition of 879
Griffith, Wm. A., deposition of 873

H.

Harpers Ferry Raid 419, 435, 446
Harrison, Randolph, address of before committees of West Va. Legislature February 1st, 1905 77
Exhibits filed with address of 92
Harman, A. W., Direct Examination, Par. 1. May 5, 1909 297
Hawes, S. H., deposition of 771
Hearings; openings and adjournments before Master 1044
Hildreth, S. P., letter of 831, 1018
Hunter, Ro. W., depos'tion of 739

K.

Kanawha Board 432, 489
Kanawha Improvements 401, 409, 432, 489, 495
Kingwood & West Union Turnpike 410, 451, 481

L.

Lewis, Dr. C. I., deposition of 883
Lightfoot, Jr., J. B.:
Par. III. May 6, 1909, direct examination 426
Par. III. May 6, 1909, cross examination 438
Par. III. May 6, 1909, re-direct examination 450
Par. V. July 2, 1909, direct examination 731
Par. V. July 2, 1909, cross examination 733
Love, Peter E., deposition of 868

M.

Page.

McCabe, Capt. W. Gordon, deposition of..... 782
McWhorter, Judge J. M.:
July 2, 1909, direct examination 713
July 2, 1909, cross examination 717
July 2, 1909, re-direct examination 724
Statement of capitations returned..... 725
Marshall, John, Chairman, Report of Commission (filed as exhibit for Plaintiff) 183

O.

Objections, when to be made.....1023
Opinion of Court, overruling demurrer of W. Va..... 119
Ordinary Expenses, items excluded by Defendant (See Exhibit, Joint, D-1.)

P.

Paragraph I of Decree:..... 215
Joint Exhibit A-1 215
Plaintiff's Exhibit A-2 (forms of bonds)..... 219
Plaintiff's supplementary Exhibit A-1..... 289
Testimony under Par. I..... 291
Paragraph II of Decree:..... 347
Joint Exhibit B-1..... 347
Testimony under Par. II..... 349
Paragraph III of Decree:..... 371
Joint Exhibit C-1..... 371
Testimony under Par. III..... 379
Paragraph IV of Decree:..... 515
Joint Exhibit D-1..... 515
Defendant's Exhibit D-2 (Literary Fund)..... 538 A
Testimony under Par. IV..... 539
Paragraph V of Decree:..... 639
Joint Exhibit E-1..... 639
Plaintiff's Exhibit E-2..... 647
Testimony concerning 728
Plaintiff's Exhibit E-3..... 651
Testimony concerning 729
Plaintiff's Exhibit E-4 653
Testimony concerning 730
Plaintiff's Exhibit E-5..... 659
Testimony concerning 733
Plaintiff's Exhibit E-6..... 667
Plaintiff's Exhibit E-7..... 669
Defendant's Exhibit E-2..... 672 A
Testimony under Par. V 673
General discussion of Par. V..... 695
Paragraph VI of Decree:..... 805
Joint Exhibit F-1..... 805
Testimony under Par. VI..... 806
Paragraph VII of Decree:..... 819

Page.
Plaintiff's Exhibit G-1 819
Defendant's Exhibit G-1 ..... 820 A
Defendant's Exhibit G-1 (amendment of heading) 855-7, 866
Exhibit W. Va. 1 (Defendant's) 821
Exhibit W. Va. 2 (Defendant's) 823
Exhibit W. Va. 3 (Defendant's) 825
Testimony under Par. VII 827
Pierpoint, Gov. F. H., message of, July 22, 1863 ..... 831, 1016
Population, agreement as to 365
Potter, A. G., testimony of:
Par. I. May 5, 1909, cross examination 291, 304
Par. II. May 5, 1909, cross examination 351
Par. III. Nov. 16, 1908, direct examination 379
Par. III. May 5, 1909, cross examination 380
Par. IV. Nov. 16, 1908, direct examination 539
Par. IV. May 5, 1909, cross examination 542
Par. IV. July 2, 1909, direct examination 627
Par. V. Nov. 16, 1908, direct examination 673
Par. V. May 5, 1909, cross examination 679
Par. VI. Nov. 16, 1908, direct examination 807
Par. VI. May 6, 1909, cross examination 808
Par. VII. Nov. 16, 1908, direct examination 827
Par. VII. May 6, 1909, cross examination 830
Qualifications and methods used 1029
Payne, James M., deposition of 882

S.

Sattes, Henry V., deposition of 887
School Commissioners, payments to 419, 421, 441
Scott, W. W., deposition of 747
Scoville. C. E., testimony of:
Par. III. May 7, 1909, direct examination 480, 497
Par. III. May 7, 1909, cross examination 495
Par. IV. May 7, 1909, direct examination 578
Par. VII. May 7, 1909, direct examination 852
Qualifications and methods used 1043
Slack, John, deposition of 884
Special Master, order appointing 209
Swann, B. F., deposition of 871
Swinburn, Thos., deposition of 897

T.

Taylor, Jos. C., abstract of Acts by 900
Taylor, Wm. G., deposition of 767
Testimony relating to case generally 1023
Thompson, J. K., deposition of 894
Tompkins, Wm. H., deposition of 887

W.

Wellford, Phillip A., deposition of 759
Williams, Chas. U., deposition of 777
Winchester & Potomac R. R., testimony concerning
399, 401, 433, 459, 478, 488, 512
Wright, James H., deposition of 880

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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 13.

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COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
HOLMES CONRAD,
Of Counsel for Virginia.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 1906.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

Statement of Facts as Shown by the Bill.

I.

On the 20th of June, 1863, West Virginia became a State of the American Union pursuant to an act of the United States Congress approved December 31, 1862, and in accordance with a proclamation of President Lincoln made April 20, 1863, under that act of Congress, upon the terms and conditions prescribed by the Commonwealth of Virginia in an ordinance adopted in convention and in the acts passed by the General Assembly of the restored government of the Commonwealth giving her consent to the formation of the new State out of her territory, with the constitution adopted for the new State by the people thereof, and which was sanctioned by Congress.

II.

Prior to the formation of the new State, the Commonwealth of Virginia had contracted an indebtedness approximating, as of the first day of January, 1861, the sum of $33,000,000, evidenced by the contracts and obligations of the undivided State.

This large indebtedness had been created in constructing a system of public highways, turnpikes, canals, railways, and other public internal improvements, begun in the first quarter of the nineteenth century and designed to fairly develop every part of her territory, and to afford means of communication between the different sections of the Commonwealth and the seashore, and to give to the people in all the various portions of the State access to the best available markets.

The "vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for years prior to the date named (1861), and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation." Accordingly the costly system of highways, canals, and railways thus projected were designed, begun, and in very great measure constructed, *for the purpose of developing the resources of the region afterwards embraced in the State of West Virginia,* and of giving to its people adequate facilities of communication with other portions of the Commonwealth and access to the seashore and to the markets of the country.

This system of internal improvement and the large indebtedness contracted in carrying it into execution received the sanction of the people of the counties subsequently constituting West Virginia, through their representatives in the General Assembly of the undivided State, and a very large proportion of that indebtedness would not have been created

but for the votes of the members of the General Assembly representing those counties; and little or none of that indebtedness would have been contracted had the representatives from the counties subsequently forming the State of West Virginia voted against its creation. Several millions of dollars of said indebtedness were contracted on account of works of internal improvement constructed in the territory now constituting West Virginia.

III.

The 9th section of the ordinance adopted by the people of the restored State of Virginia, in convention assembled in the city of Wheeling, Virginia, on the 20th day of August, 1861, entitled "An ordinance to provide for the formation of a new State out of the portion of the territory of this State," provided as follows:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

Upon this stipulation and condition, afterwards accepted and acted upon by the people of West Virginia, the consent of the Commonwealth of Virginia was given to the formation of the new State.

IV.

Before the creation of the State of West Virginia, and while the territory and the people afterwards constituting that State still formed a part of the Commonwealth of Virginia and were subject to its jurisdiction and laws, the General Assembly of the restored State of Virginia, on the 3d day of February, 1863, enacted the following law:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of the State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.
>
> 5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

And by another act of the General Assembly of the restored State of Virginia, passed February 4, 1863, it was enacted as follows:

> "1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.
>
> 2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

These two statutes of the restored government of Virginia validly prescribed the terms and conditions upon which the property and money therein mentioned should be transferred to the new State, when it should be formed; and, pursuant to their provisions, money and property amounting to and of the value of several millions of dollars were, after the formation of the new State, paid over and transferred to and accepted by West Virginia.

V.

The constitution of the State of West Virginia, which became effective when she was admitted into the Union pursuant to the said act of Congress and proclamation of President Lincoln, contained the following provisions:

By section 5 of article VIII of said Constitution it was provided:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

And by section 7 of article VIII it was provided:

> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of article VIII it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the constitution containing these provisions was adopted by West Virginia that State did not owe, and could not have owed, any "public debt" or "previous liability," except for her just contributive portion of the public debt of the original State of Virginia, and for the money and

property of the original State which had been transferred to and received by her under the acts of the General Assembly of the restored State of Virginia above set forth, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia.

The provisions of sections 7 and 8 of article VII of said constitution were embodied therein by the people of West Virginia, or their representatives, for the purpose of complying with and carrying out in good faith the stipulations and conditions upon which the consent of Virginia was given to the formation of the State of West Virginia, and to the transfer of the money and property aforesaid to said new State.

VI.

After the formation of the State of West Virginia and after the restored government of Virginia had become the only government of the Commonwealth and its authority recognized and established throughout her limits, at intervals after the year 1865 down to and including the year 1905, various efforts were made by the Commonwealth of Virginia, through its constituted authorities, to bring about and effect an adjustment and settlement with West Virginia of the equitable proportion of the public debt of the undivided State proper to be borne and paid by the State of West Virginia. All of these efforts proved unavailing and abortive; and for years West Virginia has refused or failed to take any action or do anything for the purpose of bringing about any adjustment or settlement with this State.

Only after exhausting every means of amicable negotiation and having her overtures to that end repeatedly refused, and as a last resort, has Virginia been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to her and to all of her people.

VII.

Without waiting for a settlement with West Virginia, the Commonwealth proceeded, fully recognizing her liability for an indebtedness, all of which stood in her name, soon after the establishment of its restored government at Richmond, to make provision for the settlement and payment of the portion of the common debt of the undivided State which she could be fairly expected to assume and pay, under the circumstances then existing and the conditions which confronted her.

Several efforts were made to effect such an adjustment and settlement, the most important of which was that embodied in the act of March 30, 1871, mentioned at page 7 and copied at pages 13 to 16 of the bill.

By reason of the then impoverished condition of her people, occasioned by disasters which had destroyed their resources and paralyzed their productive energies, it was soon apparent that Virginia, in assuming and capitalizing, and again recapitalizing, the accrued interest upon the debt of the original State, and undertaking to pay, with 6 per cent. interest, two-thirds of the aggregate sum thus ascertained, had assumed a heavier burden than she was able to bear. Accordingly other plans for the settlement of the State debt were adopted, and a final adjustment made under the act of February 20, 1892, set forth in the bill.

As a result of this, it will be seen that Virginia has assumed and already actually paid off and retired, exclusive of the large amounts she has paid on account of interest, *a principal sum* aggregating as much as, or more than, the entire principal sum of the debt of the undivided State as of January 1, 1861.

The facts in regard to these various transactions and the adjustment made by Virginia with the common creditors of the old State are recited in the bill merely for the purpose

of showing the present status of the public debt of the original State and the precise relation of this Commonwealth at the present time in respect thereto.

Of course, the rights of West Virginia cannot be affected by any of these transactions between Virginia and the common creditors of the undivided State, except to the extent that Virginia's rights and action therein may entitle her to contribution from West Virginia.

VIII.

As indicating the character of the efforts and sacrifices which Virginia, notwithstanding the disasters and losses which her people have endured, has made, in order to bear and to discharge her just obligations on account of the common debt of the undivided State, and as showing something of the strength of her equitable claim against West Virginia, it must be remembered that she has actually paid off, retired, and discharged and satisfied, so far as West Virginia is concerned, as of the date of the institution of this suit, over $71,000,000, including principal and interest, on account of said common indebtedness.

While Virginia has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof.

IX.

Since January 1, 1861, the arbitrary date fixed by the Wheeling ordinance as of which the adjustment and settlement between the two States shall be made, Virginia has actually paid off or retired, and now holds in her own hands and for her own benefit, exclusive of the sums represented by the certificates issued under the funding acts aforesaid, obligations of the undivided State amounting in the aggregate, including the interest to be fairly computed thereon to date, to a sum in excess of $25,000,000. For all of the obligations

and indebtedness of the original State, so taken up and retired or paid off by her, Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

X.

As a part of the adjustment which Virginia from time to time has made with the holders of the bonds and obligations of the undivided State and as a proper stipulation in connection with the partial settlements thereof made by her, it was agreed between them and Virginia that upon giving to them respectively her obligations for the respective portions of each of the old bonds of the undivided State agreed to be assumed and paid by Virginia, these old original bonds should be deposited with Virginia, and so far as not thus funded by her in her own obligations should be held by her as trustee for the holder or his assigns; and to each of these parties thus entitled she has given her certificate to this effect.

By the terms of the settlements authorized by the acts of 1879, 1882, and 1892, set forth in the bill, no liability rests upon Virginia on account of the certificates given by her pursuant to the terms of those acts, for the bonds deposited with her, and to be held by her, to await a settlement with West Virginia, as to the portion thereof not assumed or paid by Virginia. But it has been suggested that, although there is no liability assumed by Virginia by reason of issuing said certificates or upon said certificates, that there may still be a liability upon her *as to the unfunded portion of the bonds deposited with her under the acts of 1879, 1882, and 1892.* This, however, is a matter of minor importance, because a comparatively small proportion of the old debt of the State was funded under the acts of 1879, 1882, and 1892, as will appear from the circumstance that there are in all only $1,609,600.15 of the certificates issued under the last-men-

tioned three acts outstanding in the hands of the public, as is shown by the exhibit at page 73 of the bill.

The great bulk of the debt of the old State was funded under the act of 1871, and the unfunded portion of the bonds deposited with Virginia by the public creditors under the terms of that act, amounted to $12,703,451.79, upon the principal interest-bearing sum of which there is interest due from July 1, 1871. (See Exhibit No. 1, page 13 of the bill, and statement of Second Auditor of Virginia, embodied in the address of Mr. Randolph Harrison, found at page 73 of the bill.)

The arrangement under the funding act of 1871 was very different from that provided for by the subsequent acts of 1879, 1882, and 1892.

By the acts of 1871 Virginia undertook to be the custodian of the bonds of the undivided State deposited with her, so far as they were unfunded; and that payment should "be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

Whatever may have been the purpose of the General Assembly of Virginia in the enactment of this law and in authorizing such contracts to be made, it would seem that Virginia's legal liability on account of said unfunded portion of said bonds is not released or affected by the transaction, but still exists.

However, under all the circumstances of the case and in view of the underlying equities suggested by the facts stated in the bill, it would seem that Virginia has already unquestionably done as much as she could be fairly expected to do towards paying off the common public debt of the old State. The great mass of the holders of the certificates issued by her under the act of 1871, and under the other acts above recited, who are the persons entitled to the said unfunded bonds deposited with her and now held by her, recognizing

the justice of this view, have, through their authorized representatives, entered into the agreement printed at pages 83 to 86 of the bill.

XI.

By joint resolution of the General Assembly of Virginia, printed as Exhibit No. 5, beginning at page 39 of the bill, entitled—

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same,"

approved March 6, 1894, a commission was created for the purposes set forth in the title to the resolution.

The Virginia Debt Commission mentioned in the bill was created pursuant to that resolution, and made earnest efforts to bring about a settlement with West Virginia, without any satisfactory result.

Accordingly the General Assembly of Virginia afterwards passed the act approved March 6, 1900, printed as Exhibit No. 6 of the bill, beginning at page 41 thereof, the object of which is stated in its title as follows:

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises."

By this act, as plainly appears from its terms, additional powers and authority were conferred upon this commission, and it was made its duty, and power was conferred upon it, by and with the advice and approval of the Attorney-General of the State, to take such action and institute such proceed-

ings on behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

After again making an earnest effort to bring about an amicable settlement with West Virginia, by which the proportion of the debt of the original State of Virginia proper to be borne by West Virginia should be ascertained, and after having had their overtures to that end rejected by West Virginia, the said commission deemed it to be its duty, with the advice and approval of the Attorney-General of Virginia, to cause this suit to be brought in strict conformity with the powers conferred upon them by the acts aforesaid, the commission and the Attorney-General considering such action to be needful and proper to protect the interest of the State and bring about and carry into effect such a settlement.

Accordingly, and in strict conformity with the authority conferred by the act of March 6, 1900, this suit was instituted.

BRIEF OF ARGUMENT UPON THE QUESTIONS OF LAW PRESENTED BY THE DEMURRERS.

(1.)

As to the first ground alleged in the amended demurrer, namely, that there is a misjoinder of parties plaintiff and a misjoinder of causes of action, we cannot see that this objection is well taken.

The definitions of misjoinder under English chancery practice, as well as the practice in this country, show that there is no such vice in the bill:

(*a*) As to the misjoinder of parties: This does not arise unless—

> "Coplaintiffs actually have or may have conflicting interests in regard to the object of the suit, or if any or either of them have no interest in the subject-matter of the suit."
>
> Mitf. Pl., p. 399, note.

The rule as to misjoinder of plaintiffs, as laid down by Mr. Daniell, is that—

> "persons who have no interest in the litigation cannot be joined as coplaintiffs in a suit with those who have."
>
> 1st Daniell Chy. (5th Am. ed.), m. p. 301.

Example given by Mr. Daniell of what is not misjoinder; Auctioneer can be joined as coplaintiff with the vender in a bill against the purchaser.

Id., m. p. 302.

Again: Want of interest by a coplaintiff in the subject-matter is ground of demurrer.

Story's Eq. Pl., sections 231, 232, 508, and 509.

Mitf. Pl., 160, 161.

Again: Plaintiffs who have no common interest, but assert distinct and several claims against one and the same defendant, cannot be joined.

Story's Eq. Pl., section 279.

On the other hand, where there is a community of interests among coplaintiffs desiring the same relief against a common defendant, they may be joined.

It was held in Ware *vs.* Duke of Northumberland, 2 Anstruther's Rep., p. 469, that:

> "Unconnected parties might be joined in one suit *where there was a common interest among them all, centering in the point in issue in the cause.*"

This doctrine is strongly approved by Chancellor Kent in Brickenhoff *et als. vs.* Browns, where different judgment creditors united in one bill for discovery and account to set aside impediments to their remedies at law caused by the fraudulent acts of their common debtor.

6 Johnson Chy., 139, 151, 152.

Chancellor Kent says at page 151:

> "It is an ordinary case in this court, for creditors to unite, or for one or more, on behalf of themselves and the rest, to sue the representative of their debtor in possession of the assets, and to seek an account of the estate.
>
> "This is done to prevent a multiplicity of suits, a very favorite object with this court; and this principle so far controls the other rule, which preserves, in some degree, an analogy between pleadings in chancery, and the simplicity of declarations at common law. *There is no sound reason for requiring the judgment creditors to separate their suits, when they have one common object in view, which, in fact, governs the whole case.*" (Italics here and elsewhere ours).

Story's Eq. Pl., section 286; see also 2d Story's Eq. Jur., sections 853, 854.

(*b*) Nor is there any foundation whatever for the objection that there is a misjoinder of causes of action.

Considering together the two grounds of objection which are jointly presented in the first assignment of grounds of demurrer made in the amended demurrer in the light of the established doctrines and definitions, we beg leave to say that they are both founded upon an utter misapprehension of the meaning, scope, and purpose of the bill.

It is impossible that there can be any misjoinder of parties plaintiff, because there is only one party plaintiff. Virginia, in her corporate capacity, is the only plaintiff in the suit. She does not sue in any representative capacity, though the bill discloses the fact that, by reason of the arrangements which she has made with the great mass of the holders of the bonds of the old State, she does hold in her possession nearly all of those bonds as a depository, and *quoad* the custody thereof that she holds them in a fiduciary capacity; but she does not sue as trustee, but sues in her own name, for the purpose of obtaining the equitable relief to which the bill shows that she is fairly entitled.

In so far as said bonds have been funded in her own obligations and discharged by her, she holds those bonds as vouchers and evidence of her satisfaction of the same against the State of West Virginia, who is, as a proposition of public law and of equity, bound jointly with her to the public creditors to pay the same, and, as between her and West Virginia, is bound by contract to pay West Virginia's equitable proportion thereof.

If Virginia had no personal interest in respect to the bonds so deposited and held by her in a fiduciary capacity, we would cheerfully concede that she would have no standing to maintain this suit in respect *to these bonds;* but Virginia not only has an interest, but a very great interest, in respect to the unfunded and unsatisfied bonds of the old State, which, confiding in her fair dealing, the public creditors have entrusted to her custody, and in the settlement by

West Virginia of her fair equitable proportion of the indebtedness of the undivided State represented by these bonds; *and that interest is that she shall be exonerated, at least to the extent of West Virginia's liability therefor, from any obligation to pay the same.*

To obtain such just exoneration she has invoked the equitable jurisdiction of this court.

Not only is she entitled to maintain and prosecute this suit, in order to obtain the exoneration which, according to the general principles of equity she is entitled to be decreed, but, by the special contract between her and the parties entitled to these bonds, she has, without any prejudice to the rights of West Virginia or any violation of any duty she owes to West Virginia, and without doing anything of which West Virginia has any ground whatever for complaint, acquired a still greater interest and right, namely, to be entirely exonerated from any liability on account of the unfunded portion of the common debt represented by the bonds so deposited with her and by the certificates which she has issued therefor.

This interest is given to her by the express terms of the contract which she has made with these certificate-holders, who are the owners of the bonds of which she is the custodian, and who, recognizing the enormous contributions which she has made from her limited means to the satisfaction of the common debt, have cheerfully agreed to accept whatever amount this court shall ascertain to be the just and equitable proportion of the common debt of the old State to be borne by West Virginia, in full discharge and satisfaction of any claim they may have against Virginia and in full acquittance of all demands against her. (See 4th clause of contract, p. 85 of bill.)

It will be observed that, as has been already suggested, this stipulation, though it enures to the protection and to the interest of Virginia, in no sense and by no possibility is or can be prejudicial to any right of West Virginia; for under

no circumstances could or will this agreement operate to add one cent to the liability of West Virginia.

We respectfully submit that her equitable right to exoneration from liability as to these unsatisfied and unfunded bonds, of which she is the custodian, alone gives her a standing to maintain this suit to have West Virginia's liability, not only for the whole indebtedness of the undivided State, but for the bonds so deposited with her, ascertained, determined, and adjudicated; and that her contractual right to exoneration under her agreement with the parties equitably entitled to those bonds increases her interest and confirms her right to have such exoneration decreed.

An authority of respectability and of proven merit has said:

> "It was not necessary to wait till some one was damnified by having paid, or having claim made against him for the whole; a bill might be filed to settle the amount due from each individual of a body liable to a common burden, and to compel the payment by each, of his share."
>
> 2 Spence Equitable Juris., marginal p. 662.

The suit is brought, as appears plainly from the bill, for the purpose of obtaining a *complete settlement* with West Virginia and an adjustment of a controversy which has vexed both States for a generation past; and as a part of this settlement and as a necessary incident to it, and in accordance with the manifest equitable rights of Virginia to have that settlement decreed—

First, in respect to some $25,000,000, including principal and interest, of the obligations of the original State, which have been paid off or retired by the Commonwealth of Virginia since her dismemberment and the vouchers for which transaction she now holds in her treasury; and as to this she invokes the equitable jurisdiction of this court for *contribution* from West Virginia to the extent of West Virginia's

liability on account of the common obligations which Virginia has thus paid off and retired; and,

Second, to obtain the *exoneration* to which she is entitled in respect to the unsettled and unfunded one-third of the debt of the undivided State, the obligations evidencing which have been deposited with her.

There is no possible conflict between or inconsistency in the two kindred and associated rights of contribution and of exoneration thus possessed by Virginia, or in the assertion of the same in one common suit. Indeed, it is proper and right that they should be asserted and united in one suit, and it would be ground of objection not to include them in one suit.

This would be true, even if there were more than one party, who had such rights, plaintiff to the bill; but, in the nature of things, there is and can be but one party plaintiff here, because there is only one Commonwealth of Virginia; and, as to her, "there is a common interest centering in the point of issue in the cause," and, in every phase and aspect of the cause, a common right in her capacity as a creditor of West Virginia in respect to so much of the common debt as Virginia has settled and paid off in full, and in her capacity of co-obligor of West Virginia as to so much of the common debt as remains unsatisfied, to have a settlement and ascertainment and adjudication of the equitable proportion of the debt of the undivided States which West Virginia should pay.

The effect and logical consequence of such an ascertainment and adjudication will necessarily be to obtain contribution to Virginia by West Virginia to the extent of West Virginia's equitable liability to make such contribution, and to obtain the exoneration of Virginia from any farther liability on account of the common debt of the old State; and this is the ultimate relief to which Virginia is justly and equitably entitled, upon the showing made by her bill.

Again, the two causes of complaint united in this bill, and on which relief is prayed, are:

1. The liability of West Virginia to Virginia for her reasonable and just contributive share of the public debt of Virginia as of the 1st of January, 1861.

This liability rests upon several distinct and evident grounds:

(*a*) On the principle of public law, that "where a State is divided into two or more States, in the adjustment of liabilities between each other the debts of the parent State should be ratably apportioned among them" (Hartman *vs.* Greenhow, 102 U. S., 877.

(*b*) On the ordinance of the convention of Virginia of August 20, 1861, "to provide for the formation of a new State out of the portion of the territory of this State," by section 9 of which ordinance it was provided that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

(*c*) On the constitution formed by the State of West Virginia and submitted to Congress, and on which West Virginia was admitted into the Union (Virginia *vs.* West Virginia, 11 Wall, 43).

By section 8 of article 8 of said constitution it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

2. Under and by virtue of the act of the General Assembly of the restored government of Virginia, passed February 3, 1863, property of the Commonwealth of Virginia, to the amount in value of several millions of dollars, was transferred from Virginia, and was delivered to and received by West Virginia, on the express condition that "the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property stocks and credits shall have been obtained since the organization of the State government."

And by act of the same General Assembly, passed February 4, 1863, the sum of one hundred and fifty thousand dollars ($150,000) was appropriated and subsequently paid over to West Virginia, and by the same act all moneys and balances in the treasury of Virginia not otherwise appropriated were appropriated to the said State of West Virginia.

It is too plain and obvious to be questioned, that both of the two above-recited grounds of complaint grew out of and formed material parts of the same transaction, viz., the generation of the new State of West Virginia and its necessary sustenance and support while in her infancy. By her very birth, West Virginia incurred the liability for her just proportion of the public debt of Virginia. It was in fact and in law her debt as much as it was the debt of Virginia. She inherited it. It was congenital. Then, at her birth, West Virginia was wholly without resources or means for maintaining herself and continuing her political existence twenty-four hours save by the money and property of Virginia which fell into her hands. The appropriation of this money and property to the uses of West Virginia created a debt of so high an obligation that, even without the express condition on which it was given and received, she would be compelled to account for it.

Can there be doubt, then, for one moment that these two grounds of complaint are so intimately and essentially connected as that, had this complainant brought her separate

bill on each ground, this court would, to avoid so useless multiplicity of actions, have consolidated or caused them to be heard together? The people who appeared as the citizens of the restored government of Virginia and who formed the conventions and General Assemblys by which ordinances were framed for the creation of the new State of West Virginia—and consent was given in the name of Virginia for the creation of such new State—and who appropriated millions of dollars in value of the property of Virginia for the use of West Virginia were, it may be, in legal contemplation, citizens of Virginia up to the 20th day of June, 1863; but on that day these same people became citizens of West Virginia and thenceforth sat in conventions of her people and in her halls of legislation. But before this transformation took place, and in contemplation of its assured coming, they, as citizens of Virginia, appropriated all her property within their reach and gave it to the embryo State.

So it appears by the allegations of this bill, which must be taken here to be true, that West Virginia is justly liable on many grounds for a just proportion of the public debt of her parent State, Virginia; that West Virginia has not only repudiated and openly disavowed all such liability, but that she has appropriated to her own use a large amount in value of the public property of Virginia, which Virginia might properly have applied, as part of her public assets, to the payment of her public debt; and now, when by this bill in equity Virginia calls on West Virginia to account for the property which she has appropriated and applied to her own uses, and to come in before this court and have her proportion of the public debt ascertained, West Virginia, by her demurrer, protests that the part of the public debt which she owes and the part of the public assets which she has appropriated to her own use are two subjects of complaint so distinct and unconnected as should relieve her from making answer to the bill.

Counsel for the defendant rely upon the decision of this

court in the cases of New York *vs.* Louisiana and New Hampshire *vs.* Louisiana, 108 U. S., 78; but, as has already been made apparent, this case is entirely different in fact and in principle from those cases; indeed, there is no analogy between them.

Neither the State of New York or New Hampshire had any direct or personal interest in the bonds of Louisiana or in the subject-matters of controversy in those suits, but were mere volunteers, self-constituted trustees, without sustaining any relation, or interest, or obligation, or liability in regard to the bonds, or to any question presented in those causes.

While it may be true that, as to the custody of some of these unsatisfied bonds, Virginia sustains the relation of trustee, she has an enormous interest as to those bonds—an interest as substantial and as real, if not in fact as great, as if she had actually paid these bonds in full.

(2.)

The next ground of demurrer assigned by the defendant is:

> "That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon."

This ground of objection is based upon two postulates, each of which, we respectfully submit, is fallacious as applied to this case.

The first is, as we understand the position of defendant's counsel, that the judicial power of the United States and the jurisdiction conferred by section 2 of article III of the Con-

stitution of the United States upon the Supreme Court over "controversies between two or more States" does not embrace a controversy such as is presented here, or any other controversy which, like the one here, is based upon any pecuniary obligation or liability of a State; that while it does confer jurisdiction upon the Supreme Court of the United States over certain controversies between States, the word "controversy" as used in that section of the Constitution, does not embrace any controversy in regard to any pecuniary matter.

The second postulate which defendant's counsel must maintain to support the above objection is necessarily that the language of the Constitution referred to does not confer jurisdiction in any case in which the court has no power to render or enforce and make effective its final judgment thereon, and that this court cannot render or enforce its final judgment or decree making effective the relief sought by the plaintiff.

We will now consider this two fold ground of objection:

(*a*) Can it be true that the word "controversy" as thus used in section 2 of article III of the Constitution can be fairly given any such narrow construction and confined by any such forced and restricted limitations?

It will be observed that precisely the same word defines the jurisdiction of this court as to "controversies between citizens of different States."

Judge St. George Tucker, in discussing the judiciary clauses of the United States Constitution, says, in his appendix to Tucker's Blackstone, vol. 1, p. 120, edition of 1802:

> "The word 'controversies,' as here used, must be understood as relating to such as are of civil nature. It is probably unknown in any other sense, as I do not recollect ever to have heard the expression 'criminal controversy.' As here applied, it seems particularly appropriated to such disputes as might arise between the United States and any one or more States, respecting territorial *or fiscal* matters; or between the United States and their debtors, contractors

> and agents. This construction is confirmed by the application of the word in the ensuing clauses, where it evidently refers to disputes of a civil nature only, such, for example, as may arise between two or more States, or between citizens of different States, or between a State and the citizen of another State, none of which could possibly be supposed to relate to such as are of a criminal nature."

It is to be presumed that the framers of the Constitution did not design by the use of the same identical expression to confer one jurisdiction upon the federal courts as to matters of dispute between States and another jurisdiction as to matters of dispute between citizens of different States. In other words, if the words "controversies between two or more States" do not embrace, under any circumstances, in the one case controversies growing out of contracts or liabilities for the payment of money, the words "controversies between citizens of different States" cannot be fairly construed to embrace any controversies of a pecuniary character; and yet we are surely within limits when we say that a large majority of the "controversies between citizens of different States" of which the federal courts have from their foundation taken jurisdiction have been controversies arising out of contracts for the payment of money.

But it is urged that it is derogatory to the dignity of a State to have it impleaded in any court upon any contract, or obligation or promise which a State may have made.

Whether this be true or not is immaterial, if it be true (and as to this there can be no question) that the States, by coming into the Union and accepting the Constitution of the United States as their supreme law, have agreed to submit their controversies to the supreme tribunal created by that Constitution and clothed by it with jurisdiction of just such controversies.

And is it any more derogatory to the dignity of a State for it to be impleaded in this impartial tribunal in a contro-

versy involving such important and far-reaching questions of public obligation and of public right as are presented in this cause than it would be to be impleaded in this court upon the question as to whether one State had encroached upon the territorial limits of another State; or as to whether it was improperly allowing its citizens to pollute the waters flowing through its territory and by the territory of another State, or that it was in violation of the rights of a neighboring State, diverting, dissipating, and absorbing streams of water rising in one State and preventing their natural flow into the territory of another State; or that it was doing any one of the things for which States have been impleaded under jurisdiction recognized and approved by this Court?

We are unable to see that there is any surrender of the dignity of a State in that it submits, or, if recalcitrant, is compelled to submit, its controversies to the adjudication of a tribunal of its own creation and selection for the settlement of any question of controversy involving property rights, or any other direct interests of a State in its corporate capacity, or of the people of a State represented by the government of the State.

It is urged that a State cannot be sued without her consent; but, as has been repeatedly decided by this court, all of the States have, in most solemn form, given their consent to the jurisdiction of this court over all civil controversies which may arise between them.

A careful review of all of the decisions of this court which throw light upon this subject, we think, justifies us in the view that this is no longer a debatable question.

The word "controversy" as used in this section of the Constitution has been repeatedly passed upon and interpreted by this court. Not only has its meaning been fixed by this court in approving the jurisdiction taken by the circuit courts of the United States of hundreds of controversies of a pecuniary character "between citizens of different States, but it has been repeatedly given a similar significance and inter-

pretation, and the jurisdiction of this court sustained in respect to controversies to which States were parties and in respect to controversies to which the United States has been a party, as to which the definition and limitation of the jurisdiction conferred by the Constitution is defined by precisely the same word, *"controversies."* And so we say that, if this court has no jurisdiction of any controversies arising out of demands for money, or obligations for the payment of money, between States, then neither this court nor any other federal court could have jurisdiction of any such pecuniary "controversy between citizens of different States," or of controversies to which a State is a party, or of a controversy to which the United States is a party, for in each case the jurisdiction is conferred by precisely the same language.

And such we understand to be the doctrine established by the decisions of this court.

The first case in which this question arose was that of Chisholm, ex'r, *vs.* Georgia, 2 Dal., p. 419, in which this court held that the judicial power of the United States and the original jurisdiction of the Supreme Court, as conferred by section 2, article III of the Constitution, embraced a demand for money asserted against a State by a citizen of another State in an ordinary action of assumpsit, and that such a case presented a "controversy" within the meaning of that section of the Constitution.

Mr. Justice Iredell alone dissented, not as to the construction given by the majority of the court to the word "controversy," but as to the decision of the majority of the court in construing section 2 of article III so as to extend the jurisdiction of the federal courts to a pecuniary demand asserted by a citizen of one State *against* another State. He held and argued that the language used in the Constitution, taken as a whole and construed in the light of the historical facts which he mentioned, was not designed to give the federal courts jurisdiction of a suit by any *individual* against a sovereign State upon any merely pecuniary demand: but

it is an exceedingly significant circumstance that Mr. Justice Iredell was constrained to hold, and he did declare, that—

> "The Supreme Court hath, therefore, first, *exclusive jurisdiction in every controversy of a civil nature: 1st. Between two or more States.* 2d. Between a State and a foreign State. 3d. Where a suit or proceeding is depending against ambassadors, other public ministers, or their domestics, or domestic servants. Second. Original, but not exclusive jurisdiction, 1st, between a State and citizens of other States. 2d. Between a State and foreign citizens or subjects. 3d. Where a suit is brought by ambassadors, or other public ministers. 4th. Where a consul or vice-consul, is a party."
>
> *Id.,* p. 431.

Had that suit, like this, been a suit between two States; had that been a suit by South Carolina *vs.* Georgia, upon a demand for money, there cannot be a doubt but that this court, as then constituted, would have unanimously maintained its jurisdiction. And such is the meaning and effect of the decision of all the Judges.

It may be fairly claimed that the ruling of the majority of the court in Chisholm, ex'r, *vs.* Georgia has been questioned, if not overruled, as to the suability of a State by any private citizen independently of the eleventh amendment, and the opinion of Mr. Justice Iredell in that case affirmed by the opinion of this court, as formulated by Mr. Justice Bradley in Hans *vs.* Louisiana, 134 U. S., p. 1; but it will be seen that Mr. Justice Bradley, in the interesting opinion referred to, affirms and approves the opinion and the views of Mr. Justice Iredell in the Chisholm case; and Mr. Justice Iredell, in his opinion so unqualifiedly affirmed, as we have seen, held that this court had jurisdiction *"in every controversy of a civil nature between two or more States,"* though he held that jurisdiction was not conferred upon it of a controversy between an individual plaintiff suing a State upon a pecuniary demand.

There can be no doubt that the decision and reasoning of all the judges in the case of Chisholm, ex'r, *vs.* Georgia confirms every contention made for the plaintiff in this case as to the rightful and necessary jurisdiction of this court over a controversy of the kind presented here between the Commonwealth of Virginia and the State of West Virginia.

The question of the nature and extent of the jurisdiction conferred upon this court by article III of the Constitution in respect to controversies to which a State is a party, and also as to controversies between two or more States, was exhaustively discussed by Chief Justice Marshall in Cohens *vs.* Virginia, 6 Wheat., pp. 364, 375-440.

In considering the effect of the adoption of the 11th amendment upon that jurisdiction the Chief Justice, at pages 405-6, says:

> "This leads to a consideration of the 11th amendment.
>
> "It is in these words: 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.'
>
> "It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a state

> may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. *There was not much reason to fear that foreign or sister states would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases,* because it might be essential to the preservation of peace. *The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.*"

And at page 378, in defining the jurisdiction of this court in the class of cases in which its jurisdiction by the terms of the Constitution is determined by the character of the parties, the Chief Justice uses this language, which would seem to be conclusive as applied to this case:

> "In the second class, the jurisdiction depends *entirely* on the character of the *parties.* In this are comprehended 'controversies *between two or more States,* between a State and citizens of another State, and between a State and foreign States, citizens or subjects.' *If these be the parties, it is entirely unimportant what may be the subject of controversy.* Be it what it may, these parties have a constitutional right to come into the courts of the Union."

It has been argued that these rulings of the Chief Justice were *obiter dicta.* They were entirely pertinent to the great question which he was considering and had a direct bearing upon it. The question which the court had to review was what was the character of the controversies over which it had jurisdiction under article III of the Constitution, after the adoption of the 11th amendment; and it was necessary in that connection for the court to construe the word "controversy" as used in that article.

The opinion was one of the most lucid and ablest which ever came from the mind of the great Chief Justice. It was evidently well and carefully considered.

Under such circumstances a conclusion which he so deliberately reached and so clearly expressed ought to have the greatest weight.

It may also be justly claimed that the expressions in opinions in two or three later cases, which are claimed to be inconsistent with the views of Chief Justice Marshall, are all of them far more emphatically *obiter* than were his conclusions as above quoted.

It is to be presumed, of course, that the controversies to which the Chief Justice referred were controversies in a juridical sense; that is to say, justiciable controversies; but where has it ever been held by any court anywhere that a controversy arising out of a contract for the payment of money was not *justiciable?*

Since money supplanted barter in the dealings and contracts of mankind, and since courts for the adjudication of civil controversies have been established, a great part of the disputes which have grown out of the contracts of mankind have been controversies about the payment of money. They have not only been "solvable" by the courts, but they are generally more reaily "solvable," for principles of justice and right and more adequate relief can usually be administered in respect to them than in respect to some other descriptions of controversy which have been held to be justiciable by this court. For instance, the prevention of the flow of polluted water from the State under whose authority it has been contaminated, along the borders of another State, the health of whose inhabitants is prejudiced by the flow of such polluted water by their shores, as in Missouri *vs.* Illinois, 180 U. S., p. 208; or the prevention of the undue retarding and diminution of the natural flow of rivers by the State in which they have their source into the State through which they have their natural exit, as in

Kansas *vs.* Colorado, 185 U. S., p. 125; or, indeed, the establishment of a disputed boundary line between coterminous States, as in Rhode Island *vs.* Massachusetts, and a number of later cases where this court has taken jurisdiction of such controversies.

In Missouri *vs.* Illinois, 180 U. S., 240, Mr. Justice Shiras, after reviewing at great length the cases decided under the constitutional provision giving this court original jurisdiction in controversies between two States says:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases *directly affecting the property, rights and interests of a State.* But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court."

This question has been directly passed upon by this court and its jurisdiction over controversies arising upon pecuniary demands has been sustained in—

Georgia *vs.* Brailsford, 2 Del., p. 402;
Texas *vs.* White, 7 Wal., p. 700;
Florida *vs.* Anderson, 91 U. S., p. 667;
Alabama *vs.* Burr *et als.*, 115 U. S., p. 413;

and even more emphatically and conclusively in—

United States *vs.* North Carolina, 136 U. S., p. 211;
United States *vs.* Texas, 143 U. S., p. 621; and
United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406.

The three last cases would seem to be entirely decisive of the question.

The very language under which this court took jurisdic-

tion of these cases, all involving pecuniary demands of the United States against the several defendant States, is used in the Constitution to confer jurisdiction upon this court of controversies between States; and if that language in the one case gave this court jurisdiction of a controversy arising out of, or asserted upon, a pecuniary demand, by a logical and inevitable consequence it gives this court jurisdiction of a similar controversy between States.

It may possibly be contended that the question of jurisdiction was not raised in United States *vs.* North Carolina, 136 U. S., p. 211, but such a contention would be idle, because this court, and no other federal court, according to the uniform decisions of this court, can, even by consent of parties, exercise jurisdiction in any case in which such jurisdiction has not been conferred upon it by the Constitution or by valid act of Congress.

This question arose in United States *vs.* Texas, 143 U. S., p. 621, *supra*, where, at page 642, this court, through Mr. Justice Harlan delivering its opinion, said:

> "The cases in this court show that the framers of the Constitution did provide, by that instrument, for the judicial determination *of all cases in law and equity between two or more States*, including those involving questions of boundary. Did they omit to provide for the judicial determination of controversies arising between the United States and one or more of the States of the Union? This question is in effect answered by United States *v.* North Carolina, 136 U. S., 211. That was an action of debt brought in this court by the United States against the State of North Carolina, upon certain bonds issued by that State. The State appeared, the case was determined here upon its merits, and judgment was rendered for the State. *It is true that no question was made as to the jurisdiction of this court, and nothing was therefore said in the opinion upon that subject. But it did not escape the attention of the court, and the judgment would not have been rendered except upon the theory that this court has original jurisdiction of a suit by the United States against a State.*"

And it unquestionably arose and was passed upon in United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406, which was a suit for the recovery of money, in which this court, Mr. Justice Peckham delivering its unanimous opinion, at page 396 held:

> "By its bill the United States invokes the original jurisdiction of this court for the purpose of determining a controversy existing between it and the State of Michigan. This court has jurisdiction of such a controversy, although it is not literally between two States, the United States being a party on the one side and a State on the other. This was decided in United States *v.* Texas, 143 U. S., 621, 642; 36 L. Ed., 285, 292; 12 Sup. Ct. Rep., 488."

Such was also the effect of the decision of the majority of the court in South Dakota *vs.* North Carolina, 192 U. S., p. 286; and there is nothing in the dissenting opinion of the minority of the court in that case inconsistent with the views for which we contend.

Again, we say that it seems to us the question is no longer a debatable one in this court.

(*b*) Is there anything in the contention that this court cannot hear and determine the questions presented in this case because it has, as is alleged, no power to render or enforce any final judgment or decree therein?

Let us see, first, what is the precise character of this suit and what is the relief sought, a total misconception of which must have occasioned the assignment of the ground of demurrer now being considered.

The main and real object of the suit is a settlement with West Virginia, and to this end a determination and adjudication by this court of the amount due by that State to Virginia, upon the state of facts set forth in the bill.

West Virginia having refused to have any accounting, or even to negotiate with Virginia upon the subject, it became

necessary to invoke the equitable jurisdiction of this court in order that it might ascertain, determine, and adjudge the proportion of the debt of the original State which it would be equitable for West Virginia to pay.

The Commonwealth of Virginia would be loath to believe that any State of the American Union would disregard or disobey any decree of this, the tribunal selected and empowered by all of the States as the final arbiter of all civil controversies which may arise between them, and did not consider it necessary in any such case, or proper under the circumstances of this case, to insert in her bill a special prayer asking this court to summarily enforce its decree against West Virginia.

She cherishes the hope that there would never be any occasion to ask the court to award any execution or take any action for the purpose of enforcing such judgment as it shall render.

If such occasion should ever arise, it will be for the court to then decide by what process or further action it would proceed to execute its decree.

It will be time enough when the proper accounts have been taken, and the balance ascertained, and the sovereign State against whom such balance may be found has repudiated the liability and refused to pay such balance, to consider and decide whether the power resides in this court and the means are at its hand to enforce the payment of the amount so found to be due.

It is enough for present purposes to know that all the States in the Union have, by the Constitution of their general Government, covenanted and agreed in the most solemn form that "the judicial power shall extend to controversies between two or more States," and that "in all those cases in which a State shall be a party the Supreme Court shall have original jurisdiction."

> "The Constitution of the United States, with all the powers conferred by it on the General Govern-

ment and surrendered by the States, was the voluntary act of the people of the several States, deliberately done, for their own protection and safety against injustice from one another."

Ableman *vs.* Booth, 21 How., p. 521.

"Some tribunal exercising such authority, is essential to prevent an appeal to the sword and a dissolution of the Government."

2 Story on Constitution, sec. 1681.

The Supreme Court hath exclusive jurisdiction in every controversy of a civil nature between two or more States.

Chisholm *vs.* Georgia, 2 Dall., 2d ed., p. 430.

These cases hold that questions of boundary, territorial right, and property rights of all kinds are proper for this jurisdiction.

2 Tucker's Constitution, p. 784.

Indeed it may be needless to consider at all the question of whether, when a decree shall be made ascertaining the amount due by West Virginia, on a full adjustment and accounting between the two States, how such amount can be obtained from the debtor State. We may accept as sound and true the statement made by Mr. Webster in his letter to Baring Brothers (Webster's Works, vol. 6, p. 539), that "the security for State loans is the plighted faith of the State as a political community, resting on the same basis as other contracts with established governments; that is to say, the good faith of the government making the loan, and its ability to fulfill engagements." We may admit that this is the only sanction and security on which an individual who is a public creditor may rely; that this arises on the creation of the debt and continues so long as the debt exists. We recognize that no sovereign State, of whatever form of government, can clothe an individual or another State with power to seize by force upon its treasury and appropriate its

resources without regard to the needs, policies, or will of the debtor State.

Every day judgments are rendered by this court against the United States for money demands on appeals from the Court of Claims; but nowhere is power given to this court to award execution of *fiere facias* against the United States. Awards are made by high tribunals and commissions to whose arbitrament claims for money against empires, kingdoms, and republics have been submitted, but never has power been given to these courts to enforce by judicial process or physical force the payment or satisfaction of the amounts which they may ascertain to be due.

Only by appropriation, regularly made by the legislative branch of the Government, is provision ever made for the payment of claims, whether ascertained by judgment, award, or other legal form. To that branch of the Government alone may we look for the fulfillment of "the good faith of the Government."

We here invoke the exercise of a long-established ground of equitable jurisdiction when, on the case stated in the bill, we ask that an accounting be had, and that such other and further relief be granted as the nature of the case may require and in equity may be meet.

It is true that in the case of Gordon *vs.* United States the Supreme Court declined to take jurisdiction of the case on appeal from the final action of the Court of Claims, on the ground that no power had been conferred upon the court to enforce its judgment, Chief Justice Taney in the opinion saying:

> "nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised and where its judgment would not be final and conclusive on the rights of the parties, and process of execution awarded to carry it into effect.
>
> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising

judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy," &c.

Gordon *vs.* United States (Appendix), 117 U. S., p. 697.

(Although a grave doubt exists as to the authenticity and accuracy of this alleged opinion.)

This language was used in considering and deciding a question of jurisdiction of the Court of Claims where the judicial power of the United States had not been conferred on it by Congress. It is not applicable to the question presented here, which is not as to the jurisdiction of the court, but as to its power to enforce its writ of execution against a State. The question here is not as to the power of the arm to strike, but as to the immunity of the object from wounds.

Whether property or funds of West Virginia within the jurisdiction of this court, other than property used distinctly for governmental purposes, would be liable to seizure, levy, garnishment, or sale in execution of or for the purpose of coercing compliance with any such decree is a question which we trust will never arise; for we are persuaded that any decree which this court shall render will be accepted by both parties as final and binding and will be respected and obeyed. But if a decree shall be rendered against West Virginia, and that State shall fail or refuse to respect it and to comply with its terms, it will be time enough then for this court to decide what farther action shall be taken in the enforcement of its decree.

The supreme court of Louisiana, in the case of *Carter vs. State*, 42 La. Annual, 930, in an opinion delivered by Judge Fenner, has shown why, from the character of the party, a writ of *fieri facias* should not be awarded, and cannot be enforced against a State.

"Legislative acts authorizing individuals to sue the State upon claims which the Legislature, for any cause, does not see fit to recognize and pay, have been of common occurrence in this and in other States. Their purpose and effect, as commonly understood, are undoubtedly nothing more than to refer to the judiciary the settlement of the questions of law and fact involved in the claims, and the determination, in the form of a judgment, of the rights of the parties. It is implied, as a matter of course, that the legislative power, after making such a reference, will accept and abide by the judicial determination, will recognize the judgment rendered as final and conclusive, and will, in due and ordinary course, make provision for the satisfaction thereof.

"That such was the interpretation of his remedy, adopted by the plaintiff himself, is evinced by his applications to successive General Assemblies for an appropriation to satisfy his judgment.

"But to assume that, by consenting to be sued, the Legislature intended to abdicate its constitutional function of controlling and administering the public funds and property and of appropriating them to such lawful purposes as it may deem best, and to delegate to the judicial department the power of seizing such property and applying it to the payment of a particular debt, would be, beyond measure, rash and unjustifiable. No such intention is expressed in the act or can be fairly implied from its terms; and we consider it beyond question that no such ever entered into the mind of any member of the legislative body. The incidents and appurtenances of ordinary jurisdiction have no application to a case like this. Undoubtedly jurisdiction granted to render judgments between parties subject to judicial power and control implies power to execute such judgments. But the sovereign is not subject to judicial power and control, except just so far as it has consented thereto; the moment the limit of that consent is reached the judiciary must instantly halt. Satisfied as we are that the Legislature has not consented and did not intend to consent to the execution of this judgment by writ of *fieri facias*, we are bound to deny such remedy.

"Counsel asks, of what use is the power to render judgment against the State, if the court is powerless to execute the judgment? That question was anticipated by Mr. Hamilton in the discussion of the Constitution of the United States before its final adoption. 'To what purpose,' he asked, 'would it be to authorize suits against sovereign States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State.' Federalist, No. 81. He never dreamed that authorizing suit against a State would imply the right to issue *fieri facias* on the judgment.

"Puffendorff says: 'And if the prince gives the subject leave to enter an action against him in his own courts, the action itself proceeds rather upon natural equity than on municipal laws. For the end of the action is not to *compel* the prince to observe the contract, but to *persuade* him.'

"In England claims against the Crown might be prosecuted before certain courts, in the form of petitions of right, with the consent of the King, but it was held by Lord Mansfield that 'if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year.' "

Macbeth *vs.* Haldimand, 1 Durn. & East., 172.

We have examined all the authorities quoted by counsel, and find none of them to support his contention. We are quite certain that no precedent exists sustaining the issuance of a *fieri facias* on a judgment against a sovereign State in her own courts, though rendered with her own consent.

The only recourse for satisfaction is by application to the Legislature, with whom the judgment should surely have great *persuasive* force, but none *compulsive*.

In United States *vs.* North Carolina, 136 U. S., p. 211, *supra,* this court took jurisdiction of a suit brought by the United States against that State for money due upon bonds held by the United States.

In United States *vs.* Michigan, 190 U. S., pp. 377-406, already referred to, this court again took jurisdiction of a

suit against Michigan for the recovery of money. At the conclusion of its opinion, at page 406, this court unanimously decided that—

> "There must be a judgment overruling the demurrer, but as the defendant may desire to set up facts which it might claim would be a defense to the complainant's bill, we grant leave to the defendant to answer up to the first day of the next term of this court. *In case it refuses to plead further, the judgment will be in favor of the United States for an accounting, and for the payment of the sum found due thereon.*"

Every writ, process, and remedy which would be available for the enforcement of such a judgment, or for the decree prayed for by the plaintiff in United States *vs.* North Carolina, 136 U. S., p. 211, *supra,* would be available for the enforcement of a decree in this case adjudicating the amount of West Virginia's equitable contributive share of the ante-bellum debt of Virginia.

If such decree in United States *vs.* North Carolina, or the judgment directed in United States *vs.* Michigan, could not be summarily or effectively enforced, then it may be that a final decree in this case cannot be so enforced.

But it is equally true, and it is a truth which should conclusively dispose of this ground relied upon in the demurrer, that if the inability of this court to award any execution or frame any writ which would enable the United States to enforce any such decree or judgment against North Carolina or against Michigan did not defeat the jurisdiction of this court in the suits against those States, a similar inability to summarily enforce a decree in this case against West Virginia by execution, levy and sale cannot defeat the jurisdiction of this court in this suit against that State for a settlement, ascertainment, and adjudication of the state of the accounts between the two States.

It is impossible by any conceivable process of right rea-

soning to apply any principle to the case at bar which would defeat the jurisdiction of this court, upon the ground here discussed, which would not have deprived this court of its jurisdiction in each of the cases just considered.

And so upon this alleged ground of demurrer we conclude that the bill presents a controversy between the plaintiff and defendant States justiciable and solvable in this court, and that the jurisdiction of the court will not be defeated because it may be that the plaintiff may not be able to collect from the defendant, or this court may be unable to compel the defendant to actually pay such sum as the court may adjudge and decree to be due by the defendant.

(3.)

To the third ground assigned in defendant's demurrer, namely,

> "That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described,"

our reply is that this assignment is founded upon mistake. It is not true that Virginia sues as trustee for the individuals mentioned or for any other persons. She sues in her own name and for her own benefit, in vindication of her own rights and for her own protection.

It is true that if the relief which she seeks is accorded her it will not only enure to her benefit, but necessarily to the benefit of all of the creditors of the undivided State, as well those who have deposited their unsatisfied bonds in her keeping as those who have never funded the bonds of the original State held by them; as well also those whose bonds and certificates are represented by the "depositing committee," who made the contract which is copied in the bill, as those whose bonds and certificates have not been so deposited. It is true that

the amount of the unfunded bonds and of said certificates which are not represented by said "depositing committee" is comparatively small, but they aggregate over a million dollars. Whether their holdings are large or small, this suit must necessarily enure to their benefit, as it must also to the benefit of all of the unsatisfied creditors of Virginia, for the reason that Virginia cannot obtain the exoneration to which she is entitled unless West Virginia's equitable share of liability upon every bond and obligation of the undivided State shall be ascertained and adjudicated.

Indeed, a little reflection will show it to be true, that the amount and extent of West Virginia's liability in respect to any one of the original bonds representing Virginia's ante-bellum debt could not be ascertained without at the same time by the same token ascertaining her aliquot liability as to all of the others of those bonds.

It will be seen at once that this is true, for under the Wheeling ordinance and the first constitution of West Virginia, framed and adopted in pursuance and effectuation of that ordinance, and under the contract thereby created between Virginia and West Virginia, it would be impossible to determine what part of any particular bond West Virginia is legally and equitably bound to pay without first ascertaining what is the equitable proportion of the entire ante-bellum indebtedness of the undivided State.

And so no suit could be brought by Virginia against West Virginia; and, indeed, if an individual could legally institute and prosecute such a suit, no suit could be brought by any individual holder of a single one or any larger number of the bonds of the original State against West Virginia for a settlement and be prosecuted to a finality without an ascertainment of West Virginia's share of the entire indebtedness.

But Virginia's status in reference to this suit and her relation to the bonds deposited with her and the relief she seeks, and to which the bill shows her to be entitled in respect to

those bonds and to the whole case, have been already fully discussed in the foregoing part of this brief and they need not be further treated here.

It is true that in the prayer for general relief Virginia asks that—

> "all proper accounts be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee as aforesaid."

But this, we submit, does not convert the suit which she has brought in her own name and right into a suit by her *as trustee;* for, in the settlement of the accounts which this court may hereafter direct to be taken between Virginia and West Virginia it will be convenient, if not necessary, in the ascertainment of West Virginia's contributive proportion of the original public debt of the Commonwealth of Virginia to show the amounts due to Virginia in her own right and also as trustee. Indeed, the prayer of the bill for the ascertainment of the amount due by West Virginia upon the bonds held by Virginia as trustee might be omitted without impairing the character and effect of the bill.

The paramount and controlling equity which Virginia asserts and relies on, is her right to have a settlement and accounting between West Virginia and herself of all the matters growing out of the partition of her territory and the adjustment and determination of the respective rights and liabilities of the two States. This, we submit, is Virginia's right, and it is not affected by any questions that may be suggested as to the disposition she may make of whatever amount may be decreed by this court to be due to her.

It may be true that she has pledged in advance the full amount of any such recovery to the payment ratably of certain of her old debts, or even that she has made a declaration of trust as to such amount in favor of those creditors; but those are matters which cannot be considered on this

demurrer. They are in nowise involved in the ground of equitable jurisdiction invoked by this bill. Virginia's right to compel contributions from West Virginia to the satisfaction of a common liability cannot be impaired or at all affected by the fact that Virginia has declared her purpose to apply the amount recovered to the payment of her debts.

They are matters which may, and doubtless will, be laid before the master to whom the settlement and statement of the account is intrusted, or they may have to be considered and passed on by this court, in the directions it may give to the master for his guidance in the execution of the order of reference; but they form no proper subject for consideration or action by the court at this stage of the case. The only question presented for decision now is, Has Virginia shown by her bill a proper case for the relief asked, of an accounting and for contribution from West Virginia?

(4.)

The fourth assignment of grounds of demurrer is so general in its terms that it is difficult to make to it a specific reply. It is as follows:

> "That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described."

This contention rests largely upon the same grounds upon which the second assignment is based, and the reply to it is very much the same, which is a conclusive answer to that assignment, and the importance of the case will justify some iteration in stating this reply.

The case stated in the bill must on this demurrer be taken to be true as to the facts charged. Among the facts charged are the following, viz:

1. That the restored State of Virginia, in convention assembled, did, on the 20th day of August, 1861, adopt an ordinance:

> "To provide for the formation of a new State out of the portion of the territory of this State."

That section 9 of that ordinance was as follows, viz:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, &c., as above quoted."

2. That on the 31st of December, 1862, the Congress of the United States, by act, provided that the new State, thus formed in pursuance of said ordinance, should be admitted into the Union by the name of West Virginia.

3. That on the 20th of June, 1863, the State of West Virginia was accordingly admitted.

4. That by act of the General Assembly of the restored State of Virginia, passed February 3, 1863, all property—real, personal, and mixed—owned by Virginia, but situated within the proposed boundaries of West Virginia, was granted and transferred to West Virginia upon the condition, viz, that—

> "The State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State," &c.

5. That under and by virtue of said act there was actually received and enjoyed by the State of West Virginia property of the Commonwealth of Virginia amounting in value to several millions of dollars.

6. That by act of the General Assembly of the restored State of Virginia, passed February 4, 1863, there was appro-

priated to the State of West Virginia from the public moneys of Virginia the sum of $150,000; and there was further appropriated *"all moneys* not otherwise appropriated then" and that may come into the treasury up to the time when the State of West Virginia shall become one of the United States.

7. That by section 8 of article 8 of the constitution framed and adopted by the State of West Virginia, and under and in accordance with and by reason of which she was admitted into the Union of States, it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and the legislature shall ascertain the same as soon as may be practicable—and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

8. That the legislature of West Virginia never ascertained the amount of West Virginia's "equitable proportion" of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861; that the State of West Virginia has never accounted for the property of the Commonwealth of Virginia which was turned over to and received by her, amounting in value to several millions of dollars; that the State of West Virginia has failed and refused through a period of forty years, and in the face of repeated solicitations on the part of Virginia, to enter upon any settlement of the accounts between herself and Virginia, but has oftentimes and but recently, through one or the other of the two houses of her legislature, declared that she would not recognize any liability whatever as resting upon her to the Commonwealth of Virginia.

Wherefore, and by reason of the matters of fact aptly charged in the bill, it is manifest that a controversy is pre-

sented between the Commonwealth of Virginia and the State of West Virginia to which the judicial power of the United States extends and as to which this court has original jurisdiction.

West Virginia obtained the consent of the restored State of Virginia to the erection upon the territory of Virginia of this new State, and she procured the aid of the Senators and Representatives of Virginia in Congress in having her invested with sovereignty and admitted into the Union upon the express terms of the "Wheeling ordinance," which bound her to *"take upon herself a just proportion* of the public debt of the Commonwealth of Virginia."

West Virginia obtained admission into the Union of States on an express undertaking in her constitution that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State."

West Virginia received and applied to her own uses property belonging to the Commonwealth of Virginia to the amount in value of several millions of dollars, on the express condition that she would *"duly account for the same in the settlement hereafter to be made with this State."*

Hence it is evident that the "demand" referred to in this branch of the first ground of demurrer is not, as there assumed, "a simple demand for money," but it is a prayer that the *accounting,* so solemnly promised, may now be had, under the direction of this court.

The bill presents a state of facts from which it appears that the case is one for the exercise of the equitable jurisdiction of account upon some of the most important grounds upon which that jurisdiction can be invoked, according to the authorities and precedents.

(*a*) There have been in the first place complicated transactions running back to the creation of this new State, and

back of that for about thirty years, embracing numerous loans made by the original State of Virginia and a large number of expenditures of the money thus borrowed in the construction of internal improvements outside and inside the territory now constituting West Virginia.

Any such settlement would necessitate, first, an ascertainment of the amount of the public debt of Virginia as of January 1, 1861, a matter which in itself would require the services of a skillful and painstaking accountant.

There would also have to be an ascertainment of a great multitude of items of expenditure made by the old State within the limits of what is now West Virginia, and of a vast number of payments made in the shape of taxes by the people living in that territory towards the support of the State government, in each case, from the date of the inception of the State debt down to the 1st of January, 1861.

There would have to be, moreover, a determination of what was the proportion of the general expenses of the State government equitably chargeable against the counties and cities now constituting West Virginia during the same period. All of this, and more than is indicated here, would have to be ascertained in order to furnish the data upon which to ascertain the just proportion of the debt of the Commonwealth which West Virginia can be required or expected to pay upon the basis prescribed in the Wheeling ordinance.

These complicated statements, and the accounting necessary to evolve from them accurately, fairly, and justly the share of the common indebtedness which can be equitably assigned to West Virginia, alone would furnish an amply sufficient justification for a resort to a court of equity for an account.

But, in addition to this ground, there are others which even more emphatically call for the equitable relief to which the bill shows the plaintiff to be entitled.

(*a*) Prominent among these is the plaintiff's right to contribution. The basis of this right has been already fully stated in this brief, and in the bill. (See paragraph XVI, p. 16 of the bill.)

As to the right to invoke the aid of a court of equity to establish the right to contribution, see

1 Madd Chy., 233, star page 234.
Ex parte Gifford, 6 Ves., p. 808.
Lawson *vs.* Wright, 1 Cox, p. 276.
Collyer on Partnership, secs. 2-3, ch. 8.
1 Story's Eq., sec. 504.
Wright *vs.* Hunter, 5 Ves., p. 792.
Wills *vs.* Hubbell's Adm'r, 2 Johns. Chy. R., 401.

(*b*) Another ground for equitable jurisdiction recognized by all of the authorities upon equitable jurisprudence and practice is the plaintiff's right to exoneration upon the facts stated in the bill and already fully stated in the former part of this brief.

(*c*) Another ground for equitable relief shown by the bill is the accounting necessary to ascertain what money and property, stocks, and other assets of Virginia were transferred to and received by West Virginia under the acts of the General Assembly of Virginia of February 3 and 4, 1863. (See pp. 4, 5, and 6, paragraphs VIII and IX of the bill.)

(*d*) Another ground for the exercise of equitable jurisdiction shown by the bill is the avoidance of a multiplicity of suits. Virginia sustains, as appears from the bill, various associated relations in respect to West Virginia, all affecting the property and pecuniary rights of the two States, all growing out of the formation of the new State, closely related to the partition of the territory and property and the apportionment of the common indebtedness of the undivided

State, and all necessarily factors to be considered in making any satisfactory or final settlement between the two States.

First. Virginia holds obligations and evidences of indebtedness of the undivided State great in number and large in aggregate amount, paid off or retired by her, doubtless, at different times and under variant circumstances, but each of them giving her a claim against West Virginia to be reimbursed to the extent of West Virginia's liability therefor.

Second. She is entitled to have West Virginia make proper remuneration to her or give her proper credit for the money and property of Virginia which West Virginia received under the acts of February 3 and 4, 1863.

Third. She is entitled to exoneration to the extent of West Virginia's equitable liability upon the various transaction set forth in the bill, hereinbefore fully stated.

It is not only proper, but it is alike West Virginia's and Virginia's right and to their interest, to have the settlement of all of these associated claims and transactions made in one suit, instead of the parties being harassed by a number of suits for the equitable adjustment of matters which can be far more satisfactorily, intelligently, and fairly considered and adjudicated in one suit.

(5.)

The fifth ground assigned in the amended demurrer—

> "That it does not appear by said bill that the Attorney-General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6,

> 1900, which is referred to and made part of said bill,"

is refuted by the bill. In support of this statement it is only necessary to refer to the following parts of the bill.

The act of the General Assembly of Virginia approved March 6, 1900, printed at pages 41-42 of the bill, entitled

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth in the premises,"

in the second section thereof authorized the Virginia Debt Commission, appointed under the joint resolution of March 6, 1894, upon certain conditions mentioned in that section,

> "by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings on behalf of the State as may in the judgment of the commission and the Attorney-General be needful and proper *to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid.*"

The bill avers (paragraph XX, p. 11) that—

> "This suit has been instituted at the request and direction of said commission, and in strict conformity with the provisions of said act of March 6, 1900."

The exhibits filed with and as part of the bill, and particularly the report made by said commission to the General Assembly of Virginia on the 9th of January, 1906, Exhibit No. 8, pages 43-50 of the bill, prove the truth of this allegation, though its truth, of course, cannot be questioned by the demurrant.

(6.)

The sixth ground of demurrer assigned in the amended demurrer is:

> "That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely (*sic*) and uncertain that no proper answer can be made thereto."

The bill, with as much exactness and particularity as is possible under the circumstances, sets forth with much detail the facts upon which the plaintiff claims to be entitled to relief.

It is as full and precise in asserting the demands which it asserts against the defendant as it is reasonably practicable to make those allegations without first having had the accounting with the defendant which is the primary relief for which the bill prays.

If Virginia could, without such an accounting with West Virginia, state with definiteness just what is the sum West Virginia should pay to Virginia, an action of assumpsit might have sufficed; but no remedy at law could give her the relief to which she is entitled by way of exoneration, nor is there any adequate remedy at law by which the complicated and more or less intricate accounts can be so digested and stated upon equitable principles as to reach a result which will be just to the parties.

(7.)

The seventh assignment made by defendant's amended demurrer is:

> "That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant."

This has been already answered in the answers made to other alleged objections to the bill. The plaintiff's right to an account is unquestionable upon any one of the several grounds already discussed; and a plaintiff is entitled to discovery in any case in which any right to equitable relief exists, and the defendant is in possession of any information, documents, or records which may throw any light upon the questions at issue or facilitate a just solution of those questions.

(8.)

The eighth and last ground of demurrer assigned is:

> "That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

This objection is possibly even more technical than some of the others presented in the demurrers.

It was not necessary under the English chancery practice, adopted by this court in 1792 for the guidance and direction of suitors and practitioners therein, to have any prayer at all for special relief.

Under the prayer for general relief the plaintiff could obtain all such relief as he was found by the chancellor to be entitled to upon the state of facts alleged in his bill and established by his proofs.

> "The old bills in chancery did not contain any special statement of relief, but only what is called the prayer for general relief." * * *
>
> Adams' Eq., m. p. 309.
>
> Mitford's Pleading, m. p. 39.
>
> Cook *vs.* Martin, 2 Atk., p. 141.

Under later practice in England, the prayer for general relief was still held to be sufficient, though it became the uniform practice to insert a special prayer, and to conclude with the prayer for general relief.

Adams' Eq., m. p. 309.

But there are prayers in the bill for special relief, namely,

> "that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by the State of West Virginia in the premises;'

These prayers not only ask for the specific relief stated, but that "the court will adjudicate and determine the amount due to your oratrix by the State of West Virginia."

An adjudication is a solemn judgment of a court. The word "adjudicate" is defined to mean:

> "To determine in the exercise of judicial power; to pronounce judgment in a case" (Anderson's Dict. of Law).
>
> "Synonymous with adjudge in its strictest sense" (Abbott's L. Dict.).
>
> "To determine judicially; try and decide; adjudge" (Standard Dictionary).

So a prayer for an adjudication by the court is a prayer for a judgment.

But such a prayer is unnecessary in a bill invoking the chancery jurisdiction of account.

The judgment or decree upon the account when taken and confirmed by the court is a necessary incident to the relief sought:

> "for it is implied if not expressed in the decree to account that the balance shall be paid to the party entitled."
>
> 1 Madd Chy. Pr.; title, Account, p. 86.

But where there is a prayer for special relief which does not adequately define *or even inaccurately state* the relief to which the plaintiff is shown upon the case presented to be equitably entitled, such relief as is adequate and appropriate to the case can and should be granted by the court.

1 Daniell's Chy. Pr., ed. 1846, p. 434.

The modern English practice is

> "to pray particular relief, though if the particular relief prayed for in the bill cannot be given exactly as prayed, the court will assist the particular prayer under the general prayer; but relief inconsistent with the specific relief prayed, cannot be given under the general prayer."
>
> 2 Madd Chy., m. p. 172.
> Beaumont *vs.* Beaumont, 5 Ves., p. 495.
> Muckleston and Brown, 6 Ves., p. 52.

The proposition asserted in this eighth assignment is negatived by repeated decisions of this court.

It will be noted that the bill contains prayers for special relief and also a prayer for "all such other, further and general relief as the nature of the case may require and to equity may seem meet."

In English *vs.* Foxhall, 2 Peters, p. 612, this court declared that—

> "There is no doubt but that, under the general prayer, other relief may be granted than that which is particularly prayed. But such relief must be agreeable to the case made by the bill."

And in Watts and others *vs.* Waddle and others, 6 Peters, pp. 389-403, this court said:

> "Although there is no specific prayer in the bill to be paid the rents and profits, yet the court think that under the general prayer this relief can be granted. *Under this prayer any relief may be given for which the basis is laid in the bill.*"

And in Walden, &c., *vs.* Boley and others, 14 Peters, pp. 164-5, this court decided that—

> "A court of equity cannot act upon a case which is not fairly made by the bill and answer. *But it is not necessary that these should point out in detail the means which the court shall adopt in giving relief.* Under the general prayer of relief, the court will often extend relief beyond the specific prayer, and not exactly in accordance with it."

See also, to same effect—
Boone *vs.* Chiles, 10 Peters, p. 177.
Stevens *vs.* Gladding, 17 How., p. 455.
Georgia *vs.* Stanton, 6 Wall., p. 50.
Texas *vs.* Hardenburg, 10 Wall., p. 86.
Jones *vs.* Van Doren, 130 U. S., p. 692.
Hayward *vs.* Eliot Nat. Bank, 96 U. S., p. 611.
Lockhart *vs.* Leeds, 195 U. S., pp. 427-437.

In the case cited this court decided that—

> "There is nothing in the intricacy of equity pleading that prevents the plaintiff from obtaining the relief under the general prayer, to which he may be entitled upon the facts plainly stated in the bill. There is no reason for denying his right to relief, if

> the plaintiff is otherwise entitled to it, simply because it is asked under the prayer for general relief, and upon a somewhat different theory from that which is advanced under one of the special prayers."

These authorities would seem to unquestionably establish the sufficiency of the prayers for relief in the bill, and to effectively dispose of the eighth ground of objection laid in the amended demurrer.

The grounds of objection to the bill alleged in the original demurrer have not been noticed, for the reason that they are all merged in or covered by the amended demurrer.

Upon the whole case presented, it is respectfully submitted that the demurrers should be overruled, and the defendant required to answer the plaintiff's bill.

MARCH, 1907.

WILLIAM A. ANDERSON,
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HOLMES CONRAD,
Of Counsel for Virginia.

MEMORANDUM.—Because the time allowed them was scant, the counsel for the Commonwealth agreed to apportion certain portions of this reply brief between themselves. Hence it appears as one brief, though in two parts.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

REPLY BRIEF OF COUNSEL FOR VIRGINIA UPON THE DEMURRERS TO THE BILL.

I.

The bill is not demurrable on the ground of multifariousness, either because of uniting any two or more distinct and separate matters or grounds for equitable jurisdiction, or upon the alleged ground that it blends in the same bill two causes of action, one of which is of equitable and the other of legal cognizance.

(1) None of the grounds for equitable relief shown by the bill are distinct and separate and independent of the other grounds assigned in the bill for the relief prayed. All of the demands for relief shown by the bill are intimately

connected with each other and are properly to be considered in stating any account and making any settlement between the two States.

It cannot be fairly contended that any item of charge against West Virginia suggested by the bill is not a proper item to be brought into any statement which shall fairly ascertain the true state of accounts between the parties and the amount which the plaintiff is equitably entitled to recover from the defendant.

It is manifest that the equity for contribution and the equity for exoneration, to which the bill plainly shows that the plaintiff is entitled, are, for the purposes and with reference to all the legitimate objects of this suit, so associated together and so connected with each other that it would be impossible for the court to give complete relief, and to ascertain the amount for which the plaintiff has a just claim against West Virginia without bringing all of these matters into the account.

It would be impossible fairly and justly to state the account between these parties without bringing into it the sums with which West Virginia is justly chargeable on account of the moneys and property constituting integral parts of the assets of the undivided State which West Virginia has received under the acts of the restored government of Virginia passed in 1863.

(2) But if, applying rigidly an extreme technical rule of pleading, it could be claimed that the demand which Virginia has a right, as shown by paragraph VIII of her bill, to make of the defendant imports a legal cause of action, and could not for any reason be properly cognizable by a court of chancery in making a final settlement between the parties to this cause, then, according to the rule of common sense and common justice, well settled by the authorities, the averment of such a cause of action in the bill will not be fatal to the maintenance of the suit, but will

be treated as surplusage by a court of equity, and either ignored in its consideration of the case or will be by amendment stricken from the bill without prejudice.

We are saved any necessity for any further discussion of this phase of the argument of defendant's counsel by the admirable statement of the law governing this subject, accurately expressed in the work upon "Equity Procedure" of which the learned counsel, Mr. Charles E. Hogg, who opened the oral argument for West Virginia and is upon her brief, is the author.

The principles governing this subject, as stated in Hogg's Equity Procedure, edition of 1903, vol. 1, sec. 136, furnish a conclusive answer to the elaborate argument of the counsel for the defendant upon this branch of the case and are as follows:

> "SEC. 136. Courts of equity have declined to announce a general rule applicable to all cases of multifariousness, *being guided by considerations of convenience in each particular case rather than by any absolute rule.* But there are certain cardinal principles which have been established by repeated and numberless decisions in the court of equity, and if borne in mind it will seldom if ever be found difficult to determine whether multifariousness exists in the particular case.
>
> "As to what these particulars are, all the adjudged cases agree.
>
> "From the numerous decisions relating to this matter, a few of which are cited in the foot-notes, the following principles may be safely declared to govern in questions of this character:
>
> "1. A bill will always be deemed multifarious where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite in his answer and defense different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delay

might be occasioned respecting matters ripe for hearing by waiting for proofs as to some other matters ready for hearing.

"2. It will be treated as multifarious where there is a demand of several matters of a wholly distinct and independent nature, in the same bill, rendering the proceedings oppressive because it would tend to load each defendant with an unnecessary burden of costs by swelling the pleadings with the statement of the several claims of the other defendant or defendants with which he has no connection.

"3. A bill against two or more defendants will be regarded as multifarious which also embodies a separate and distinct claim against one of the defendants only.

"4. A bill will not usually be regarded as multifarious when the matters joined in the bill, though distinct, are not absolutely independent of each other, and it will be more convenient to dispose of them in one suit.

"5. A blending of two causes of action in the same bill, one of which is of equitable cognizance and the other legal, will not render a bill multifarious, *as the latter will be treated as mere surplusage and stricken from the bill and the cause retained as to the equitable ground of the suit.*" (Italics, here and elsewhere, ours.)

These propositions are amply supported by the authorities cited by the learned author and by the following:

Story's Eq. Pl., secs. 271-278, 280, 284, 531, 532.

Mitf., Eq. Pl., by Jeremy, 181, 182, notes *a* and *b*.

Atty. Gen. *vs.* Merchant Tailors Company (1883).

1 Milne and Keene's Chy. R., 189, 191, 194.

Campbell *vs.* Mackey, 1 Mylne & Craig Chy. R., 622

II.

The next ground of objection to the bill urged by defendant's counsel, which I will notice, is that the plaintiff has, as they allege, no interest in the subject-matter of the controversy and asks no substantive relief for herself.

This position of opposing counsel is based upon an extraordinary misapprehension of the bill.

(*a*) The bill shows that the plaintiff has a very large direct claim against the defendant because of the fact that the plaintiff has paid off and satisfied in full obligations and evidences of indebtedness of the undivided State, including interest from the dates of payment of the several items constituting said demand, considerably in excess of $25,000,000, and that for this Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

See paragraph XVI, page 9 of the bill.

(*b*) *The bill shows that it is not true in fact,* as counsel argued, that Virginia has been released in respect to the unfunded portion of the bonds of the original State deposited with her under the act of 1871 and amounting, as appears from the exhibits printed at pages 73 and 90 of the bill, to $12,703,451.79, with interest on the principal sum thereof from July 1, 1871. As to this portion of the old debt of the State, Virginia has never been released, and her own highest court, in Greenhow *vs.* Vashon, 81 Va., 342-343, has so declared. In that case Judge Richardson, delivering the opinion of the court, quoting with approval the dictum of Judge Staples in Antoni *vs.* Wright, 22 Gratt., 864-5, says:

> "It is said that the creditor has released one-third of his debt. I do not so understand it, and I will hazard the assertion the creditor does not so construe the law. If this was the intention of the framers

> of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt, and coupons for the interest. For the remaining one-third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her the creditor will receive the other two-thirds also. On the other hand, if she repudiates these obligations there is no agreement or understanding absolving the State from the payment of such third. It is as much bound for the payment of the whole debt as before the passage of the funding bill."

And the Supreme Court of Appeals of Virginia, in Higginbotham *vs.* The Commonwealth, 25 Gratt., 627, expressed substantially the same opinion. This ought to be conclusive of this particular question for the purposes of this demurrer.

But, independently of said decisions, we assert with absolute confidence in the unquestionable correctness of the proposition, that it is impossible to read the act of March 30, 1871, and particularly section 3 of said act, found at pages 14 and 15 of the bill, without seeing not only that Virginia is not released, but that she has solemnly contracted that payment of said unfunded one-third, with the interest due thereon, "will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

* * * * * * *

The manifest effect of the transaction was to continue in full force the liability upon the unfunded third of each of the bonds so deposited, both as against Virginia and against West Virginia, the only concession that the creditor

made being that payment could not be expected or required of Virginia until a settlement should be had between the two States.

While the creditor, as the result of this arrangement, took the risk of such a settlement ever being made, it was none the less the duty of Virginia to do all that could be reasonably and fairly expected of her to bring about and effect such a settlement; and, her repeated efforts to that end having proved abortive by reason of the failure of West Virginia to meet her overtures, this suit has become necessary.

Her equity to maintain this suit in respect to the $12,700,000 of unfunded bonds deposited with her under the act of 1871 is based upon her right to exoneration to the extent of West Virginia's liability upon the indebtedness represented by those bonds.

By reason of the contract which her creditors have made with her, she has a further interest in maintaining this suit, viz., to obtain COMPLETE exoneration in respect to those unfunded bonds as to which she has been in no sense *released*, but can only be released by an adjudication of this court against West Virginia ascertaining West Virginia's aliquot liability on account of the said indebtedness.

(*c*) Nor is it true in any sense that Virginia has in any degree impaired her right to maintain this suit because she has agreed to turn over to her creditors entitled thereto the ratable proportion of any amount which she may obtain from West Virginia assignable to the holders of the unsatisfied obligations of the undivided State.

It cannot in any court of conscience impair a plaintiff's right to equity because her bill shows that it is her purpose to do equity.

Any recovery from West Virginia will, by the terms of Virginia's contract with the representatives of the creditors of the undivided State be ratably apportioned among all of

the holders of the ante-bellum obligations of the original State, including Virginia as now constituted. The creditors other than Virginia will receive their *pro rata* share of such recovery in entire exoneration of Virginia, and Virginia will receive or retain the *pro rata* share of such recovery assignable to the obligations and evidences of indebtedness of the original State which she has paid in full, by way of equitable contribution to her.

It will be apparent from an examination of the contract between Virginia and the committee representing the certificates which she has issued, and which in turn represent the unsatisfied obligations of the undivided State, that, while the arrangements which Virginia has made with the common creditors or their representatives for her protection, and for their protection, with a view to their payment, and to her payment, and to her exoneration, enure alike to her benefit and to the benefit of the common creditors, West Virginia is not in the slightest degree prejudiced, nor are her interests or rights to any extent impaired by reason of any of these arrangements.

There were different stipulations in the certificates issued under the act of 1879, 1882, and 1892, in reference to the settlement of the public debt of Virginia, but they do not impair Virginia's right to maintain this suit.

III.

With strange persistency counsel for West Virginia insist that jurisdiction has not been conferred upon this court by the judiciary clauses of the Federal Constitution over controversies between two or more States involving directly or indirectly a demand for the payment of money.

Their contention is that—

Jurisdiction imports power not only to decide, but to grant adequate relief, and—

That this court is powerless to give adequate relief to the plaintiff upon the case stated by her, and—

That therefore this court can have no jurisdiction of this cause.

We have shown in our brief, already filed, for the plaintiff that this question has been repeatedly adjudicated in this court, against defendant's contention, in cases so analogous to the case at bar that it is impossible to distinguish them upon any ground of principle as to this particular question.

But we have a further sufficient reply to make to this contention.

The proposition of opposing counsel rests upon the assumption that this court cannot give adequate relief.

That is not true. The court can give all the relief that is in the nature of things appropriate to the case and all that is prayed for by the bill.

It can cause the account between the two States to be stated and an ascertainment and an adjudication of the equitable proportion of the public ante-bellum debt of Virginia to be borne by West Virginia to be had, and upon confirming the report made by its master in chancery can, and will, adjudge and decree the amount which West Virginia is equitably bound to pay on account of the common indebtedness of the original State.

This, as is shown by the bill and pointed out in our former brief, not only will give Virginia adequate, but will accord her complete, relief, because it will operate to exonerate her from any further liability on account of that indebtedness to the extent already plainly shown.

In further reply to this branch of argument of defendant's counsel, I beg leave to add to what has already been said upon that subject, that it has never been held by this court that no execution or process could under any circumstances be issued upon any judgment against a State upon any pecuniary demand.

Whether strictly private property of West Virginia, property owned for profit and charged with no public trusts or

uses, property owned for some commercial purpose, or owned just as an individual might own such property, would be liable to levy, attachment, or sale under an execution issued under a decree of this court, is a question which we hope will never arise and can never arise unless West Virginia shall fail or refuse to respect a decree of this court and to comply with its terms.

It will be time enough then for this court to decide what further action, if any, shall be taken in enforcement of its decree.

We frankly say that we at present know of no property of defendant which would be liable to levy or sale under any execution issued by this court, but it is not very difficult to conceive of a condition of things in which West Virginia might own property within the jurisdiction of this court which would be liable to be subjected for the satisfaction of a decree in this case. I fully concede that only such property as was not held by that State for governmental purposes and not charged with any public trust could be subjected for the satisfaction of a decree of this court; but there may be circumstances under which property charged with a special trust for the satisfaction of the very debt claimed here, or property not charged with any public trust, belonging to the State of West Virginia and held by her, just as a private individual might hold such property, might be liable to be attached for the satisfaction of a decree of this court in this cause.

Tried by the same principles which have controlled this court and the State courts in respect to judgments entered against municipal corporations, there can be no question that the fact that an effective execution cannot be issued upon the judgment does not invalidate the judgment.

2 Dill., Munic. Corp., 4 ed., sec. 576.

2 Dill., Munic. Corp., sec. 856.

Tiedman, Munic. Corp., sec. 212.

The execution is in no sense and under no circumstances an essential part of the judgment.

Freeman on Judgments, sec. 2, and cases cited.

Whether a defendant has or has not any property on which a lawful execution could be validly levied does not at all affect the validity, though it may affect the value, of a judgment against him.

III.

I come now to consider the ground upon which Mr. Carlisle, the distinguished counsel for West Virginia who closed the oral argument of the case, seems in his brief and in his oral argument to mainly rely in his advocacy of the demurrers, though it is a ground not mentioned or suggested in either of the demurrers.

His contention is that by reason of the provisions of the alleged act of the General Assembly of Virginia, passed May 13, 1862, which were as follows:

> "That the consent of the legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, according to the boundaries and along the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one."

and of the provisions of section 8 of article VIII of the constitution of West Virginia, which is in the following words:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquida-

> tion thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

a compact was created by which the legislature of West Virginia was constituted the sole tribunal to ascertain, adjudicate, and finally decide what was the equitable proportion of the public debt of the undivided State which West Virginia should assume and pay.

Upon this extraordinary contention counsel for the defendant seem now mainly to rest their case.

(*a*) We deny that the fact of such an alleged compact, not mentioned or suggested in the bill, can be relied on as ground of demurrer.

(*b*) We challenge the averment that any such act as the alleged act of May 13, 1862, was ever passed by any legislature of the Commonwealth of Virginia, and we crave oyer of the act, if it is to be relied on.

(*c*) If the meaning and effect contended for by the counsel for the defendant could be fairly given to the terms of section 1 of the said alleged act of May 13, 1862, then Virginia has a right to insist, and does insist, that said act shall be at least reasonably, if not strictly, construed.

Under no fair construction of that act can it possibly have any such legal effect, even upon the violent hypothesis of counsel for the defendant, for the reason that the alleged consent and agreement of the Commonwealth of Virginia, as therein expressed, was predicated upon the admission of West Virginia into the Union under the provisions of the constitution for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, eighteen hundred and sixty-one, while the fact is that West

Virginia never was admitted into the Union under that constitution, but was admitted under an amended constitution submitted to the people of West Virginia by an ordinance adopted by a convention thereof on the sixteenth of February, eighteen hundred and sixty-three, and pursuant to a further ordinance adopted by the said convention, entitled "An ordinance to provide for the organization of the State of West Virginia," passed February nineteenth, eighteen hundred and sixty-three, as will appear from the said constitution and ordinances of the State of West Virginia, published in the volume entitled "Constitution and Statutes of Virginia and West Virginia," printed pursuant to the act of the legislature of West Virginia passed February, twenty-sixth, eighteen hundred and sixty-six.

Non constat but that the consent of the legislature of Virginia would never have been given in manner and form as expressed in the alleged act of February thirteenth, eighteen hundred and sixty-two, if predicated upon the amended constitution, which was subsequently submitted to the people of West Virginia and received their sanction at the polls. This is by no means so strained a construction as that which counsel for the defendant would feign give to this act.

(*d*) But we deny utterly that by any fair or reasonable construction of the language of the first section of said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the provisions of the constitution proposed for the State of West Virginia by the convention which met in the city of Wheeling on the 26th of November, eighteen hundred and sixty-one, the language of that section was ever by any possibility intended by the legislature of Virginia or understood by the convention or by the people of West Virginia, or by any rational human being, to be, or to operate as, a SUBMISSION to the legislature of West Virginia of the question of the amount and pro-

portion of the common debt of the original State which it was equitable and just for West Virginia to assume and pay; or that that enactment was ever intended by Virginia, or understood by West Virginia, or by any one, to bind Virginia to accept and abide by such determination of that matter as might be made by the legislature of West Virginia, however capricious or unjust its judgment might be; or was ever intended or understood by either of the parties, or by anybody, to constitute the legislature of one of the parties to the present controversy a tribunal with plenary power and exclusive jurisdiction to determine and decide anything in respect to the common *ante-bellum* debt of Virginia which would be binding upon Virginia; and yet such is the contention of the learned counsel, unless we misapprehend the language of their briefs.

All that could be reasonably inferred from the language used in said act of May thirteenth, eighteen hundred and sixty-two, taken in connection with the proposed constitution of West Virgina, was that Virginia gave her consent to the creation of the State of West Virginia out of her territory under that constitution and that section 8 of article VIII of the proposed constitution was designed not to create any new contractual relation or obligation between Virginia and West Virginia, but to be, and operate as, a mandate from the people of West Virginia to the legislature of West Virginia, requiring that legislature to assume an equitable proportion of the public debt of the original State, and as soon as practicable to ascertain the same and to provide for its liquidation by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years, and that Virginia was willing that West Virginia should become a State of the Union under a constitution which contained those provisions and the other provisions expressed in the constitution as formulated and proposed prior to May thirteenth, eighteen hundred and sixty-two.

Reasonably construed, the purpose and effect of section 8 of article VIII was to place upon the new State an equitable

proportion of the public debt of the old State and to require, and make it the duty of, the legislature of the new State to provide for the payment of West Virginia's equitable proportion of that debt, so that the entire amount, interest and principal, should be extinguished and paid off within the period of thirty-four years.

Nearly forty-four years have elapsed, and yet West Virginia has done nothing; has paid not one cent of the interest or the principal of the debt; but, on the contrary, has repudiated every obligation imposed upon her by the stipulations of the Wheeling ordinance which constituted the essential condition of her political existence.

(*c*) But the entire conception and theory of opposing counsel upon this subject have been demolished by the fact that West Virginia has repealed and abrogated the constitution under which she was admitted into the Union, by the adoption of a new constitution in eighteen hundred and seventy-two, which new constitution contains no provision whatever requiring that State to assume an equitable proportion, or any other proportion, of the *ante-bellum* debt of Virginia, or requiring the legislature of that State to provide for the payment of any portion of that debt.

See West Virginia Constitution, adopted in 1872; Code of West Virginia, 1887.

By her present constitution West Virginia ignores her obligation to pay any part of the debt, and if it had ever been true that anybody had ever attempted to constitute, or dreamed of constituting, the legislature of that State the supreme and ultimate arbiter between the two States as to the amount of the common debt which West Virginia should bear, West Virginia has not only failed and refused to discharge the duty as arbitrator, but she has actually abdicated any such function, duty, or power by repealing the constitution which counsel claim conferred such exclusive, supreme, and irreviewable jurisdiction upon her legislature.

IV.

The other points discussed in the briefs of defendant's counsel have been already anticipated and sufficiently met by the brief of counsel for Virginia already filed. A singular misapprehension of the language of the bill, and of the exhibits which constitute important parts thereof, has led counsel for the defendant into several errors of fact, two of which I deem it proper to notice. One is their contention that Virginia has ever made it a condition of any settlement or negotiation with West Virginia that that State should assume one-third of the *ante-bellum* debt of Virginia.

It was a condition of the negotiation and settlement authorized to be made by the resolution adopted by the General Assembly of Virginia on the 6th of March, eighteen hundred and ninety-four (pp. 39-40 of the bill), that Virginia was not to be charged with or assume more than two-thirds of the debt of the original State already assumed and provided for by her as her equitable proportion thereof.

But even under that resolution there was no condition whatever as to what West Virginia was to pay. That was left wide open as a matter for negotiation and adjustment.

And by the act of March sixth, nineteen hundred, pages 41 and 42 of bill, beyond the shadow of a doubt, plenary power was conferred upon that commission, with the approval of the Attorney General, to make any settlement and adjustment with the State of West Virginia which it might be practicable to make, and which the commission and the Attorney General might approve, provided the creditors, as defined in the act, agreed to accept such amount as might be recovered from West Virginia as a full settlement of all their claims against the State of Virginia.

Another inaccuracy of statement by opposing counsel, founded upon a like misapprehension, is that Virginia has submitted *any ultimatum* to West Virginia, or has made as a condition of an amicable adjustment with West Virginia, or of a negotiation or accounting with West Virginia looking

to such amicable adjustment, any condition that West Virginia should assume and undertake to pay any particular proportion of the common debt or any sum whatever; and particularly are the counsel for the defendant in error upon this point as to the last effort made by Virginia to bring about an amicable settlement, as will be seen from an examination of the address of Mr. Randolph Harrison, made on behalf of the Virginia Debt Commission before the joint committees on finance of the West Virginia legislature on the first of February, nineteen hundred and five, and printed on pages 66-80 of the bill.

Among other things of interest to this cause and to the questions now submitted to the court which will be found in that admirable address, Mr. Harrison, on page 76 of the bill, said:

> "We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount, that will end the matter. We only ask that your State will, through the proper authorities, unite with Virginia in stating the account between the two States in order that the question of her liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises."

I beg leave to commend the statement of Virginia's case, as made in that address, to the attention and consideration of the court. Its perusal will most conclusively demonstrate to this court the rightfulness and righteousness of the cause of action stated in the bill.

Respectfully submitted,

WILLIAM A. ANDERSON,
Attorney General of Virginia.

MARCH 14, 1907.

THE COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA.

REPLY BRIEF TO THE BRIEFS OF DEFENDANTS ON THE DEMURRER.

In the brief of Mr. Carlisle there appears, for the first time, the suggestion that this court cannot take jurisdiction of this case, because of a COMPACT alleged to have been entered into between the two States of Virginia and West Virginia, by which the question of the liability of West Virginia to Virginia on account of the public debt of the parent Commonwealth of Virginia was submitted to the arbitrament and award of the legislature of West Virginia.

The facts which it is claimed constitute such compact are as follows, viz.:

(1) That the constitution under which the State of West Virginia was admitted into the Union on June 20, 1863, contained the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and *the legislature shall ascertain the same as soon as may be practicable* and provide for the liquidation thereof by a sinking fund to pay the accruing interest and redeem the principal within thirty-four years."

(2) That on May 13, 1862, the legislature of (restored) Virginia passed an act entitled "An act giving the consent

of the legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State;" that by said act the consent of the legislature was given to the erection of the proposed new State "according to the boundaries *and under the provisions set forth in the constitution for the said State of West Virginia,* and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

(3) That the State of West Virginia was admitted into the Union on the 20th day of June, 1863, under the constitution framed by its convention, approved by the State of Virginia and the Congress of the United States. "And thus the consent of that body was given to all the provisions of the agreement and it became a legal and constitutional compact between the two States."

(Mr. Carlisle's Brief, page 36.)

To this suggestion of a "compact" between the two States we have to say in reply:

1. That this is not among the grounds assigned in the formal demurrer heretofore filed in this cause, but is set up for the first time in the brief of Mr. Carlisle, and is again relied on in the brief of the Attorney General of West Virginia, subsequently filed.

2. That it is not a ground proper to be considered on demurrer, because it involves alleged facts which do not form any part of the case stated in the bill, viz., the fact that on May 13, 1862, the legislature of Virginia, by an act regularly passed, by a legislature duly assembled, consented to the erection of the new State of West Virginia "within the jurisdiction of this State." Not only is this alleged act not stated or admitted in the allegations of the bill, but it nowhere appears in the record of the case, nor is it set forth even in the briefs of counsel.

3. That the Commonwealth does not admit, but is prepared to deny, when opportunity is afforded it, that any such valid, constitutional act was ever passed by the legislature of Virginia, but that a demurrer affords no such opportunity to complainant to traverse the allegation of the existence of such act or of showing its non-existence.

4. That the existence and consequent effect of such an act should be asserted by a plea, to which replication might be made, or by answer, to which denial might be opposed, and thus an issue presented to which proper proof might be directed.

5. That from the official publications of the acts of assembly of the (restored) State of Virginia it distinctly appears that the regular session of that body adjourned *sine die* on February 13, 1863; that the constitution of the (restored) State of Virginia provides that extra sessions of the legislature may be convened only upon a proclamation of the governor of the Commonwealth calling the same; that while it does appear that the members of the General Assembly did assemble and were in session on the 13th of May, 1863, it does not appear from the proceedings of that body in the officially published journals of its proceedings that it had been called to meet by the proclamation of the governor.

6. That the constitution adopted by the convention of West Virginia, which assembled at Wheeling on the 26th of November, 1861, was not the constitution which was approved by Congress and under which the State of West Virginia was admitted into the Union, but that that Congress did refuse to admit the State into the Union under that constitution until the same was amended in certain indicated particulars, and the said constitution was accordingly so amended.

7. That even assuming all the facts relied on as constituting such a compact to be established, yet the conclusion deduced therefrom is fallacious and unsound, in this, viz., that the provision of the constitution of West Virginia that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *shall be assumed* by this State, *and the legislature shall ascertain the same* as soon as practicable, and provide for the liquidation thereof," &c., does not import or mean that there was conferred upon the legislature power to adjudicate the fact or the amount of such "equitable proportion," or that there was lodged in the legislature any discretion whatever in the matter of such ascertainment.

In construing this provision of a constitution we must have regard to the subject-matter and the policy and purpose of the framers as disclosed by the instrument in all its parts. Here was a new State, about to be formed within the jurisdiction of an old State. That old State had, on August 20, 1861, just three months before, by an ordinance, provided "for the formation of a new State out of the portion of the territory of this State," and it had by the same ordinance declared that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of this debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the new State during said period."

It is impossible to suppose that the new State should not have had this in mind when it framed its own constitution, and that when it provided that its legislature "shall ascertain the same as soon as practicable" it referred to the method of ascertainment prescribed by the Virginia convention in the

very ordinance which provided for the creation of the new State. It seems to be at least reasonable to recognize that the ordinance of the Virginia convention and the provision of the West Virginia constitution should be taken as being *in pari materia* and construed together. It would then follow that what was meant by the expression the legislature "shall ascertain" was that the legislature should learn as soon as practicable the result of the method prescribed by the Wheeling ordinance, and then provide for the liquidation of the amount so ascertained.

It is simply preposterous to suppose that Virginia ever agreed to submit the matter of West Virginia's indebtedness to the arbitrament and award of West Virginia herself.

It should be enough to utterly repel this suggestion of a "compact" to inquire why, if such "compact" ever existed, in all the forty-three years that have elapsed since it was entered into, West Virginia has never, through her succession of governors, legislatures, and attorneys general, indicated and announced that it was upon such "compact" that she stood, and that to its terms and provisions she would hold Virginia, and why, through that long period, no step has ever been taken by West Virginia, through her legislature, to enter upon the performance of the duty which such "compact" imposed, or to notify Virginia that she stood ready and willing to enter upon such duty.

The suggestion that the case of Virginia *vs.* West Virginia, decided by this court thirty-six years ago, had restrained her from so doing is scarcely creditable to the intelligence of the inventor of that excuse.

Again, it is suggested in the briefs of demurrants, and was urged in oral argument, that Virginia had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on January 1, 1861.

The grounds relied on to support this suggestion were indicated as follows, viz:

(1) That by the terms and provisions of the act of the General Assembly of Virginia of March 30, 1871, entitled "An act to provide for the funding and payment of the public debt" (Record, p. 13), and the acceptance thereof by the holders of the bonds of the Commonwealth, such holders released Virginia from all liability to them on account of the original public debt existing on January 1, 1861, and for which West Virginia was bound with Virginia, and they created with Virginia a new debt, evidenced by the new bonds of Virginia, for two-thirds of the amount of the old bonds, and accepted from Virginia a certificate showing that for the remaining one-third of such amount they would look for their payment only to such funds as might thereafter be obtained from West Virginia in satisfaction of her contributive share of the old public debt.

For reply to this ground we refer to the act itself. Its preamble fully recites its purpose. Its terms and provisions are contrived to strictly carry that purpose into effect. The third section of the act (Record, p. 14) shows that the bonds surrendered by the holders were not surrendered for cancellation and extinguishment of the obligations, save as to two-thirds of the amount of each bond so surrendered, and that as to the remaining one-third, which was estimated to be the amount of West Virginia's just and equitable proportion of the common debt, "the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees." The bonds, as to such one-third, could not be "canceled" and at the same time "held in trust for the holder or his assignees." Virginia, by giving her new bond to take the place of the old bond, cannot be held to have paid her debt, but only to have substituted one security or evidence for another. A creditor, by surrendering an old bond and accepting a new one for the same debt from the debtor, has not received payment or satisfaction of the debt, unless such was the plain intention of the parties. The act itself as well as the certificate issued under it (Record, p. 72) show that such was not the intention.

(2) That by the act of the General Assembly of Virginia of March 28, 1879 (Record, p. 16), it was expressly provided, in the seventh section (Record, p. 19), "The acceptance of the said certificates for West Virginia's one-third, *issued under this act,* shall be taken and held as a full and absolute release of the State of Virginia from all liability *on account of the said certificates.*"

Observe, the release of Virginia is not from her liability on account of the old bonds surrendered by the holder. These old bonds still are to remain, so far as the unfunded one-third of their amount, held in trust for the holder, but the release here provided for is expressly "on account of these certificates," by which was plainly meant that Virginia would not recognize these certificates as creating any distinct and substantive evidence of indebtedness on her part. They should not be construed to be causes of action against her. The holder, by surrendering his bond to be held in trust for him by Virginia, did thereby agree to await the result of Virginia's efforts to obtain from West Virginia the amount of her "just and equitable proportion of the public debt," which amount Virginia solemnly dedicated to the satisfaction *pro rata* of the one-third for which the bonds were held in trust by her. This provision in the seventh section of the act was designed to preclude the idea that these certificates created a new and distinct liability of Virginia. The previous language of the seventh section is—

> "The owners of all classes of bonds mentioned in this act, and who shall not yet have received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, *shall receive certificates of a like character to those issued under the act of March 30, 1871, when they make such exchange,*" &c.

We have seen that the certificates issued under the act of March 30, 1871, declared on their face (Record, p. 72)

that "the State of Virginia holds said bond so far as untunded in trust for the holder thereof or his assignees, and these certificates, issued under this act of 1879, were to be of "like character." It is manifest, then, that under the act of 1879 there was no release by the bondholders of the liability of Virginia on the bonds surrendered to Virginia and held by her in trust for the holder as to the one-third.

(3) That under the act of February 14, 1882, entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon" (Record, p. 21 *et seq.*), Virginia obtained a release of liability from the bondholders.

This was the act passed by the repudiating legislature, under the malign influence of the Mahone-Riddleburger reactionaries. This act was the fruitful source of all the litigation that so long disturbed the patience of this court, from Hartman *vs.* Greenhow, 102 U. S., 877, down through many years. By section 6 of this act (Record, p. 28) the form of a certificate was prescribed, which recites that "Virginia has this day discharged her equitable share of the — bond, * * * leaving a balance of — dollars * * * to be accounted for by the State of West Virginia, without recourse upon this Commonwealth."

Now this certificate does not even purport to be a contract on the part of the bondholder, nor does the act itself purport to alter, amend, or repeal the former acts. It was a mischievous attempt, conceived in wicked folly and wrought out in ignorance, to repudiate the public debt. It could operate only prospectively, and but few of the bonds remained at the date of its enactment on which it could operate. Whatever its purpose and intent were, it could have no sort of

effect on the relations then existing between Virginia and West Virginia nor between Virginia and those of her creditors who had already surrendered their bonds and received the certificates.

That by the act of February 20, 1892, entitled "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of" [the preceding act], (Record, p. 31), Virginia was released. This was the first of a series of acts looking to the employment of a commission or committee as an instrumentality through which an arrangement might be made with all the holders of the bonds of every description issued by Virginia, whether funded or unfunded, under which all such bonds and the certificates issued in connection therewith might be assembled and united action taken by them with and through Virginia to obtain a final settlement of West Virginia's liability for her share of the public debt, the recovery of the amount of such liability, and the payment thereof to Virginia and the distribution by Virginia of such amount among the persons entitled thereto.

This was followed by the act of March 6, 1894 (Record, p. 39), and the act of March 6, 1900 (Record, p. 41).

On page 43 of the record appears the "Report of the commission appointed and acting under the joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia, and known as Virginia deferred certificates."

This report is contained between pages 42 and 82 of the record. It shows all that was done by the Virginia Debt Commission and the bondholders' committee in obtaining concurrent action on the part of the creditors; it shows the scrupulous and intelligent care taken by the General Assembly of Virginia in requiring that a large majority of such creditors should unite in their demands before the

Commonwealth would take decided action; it required that an open, public, formal, and earnest request should be made upon West Virginia to come into a friendly settlement of these matters before any resort should be had to the courts for redress; it shows the extreme care taken by the Attorney General of Virginia to see that he was invested with full authority, and that all the conditions precedent to its exercise had been fully performed before he would institute the proceedings provided for in the acts; it shows, too, the address made by the Virginia Debt Commission to the legislature through their spokesman, Mr. Randolph Harrison (Record, p. 66), in which are the full history of the debt, the legislation had thereon, the repeated efforts made by Virginia to induce West Virginia to come into a friendly settlement, the sanction of law on which Virginia relied to support her demand, and the unpleasant consequences that must ensue in the event of West Virginia's persistent refusal to make a settlement.

The address was received with respectful silence, and it is of consequence to note that although it was heard by the assembled body of the legislative committees of West Virginia's intelligent legislature, that not then, or at any time since, as at no time in the long period that had passed, was any intimation given, or ground of refusal to the invitation urged, that West Virginia would not enter upon the proposed settlement because a COMPACT had been entered into between the two States, and which still subsisted, by which that very legislature had been chosen as the final arbitrator of the very matter as to which Virginia was asking a settlement.

HOLMES CONRAD,
Of Counsel for Virginia.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original No. 8

IN EQUITY.

COMMONWEALTH OF VIRGINIA, ...COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, ...DEFENDANT.

BRIEF FOR VIRGINIA, UPON MOTION TO ENTER DECREE REFERRING THE CAUSE TO A MASTER.

Printing of Virginia-West Virginia Reporter, Va.

Supreme Court of the United States.

OCTOBER TERM, 1907.

Original, No. 4.

IN EQUITY.

COMMONWEALTH OF VIRGINIA, ...COMPLAINANT.

VS.

STATE OF WEST VIRGINIA, ...DEFENDANT.

BRIEF FOR VIRGINIA, UPON MOTION TO ENTER DECREE REFERRING THE CAUSE TO A MASTER.

Drafts of a decree referring the cause to a Master have been submitted on behalf of the complainant, and the defendant, respectively.

[1]

There are some differences going rather to matters of procedure than to any question of principle, between the provisions of paragraphs III. and IV. of complainant's draft, as compared with paragraph VII. of defendant's draft, which will be apparent upon reading the two papers.

We respectfully ask that the provisions expressed in paragraphs III., IV. and V. of complainant's draft be embodied in the decree which the court shall enter, for reasons which will be apparent on reading those paragraphs.

[II]

Our serious objections to the defendant's draft of decree are particularly to paragraph II., but also to paragraphs III., IV. and V. thereof.

The draft submitted on behalf of the complainant directs the master to take an account ascertaining:

I.

"The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness."

The defendant's draft adopts this paragraph.

Paragraph II. of plaintiff's draft directs the master to take the following accounts:

II.

"What amount and proportion of said indebtedness and of the interest accrued thereon, should in equity be apportioned to and be now paid by the State of West Virginia."

Paragraph II. of defendant's draft directs the master to take the following accounts:

II.

(*a*) "The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861.

(*b*) "The aggregate ordinary expenses of the State government of the Commonwealth of Virginia,

prior to January 1st, 1861, and since any part of said indebtedness was contracted.

(*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period."

Paragraph III. of plaintiff's draft directs that the master,

III.

"will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court."

We respectfully object to paragraph II. of defendant's draft, on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of the account, which is not shown by anything as yet in the cause to be either equitable or just.

Before any such question can be fairly adjudicated, it is necessary to the ends of justice, that there shall be a mass of evidence in the case, not yet introduced, which evidence the court should have the aid of its master in collating and thoroughly digesting.

There is by no means enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be equitable to adopt in stating the account.

To do so at this stage of the litigation, would be to decide an important question in the case before the evidence necessary for a full understanding and just decision of that question is before the court. It would be largely to take a step in the dark, which might, and in all probability would, do injustice to one party or the other.

Our main objection to paragraph II. of defendant's draft is that its effect manifestly is to have the court prejudge the case as to the basis on which the account shall be stated.

On the other hand, in the draft of decree tendered by counsel for Virginia, we have not asked the court to prejudge the case upon any controverted question of law or fact.

The case is not now being submitted for a decision upon its merits.

It is submitted for a decree referring it to a master, to state and report to the court the data necessary to enable the court to justly decide it upon its merits—and all the complainant desires is an opportunity to show the court and its master what is the fair and equitable basis upon which the account between the two States should be stated, under all of the circumstances of the case, as they shall appear when the evidence is all in.

If it should then appear that the basis prescribed by the Wheeling ordinance is binding upon the parties, and must be followed as the basis upon which the account shall be made up, that basis would be adopted. But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to impair the obligation of the contracts by which the common debt was created, contracts which were and are alike obligatory upon Virginia and upon West Virginia, or for any other valid reason, then the scheme of settlement indicated in the Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted.

It is due to frankness to say, that, while the Wheeling ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are satisfied that upon a fair, reasonable and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay.

The debt, a portion of which she was to pay, was an interest-bearing debt. It would be manifestly "just" and "equitable" that West Virginia should be required to pay interest as well as principal. Indeed, any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust, and inequitable, but iniquitous.

The ninth section of said ordinance required the new State "to take upon itself a *just* proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861."

And section 8 of Article VIII., of the first Constitution of West Virginia, under the provisions of which she became a State, required that:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State;" and that "the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund *sufficient to pay the accruing interest* and redeem the principal within thirty-four years."

So West Virginia came into the Union upon the distinct condition expressed in her Constitution, that she would assume an equitable proportion of the common debt of the undivided State, as it existed prior to January 1, 1861, and would provide for the payment of the accruing interest and the redemption of the principal thereof.

While it is believed that, upon the facts stated in the Bill and accompanying exhibits, and upon the proofs hereafter to be adduced in support thereof, West Virginia will owe a very large sum, even under the arbitrary scheme of the Wheeling ordinance, we submit that we should not, in the present status of the litigation, be tied down to the terms of that ordinance.

Indeed, its provisions were modified by the terms of the eighth section of Article VIII of the Constitution under which West Virginia was made a State, which provided that West Virginia should assume an equitable proportion of the com-

mon debt of the Commonwealth, principal and interest: And yet the defendant's draft excludes any item of interest from the account.

[III]

Another palpable objection to the defendant's draft is, that it excludes from the account the value of the property, assets, and money which West Virginia has received from the Commonwealth.

Upon any basis of just accounting, these items should be brought into the account.

If the account should be stated on the basis of the Wheeling ordinance, these items would manifestly be proper charges against West Virginia.

By the terms of that ordinance, Virginia's title to, and ownership of, all of the property and assets theretofore belonging to the Commonwealth remain intact.

By it, West Virginia would acquire no title to any of those assets or of that property. Framed as that ordinance was, by western Virginians, and arbitrary, and on its face unjust, as were the criteria by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a share of the property and assets of the Commonwealth, free of charge.

All that was, by the terms of that ordinance, to be ceded by the Commonwealth to the new State, was political dominion, and jurisdiction over the people and territory embraced in the new State.

The meaning and effect of the ordinance was to leave the title to, and ownership of, the assets and property of the Commonwealth in the Commonwealth.

If nothing more had been done or said by Virginia as to that property and those assets, than was said in the Wheeling ordinance, none of it ever would have become the property of West Virginia.

The Virginians who were the creators of West Virginia, who sat in the Wheeling Convention on the 20th of August, 1861, who constituted the convention which framed the first Constitution of West Virginia, and who constituted the Legislature of the restored government of Virginia which sat in Wheeling in 1862, and in 1863, fully recognized this to be true, for, pending the formation of the new State, and before the Legislature of Virginia had in any form given its consent to its creation out of the territory of Virginia, the Legislature of the restored State of Virginia, whose authority was supreme over the territory and people afterwards constituting West Virginia, and binding upon them, on the 3rd and 4th of February, 1863, passed the acts copied in the appendix to this brief.

These statutes constituted a part of the enactments out of which the State of West Virginia had its birth. It is particularly true of the act of February 3, 1863, that it was fundamental, so far as West Virginia was concerned: for it constitutes her title deed to a vast quantity of property, the title to which, by law and under the Wheeling ordinance, was vested in Virginia.

These statutes, together with the Wheeling ordinance, the first Constitution of West Virginia, the act of the United States Congress approved December 31, 1862, under which the new State was afterwards admitted into the Union, and the act of the Wheeling Legislature of May 13, 1862, constitute the constating instruments and acts by which her political existence was created, and her governmental powers and duties determined.

As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling ordinance, and Section 8 of Article *VIII* of the first Constitution of West Virginia, must be taken and read together: So also these constating acts of February 3rd and 4th, 1863, and particularly of February 3rd, 1863, must be taken and read together with Section 9 of the Wheeling ordinance, and with Section 8 of Article *VIII* of the first West Virginia Constitution, as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that

new State when formed of any portion of the assets and property of the parent State.

Property and money large in quantity and value were thereupon transferred by Virginia to West Virginia, for all of which West Virginia must account, not only as an equitable obligation resting upon her, under the circumstances, but as a legal obligation put upon her by positive and binding enactment.

All of these just items of charge against West Virginia, are excluded from the account to be directed by the court by the terms of defendant's draft.

For convenience of reference, the "Wheeling Ordinance," and the acts of the Legislature of Virginia at Wheeling, passed February 3rd and 4th, 1863, are printed as an appendix to this brief.

[IV.]

Another objection to the account called for by defendant's draft, is that it does not direct *any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January 1, 1861, which West Virginia should assume and pay*, but contents itself with merely directing the arbitrary and inconsequential accounts defined in paragraph *II* of defendant's draft.

But our principal insistance is that defendant's draft of a decree prejudges the case in advance of a hearing upon the merits, while that tendered for the plaintiff cannot operate to the prejudice of either party, upon any material question in the cause; by this draft the adjudication of these questions being left to await a hearing after the Master's report shall be filed, upon the evidence then fully in the cause.

[V.]

The precise accounts called for by paragraph *II* of defendant's draft will be taken by the Master if he shall find it necessary and proper to take them in order to ascertain the amount and proportion of the Virginia debt which West Virginia should pay; and if the Master shall for any reason deem it un-

necessary to take those accounts, the defendant can, under paragraph *III* of complainant's draft, have them stated as special accounts, if she shall be so advised.

Paragraph *III* of complainant's draft is designed to enable each party, or the Master, to have alternative, or special statements of the accounts made up on any basis on which either party or the Master may deem it proper or desirable that the same shall be stated.

By having the respective views and contentions of the complainant and the defendant thus presented in contrast in such concrete form, the court, with the assistance of the findings of the Master, will be enabled more readily and intelligently to reach a just conclusion.

[VI.]

If the inquiries defined in paragraphs III., IV., V. and VI. of defendant's draft have any pertinency to any question in the case, it must be because of something not yet in the record.

We object to them as being unnecessary and irrelevant.

(*a*) There is nothing in the cause, or so far as we know out of it, to show that there is any foundation in fact for the inquiry mentioned in paragraph III. of defendant's draft, as to whether Virginia has made any other contracts or arrangements with the public creditors, since January 1, 1861, in reference to the public debt. So that inquiry, though harmless, is useless.

(*b*) The accounts provided for in paragraphs IV. and V. of defendant's draft, are not pertinent to any issue in the cause.

Both relate to the certificates or receipts given by Virginia to the holders of the bonds issued by the Commonwealth before her dismemberment, who have deposited these bonds with her.

Those certificates are in the nature of a declaration of trust by Virginia, that she holds said bonds (so far as they have not been funded in the new securities which the Commonwealth has given for about two-thirds of the aggregate amount thereof, principal and interest), for the benefit of the owners of the bonds deposited with her.

It is impossible to see how those transactions could in any way affect any question which will arise in this cause.

The only function of those certificates is to show who are now entitled to the bonds which were so deposited with Virginia, and which she holds in her treasury for the benefit of these certificate holders, awaiting a settlement with West Virginia.

As is true of the inquiries mentioned in paragraph III., of defendant's draft, the objection to those provided for by paragraphs IV. and V. are that they are unnecessary and useless.

(*c*) The same objection applies to paragraph VI. of defendant's draft. That relates to the obligations which were issued by Virginia, as now constituted, in settlement of the two-thirds of the old bonds funded, and payment of which was assumed by her.

That is a matter with which West Virginia has nothing to do, and which does not affect the rights or obligations of either party in respect to the claims asserted in complainant's Bill.

Those new bonds given by Virginia for the two-thirds of the old bonds assumed by her, and accepted by the owners of the old bonds so deposited with Virginia, operated as a payment and discharge of the old bonds to the extent of the two-thirds thereof so funded.

West Virginia is not sued here to pay any part of that two-thirds so settled by Virginia. She is sued to have her assume and pay so much of the remaining unfunded third of the common debt of the undivided State, as may be West Virginia's equitable portion of the whole of the debt represented by the bonds of the original State. It has never been claimed or suggested that there was any liability on West Virginia beyond said unfunded third of the bonds of the original State which have been funded; or that West Virginia should pay more than one-third of the bonds issued by Virginia prior to the formation of West Virginia, which have not been funded.

The liability of West Virginia on account of the common public debt, has sometimes been estimated by Virginia or her representatives at one-third thereof, but never at more than one-third, and Virginia has undertaken to take care of the other two-thirds with which West Virginia has nothing to do.

It is true, that there are some millions of the debt of the undivided State, which Virginia has paid in full, and holds the

obligations so taken up by her as a claim against the new State, to the extent of West Virginia's equitable liability for contribution therefor; and the extent of that liability can be ascertained and stated in the account directed by paragraph II. of complainant's draft.

There is no occasion for any of the accounts directed by paragraphs III., IV., V. and VI. of defendant's draft. If West Virginia wants any of them to be stated, she can have that done as a special statement under paragraph III. of complainaint's draft.

[VII.]

We object generally to the defendant's draft, that it does not direct the accounts which are necessary to be taken in order to intelligently, definitely, and fairly determine the amount and proportion of the debt of the undivided State, which West Virginia is equitably and justly bound to pay.

Respectfully submitted,

WILLIAM A. ANDERSON,

COUNSEL FOR VIRGINIA.

APPENDIX.

Copy of the ordinance adopted by "the Wheeling Convention," providing for the formation of the new State afterwards called West Virginia.

AN ORDINANCE.

To provide for the formation of a new State out of a portion of the territory of this State.

(Passed August 20, 1861.)

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this Commonwealth, and to be erected into a separate State, and admitted into the Union of States, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: beginning on the Tug Fork of Sandy river, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the southwest corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the States

of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the States of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke, and Hancock.

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a Constitution for the government of the proposed State.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State."

And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the Secretary of the Commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We, ... commissioners, and ..... conducting officer, do certify, that we caused an election to be held at ....., in the county of ....., at which we permited all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following results:

For a new State, ... votes; Against a new State, ... votes.

Given under my hand, this ..... day of ....., 1861.

Under which certificate there shall be added the following affidavit:

..... County, to-Wit:

I, ..., a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under our hand, this ..... day of ....., 1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of election and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the Constitution that may be agreed upon by it, to the qualified voters within the proposed State, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monon-

galia, Preston, and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegate shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State, of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants issued by the proposed State, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed State now liable thereto.

10. When the general assembly shall give its consent to the formation of such new State, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the union of States.

11. The government of the State of Virginia as re-organized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the powers and authority with which its has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said re-organized State government in any county which shall not be included within the proposed State.

(SIGNED) A. I. BOREMAN, *President.*

(SIGNED) G. L. CRANMER, *Secretary.*

Copies of acts passed by the Legislature of Virginia, at Wheeling, February 3rd, and February 4th, 1863.

CHAPTER 68.—*An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.*

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein con-

tained; and shall include among other things not herein specified, all lands, buildings, roads, and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this State, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in any person or persons, for the use of this State to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this State or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the State in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed State of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the State, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroad, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the State, railroad or express companies, or other persons before or since the reorganization of the State government at the city of Wheeling; also all suits and their

results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, assessed in the counties aforesaid, and due the State for the year eighteen hundred and sixty-three, in the hands of officers of the State or individuals, together with all the rights of the State, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the State or corporations for the use of the State, shall be the property of the State of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the State, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the State of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of the commonwealth for the use of the State of West Virginia, when it becomes one of the United States, on any bond or claim which shall pass to or become the property of the State of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State: provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government.

6. It shall be the duty of the auditor of public accounts, the secretary of State, the treasurer and the adjutant-general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said State of West Virginia.

7. This act shall take effect when the proposed State of West Virginia shall become one of the United States.

CHAPTER 72.—*An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.*

Passed February 4, 1863.

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars be, and is, hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Vir-

ginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.

3. Be it further enacted, That the act passed May fourteenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the State of West Virginia be, and the same is hereby repealed.

4. This act shall be in force from passage.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

Original, No. 2

COMMONWEALTH OF VIRGINIA, Complainant,

v.

STATE OF WEST VIRGINIA, Defendant.

BRIEF IN REPLY TO DEFENDANT.

HOLMES CONRAD,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

BRIEF IN REPLY TO DEFENDANT.

On behalf of the complainant, an order is asked for referring this cause to a master to ascertain and report—

> "what amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to, and be now paid by, the State of West Virginia."

The order further provides that the master shall—

> "make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state, or which he may deem desirable to present to the court."

The object of this latter provision is to have stated and presented to the court the several methods or plans which, in the view of the respective parties, properly expresses and illustrates the correct method of ascertaining the "just pro-

portion" of the public debt of the Commonwealth of Virginia which each party should bear.

The court, having before it the accounts, stated in accordance with the views of each side, may be better enabled to judge of their respective merits and elect between them, and so avoid the delay which would be occasioned by a recommitment of the report.

On behalf of the State of West Virginia it is proposed, in section 2 of the draft of the decree presented by counsel, that the master shall state in his report—

(*a*) The amount of State expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia, at Wheeling, August 20, 1861.

(*b*) The aggregate ordinary expenses of the State government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of the said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

Among the "ordinances and acts of the restored government of Virginia, prior to the formation of the State of West Virginia," passed in the convention which assembled at Wheeling on the 11th of June, 1861, there was one ordinance, passed August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," the ninth section of which ordinance was as follows, viz:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of

> Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period," etc.

It will be seen at once that the provision of the proposed decree is a wide departure from the Wheeling ordinance, in that it does not even propose to ascertain by the method indicated West Virginia's "just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861." It was doubtless too apparent to the framers of the decree that the method proposed by the Wheeling ordinance had in fact, as we will show, no sort of connection with such public debt, and the account, stated as there suggested, might well have been taken, had no public debt of Virginia ever existed.

From the plan proposed by the Wheeling ordinance, as from that proposed in the decree offered by the defendant, there is altogether excluded any account of or reference to the public debt of the Commonwealth of Virginia, evidenced by bonds and other evidences of indebtedness outstanding on the first of January, 1861. The only settlement which this method could effect would be a mere accounting between two sections of Virginia, *inter sese*, of the amounts which had been paid into the treasury of Virginia from each section and the amounts which had by the appropriations of their common legislature been expended in each section during the period between 1822 and 1861.

If it should appear from such an accounting that the counties lying west of the mountains, and now constituting West Virginia, had during such period paid into the treasury of Virginia more money than had been expended by the State legislature within said counties, what possible connection could the result reached by that account have upon the

outstanding public debt of Virginia? Is there any provision or principle of law under which one county, or any number of counties, in a State can claim that the amounts paid to the State in the way of legal taxes shall not exceed the amounts which such counties receive from the State in the way of legislative appropriations? Can such counties claim that they should not be required to contribute their share of the public taxes toward the payment of the State indebtedness because, forsooth, they have through a period of sixty years paid into the State treasury more money than they have received from it? Coming to the case in hand, we have the request made to this court, in the decree offered by defendant, that the master, who may be directed to ascertain and report to the court what proportion and amount of the public debt of Virginia should justly and equitably be now borne by West Virginia, shall ascertain such amount and proportion by taking the aggregate amount of the taxes and ordinary State expenses collected from the counties constituting West Virginia and the amounts paid into said counties by legislative appropriation since 1822 and, deducting the smaller amount from the greater, report the balance so found to the court as West Virginia's just proportion of the public debt as of January, 1861.

The court has overruled the demurrer to the bill, and in doing so has stated in effect that the case stated in the bill entitles the complainant to the relief prayed, if such case is established by the proof. Is the case stated in the bill satisfied by the Wheeling ordinance?

The defendant was fully warranted in reiterating again and again in her answer that Virginia has always repudiated the Wheeling ordinance as binding on her, or as affording to any extent a satisfaction of Virginia's reasonable demand that West Virginia should contribute her just and reasonable share of that common indebtedness.

The Wheeling ordinance is impracticable, illusory, and altogether inadequate.

In suggesting here considerations which warrant us in insisting that the Commonwealth of Virginia cannot lawfully be bound by the ordinances of the Wheeling convention, which provided for the repudiation by the people of West Virginia of their liability to contribute toward the payment of the public debt of Virginia, we must not be understood as criticising in any manner the constitutional status of the State of West Virginia. It is as firmly entrenched and established as any State in the Union. What we do deny and repudiate is the claim asserted, that in matters relating to the pecuniary obligations—legal or equitable—of that State, the acts or ordinances of that convention which assembled in Wheeling in June, 1861, calling itself a convention of Virginia, and which professed to preserve, protect, and defend the interests of Virginia while actually engaged from its outset in providing for the dismemberment of Virginia—that such acts and ordinances, so far as they were designed to relieve West Virginia from her proper share of the public debt of Virginia, are of any legal, equitable, or moral binding effect on Virginia.

We object to West Virginia's proposed plan of settling the accounts, because—

(1) The Plan of the Wheeling Ordinance and of Defendant's Decree Is Impracticable.

It is charged in the bill and admitted in the answer of defendant that the public debt of Virginia, as of January, 1861, was about $33,000,000, and was evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia issued prior to that date. At the periods when said public debt was created the counties now constituting the State of West Virginia were each represented in the legislature of Virginia and in the executive councils of that State; that such representatives in the legislature advocated and voted for the creation of this debt and the appli-

cation of its proceeds to the construction of works of internal improvement, which were designed for the benefit and welfare of the entire Commonwealth; that the region now forming West Virginia was the portion of Virginia toward which the greater part of such public works tended, and it was for the development of that region they were primarily designed. Hence it is that we insist that not only on the principles of international law, but on the homelier and more intelligible rules of common honesty and morality, as well as upon legal and equitable doctrines, West Virginia is as much bound as Virginia for this public debt.

The Wheeling ordinance ignores these solemn evidences of the public indebtedness, and proposes to go back to the year 1824, through a period of nearly sixty years, and inquire into the consideration of all these evidences of a common indebtedness, and into the various objects to which were applied the moneys obtained for them as they were made and issued. It requires the production of the vouchers and evidences of every dollar paid into the public treasury of the money derived from the taxation of the counties now forming West Virginia, and of every dollar appropriated and expended by Virginia within that territory. How far such requirement can be complied with at this time, with fullness and accuracy, it is impossible to tell.

It should be enough to suggest the danger and uncertainty attending such attempt, to remind the court that the State court-house, in the city of Richmond—the repository of many of the most valuable of Virginia's archives—was destroyed by fire at the evacuation of that city, at the close of the Civil War; and further, that many of the most valuable of the State records and files were ravaged during the period of the military government of the State and during the baleful period of "Reconstruction," when hostile aliens had control and possession of the State government and property. To require now that, in order to correctly ascertain the amount which West Virginia should contribute toward the

payment of a public debt, evidenced by bonds to which that State was in effect a party, Virginia should make research through her files and records of nearly sixty years and produce the evidences of the items of receipt and expenditure, so far as the territory of West Virginia is concerned, is a peril and a hardship to which she should not be exposed.

It cannot be claimed that Virginia is in default in the performance of any duty resting upon her to West Virginia. The State officers at the capitol were the common agents of both the litigants here, and both are equally bound by their acts.

It is a fact which should not be forgotten, but to which due weight should be given in any equitable adjustment of the common burden, that it was the voluntary act of the people of West Virginia in withdrawing themselves from the body politic and corporate of Virginia and surrendering all right of participation in her councils and administration of her affairs that has contributed to the present conditions.

But another and more serious objection lies to the Wheeling ordinance as a plan of adjustment. Its evident purpose was to avoid and defeat the very liability to which this bill seeks to hold her. It proceeds on the theory that West Virginia cannot be held for any other amount than the difference between the amounts she—or her constituent counties—paid into the treasury of Virginia and the amount they received from that treasury during the sixty years preceding January, 1861; and also on the theory that those counties should not be held liable for any more of the public debt than was actually enjoyed by them by the extension of the works of internal improvement into or through their territory. It ignores the fact that the liability accrued when the bonds were issued and the money for them was obtained by the State, and not when the works for which that money was borrowed were actually constructed. The construction of the works was arrested by the war. They were not all completed within West Virginia. The war arrested, it did

not prevent, the completed construction; *that* was prevented by the secession of West Virginia.

At the close of the war the spirit of energetic activity which the war had quickened found employment in every field of material development. Never in its history had this country known such an era of successful enterprise and development. The vast resources of wealth in timber, coal, gas, and oil would speedily have secured the capital for the realization of the plans which had been discerned and provided for by the generations of Virginia people sixty years and more before. The works of internal improvement for which this public debt had been created would have been completed, and Virginia's taxable wealth would very soon have been applied to the entire extinction of her public debt; but all this was defeated by the withdrawal of the territory now forming the State of West Virginia; and now that State appears in the unenviable attitude of possessing all the sources of wealth which induced the creation of the public debt—that debt which her people had largely contributed to making—while denying all liability for the bonds by which the debt was evidenced. She is willing to enter upon a settlement as prescribed by the Wheeling ordinance. That ordinance, as we have shown, provides a plan of settlement which omits altogether the public debt.

(2) The Commonwealth of Virginia is Not Bound by the Wheeling Ordinance.

It is true that this court has in one case recognized the restored State of Virginia—the "Pierpont government," as it is called in that case—as the State of Virginia. *Virginia v. West Virginia*, 11 Wallace, 39, was on a bill brought by Virginia "to settle the boundary line between the States of Virginia and West Virginia." The real question presented was the validity and effect of the proceedings by which the counties of Jefferson and Berkeley were transferred in 1866

from the Commonwealth of Virginia to the State of West Virginia. We have endeavored, without success, to obtain a copy of the record of the case, to learn what exactly were the issues presented by the pleadings and the course of the proceedings had in the case in this court. It appears (page 51) to have been argued at December term, 1866, and again, after this court had been differently constituted, at December term, 1870. Justices Davis, Clifford, and Field dissented from the judgment. The case has been rarely referred to in the subsequent decisions of this court. Chief Justice Chase, who sat in the case, did, in *Cæsar Griffin's case* (Chase Decisions, p. 412), referring to the State government of Virginia, say:

> "Indeed, it is well proven historically that the State and the government thus organized were recognized by the National Government. Senators and Representatives from the State occupied seats in Congress, and when the insurgent force which held possession of the principal part of the territory was overcome, and the government recognized by the United States was transferred to Richmond, it became in fact, as it was before in law, the government of the whole State. As such, it was entitled under the constitution to the same recognition and respect, in national relations, as the government of any other State."

And yet, notwithstanding this solemn judicial declaration as to the validity of Virginia's right to "recognition and respect in her national relations," it appears that on March 2, 1867, Congress, in an "Act to provide for the more efficient government of the rebel States" (14 St. L., p. 428), declared that—

> "Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of VIRGINIA, etc.; * * * and
>
> "Whereas it is necessary that peace and good order should be enforced in said states, until loyal republican State governments can be legally established, &c."

2

By virtue of this act the entire State government of the restored State of Virginia was swept away—executive, legislative, and judicial—and Major General Godfrey Wetzel succeeded to all their functions.

So it seems that this restored State, on which had been poured the anointing balm of national recognition and acceptance, and which was "entitled under the Constitution to the same recognition and respect in national relations as the government of any other State," was now declared by the political branch of the National Government to have "no legal State government existing in it," and the government that did exist in it was totally abolished.

A natural inquiry is suggested: If the State government, which had been created in Wheeling in August, 1861, and removed to Alexandria in 1863, and transferred to Richmond in 1865, and continued in operation continuously until 1867, was then ascertained and declared to be "illegal," and so extinguished, when had it ceased to be a legal government, or when had it ever become a legal government? Surely, in its "national relations," it could not be both legal and illegal, or legal for some purposes and illegal for others.

Whether a State government exists, and whether it is a lawful and valid government, are political questions, and are to be determined by the political departments of the National Government and not by the judicial. The government of Virginia formed at Wheeling, and continued until after the close of the war, was recognized by the National Government as the true and lawful government of Virginia. In all of its political conduct and relations it must be assumed by the courts to be the true and lawful government of the State. But when it appears, as it does here, that the people of that part of the territory of Virginia which now forms the State of West Virginia were in fact the only people represented in the convention assembled at Wheeling on the 11th of June, 1861, and in the legislatures of Virginia held under the authority of that convention; that the leading object and pur-

pose of those people in assuming the insignia—the title, powers, and authority of the Commonwealth of Virginia—was only to enable them to erect within the territory of Virginia a new State, and to appropriate to its uses all the property of Virginia under their control, and at the same time to absolve themselves from all liability on those bonds which they had united in making, as the evidences of that public debt which they had insisted on creating, then other considerations must apply.

The fiction that the people west of the Allegheny mountains were "the people of Virginia;" that the government which they organized in that region was the government of Virginia; that it became invested with all the powers and authority of the ancient Commonwealth of Virginia, ceases to apply. That fiction has served its purpose; the National Government has recognized this government, for all political purposes, as the Commonwealth of Virginia, and has accepted as valid and efficient the consent given by it to the erection of a new State within the borders of Virginia. Such recognition was the exercise of a power which belonged to the political departments alone. As to the propriety of its exercise the judicial branch is without jurisdiction to inquire. But into the conduct of this government in relation to its civil rights and liabilities—its liability on bonds and contracts, or under the application of equitable doctrines—the judicial courts may inquire, may take jurisdiction, and afford relief. Such courts may inquire into the validity and the *bona fides* of State action. It may ascertain and declare such action to be an impairment of the obligation of contracts. Inquisition may not be made into the motives or the good faith of the law-makers, whether in convention or in legislature, but the actions of these bodies may be annulled or disregarded when they appear to have been procured by fraud, as the judgments of the courts may be without impeachment of the motives of the judge who presided.

In Graham *v.* Folsom, 200 U. S., 253, this court, speaking of an attempt by a county to rid itself of debt, said:

> "But courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of a State, but they will not ignore the effect of its action."

The Wheeling ordinance was ordained by a body of citizens who proclaimed themselves to be citizens of Virginia, assembled in convention to reform and establish her organic law. Their religious duty was to preserve, protect, and ameliorate her material interests; and yet it is manifest that their paramount object was to despoil Virginia of one-third of her territory; to erect upon that portion so cut off a new State, and to endow it with all the money and other property of Virginia found within the limits of the proposed new State. This purpose was actually carried into effect. These things were not conceived and performed to promote the welfare of Virginia. The citizens of Virginia by whom they were done looked not to the welfare of the State whose citizens they were, but to the welfare of that new State, for whose erection they were then providing and the dawn of whose creation was already appearing. The ordinance is entitled "*An ordinance to provide for the formation of a new State out of the territory of this State*," and was passed August 20, 1861. It should be construed, then, in the light of its professed object. Its provisions, so far as they related to the public debt of the Commonwealth of Virginia, and to the ascertainment of the contributive share which the new State of West Virginia should bear, must be construed as designed to secure the interests of West Virginia as opposed to those of Virginia. But one body corporate and politic then existed, but this very ordinance, as its title and body shows, was to partition this existing body and create another body, with opposing and antagonistic interests. The framers of the ordinance were in a little while to become citizens of the new and opposing body. They legislated for their own

future interests and not for the interests of Virginia. Hence it was that in framing this section of the ordinance which prescribed a method of ascertaining the portion of the common burden to fall upon West Virginia they ignored the bonds which evidenced the common debt and provided for an adjustment which involves the items of receipts and expenditures between the two sections of Virginia through a period of nearly sixty years.

The fiction of the restored State of Virginia is again invoked to shield the actual truth. It cannot serve it. It has long ago fulfilled its only mission. It is now too thin and transparent to conceal the truth.

We have already shown, and the attention of the court cannot be too earnestly called to it, that the ordinance, in providing a plan for ascertaining the "just proportion" of the public debt which West Virginia should bear, makes no further reference to that public debt than the words contained in its opening sentence. The plan of ascertainment does not in any way involve the debt. It relates only to the amounts which the two sections of the Commonwealth had paid into the treasury of the Commonwealth and had received from that treasury since 1822. As a plan of ascertaining West Virginia's share of the public debt, it was illusory, disingenuous, and inadequate, and wholly in the interest of the people who framed and passed it.

It cannot be tolerated that one of the parties in interest should be the sole arbiter of the proportion or amount of the common burden which it will bear, or, as contended here, that a plan prescribed by one-third of the people of Virginia should be made the exclusive rule of measurement by which their share of the public debt of the whole people must be ascertained; and this although such one-third had separated themselves, and had met in convention, calling itself the convention of Virginia, which by an ordinance had provided for the erection of a new State within the territory occupied by them, and had by the same ordinance prescribed this rule for the ascertainment of its "just proportion" of said

public debt. It is true, as stated in the answer, that Virginia has always denied that the Wheeling ordinance was binding upon her.

We submit that the debt for which West Virginia is liable is evidenced by the bonds and other evidences of indebtedness of the Commonwealth of Virginia prior to January 1, 1861. We have assumed—and no reason had been shown against it—that, taking into the account the population, area, and values of West Virginia, a reasonable and just proportion of the common burden was two-thirds of the public debt as the proper share to be laid upon Virginia and one-third of it as the proper share of West Virginia.

Apportioning the common burden on this basis, it would yet be competent for West Virginia to show on the taking of the account any just grounds that she may have of abatement of the amount thus ascertained, whether by payments, set-offs, or otherwise. The amount of the public debt is admitted to be about $33,000,000. The exact amount can be readily ascertained. This should form the basis of any accounting between the two States. It is a fixed and certain factor. The liability of West Virginia for a just and reasonable proportion of this debt is not denied. The proportion in which it should be borne by the two States must be determined by some rule which the court may prescribe or which the master may adopt. The result is then readily ascertained.

If the court desire it, the master may be instructed as to the principles, rules, and methods which he must employ in stating and settling the account, or he may be authorized to return with his report such alternative statements of the account as to him may appear proper or as either party to the cause may require.

In the argument of counsel for West Virginia in support of the demurrer to the bill it was pointed out that by section 8 of article 8 of the Constitution of West Virginia it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years;"

and that by the act of May 13, 1862, of the legislature of Virginia it was provided—

> "That the consent of the legislature of Virginia be, and the same is hereby, given to the formation and erection of the State of West Virginia within the jurisdiction of this State, * * * according to the boundaries, and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

From these two provisions the conclusion was deduced that a compact had been entered into by the two States, by which the legislature of West Virginia was made the sole arbiter of the fact and the amount of West Virginia's liability.

The court in its opinion (206 U. S., 320) disposed of that contention by saying:

> "When Virginia, on August 20, 1861, by ordinance provided for the 'formation of a new State out of the territory of this State,' and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should ascertain the same as soon as practicable, it referred to the method of ascertainment prescribed by the Virginia convention,"

the soundness of which reasoning cannot be questioned. The court was dealing with the question before it, which was the demurrer of West Virginia to the bill of Virginia. On the demurrer, all the allegations of the bill were taken for true. It was a fact that such ordinance had been adopted by the convention assembled at Wheeling. It was also a fact that the matters recited were in the acts and proceedings of the legislatures and conventions; but it was even more significantly the fact that the members of the Wheeling convention of August, 1861, and the members of the convention that framed the constitution for West Virginia knew what was in each other's minds, and what had been the acts of each body, for they were the same people, and it was all done in the same convention and at the same time, as appears by the official records (11 Wall., p. 41).

The court, in its opinion on the demurrer, did not decide or intimate any opinion as to the validity, or legal effect, or binding force of the Wheeling ordinance on the people of Virginia. It was manifest from the bill that the Wheeling ordinance was referred to there only as an additional expression by West Virginia people of their liability for the public debt. Virginia had never recognized for a moment that she was bound by an act which had so plainly for its object the casting upon her of the entire burden of the debt. The answer of defendant here complains that Virginia had persistently repudiated all responsibility for and liability under that ordinance.

The True Basis of Virginia's Right to an Accounting.

In paragraph VIII of the bill (Record, p. 10) five grounds are indicated on which the liability of West Virginia rests. The first of these grounds is that the mere partition of the territory created the liability. Writers on international law agree that—

"In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for, as Story says, 'the division of the empire creates no forfeiture of previously vested rights of property.' And so *ex contracio*, where several separate States are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new State; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union framed and the characters of the act of incorporation in each particular case."

1 Wharton, International Law Digest, sec. 5, p. 19, citing authorities.

1 Oppenheim on International Law, p. 122.

Wheaton, International Law, 4th English ed., p. 46.

Hartman v. Greenhow, 102 U. S., 672.

In 5 Moore on International Arbitrations, pages 4618-19, the case of the "Tarquin" is reported. On page 4619 it is said:

"This claim was in the nature of a public debt, founded upon the King's decree, and by the rule of international law public debts are not extinguished upon the division of a State into distinct States, whether that division be by war or by mutual consent; but they must be discharged either jointly or severally, according to the principles of justice and equity," &c.

The partition of territory alone, without agreement and without consent, imports an equalization of the burdens which were incident to the territory between the partitioners. The only question is, by what rule shall such equalization be made?

It is charged in the bill, and indeed is matter of public history in Virginia, that the sole purpose had in view in the construction of the works of internal improvement for which

this debt was created was the development of the natural resources of the region to the west of the Alleghany mountains. The action of the delegates from that region in the General Assembly of Virginia confirms this.

The answer of the defendant denies this, and affirms that they were constructed for the development of the eastern part of the State. There were no natural resources in the eastern part that could be developed. The seacoast was there, and it was to bring to the coast the timber, coal, and other minerals of the west that the turnpikes, railroads, canals, and bridges were constructed. The reports of the Commissioners of Public Works through many years will attest this.

The enlightened sense of equity and justice throughout the civilized world has now become crystallized in the rule of international law which is stated above. That is the rule which Virginia asks may be applied here, and not the rule of the Wheeling ordinance, framed by the very people who then and now were guided and controlled by the single purpose of protecting West Virginia from this very liability.

It was not necessary that Virginia should have paid off the entire public debt before it could call on West Virginia for contribution. It was as much the debt of West Virginia as it was of Virginia. Virginia comes into court and invokes the application of those well-settled doctrines of equity of exoneration and of *quia timet*, and prays that the burden may be adjusted by the court in accordance with those doctrines and methods of procedure.

1 Spence, Equity Juris. (marginal), page 662.
3 Pomeroy, Equity Juris., section 117 and notes.

The act "to provide for the funding and payment of the public debt," approved March 30, 1871 (Record, p. 13), recites that—

> "Whereas in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas in the ordinance au-

thorizing the organization of said State, it was provided that the said State should take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and whereas the people of this Commonwealth are anxious for the prompt liquidation of her proportion of said debt, *which is estimated to be two-thirds of the same.*"

The estimate here referred to, of the proportions in which the "public debt of the Commonwealth of Virginia" should be borne by the two States into which the territory of that ancient Commonwealth was now divided, was not recklessly or arbitrarily assumed, but was the result of a careful and intelligent reckoning. The territory and population of each State was considered, and the value of such territory taken into account, embracing therein all those constituent elements, natural and artificial, which enter into and make up the wealth of a State. The seacoast, the navigable rivers, the agricultural lands, with the works of internal improvements, in varying stages of completion, which formed the value of Virginia, and the vast mineral wealth of coal, gas, oil, and the forests of hardwoods of inestimable value that formed the wealth of West Virginia. These elements of wealth duly considered, it was thought that West Virginia should bear, at the very least, one-third of the common public debt. It is charged in the bill that "West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of mineral and timber which had been known for many years prior to the first of January, 1861, and their prospective values, if made accessible to the markets of the country were understood to be well nigh beyond computation." The answer of West Virginia admits the charge, but avers "that the same was inaccessible, and of very little value on the first of January, 1861." And yet on July 1, 1862,

when the restored State of Virginia, through her Senators and Representatives in Congress, was endeavoring to have the new State erected within the territory of Virginia, one of those Senators, Willey, employed as an argument in support of the creation of a new State, the existence of the vast resources of mineral wealth in that territory. He said:

> "Here is an opportunity presented to the Senate to erect northwestern Virginia into a free State, a condition for which she was designed by the God of nature—the richest portion of this broad land in mineral resources—with inexhaustible marble quarries equal to those of Egypt and very similar; rich in inexhaustible fountains of salt and oil, and forests exceeding any of those that ever waived upon Mount Lebanon itself, that have remained from the foundation of the government of the State of Virginia, undeveloped, useless, valueless, simply because we have not been able to organize improvements within and under the control of the western section."
>
> Congressional Globe, second session of Thirty-seventh Congress, 1861-'2, p. 3037.

And on the 14th day of the same month, in the same debate, he said:

> "This new proposed State contains within its towering hills and mountains treasures richer perhaps than can be found within the limits of any other State within this Confederacy, and there they have lain ever since the establishment of this Government, undeveloped, unworked, valueless, and they must continue to remain so unless a different policy is pursued."
>
> *Ibid.*, p. 3317.

It was this potentiality of wealth that those railroads, turnpikes, canals, and bridges were being constructed by Virginia to develop and realize for which this public debt of the Commonwealth was created. It was this vast wealth which was in the view of Senator Willey, in 1862, when in the Senate of the United States he urged it as a strong ground

why the new State should be laid off in the limits and from the territory of Virginia; that such new State would be a free State, and all this wealth of which Virginia would be thus despoiled would become the exclusive property of the new State, and that the provision made by the Wheeling ordinance for ascertaining the just proportion of the public debt of Virginia to be borne by the new State would not embrace or take into account any portion of this public wealth. It was this vast wealth which, in the estimation of Virginia in 1871, imparted so great value to the hilly and mountainous territory of West Virginia that, in computing the just proportion of the public debt which West Virginia in equity and good conscience should bear, she reckoned with extreme moderation that the territory of West Virginia was equal at least to one-third of that of Virginia, and so did she apportion their respective contributive shares of this common liability.

But it is suggested that an account is necessary to ascertain the amount which West Virginia should contribute, and, further, that such account should be taken on the principles of a partnership account.

We cannot perceive in the relations existing between Virginia and West Virginia any of the features which distinguish a partnership. A partnership has been defined by this court to be—

> "a voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some one or all of them, in lawful commerce or business, with the understanding that there shall be a communion of profits thereof between them."

What was the contract and who were the parties and what were the terms of any partnership when the common debt, here sought to be apportioned, was created? The Commonwealth of Virginia was a political body, a sovereign corporation, a member of the Federal Union when she created this debt, and issued her bonds therefor. The counties of Vir-

ginia, which now form the State of West Virginia, were in no sense partners with the other counties of Virginia. They were all members of one body. The welfare of one member was the welfare of the entire body. These counties, by their own voluntary act, seeking their own exclusive selfish interests, procured their separation from the body corporate and politic of Virginia, and, after they had done so, they sought and obtained the political recognition and support of the National Government to gain for themselves separate political existence and autonomy. On the principles of international law, they remained liable for a just proportion of the public debt of Virginia. What doctrine or maxim of equity can be invoked to entitle these counties to demand a marshaling of the assets of Virginia? What indeed would be counted as constituting those assets? If a partnership existed, then all the partnership fund constituted the assets and not any particular part of such fund. The debt which is here sought to be apportioned was not created on the security of any particular asset of Virginia. It was created on the faith and credit which the lenders of money extended to the Commonwealth of Virginia. The bonds which the Commonwealth issued were the obligations of the whole State and for which the entire State was liable. They were not the bonds of the counties of Virginia *jointly*. They were the several obligations of one body politic. The debt evidenced by them was the debt of the State, sanctioned and imposed by the people of Virginia, through their General Assembly, acting within constitutional limits. *How* the money derived from these bonds was expended by legislative appropriations, or *where* it was expended, are considerations which should not even be inquired into in this proceeding, for it matters not in the present inquiry whether the entire debt of $33,000,000 was expended within the limits of Virginia or of West Virginia, so that it was expended by a legislature in which all parts of the State were fully represented. The expenditure must be conclusively presumed to have been made in good faith and for the welfare of the whole body

politic. Two thousand five hundred years ago Æsop illustrated this in the fable of the "Belly and the Members." The liability, or the measure of the liability, of the two States into which the territory has since been divided can in nowise depend upon the amount of the proceeds of the loan which may have been expended in each. If any valid, actual, legal agreement was entered into between the two States, by which the proportion in which they should contribute to the common burden was fixed, or if any means were agreed on by which such proportion should be ascertained, then such agreement must control. But if no such agreement can be shown, then on principles of international law each State remains liable for the whole debt, and the apportionment of the burden between them is a juridical matter to be settled by the courts.

How shall the proportions of this debt to be borne by the two States, respectively, be ascertained? Virginia, in 1871, estimated that it should be borne in the proportion of two-thirds by Virginia and one-third by West Virginia. She formed this estimate by computing the vast undeveloped mineral wealth of West Virginia—her "unsunned gold"—as making her equal to one-third of the entire value of old Virginia, including therein all the works of internal improvement, completed and uncompleted, that remained within the limits of the present Virginia. But suppose this estimate of Virginia should not be adopted, how should the court ascertain the just proportion? It is suggested that West Virginia should be charged with only so much of the public debt as was actually expended within her borders, and Virginia should be charged with so much of said debt as was actually expended within her borders. But we have shown that wherever or however the amount of money represented by the debt was expended within the limits of old Virginia, it was all expended for the benefit of the whole body of the State. That the counties constituting West Virginia seceded from the old State before the improvements were completed, and thus prevented their completion, and

that she sought by such secession and has now succeeded in monopolizing for her own exclusive use all those stores of natural wealth which would have afforded to the old State the basis of taxation by which the public debt could be easily and speedily discharged, surely affords her no equitable ground for an apportionment of liability on such a basis. If an accounting is to be had on the basis of the wealth of the respective States, then in estimating such wealth it will be impossible to ignore or disregard the mineral wealth of West Virginia. Her coal and oil and gas and marble and timber must be taken into the account, not according to their taxable values in 1861, but according to the values which would have been given to them by such an appraisement as would have been made of them in a suit for partition. The present material condition of West Virginia is but the fulfillment of the expectations that were entertained by the people of Virginia a hundred years ago. It was foreseen when the scheme of internal improvements was entered upon in 1820. It was foreseen and appreciated by Senator Willey in 1862. It was distinctly appreciated and estimated by the legislature of Virginia in 1871, when it reckoned the just proportion of the public debt of Virginia as of 1861 which should be borne by West Virginia at one-third of the aggregate amount of that public debt.

The "Special Agreement" Theory.

It is claimed on the part of West Virginia (Brief for Defendant, p. 11) that a "special agreement" was entered into between the States of Virginia and West Virginia, by which the method prescribed by the Wheeling ordinance was adopted as the exclusive method of ascertaining the amount of that "just proportion" which it was declared West Virginia should bear.

The "special agreement" relied on by defendant appears to be that feature of the Wheeling ordinance which prescribes the method for ascertaining what is the "just propor-

tion" of the public debt to be borne by West Virginia. Section 9 of the Wheeling ordinance presents two distinct features, which must not be confounded with each other, viz: (1) A recognition of the liability of West Virginia for a just proportion of the public debt, expressed in these words:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861."

It was this feature that is referred to in paragraph XVIII of the bill, and which defendant, on page 7 of his brief, insists is a recognition by plaintiff of the terms of the ordinance. (2) The method by which such "just proportion" shall be ascertained, expressed in these words—

> "to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

In pointing to the Wheeling ordinance as a recognition of West Virginia's liability for a just proportion of the common debt, section XVIII of the bill cannot be construed as an admission of the validity of the method of ascertainment proposed in the second feature. That section refers only to the "liability" recognized, and it indicates the ordinance as the one "in which the method of ascertaining her liability on account of said debt is prescribed," without in any way assenting to or conceding the validity of such method.

Suppose the second feature of the ordinance had prescribed as the method of ascertaining the just proportion that West Virginia should pay one mill on every thousand dollars of the public debt, or that it should pay one mill on every thousand tons of coal shipped from the State, could it be truly contended that the Commonwealth of Virginia had

deliberately consented thereto? Yet, as I have endeavored to show, these supposed methods are not one whit more whimsical and fantastic than the method actually proposed, because the difference between the amount that a county has paid into the State treasury, in a given period, in taxes, and the amount that has been expended within that county by legislative appropriations during that period has no more connection with the public debt of the State than the number of tons of coal shipped from such county during such period can have.

There can be no question as to the power of two States, or of two sections of the same State, to enter into compacts within the conditions existing in the cases of Green *v.* Biddle, 8 Wheat., 1, and Wharton *v.* Wise, 153 U. S., 155, or as to the soundness of the rule stated in Wharton *v.* Wise, p. 173:

> "The consent of Congress to any agreement or compact between two or more States is sufficiently indicated—when not necessary to be made in advance—by the adoption or approval of proceedings taken under it."

But can it be said that Congress ever saw or considered the Wheeling ordinance or ever knowingly adopted any proceedings taken under it? Congress had before it the constitution which had been framed for the proposed new State, and the act of May 13, 1862, purporting to give the assent of Virginia to the erection of this new State. Nothing appears in the constitution as to this method of ascertaining West Virginia's share of the debt. The provision of the constitution appears in article 8, section 8, and is as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

There it appeared to Congress that adequate provision had been made for the payment of West Virginia's "equitable proportion" by requiring the legislature to ascertain the same, and then provide a sinking fund for its payment.

Can it be supposed, in view of the debates that occurred in Congress on the bill for the admission of West Virginia into the Union, that such bill would have become a law if it had appeared in the constitution under which it sought admission that it proposed to ascertain its equitable proportion of the debt by deducting from the amount of taxes it had paid since the first debt was incurred the amount it had received in the way of legislative appropriations? It gained admission into the Union by the method indicated in its constitution. It now proposes to fall back on a method which would have defeated its effort to be admitted into the Union.

Sections 5 and 7 of Article 8 of the Constitution.

On pages 18 and 19 of their brief counsel for defendant insist that the words "previous liability" in the 5th section and the words "public debt" in the 7th section do not refer to West Virginia's liability to her equitable proportion of the public debt of the Commonwealth of Virginia.

What other *previous liability* of the new-born State existed besides the public debt of the old State? Many of the States of the Union now provide in their constitutions that no public debt of the State shall be created. But counsel for defendant insist that while the State may be thus prohibited from creating *a public debt*, it is not prohibited from creating *a public liability*, and that when a public liability is created then the legislatures may create a public debt to extinguish the previous liability. It is not to be supposed that the court can be favorably impressed by such linguistic jugglery. The liability of West Virginia for a just or equitable proportion of the public debt of Virginia existing previously to the formation of this constitution was recognized by the

constitution, and provision was made to meet it. This provision contemplated the issuance of bonds of the new State, but it was intended to leave no room for the creation of any other public debt, and hence it was that in this section 5 of article 8 it was provided that "no debt shall be created by this State except to meet * * * a previous liability of the State," &c. So in section 7 of article 8 it was provided that the legislature may sell all the stocks owned by the State in banks and other corporations, "but the proceeds of such sale shall be applied to the liquidation of *the public debt*," &c. What was *the* public debt?

Note, it is not *a*, or *any* public debt, but *the* public debt. There was and could be but one public debt, and that was the public debt which West Virginia had in common with Virginia, and as part of Virginia previously created.

Counsel argue on page 20 of their brief that because this same provision appears in the later constitution of West Virginia, adopted in 1872, that for that reason it could not have been intended to apply to the public debt of Virginia prior to 1861. It is true that this provision was repeated in several constitutions adopted by West Virginia, as was also section 8 of article 8; but it may be also true that when control of the State passed from the hands of the native-born citizens and into the hands of citizens from other States who had drifted into West Virginia and had filled all the high offices of the State, then these provisions disappeared from the later-formed constitutions. The reason for such disappearance is not far to seek. Doubtless the hope was indulged that a repudiation by omission of this declaration of liability might soon warrant a repudiation by express disavowal of liability, a stage which, it appears, has now been reached.

Both Virginia and West Virginia in their respective constitutions prohibit the creation of any more public debts. Virginia has learned from experience. West Virginia has taken warning from the example before her. But both States have recognized that it might become needful to issue new bonds in order to extinguish the existing debt which

rested upon both of them, and hence it was that each State provided that the prohibition should not extend to "previous liability," referring in each case to their respective liabilities for the existing public debt of the old State.

It is evident that West Virginia now rests her entire defense to the case stated in the bill on the recognition by this court of the Wheeling ordinance as a contract between the States of Virginia and West Virginia and now binding on the Commonwealth of Virginia. On the part of Virginia it is submitted that she had no part or lot in that matter. It surely lacked one essential element of a *contract;* the people who proposed the ordinance, and the people who accepted it were the same people. They did not coexist at the same time as parties to the contract. They contracted with themselves at successive stages of their continuing existence. When West Virginia was created Virginia ceased to be in that territory. True, the governor, who was a citizen of one of the counties of the new State, did not relinquish his titular office of governor of Virginia, but moved his seat of government to Alexandria and remained there within the Federal military lines. He assembled a handful of men, who masqueraded as the General Assembly of Virginia, and then on the 11th of April, 1864, organized a Constitutional Convention of Virginia, and adopted a new constitution for Virginia, the 27th section of which is quoted on page 22 of defendant's brief, by which the Wheeling ordinance was held to have no binding force upon Virginia. It was all a grim farce. But it cannot be denied that they had as much legal right to repudiate its binding force on Virginia as they had in August, 1861, to impart such binding force to it. The existing public debt of Virginia in January, 1861, was $33,000,000, as admitted in the answer to the bill. This was the debt of West Virginia, or of the counties constituting it, as much as it was of the other counties of Virginia. If the wealth of West Virginia was equal to one-third of the wealth of the whole Commonwealth of Virginia, then the

equitable proportion of that debt to be borne by West Virginia should be $11,000,000 as of January, 1861, and that amount should now be adjudged to be due by her.

Sections 3, 4, 5, and 6 of the Decree Proposed by Defendant.

These sections of the decree are also objected on behalf of the complainant on the ground that they seek inquiries into matters that have no apparent connection with the ascertainment of West Virginia's "just proportion" of the public debt of the Commonwealth of Virginia prior to January 1, 1861. The amount of that public debt as of the date named is admitted to be about $33,000,000. The exact amount is susceptible of ascertainment. The only other question is as to the just proportion to be borne by West Virginia. If the proportion heretofore fixed by Virginia, of one third, is objected to, then it remains for the court to determine, through its master, or in such other way as it may adopt, what the just proportion is. It has been assumed on the part of Virginia that the evidence relevant to such inquiry, which is altogether documentary, consisting of the public records and files of the Commonwealth of Virginia, could not appropriately be laid before the court at this stage of the cause, but would be produced before the master at such times and in such manner as he might require.

Should it be found that one-third of the public debt is the just proportion to be borne by West Virginia, then any inquiry into the manner in which Virginia has settled with her creditors for the two-thirds of said public debt, assumed by her as her just proportion, can have no relevancy to the inquiry here.

The certificates issued by Virginia represent only the bonds which were surrendered by the creditors and are now held by Virginia in trust for the owners of them; as to the one-third set apart as West Virginia's just proportion of the

debt evidenced by such bonds, the bill sets forth with minuteness of detail the amount of such certificates, which has been assembled by the committee representing such bondholders, under the plan adopted for the settlement between Virginia and her creditors and under the acts of the General Assembly of Virginia, all of which appear in pages 39-66 of the bill and exhibits, no part of which appears to be denied by the answer of the defendant.

HOLMES CONRAD,
Of Counsel.

FILED
APR 6 1909
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, NO. 8

COMMONWEALTH OF VIRGINIA, Complainant

vs.

STATE OF WEST VIRGINIA, Defendant.

REPLY BRIEF FOR VIRGINIA UPON MOTION TO REFER THE CAUSE TO A MASTER.

WILLIAM A. ANDERSON,
Attorney-General,
and as such Counsel for Virginia.

Supreme Court of the United States

OCTOBER TERM. 1907.

IN EQUITY. ORIGINAL, NO. 4.

COMMONWEALTH OF VIRGINIA, Complainant

vs.

STATE OF WEST VIRGINIA, Defendant.

REPLY BRIEF FOR VIRGINIA UPON MOTION TO REFER THE CAUSE TO A MASTER.

The propositions contended for by the counsel for West Virginia in their elaborate brief upon the above motion will be here reviewed, though not in the order in which they are presented.

AS TO ORDER OF PROCEDURE.

While this court in *Rhode Island* v. *Massachusetts,* 14 Peters, 210, 257, considered it proper that the proceedings in that case should "be regulated by the rules and uses" of the English Court of Chancery, it declared that:

> "in a controversy where two sovereign States are contesting the boundary between them, it will be the duty of the court to mould the rules of chancery practice and pleading in such a manner as to bring this case to a final hearing *on its real merits. It is too important in its character, and the interests concerned are too great, to be decided upon the mere technical principles of chancery pleading.*" 14 Peters, 257.

It will not be gainsaid that this language applies with added force to this case.

The only rule of chancery practice adopted by this court, is in accordance with this just conception of its powers and duties, and is as follows:

> "Rule 3. This court considers the former practice of the courts of King's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary."

Neither the technical rules of practice obtaining in the circuit courts of the United States; nor those approved by Mr. Bates and other learned text-writers; nor those sanctioned by any other tribunal whatever will *control* this court in the matter of the procedure and processes which it may deem necessary and proper to adopt, in order to attain the ends of justice.

This results from the very nature of its powers and duties in a case like this, as to which its jurisdiction is not only exclusive, but final, plenary and absolute.

In this its only rule upon the subject, the court has indicated the former practice of the courts of chancery in England as

"affording outlines" for the practice of this court in chancery causes.

If we look to the practice of the English courts in chancery, and to the chancery practice sanctioned by the courts and jurists of this country, precedents and authorities will be examined in vain to find any sanction for the proposition that each of the six rules laid down by Mr. Bates in the section quoted in the brief for West Virginia, must be complied with before there can be a decree for an account in a case like this; nor are we willing to believe that the learned counsel for the defendant would carry their contention to any such extremity.

2 Daniel's Chy. Pl. & Pr. (5th Ed.) p. 1004 and note 7;
Adam's Equity (8th Ed.) Book III, Chapter 1, M. pp. 220 to 222-226;
Story's Eq. Pl., Sec. 218 & note (b);
1 Story's Eq. Jurisprudence (13th Ed.) Chapter VIII. Titles, Account, Apportionment, and Partnership, Sections 450, 469 to 477-483-488-671.

The general rule is that a decree for accounts, or order of reference is from its nature interlocutory, because it directs an inquiry and contemplates the bringing of new and additional facts into the record. It would be practically impossible to state in advance all the principles of law which might apply to the facts as they might thereafter be developed. As if an account of debts were ordered against a partnership, corporation, or estate, it would be impracticable to state in advance what rules of law should obtain in regard to the establishment of such debts; as for instance, what might be valid defences, such as failure, or want of consideration, the statute of limitations, payment, set-off, &c., any of which might be interposed

against the different debts as presented, and no one could say in advance to what extent they might be applicable or valid.

"A decree is understood to be interlocutory whenever an inquiry as to a matter of law or fact is directed preparatory to a final decision." *Bebee* v. *Russel,* 19th How., 285, and in the same case we find the following citation from the 2nd volume of Perkin's Daniel's Chancery Practice 1193, "that the most usual ground for not making a perfect decree in the first instance, is the necessity which frequently exists for a reference to a master of the court, to make inquiries, or take accounts, or sell estates and adjust other matters which are necessary to be disposed of, before a complete decision can be come to upon the subject matter of the suit," p. 285.

The primary purpose of this suit is to invoke the equitable jurisdiction of "Account"; to have the account between the parties, involving more or less complicated transactions, made up of a vast number of items running through a period of more than seventy years, stated, in order to obtain from the defendant the amount for which she shall be thus ascertained to be equitably liable.

The principal facts upon which the complainant's claim depends, namely; the formation of the new State out of the territory of the Commonwealth of Virginia; the existence of a public debt of the undivided State of some $33,000,000.00 at and before that event, a large part of which remains an unsatisfied and binding obligation upon both States; the ordinances, public acts, and fundamental stipulations and enactments by which West Virginia assumed, and became liable for an equitable proportion of that common indebtedness,—all of these and other material facts are alleged in the bill, and are, either not controverted by the defendant's answer, or are established by the documents and public records filed with the

bill, or are a part of the history of the two States, and of the times, and of the country.

The facts which justify the complainant in instituting her suit for an accounting, and for a decree thereupon, are thus sufficiently established to entitle her to a decree to that end. Indeed, we had supposed that the decree of this court overruling the defendant's demurrer, had pretty well settled this.

If precise proof of Virginia's claim should be required to be made, before a decree for an accounting would be entered, it would be necessary for the court to devote months of its time to the examination of the books, accounts, documents, and transactions of the Commonwealth, in connection with the creation of the debt, the expenditures made in the counties now constituting West Virginia, and the payments made from those counties into the treasury of Virginia, during a period of forty years or more, and also to the examination of the records of both States in reference to the lands and other property which West Virginia received from Virginia.

It is difficult to conceive how a stronger case could be presented for the exercise of the equitable jurisdiction of "Account," "in order to bring the case to a final hearing upon the merits."

But while the case is not in a condition for the court to intelligently and fairly "pass upon all the issues made in the pleadings," it is in condition for a decree of reference, in which decree the principles upon which the account shall be stated should be settled, so far as it is practicable to do that from the data now in the record, and without doing injustice to either party.

In the draft of decree tendered on the 7th of last December by counsel for the complainant, some important questions were left open which we are prepared now on further consideration

to say, it would be as well, or better, to have settled in advance.

To this extent we concur, upon this point, in the views presented by the learned counsel for West Virginia.

While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that Ordinance, *reasonably and fairly construed,* and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII of the Constitution under which West Virginia became a State, was not binding on both States.

While thus construed and applied, the amount and proportion of the public debt assignable to West Virginia will doubtless be much less than it would have been equitable for her to have assumed and paid, we are constrained to the opinion that the plan of settlement prescribed and sanctioned by the foregoing enactments is binding upon Virginia.

It is due to candor also, to say that, although it is true that the Convention which enacted the Wheeling Ordinance, was not called, constituted, or organized in accordance with the requirements of the Constitution and laws of Virginia, and was a revolutionary body; although it could then have been shown that that Convention and its acts were invalid, and may now be contended that the Convention and the Wheeling Ordinance which it adopted, were fictions, nevertheless, they and their offspring, the Restored Government of Virginia, and the State of West Virginia, have since received such recognition and sanction from every department of the United States Government, and from the Government of Virginia also, that, what, in its inception, was a fiction, has become a *legal* fiction, and now has all of the force, if not all of the virtue, of a legal verity.

We are constrained to recognize the following propositions as true:

(a) That the State of West Virginia could have no legal birth or existence without the consent of the Legislature of Virginia.

(b) That the only Legislature of Virginia which ever gave its consent to the formation of West Virginia, was the Legislature of the Restored Government which, sitting at Wheeling on the 13th of May, 1862, gave its consent to the formation of the new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th of November, 1861."*

(c) That the Act giving such consent and the Legislature which passed it, depended for their validity upon the validity of the Wheeling Ordinance under which the Restored Government of Virginia was organized.

(d) That said Convention, and its acts, and the Government which it established, have been legitimated, by recognition by every department of the Government,—by the President of the United States in his official intercourse and dealings with the Governor and officials of said Restored Government, by approving the bill for the admission of West Virginia, and by his proclamation announcing the admission of the new State into the Union; by the Congress of the United States in the admission of Senators Willey and Carlisle elected by the Legislature of the Restored Government, by the passage of the Act approved December 31, 1862, admitting West Virginia into

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*At the time of the argument upon the demurrer, counsel for complainant were under the impression that this Legislature had not been convened pursuant to the proclamation of the Governor, without which proclamation the meeting of the Legislature would have been, under the then Constitution of Virginia, invalid; but subsequently the Executive Journal of the Governor of Virginia at Wheeling, for 1862, was found, and it appears from it that Governor Pierpont issued a proclamation under which the special session of the Legislature in May, 1862, was held.

the Union, and by other acts; and by the United States Supreme Court, by its decision in *Virginia* v. *West Virginia*, 11 Wallace, p. 39, in which the Wheeling Convention and this very Wheeling Ordinance and the Wheeling Legislature of Virginia, are recognized as being a Convention, an Ordinance, and a Legislature of the Commonwealth of Virginia.

We are forced by these considerations to conclude that it too late now to question the binding effect of the Wheeling Ordinance.

Still, it cannot be forgotten that there was not a man in the Virginia, and West Virginia, Wheeling Conventions of 1861-2, and 3, from any of the counties or cities which now constitute Virginia, except the four men admitted to seats in the Virginia Convention at Wheeling, of August, 1861, two of them from Alexandria and two from Fairfax county, both parts of the present State of Virginia; that there was no pretence that there was any representation whatever in said Conventions, or in the Legislature of the Restored Government of Virginia, from more than two-thirds of the territory and people of Virginia; and that, in a number of instances, the very same men acted as the representatives both of the people of Virginia, and of the people of West Virginia, in said Conventions and Legislatures.

The indisputable facts are, that it was the people of the counties and cities now constituting West Virginia, or their representatives, who were dealing with the people of the same counties and cities, or their representatives, and undertaking to make covenants and stipulations with themselves which would bind all the people, and the entire Commonwealth of Virginia, in matters of the utmost importance to them.

Among other instances of manifest injustice in the plan prescribed in the Ordinance, is, that it operates to exclude from the

account all items of expenditure in the early years of the last century.

If the principle adopted by that Ordinance was just, why should its application be stopped in 1820?

For a number of years before that date there had been large expenditures made by Virginia in what is now West Virginia, towards which the people of that section had contributed little or nothing. For a long period after the settlement of Western Virginia, the rest of the State had practically to carry that section of the Commonwealth.

Many times as much was expended there on public account, as it contributed to the Treasury of the Commonwealth.

All that was well enough, for it was reasonably hoped that in time, with the development of the bountiful resources of that trans-mountain region and the consequent increase of its wealth, the accounts would be squared.

From the very dawn of the internal improvement policy of Virginia the dream of her leading men was the construction of some efficient line of communication between her Eastern and her Western waters.

This was earnestly advocated by Washington, and others of her representative citizens, and among these Chief Justice Marshall applied the great powers of his mind and unerring judgment in aid of a wise solution of the problem.

In 1812, at the request of the General Assembly, he devoted much of his time to arduous service as Chairman of a Commission which was created for the purpose of examining the intervening region, and ascertaining and reporting as to the best route and mode of communication between the Eastern and Western waters.

Together with other members of the Commission, the Chief Justice spent some time among the mountains and wild woods of Western Virginia, much of it then almost a trackless wilder-

ness, in the patriotic discharge of this voluntarily accepted duty.

The report of this Commission which was evidently written by the Great Chief Justice, will be filed as an exhibit in the cause, not only as indicating the purpose and desire of Virginia at that early day to open up a highway through West Virginia, but as an interesting fact in connection with the history of the internal improvement policy of Virginia.

From 1812 down to the breaking out of the war which resulted in her dismemberment, the means and energies of the Commonwealth were largely devoted to the construction of roads, turnpikes, water-ways, and railroads, and especially to lines which were designed to develop Western Virginia.

This policy generally received the earnest support of the people of what now constitutes West Virginia, and their representatives, and very little indeed of the debt would have been contracted if they had opposed it; for there was a powerful opposition to that policy and to contracting the debt in large portions of the Eastern part of the State.

As giving some notion of the views of leading and representative citizens of Western Virginia, extracts from the message to the General Assembly, of Governor Joseph Johnson, of Harrison county, West Virginia, in January, 1852, will be printed in the appendix to this brief.

These are incontrovertible facts, to which we cannot shut our eyes, unless we would ignore the truth.

We therefore respectfully submit that these ordinances and public acts, adopted under such circumstances, should not be construed strictly against Virginia, who, without the actual consent of her people, or their representatives, was to be bound by them.

On the contrary, they should be strictly construed against West Virginia, in whose interest they were manifestly conceived and made.

That the rule embodied in the Wheeling Ordinance was not only arbitrary, and inequitable, but contrary to the usages of nations, and the principles of natural equity and public law, as enunciated by the great publicists and jurists of the world, and also as expressed by learned American authors, will be manifest from an examination of the extracts from the works and opinions of a number of these authorities which will be found in an appendix to this brief.

It will be seen that the authorities there quoted, with a single exception, all substantially agree that the rule of equity applicable to such a case is, that the common debt and common assets shall be apportioned between the two States ratably.

The only exception to this practically unbroken line of authority, is to be found in Mr. Hall's treatise on International Law. With entire deference for his ability, we respectfully submit, that the views of this learned author upon this subject are unsupported by reason or authority, and are repugnant to those principles of justice and right, from which the rules of International and Public Law derive their highest sanction.

If Mr. Hall is correct, then three-fourths, or four-fifths, of a State, could, by splitting off from the original State, escape liability for the common public debt of the unsevered Commonwealth, and leave that burden to rest exclusively upon the remaining parcel thereof.

The flagrant injustice of such a rule would be the same if it should be applied to this case, the only difference here being one, not in principle, but in degree; for, here the new S[illegible] embraced perhaps one-third of the actual, and one-half of the prospective and potential resources and wealth of the original State, instead of three-fourths, or four-fifths thereof, as in the case just assumed.

The debt was created by the whole State, bound the whole State, and should be paid by the whole State.

Its obligations rested equally upon the whole State, and upon every part of it, and should have been, and should now be, borne by every part of the undivided Commonwealth, whether each part has received its ratable share of the expenditures made out of the money for which the debt was contracted, or not. It would be exceedingly difficult, indeed impossible, to apportion the debt upon any basis which would require each county, or each section, or each grand division, to contribute to its payment in proportion to the benefits actually received by such county, section, or grand division—and no sanction for any such principle will be found in the writings of the publicists and jurists who have considered and discussed these questions.

But, if it be true, as is indicated in the Bill, and as it can and will be demonstrated to be true, that the public debt of the Commonwealth was created largely for the constuction of works of internal improvement which would develop the vast resources of Western Virginia then known to be lying there in boundless but almost useless affluence; that some of the most important and most expensive of these works would not have been undertaken, if it had not been believed that their construction would have that effect; that the policy under which and the acts by which that debt was contracted received the warm and active support of the people of the counties which now constitute the new State; *that a large part of that debt was contracted by the votes of a majority of the representatives from those counties, and against the wishes and the votes of a majority of the representatives in the General Assembly from the counties constituting the present State of Virginia; and that a very small part of the debt was or could have been created had the people from the counties now forming West Virginia, and their representatives in the General Assembly opposed its creation*,—if these facts which are a part of the history of the

Commonwealth, be true, how could the amount of money which was expended in West Virginia be, by possibility, any just or equitable measure of the share of that debt which, in good conscience, she should assume and pay?

Yet, by the Wheeling Ordinance, that is made the chief measure for determining the proportion of the common debt which the younger Virginia should assume and pay.

Tried by every test of authority, and every standard of principle and right, the basis of settlement prescribed by the Wheeling Ordinance, was, upon its face, arbitrary, illogical, and inequitable, and yet the learned counsel for West Virginia, would, by construction, give it a meaning which would make it work even greater hardship and injustice upon Virginia, than its language fairly interpreted would justify.

Here, then, we have an Ordinance which prescribes a plan of settlement, palpably unjust and inequitable, and in contravention of both common right, and of the common public law of the civilized world.

Such an enactment clearly comes within the time-honored rule, that a statute in derogation of common right or of common law must be strictly construed—and so construed as to conform it in its operation and effect, to the principles of right and justice and of the common law, so far as this can be done without violating the manifest *expressed* purpose of the statute.

See this Rule as applied to Acts in derogation of the common law.

> Enlich on Interpretation of Statutes, §127, citing *Brown* v. *Barry* 3 Dall., 365, 367; *Shaw* v. *R. R. Co.*, 101 U. S., 557; *Newell* v. *Wheeler*, 48 N. Y., 476; and a number of other cases.

This salutary rule, especially as to statutes in contravention

of common right, but also as to those in derogation of the common law, is embodied in the jurisprudence of both Virginia and West Virginia.

Commonwealth v. *Gaines,* 2 Va. Cases, 172-175.
Richmond City v. *Daniel,* 14 Gratt., 485, 487.
Delaplain v. *Crenshaw,* 15 Gratt., 457, 470.
Virginia & S. W. R. R. Co. v. *Clower,* 102 Va., 867, 871.
Wheelright v. *Commonwealth,* 103 Va., 512, 519.
Davis v. *Commonwealth,* 17 Gratt., 617.
Alexandria & Fredericksburg R. R. Co. v. *Alexandria & Washington R. R. Co.,* 75 Va., 780, 788.
Harrison v. *Leach,* 4 W. Va., 383.
Harrison v. *Smith,* 4 W. Va., 97.
Pendleton v. *Barton,* 4 W. Va., 496.
McGugin v. *O. R. R. R. Co.,* 33 W. Va., 63, 68.
Richardson v. *N. & W. R R. Co,* 37 W. Va., 641.

To the same effect are a large number of decisions of other States, a few of which are:

Webb v. *Baird,* 6 Ind., 13.
Sewall v. *Jones,* 9 Pick., 412.
Mayor of Savanah v. *Hartridge,* 8 Ga., 23.
Chapin v. *Persse & Brooks Paper Works,* 30 Conn., 461.
Phillips v. *Dunkirk R. Co.,* 78 Pa. St., 177.

By the express terms of the 9th Section of the Wheeling Ordinance, it was provided that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained," &c.

That is the paramount and controlling mandate and stipulation of the clause which prescribes the portion of the debt which the new State shall assume and pay.

Our insistence is, that the residue of the clause should be so construed as to give effect to the righteous principle thus expressly made the rule by which West Virginia's liability under it shall be determined.

The enactment should be interpreted and applied so as to to defeat that purpose, *ut res magis valeat quam pereat.*

And so, whenever in stating the account between the two States under the provisions of the Ordinance, a question shall arise as to whether a particular item of charge against West Virginia shall be included in the account, such construction should be given to the Ordinance as will tend to place upon the new State a just proportion of the common indebtedness, rather than a construction which will tend to exonerate West Virginia from her just and equitable share thereof.

In other words, in the application of the arbitrary basis prescribed by the Ordinance, Virginia should, according to the equitable rules of construction which are especially applicable to this case, be given the benefit of every reasonable doubt.

If the construction and effect, which, as we understand their position, opposing council advocate, be given to that Ordinance, the Act of February 3, 1863, and to Section 8 of Article VIII of the first Constitution of West Virginia, the result will be one of palpable wrong and injustice to Virginia.

The whole Wheeling Ordinance will be found printed in full in the appendix to the opening brief of counsel for Virginia, upon this motion.

Its provisions and the language in which they were formulated, were manifestly the work of intelligent and able lawyers.

It fully specifies the terms upon which Virginia authorized

the formation of the new State,—terms which having been recognized as being in the nature of things fundamental, and upon the acceptance of them, and the formation of a new State under them with the sanction of Congress, they became contractual, and operated as a covenant binding both States.

As a necessary corrollary to this, there results this now self-evident truth, namely, that no additional or new term could be added to that Ordinance, without the consent of Virginia.

While it is true that the opening brief of counsel for Virginia, upon this motion, did not accept the basis prescribed by the Wheeling Ordinance as having been *irrevocably* fixed, as the one by which the settlement must be made, and intimated that in the event that it should turn out upon the application of that scheme of accounting to the facts of the case, that it would "lead to absolutely unconscionable results, and operate to impair the obligation of the contracts by which the common debt was created, contracts which were obligatory alike upon Virginia and West Virginia, or for any other valid reason, then the scheme of settlement indicated by the Wheeling Ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted."

In other words, if the basis prescribed by the Ordinance should, when applied, produce results which would shock the moral sense of mankind, and operate a fraud upon Virginia and the common creditors of both States, then it would be right for the court to adopt some other basis.

But the statement above quoted is immediately followed by this qualifying paragraph:

> "It is due to frankness to say, that, while the Wheeling Ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are

satisfied, that upon a fair, reasonable, and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay."

Farther investigation and consideration convince the representatives of Virginia and her counsel that fairly construed and applied, as we believe they must be construed and applied by a court of equity, the Ordinance and the constating Acts which constitute as much a part of the plan of settlement adopted by the two States, as does the Ordinance itself, will not lead to any such unconscionable results, as would appear to be inevitable, particularly if the Ordinance be taken by itself.

It may be that the framers of those instruments built fairer than they intended. It is pretty certain that they built fairer than they knew.

Clause III, pp. 6 to 8 of the opening brief upon this motion, succinctly and frankly states the position of the complainant in reference to the scheme of settlement which we seem to be shut up to.

The following quotation from that clause (p. 7 of opening brief):

"As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling Ordinance, and Section 8 of Article VIII of the first Constitution of

> West Virginia, must be taken and read together: So also these constating acts of February 3, and 4, 1863, and particularly of February 3, 1863, must be taken and read together with Section 9 of the Wheeling Ordinance, and with Section 8 of Article VIII of the first West Virginia Constitution, *as together prescribing the terms and conditions on which the consent of the Commonwealth was given to the formation of the new State out of her territory, and the transfer to that new State when formed of any portion of the assets and property of the parent State.*"

correctly expresses the views of complainant and her counsel upon this question, as the same are stated in the Bill, in the oral arguments and printed briefs of counsel for complainant upon the questions arising upon the demurrer, and as now stated in this brief, and as, in principle at least, sanctioned by the opinion of the court upon the questions raised by the demurrer.

Various questions are suggested by the brief of the distinguished counsel for West Virginia, in respect to the meaning and effect of that Ordinance, and the basis, and principles upon which the accounts between the two States should be stated, and the settlement between them made, which questions we agree should be now determined by the court, and directions given to its Master accordingly, so far as it is practicable to do so without working injustice.

These questions will be now considered:

I.

The first of them which we ask the court now to decide is: Whether West Virginia is not justly and legally chargeable with interest?

In this connection, we must remember that the contract which we are considering was **a Virginia contract.**

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation,—and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

In *Jones* v. *Williams,* 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great Judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of anothers money should pay interest for it."

Cited with approval in *Baker* v. *Morris,* 10 Leigh, 284, *McVeigh* v. *Howard,* 87 Va., 599, and *Stuart* v. *Hurt,* 88 Va., 343.

In *Hatcher* v. *Lewis,* 4 Randolph, 152, 157, the court laid down the rule in the following expressive language:

> *"The interest follows the principal as the shadow does the substance."*

In *Chapman* v. *Shepherd,* the court said:

"In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman v. *Shepherd*, 24 Gratt., 377, 384.
Roberts v. *Cocke*, 28 Gratt., 207.
Tidball v. *Shenandoah National Bank*, 100 Va., 741.

"Interest is favored both by the legislative and judicial bodies of the State."

Tazewell v. *Saunders*, 13 Gratt., 354, 370.

In *McVeigh* v. *Howard*, the Supreme Court of Appeals of Virginia said: 87 Va. 599

"It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *

Citing *Jones* v. *Williams* and *Hatcher* v. *Lewis*, quoted above.

Such is the law of Virginia as to interest.

The law of West Virginia in regard thereto is the same.

In *Shipman* v. *Bailey*, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that

State, after citing a number of authorities upon the question, stated the rule as follows:

> "Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule, which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

Shipman v. *Bailey*, 20 W. Va., 140, 146.

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickens* v. *McCoy*, the court affirms *Shipman* v. *Bailey*, and adopts the language just quoted from that decision. 24 West Va., 344-352.

Independently of these West Virginia decisions, such parts of the common law, and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to

be the law of West Virginia. Section 8 of Article XI of the first West Virginia Constitution.

The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

As part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public Acts of Virginia and West Virginia set forth in complainant's Bill.

The framers of the Wheeling Ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia lawyers of that day, as since that time, Judge Coalter's apt formula of the doctrine that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an essential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided State, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the Commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipulated interest was made as much a part of the debt as was the payment of the principal.

The interest was as much a part of the debt as was the principal, and as many of the bonds were payable thirty-four years after date, and some of them at the pleasure of Virginia with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that Ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice upon Virginia, that the new State should take upon itself, and relieve what remained of the old State of a part of the burden of debt which rested upon both States. They knew that that burden consisted as well of interest, as principal, and as much, or more, of interest than of principal.

It was not proposed that the new State should, as soon as she became a State, pay in cash a sum to be ascertained in the manner indicated in the Ordinance. The framers of the Ordinance understood too well that, under the conditions then existing, it would be impossible for the new State to raise and pay any considerable sum in cash.

Why, the new State was dependent upon the old State for

the money necessary to enable her to begin business, and she did not have, and in the nature of things could not command, a sufficient amount in cash to pay off one-fifth or even one-tenth of the then Virginia debt.

The stipulation was not that the new State should pay a sum in cash on account of its share of the common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the Ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new State shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which represent it, as the branches are a part of the tree from whose trunk they spring?

In their very elaborate reply brief upon this motion, opposing counsel devote very little attention to this important question, although it was plainly in their minds when they prepared their draft of decree, and although their attention was challenged to it by the opening brief for Virginia. There is some discussion of the question at pp. 35 to 37 of their brief, but that discussion ignores the facts and the principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not depend alone upon the Wheeling Ordinance, or upon the law of Virginia and of West Virginia which makes the interest an essential part of a debt; but it rests also upon the express terms of the Constitution under which West Virginia became a State.

Now, by the Act of the Virginia Legislature at Wheeling,

of May 13, 1862, the validity of which we no longer question, for reasons hereinbefore stated, Virginia gave her consent to the formation of the new State out of her territory, "under the provisions set forth in the Constitution for said State of West Virginia and the schedule thereto annexed, proposed by the Convention which assembled at Wheeling on the 26th day November, 1861."

It is true that this consent was predicated upon West Virginia's being erected into a State under the provisions of that identical Constitution, without the performance of which condition that consent was abortive and ineffectual.

The fact is, that at the behest of Congress, that Constitution was subsequently amended in a material particular, which change, unless objection thereto had been waived, or the change assented to by the Legislature of Virginia, would have rendered the previous conditional consent null and void.

But since the opening brief upon this motion was filed the counsel for Virginia who writes this brief, has discovered the following joint resolution, which it seems was adopted by the Legislature of Virginia at Wheeling, on the 9th of December, 1862:

> "No. 2. Joint Resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.
>
> Passed December 9, 1862.
>
> *Resolved,* That feeling the greatest anxiety and interest in the successful issue of the movement for a new State in West Virginia, we earnestly request the House of Repre-

sentatives of the United States to take up and pass, without alteration or amendments, the bill which passed the Senate of the United States on the 10th of July last."

See "Constitution and Statutes Va. & West Va., 1861-66."

This resolution was telegraphed to Washington on the evening of the day on which it was passed. History of West Virginia by Lewis, p. 389.

The Senate Bill referred to in the resolution was taken up in the House of Representatives, and passed on the 10th of December, and was approved by President Lincoln and became a law on the 31st of December, 1862, in the very form in which the Legislature of Virginia had by its Joint Resolution of the 9th of December, 1862, requested and urged that it should be passed.

This Act of Congress to which the Legislature of Virginia had thus given its assent, made it a condition of the admission of the new State into the Union, that its proposed Constitution should be amended in the particular in which it was afterwards amended by the Convention and people of West Virginia, in regard to the emancipation of slaves.

The effect of said Joint Resolution, was, under these circumstances, to waive any objection by the Legislature of Virginia to the amendment made to the Constitution of West Virginia at the instance of Congress, and to make the consent given by the Act of May 13, 1862, effective, notwithstanding that amendment.

What, then, was the effect of the admission of West Virginia to the Union under the consent thus given, and the Constitution upon which that consent was predicated?

It will not be denied that the condition upon which the consent of the Legislature of Virginia was given to the formation

of West Virginia and her admission into the Union as a State, was, that she should become a State under the provisions of the Constitution under which her statehood was sanctioned by Congress.

Among the most important of those provisions, so far as Virginia was concerned, were those expressed in Article VIII of that Constitution in reference to the public debt.

Section 8 of that Article reads as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

We have a right to assert that, unless West Virginia had been required to assume and pay an equitable proportion of the Virginia debt in manner and form as was expressly prescribed in this Section, the consent of the Legislature of Virginia would never have been given to the creation of the new State.

These were, therefore, fundamental conditions of West Virginia's existence.

By accepting these conditions, the new State became bound in equity and in law to perform them in good faith.

Upon grounds which have been already indicated, as sufficient and controlling we are constrained to concede that Section 8 of Article VIII of the first West Virginia Constitution, and Section 9 of the Wheeling Ordinance being *in pari materia*, must be read together, and that the proportion of the debt which the new State was required by this provision of her Con-

stitution to assume, was to be ascertained in the manner prescribed by the Ordinance.

But the Constitution goes farther, and expressly provides as to the equitable proportion of the debt which West Virginia should assume, that her Legislature should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of her debt.

This plan was embodied not only in the statutes, but also in the Constitution of Virginia in force when West Virginia, became a State.

It was embodied in that Constitution in the following terms:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid

thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47.

It was expressed in a concrete form and given further effect by the second Section of the following Act passed by the General Assembly of Virginia:

"Chap. 17.—An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853.

* * * * * * * * * * * * * * * * *

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

* * * * * * * * * * * * * * * * *

Acts of General Assembly of Virginia, Session of 1852-3, p. 29.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Hall, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the Commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the Commonwealth to pay the accruing interest, and to liquidate or reredeem the principal of each bond representing the debt, within thirty-four years.

(This statement is subject to this qualification, that as to a considerable portion of the debt, particularly that contracted prior to 1852, like English consols, the principal was redeemable at the pleasure of Virginia).

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt, which plan was adopted by the new State as to its share of that debt.

And so, we find that both by the express terms of the Wheeling Ordinance fairly construed, and by the express terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a State, this

new State has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable. U. S. v. N. Carolina 136 U. S. 211

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling Ordinance and by the Section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly, equitably, and legally, (because it accords with the express terms of both the Ordinance and the Constitution) the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A farther kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably, and legally bound to pay this interest,

(1) By the terms of the Wheeling Ordinance, certainly, for the period during which the debt of the Commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest, in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the Section of her Constitution above quoted, West Virginia undertook that her Legislature should

assume and pay the accruing interest and the principal of her share of that debt in thirty-four years.

Her Legislature has failed either to assume, or to pay that share, or any part of it.

The interest accruing thereon from December 31, 1860, has continued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia's Legislature was to make provision, so that the same should be paid within thirty-four years.

We are unwilling to anticipate that the learned and fair-minded counsel for the defendant will argue that West Virginia, by the language of that provision of her Constitution, is only bound to pay interest for thirty-four years from December 31, 1860, or from June 20, 1863, because we are unwilling to assume that our distinguished opponents would contend that a State, any more than an individual, should be allowed to take advantage of her own wrong, or profit by her own procrastination, and neglect of duty.

Here, West Virginia has not only not taken upon herself a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things, and has by the votes of her Legislature, repeatedly repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia in Appendix).

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a State, which should be

an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged is, that equity will not suffer any party to take advantage of his own wrong.

Here, fortunately for West Virginia, it will, by reason of her increased wealth and prosperity, be far easier for her to pay the principal and the accumulated interest now, than it would have been to have paid the interest annually as it accrued, and the principal thirty-four years from 1861, or 1863. West Virginia could pay thirty million of dollars now, with as little inconvenience as she could have paid three or four millions thirty-five or forty years ago.

If there ever was a case to which the benign doctrine of Virginia law, that "interest follows the principal as the shadow does the substance," should be applied; we seem to have such a case here.

Nor is there any extravagance in the language of our opening brief upon this motion, when we say that,

> "any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust and inequitable, but iniquitous."

II.

The Wheeling Ordinance provides; that in ascertaining the just proportion of the debt which the new State shall take upon itself, it shall be charged with;

> "all the State expenditures within the limits thereof,

and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included in said new State during said period."

There cannot well be any question as to what will be included in the first item of the debit charge against the new State It includes all expenditures of whatever kind made by Virginia in any part of the territory embraced in the new State, since any part of the debt was contracted. There will be no controversy as to the earliest date when any part of the debt existing on the 31st of December, 1860, was contracted.

Part of the debt, then unpaid, was created as far back as 1820. So, the period covered by the account will be from, say, January 1, 1820.

There is likely to be some question as to what shall be regarded as under the circumstances, a just proportion of the ordinary expenses to be charged to West Virginia.

As to the criterion on which the apportionment of the expenses of government should be made, if that is to be the population, we respectfully submit that in this case it should be the free populations—the citizenship—and not the total of the free and the slave population. The care and policing of the slaves cost the State little or nothing. Those matters were regulated by their masters on the plantations. Of course, none of them could vote; but upon the "mixed basis" of representation which was partially adopted in Virginia, they counted to some extent in fixing the basis of representation in the General Assembly; that is, five negroes counted as much as three white men, where the mixed basis prevailed.

The debt was contracted solely by the votes of the white popu-

lation or their representatives. It was expended by them or under laws of their enactment. The taxes were levied exclusively upon the property of the free population; and the revenues were appropriated and expended as they directed, and exclusively for their benefit.

The negroes did not constitute a part of the citizenship of the State during any part of the period when the debt was contracted, or the money realized from it was expended; nor were they any part of the body politic.

Under these circumstances we would submit as a just criterion for such apportionment the white population of the territory embraced in West Virginia, and of the territory still remaining to the Commonwealth, at the times when the expenditures to be apportioned were made.

However, there is not probably, as yet, enough in the record to enable the court to decide this question intelligently; or satisfactorily.

III.

Another and quite an important question which can probably be fairly considered and decided, upon what is now in the record, and which should be decided now, if a just conclusion about it can be reached at this time; is, whether West Virginia shall be charged, in the settlement to be made, with the property or assets which she has received from the Commonwealth?

The Act of the Virginia Legislature at Wheeling, of February 3, 1863, which is printed in the appendix to the opening brief for Virginia on this motion, expressly provides that "the new State shall duly account for the same in the settlement hereafter to be made with this State." See Section 5 of the Act of February 3, 1863.

Counsel for West Virginia deny that these important items

shall be brought into the account; and in order to have any ground on which to base their objection, they contend that the Acts of February 3 and 4, 1863, were not binding upon West Virginia; that her rights were determined by the Wheeling Ordinance, and by the provisions of her first Constitution, and by the Act of May 13, 1862, of the Virginia Legislature at Wheeling, and the Act of Congress approved December 31, 1862, giving the consent of the Congress to the formation of the new State and her admission to the Union; that these Acts were all effective, and the rights of the new State definitely determined by them before the Acts of February, 1863, were passed; and that those Acts of the Virginia Legislature of February 3 and 4, 1863, were not binding upon West Virginia, and imposed no obligation upon her, because she had already, by reason of the consent given by Virginia to her statehood, been absolutely vested with the very rights which the Act of February 3rd, undertook to confer upon her upon conditions.

The answer to this argument, vigorously and ably as it is presented, is complete.

The position of the counsel for the defendant upon this point would find support in the doctrine laid down by Mr. Hall, *if there had been no agreement between Virginia and West Virginia as to the terms upon which the partition of the old State should be made, and the debt thereafter apportioned between the two States;* but neither Mr. Hall, nor any other authority will be found to sanction the proposition, that, where a new State has been erected out of the territory of the old State by treaty or by a convention between the mother State and the new State any such doctrine applies.

The rule in that case logically, and necessarily is, and must be, that where the two States have undertaken to define and prescribe the terms upon which the new State shall be created, the rights and obligations of the two States will thereafter be

determined absolutely by the stipulations and provisions of such treaty or convention.

The elementary rule of universal application, that a party will not be allowed to add to, or to take from, the terms of a valid written instrument applies with intensified force to a compact between two sovereign States.

The Wheeling Ordinance, which taken together with the first Constitution of the State of West Virginia; the Act of the Virginia Legislature at Wheeling, of May 13, 1862, giving the consent of the Legislature of Virginia to the formation of the new State under the provisions of that Constitution, and the Act of Congress approved December 31, 1862, giving the consent of Congress to the creation of the new State and to her admission into the Union, constitute a compact; and to this compact no new term can be added, and no term prescribed therein can be taken away.

Now, the Wheeling Ordinance, and the article of the Constitution of West Virginia referred to, are absolutely silent upon the subject of the property and assets of the Commonwealth of Virginia. While the Wheeling Ordinance, with the greatest particularity, undertakes to prescribe and define minutely the terms upon which the new State shall be created, its boundaries, and the rights of property of individuals residing therein, it makes no provision whatever in respect to property held by Virginia in her corporate capacity, whether it be personal or real. As a necessary effect of the terms of that Ordinance, the title and ownership to that property remained, after its enactment, and after the formation of the new State of West Virginia, just where they were vested before the Ordinance was enacted; and that is, in the Commonwealth of Virginia.

As already indicated no new term can be incorporated in, or added to, that Ordinance, without the consent of Virginia;

and yet, the learned counsel for the defendant would have the court, by a forced construction to interpolate a new term into this Ordinance which was, as we have a right to assume, intentionally excluded from it by the parties who framed it.

If there is any contract or covenant to which the doctrine of *expressio unius est exclusio alterius* ought to apply, it is to a compact like this between States, ~~and~~ affecting the rights of the people of those States for all coming time.

The men who framed the Wheeling Ordinance and the Constitution of West Virginia among whom were evidently lawyers of a higher order of ability, intelligence, and learning, must have fully realized the meaning and effect of the Wheeling Ordinance, and must have known that it did not transfer to the new State any title or ownership in respect to any of the property and assets which Virginia owned in her corporate capacity; for we find that they, or some of them, were instrumental in the enactment of the Act of February 3, 1863, which undertook to cure this omission, which was doubtless an intentional omission, and to vest in the new State the property and assets of Virginia, the situs of which was within the limits of the new State, upon the just and equitable terms that the new State should account ~~in that settlement~~ for the value of all such property, in the settlement to be made between the two States.

The only settlement to be made between the two States, was the settlement in regard to the public debt; and the purpose of the Act of February 3, 1863, was to provide that the new State should account without settlement for the value of the assets and property which she should acquire from Virginia under that Act.

The Legislature of Virginia at Wheeling had the right to exercise supreme dominion over the territory and people of West Virginia at the time that the Act of February 3, 1863, was passed; subject only to the limitations of the Constitutions

of Virginia, and of the United States; so that the Act of February 3, 1863, was clearly within the competency of the Legislature of Virginia to enact; nor can we be blind to the fact that the portion of the territory of Virginia which was represented by Senators and Delegates in the Legislature at Wheeling, was practically coincident with the territory of the proposed new State of West Virginia; so that it was in fact the representatives of the people who were about to form themselves into the State of West Virginia, who enacted the Act of February 3, 1863.

Upon these grounds, we can fairly claim that the Act of February 3, 1863, was a valid law, and binding upon the people who afterwards constituted the State of West Virginia.

But that Act has still farther sanctions which make it absolutely binding upon the people of West Virginia.

The 8th Section of Article XI of the first Constitution of West Virginia is as follows:

> "8. Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia, when this Constitution goes into operation; and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature." * * *
>
> Article XI, Section 8, 1st West Virginia Constitution; effective June 20, 1863.

We respectfully insist that the effect of this provision of the Constitution was to sanction and continue in force the Acts of February 3 and 4, 1863, both of which were in force within the boundaries of the State of West Virginia at the time that that Constitution went into operation.

But this Act of February 3, 1863, has received still farther and express sanction and acceptance by a positive enactment of the Legislature of West Virginia. Section 8 of the Act of the Legislature of West Virginia, approved December 20, 1875, Acts of the Legislature of West Virginia, Session of 1875, p. 126, is as follows:

> "8. The Auditor shall institute all the necessary and appropriate measures for the collection of all claims for taxes and other demands transferred by the Commonwealth of Virginia to this State by an act of the General Assembly of said Commonwealth entitled 'an act transferring to the proposed State of West Virginia, when the same shall become one of the United States, all the State's interest in property; unpaid and uncollected taxes, fines; forfeitures, penalties and judgments in counties embraced within the boundaries of the proposed State aforesaid;' passed on the third day of February, 1863."

And therefore, we respectfully, but earnestly, claim that West Virginia is equitably, legally, and justly, bound to account for all property and assets, whether real or personal, which she has received from the Commonwealth of Virginia; in the settlement which it is the object of this suit to bring about.

There is, we think, enough in the record to show that no equitable settlement can be made between the two States upon the basis of the Wheeling Ordinance and the constating Acts referred to, unless there shall be brought into the account with West Virginia a fair charge against her for such assets, money, or property as she has received under the Acts of February 3 and 4, 1863, and upon the fullest examination and consideration which we have been able to give to the subject,

we are satisfied that even then the amount with which West Virginia will be chargeable on account of the public debt of the undivided State, will be far less than she ought to have assumed and paid if we have reference to all of the facts, and all of the equities of the case.

It is proper to state here that in so far as any property or money which West Virginia acquired from Virginia, either under the Acts of February 3 and 4, 1863, or otherwise, was property which was acquired by Virginia by the expenditure of money within the limits of the State of West Virginia, or money paid by Virginia, after 1819, the new State will, of course, be chargeable with the amount so expended or paid by the Commonwealth, under the Wheeling Ordinance, and not under the Act of February 3, 1863, in the settlement to be made between the two States, for the Wheeling Ordinance provides that the new State shall be charged with all expenditures made within its limits by the Commonwealth of Virginia, since any part of the debt was contracted.

Counsel for Virginia will file a modified draft of decree in conformity with the views presented in this brief; which we will respectfully ask the court to consider, and to enter, if they shall approve the same.

Respectfully submitted

WILLIAM A. ANDERSON,
Attorney General and as such Counsel for Virginia.

APPENDIX No. 1.

To Reply Brief for Complainant on motion for order of reference in *Virginia* v. *West Virginia.*

The doctrine of the apportionment of the public debt of a State, which is divided into two or more States.

Grotius states the principle as follows:

> "On the other hand it may happen that what has been one State, is divided, either by mutual consent or by hostile force, as the body of the Persian Empire was divided among the successors of Alexander.. When this transpires, several sovereignties exist instead of one, each with its own rights; *but if anything had been in common; that ought either to be administered in common, or divided in portions pro rata.*"
>
> Grotius' Book II; Chapter 9; Section 8.

And Puffendorf says:

> "Where a kingdom divides by common consent into two or more distinct Commonwealths, the public patrimony with all the debts and incumbrances upon them, ought to be equally shared among them. Tho' indeed when such separations are made by mutual agreement, there is commonly express provision made for such cases."
>
> Puffendorf's Law of Nature & Nations, Book VIII, Chapter 12; Section 5.

Chancellor Kent thus concisely states the doctrine:

> "If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement, those rights are to be enjoyed; and those obligations fulfilled, by all the parts in common."
>
> 1 Kent's Comm. pp. 25-26.

Phillimore thus clearly states the rule:

> "If a nation be divided into various distinct societies, the obligations which had accrued to the whole before division, are, unless they have been the subject of a special agreement, ratably binding upon the different parts."
>
> 1 Phillimore International Law, Part II, Chapter 137, M. p. 158.

Pomeroy expresses the rule in the identical language of Mr. Phillimore.

Pomeroy's International Law, Section 74.

Mr. Dana expresses himself as to one phase of the doctrine as follows:

> "In the separations and re-arrangments of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted; that, in case of a division of a State, each new State is bound for the whole debt contracted by the former; and; in the case of a union of States; it seems equally clear that, as the whole must defend the part in war which is

the international process of attachment it must practically pay the debt, although the foreign power may look only to the people and land of the State which made the contract. The formation of the new State so alters the nature of all the securities the creditor looked to; that the new State has a general obligation to see that he does not suffer by the change.

See Article 13 of treaty of 1839 for the separation of Belgium; and the treaty of Zurich, ceding Lombardy to Sardinia."

Wheaton's Int. L.—Edited, with notes, by Richard Henry Dana, Section 30, Note 18.

Mr. Halleck, after stating the effect of the dismemberment of a State by the loss of a portion of its territory by foreign conquest, or by the revolt and separation of a province, says:

"§27. The case is slightly different where one state is divided into two or more distinct and independent sovereignties. In that case, the obligations which had accrued to the whole, before the division are, (unless they have been the subject of a special agreement), ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers; the decisions of courts, and the practice of nations. It was incorporated into the treaty by which the modern kingdom of Belgium was established."

Halleck's International Law & Laws of War; Section 27.

Mr. John Bassett Moore thus states the doctrine:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for as Story says, 'the division of an Empire creates no forfeiture of previous vested rights of property.'"
>
> 1 Moore's Digest Int. L. p. 334, citing
> Abdy's Kent, p. 96, and
> Lawrence's Wheaton, 52 (m) 20.

A number of precedents are cited by Mr. Moore in Vol. I, Section 97, pp. 339-365, of his Digest of International Law, giving the terms upon which public debts of States have been divided and apportioned, by conventions, or treaties, between the States affected, in cases where there has been a division of territory by war, conquest; or treaty.

No sanction for the rule prescribed in the Wheeling Ordinance will be found in any of the adjustments of public debts, there recorded by the learned author.

Judge Story declared the following fundamental truth:

> "It has been asserted as a principle of the common law, that the division of an empire creates no forfeiture of previously vested rights of property.
>
> And this principle is equally consonant with the common sense of mankind and the maxims of eternal justice."
>
> Mr. Justice Story in *Terrett and others* v. *Taylor and others,* 9 Cranch, 43; 50, citing *Kelly* v. *Harrison,* 2 Johnson, c. 29, *Jackson* v. *Lunn;* 3 Johnson, c. 109.

In *Hartman* v. *Greenhow*, 102 U. S. 672-677, Mr. Justice Field states the rule of international law in the following language:

> "Writers on public law speak of the principle as well established, that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them. On this subject Kent says: 'If a State should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, their rights are to be enjoyed and their obligations fulfilled by all the parts in common.' 1 Com., 26. And Halleck, speaking of a State divided into two or more distinct and independent sovereignties says: 'In that case, the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers; the decisions of courts, and the practice of nations.'" Interna. L., ch. 3, section 27."

And this language was again approved by Mr. Justice Field in his dissenting opinion in *Antoni* v. *Greenhow*, (in which opinion Mr. Justice Harlan concurred), 107 U. S. 769-7, where the following language is used:

> "It is a well settled doctrine of public law, that, upon a division of a State into two or more States, her debts shall be ratably apportioned among them. See authorities upon this subject in *Hartman* v. *Greenhow*, 102 U. S., 677."

The only dissent from the principles thus enunciated by this long line of authorities by any author whose opinions would carry any weight upon such a subject, which we have been able to discover, is to be found in the dogma of Mr. Hall; in his work on International Law, where that learned author says:

"§27. When a new State splits off from one already existing, it necessarily steps into the enjoyment of all rights which are conferred upon it by international law in virtue of its existence as an international person, and it becomes subject to all obligations which are imposed upon it in the same way. No question therefore presents itself with respect to the general rights and duties of a new State. What, however, is its relation to the contract obligations of the State from which it has been separated; to property belonging to and privileges enjoyed by the latter, and to property belonging in common, before the occurrence of the separation, to subjects of the original state in virtue of their status as such, when some of them after the separation become subjects of the new State?

The fact of the personality of a state is the key to the answer. With rights which have been acquired, and obligations which have been contracted, by the old State as personal rights and obligations the new State has nothing to do. The old State is not extinct, it is still there to ful- The new State, on the other hand, is an entirely fresh be- fill its contract duties, and to enjoy its contract rights. ing. It neither is, nor does it represent, the person with whom other States have contracted, they may have no reason for giving it the advantages which have been accorded to the person with whom the contract was made: and it would be unjust to saddle it with liabilities which

it would not have accepted on its own account. What is true as between the new State and foreign powers, is true also as between it and the old State. From the moment of independence all trace of the joint life is gone. Apart from special agreement no survival of it is possible, and the two States are merely two beings possessing no other claims on one another than those which are conferred by the bare provisions of international law. And as the old State continues its life uninterruptedly, it possesses everything belonging to it as a person, which it has not expressly lost, so that property, and advantages secured to it by treaty, which are enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continue to belong to it. On the other hand, rights possessed in respect of the lost territory, including rights under treaties relating to cessions of territory and demarcations of boundary, obligations contracted with reference to it alone, and property which is within it, and which has therefore a local character, or which, though not within it, belongs to State institutions localized there, transfer themselves to the new State person. Conversely, of course, the old State person remains in sole enjoyment of its separate territory, and of all local rights connected with it.

* * * * * * * * * * * *

Property which becomes transferred by the fact of separation consists in domains, public buildings, museums and art collections, communal lands, charitable and other endowments connected with the State, and the like. When a portion of the lands belonging to a commune or to an endowment lies without the boundary of the new State it is only considered that a right to the value of the property is transferred. Convenience may dictate expropriation

from the property itself; and it is only then necessary to pay its full value by way of compensation."

Hall's International Law, Sec. 27.

The fallacy of the positions taken by this learned author will be manifest when we reflect, that, if the Wheeling Conventions and Legislatures had chosen to annex, and had annexed fifty or sixty other counties to the new State, so that it would have embraced more than two thirds of the population and territory and actual and potential wealth, public properties, assets and resources of the undivided Commonwealth, the new State would have taken a good title to all of those assets, properties, and resources, free and discharged from any liability whatever for any part of the antecedent public debt of the Commonwealth, if the ordinances and other public acts of the Wheeling Conventions and Legislatures had omitted to impose any obligation upon the new State to assume and pay any part of that public debt.

Such a result would shock the moral sense of mankind; and yet, it would be no more unjust and inequitable than that which would confront us here, if the views of this eminent author are correct, had the Wheeling Conventions and Legislatures failed to prescribe any stipulations, provisions, or conditions as to the apportionment of the antecedent common public debt between the two States.

APPENDIX No. 2.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

Extracts from message of Joseph Johnson, of Harrison, Governor of Virginia, to the General Assembly of Virginia,

January 12, 1852. See Journal, House of Delegates, 1852, pp. 18-19.

"The subject of internal improvement, which for many years has engaged the anxious attention of our people, is rapidly increasing in interest and importance, and will require your most serious and careful consideration. Whether we look to the vast amount of capital already invested by the State in the enterprise, or the appropriations yet required to carry out successfully the schemes already begun, and thereby make them available for revenue and State purposes—or consider the magnitude of the objects sought to be obtained, and the importance of the results anticipated from their completion in the aid they will give in developing the mineral and agricultural resources and the manufacturing and commercial advantages of our State—all will see and be forced to acknowledge the importance of the subject, and the great and growing necessity for energetic and yet judicious action on your part in relation to it. Indeed the works of internal improvement already commenced and in course of construction, and upon which large sums of both public and private means have been expended, are so intimately connected with all the leading interests of the Commonwealth, that every year's delay in their completion will necessarily postpone, at a common loss to the whole people, great and incalculable blessings, and for an equal period of time defer to the State treasury that repletion which the heavy appropriations heretofore made for internal improvement purposes so earnestly demand, and which their final completion cannot fail to effect. Many of our sister States, with less capacity for such enterprises, and possessing natural resources and advantages far inferior to our own,

have, under circumstances of great embarrassment, executed works of internal improvement which would do honor to the enterprise of independent nations. Nor have they been disappointed in the individual or State benefit which their works were expected to impart. The citizens of those States feel the superiority of this improved condition of their country, and duly appreciate the increased comforts derived from it.

"If our generous and noble old Commonwealth has been tardy in the execution of those improvements most clearly indicated by the geological structure of the country, and in a proper development of her great physical resources, it is gratifying to consider, that profiting by the example of others, she may gain much of the loss in time, by wise, prompt and energetic measures hereafter."

Then, after recommending the completion of the James River & Kanawha Canal to Clifton Forge, Governor Johnson says:

"From this point I most earnestly recommend the construction of a railroad, on State account, to some point on the Ohio river deemed most eligible upon a full reconnoissance of the several routes heretofore contemplated, having in view the valuable trade of that river and ultimately a railroad connection with the cities of Cincinnati and Louisville. In connection with this line, I recommend that every proper aid should be given for the speedy completion of the central railroad from Richmond to the point proposed at the present terminus of the canal, and that from Alexandria to Gordonsville. The railroad from the canal to Loup creek shoals would not exceed 150 miles, (to which point steamboats are now accessible), and from which to Guayandotte, should that point be se-

lected as the terminus, it would be about 82 miles, making 232 miles of railroad. The water line by the Kanawha would be about 80, and strike the Ohio 40 miles above Guyandotte—thus giving the section of road between Loup creek shoals and Clifton Forge the double importance of being connected at both ends with water and railroad lines. The best energy of the State should therefore be turned to the speedy completion of this division of the work. There is little doubt that the Alexandria and Orange railroad and the Blue Ridge tunnel may be completed, and the Central railroad and the canal be carried to Clifton Forge by the time the railroad from the latter place to the Ohio river can be finished."

Journal House of Delegates, 1852, p. 21.

APPENDIX NO. 3.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

House Joint Resolution No. 10, Concerning the Virginia Debt.

(Adopted February 7th, 1895).

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiation with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiations on that subject.

(H. J. R. No. 6.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purposes the consideration of the same; and that it is the sense of this Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this Legislature declines and refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this Legislature declines, and most emphatically refuses, to take any action in re-

gard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that it is the sense of this Legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other State or Territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this Legislature is opposed to any negotiations whatsoever on that subject.

APPENDIX NO. 4.

TO REPLY BRIEF FOR COMPLAINANT ON MOTION FOR ORDER OF REFERENCE IN VIRGINIA V. WEST VIRGINIA.

"Chap. 78.—An Act giving consent to the admission of

certain counties into the new State of West Virginia, upon certain conditions. Passed February 4, 1863.

"1. Be it enacted by the General Assembly of Virginia, That at the general election on the fourth Thursday of May, one thousand, eight hundred and sixty-three, it shall be lawful for the voters of the district composed of the counties of Tazewell, Bland, Giles and Craig, to declare by their votes whether said counties shall be annexed to and become a part of the new State of West Virginia; also, at the same time, the district composed of the counties of Buchanan, Wise, Russell, Scott and Lee, to declare by their votes whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Alleghany, Bath and Highland, to declare by their votes, whether the counties of such last named districts shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Frederick and Jefferson, or either of them, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Clarke, Loudoun, Fairfax, Alexandria and Prince William, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; also, at the same time, the district composed of the counties of Shenandoah, Warren, Page and Rockingham, to declare by their votes, whether the counties of the said last named district shall be annexed to and become a part of the State of West Virginia; and for that purpose there shall be a poll opened at each place of voting in each of said

districts, headed 'For Annexation,' and 'Against Annexation.' And the consent of this general assembly is hereby given for the annexation to the said State of West Virginia of such of said districts or either of them, as a majority of the votes so polled in each district may determine: provided, that the Legislature of the State of West Virginia shall also consent and agree to the said annexation, after which all jurisdiction of the State of Virginia over the districts so annexed shall cease.

2. It shall be the duty of the governor of the Commonwealth to ascertain and certify the result as other elections are certified.

3. In the event the state of the country will not permit, or from any cause, said election for annexation cannot be fairly held on the day aforesaid, it shall be the duty of the governor of this Commonwealth, as soon as such election can be safely and fairly held and a full and free expression of the opinion of the people had thereon, to issue his proclamation ordering such election for the purpose aforesaid, and certify the result as aforesaid.

4. This act shall be in force from its passage."

Act of the General Assembly of Virginia, approved February 4, 1863. Acts of 1863, pp. 65-66.

APR 6 1908
JAMES H. McKENNEY,

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 8

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN. FILED AS AN EXHIBIT FOR THE COMPLAINANT.

Supreme Court of the United States

OCTOBER TERM, 1907.

Original, No. 4.

VIRGINIA

vs.

WEST VIRGINIA.

REPORT OF COMMISSION—JOHN MARSHALL, CHAIRMAN. FILED AS AN EXHIBIT FOR THE COMPLAINANT.

The fact that Virginia in 1811-12 called upon Chief Justice Marshall and others of her leading citizens to devote some weeks or months of their time to a reconnaissance of the region lying between the Blue Ridge Mountains and the Ohio, for the purpose of learning the most desirable line of communication between the waters of the Eastern Seaboard and the Western waters, and that the Great Chief Justice and the eminent men who served with him on that Commission responded to that call and devoted themselves to the arduous service which its acceptance involved, is evidence of the profound interest which in the early part of the last century the people of Virginia and her leading citizens took in that subject, and the importance which they attached to it.

The report of this historic Commission is therefore re-

printed and filed as an exhibit for the complainant in this cause.

Col. Claudius Crozet, an eminent civil engineer, who, after having served as an engineer under Napoleon, and afterwards as Professor of Mathematics or Engineering in the U. S. Military Academy at West Point, was for a number of years State Engineer of Virginia, and some of the most important of her works of internal improvement were begun under his direction.

In one of his reports he refers to the service rendered by this Commission in the following language:

"The first notice of the connection of the eastern and western waters is found in a report, made at the close of 1812, by the commissioners appointed by an act of the preceding session, 'for the purpose of viewing certain rivers within this Commonwealth.' The commissioners, John Marshall, James Breckenridge, William Lewis, James M'Dowell, William Caruthers, Andrew Alexander, examined the James river, from Lynchburg up, crossed the mountains, and descended with much difficulty, and indeed personal danger, the hitherto unexplored New river. They went through this arduous task with a zeal and perseverance worthy of such men.

"A plain sluice improvement of the James and Jackson's river, up to Dunlap's creek; thence a turnpike road, across the Alleghany mountain, which has been made since, and finally a sluice navigation of the Greenbriar, New, and Kanawha rivers were, at that early day, all they thought proper to recommend.

"A remarkable, and in our day, curious passage, occurs in their report. 'Your commissioners submit with diffidence the following propositions: First, that boats impelled by steam may

be employed successfully on New River * * *. But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified as to be applied in new and different situations, &c.' These remarks, at the very dawn of steam navigation, show, on their part, much sagacity and forethought."

See Report of Colonel Claudius Crozet, late State Engineer, to the General Assembly of Virginia, 1848.

WILLIAM A. ANDERSON,
Counsel for Virginia.

March, 1908.

Besides the Great Chief Justice, the gentlemen who served upon this Commission were James Breckenridge, distinguished as a soldier, and statesman, and esteemed by contemporaries as the equal in ability, though not in oratory, of his brother, John Breckenridge, of Kentucky; William Lewis, a patriotic citizen of the highest character, a near relative of Col. Charles, and General Andrew Lewis, of Point Pleasant fame, and a worthy scion of such illustrious lineage; James M'Dowell, one of the gifted men of his generation, who afterwards rendered eminent service as a member of Congress, and as Governor of the Commonwealth; William Caruthers, a leading citizen of the Valley of Virginia, and a farmer and business man of very high character and standing; and Andrew Alexander, surveyor, engineer, representative citizen, a man of skill in his profession, and remarkable for his public spirit.

REPORT

OF THE

COMMISSIONERS

APPOINTED TO VIEW CERTAIN RIVERS

WITHIN THE

COMMONWEALTH OF VIRGINIA,

CONFORMABLE TO AN ACT OF SAID COMMONWEALTH, PASSED THE FOURTEENTH DAY OF FEBRUARY, 1814.

PRINTED ACCORDING TO A JOINT RESOLUTION OF BOTH HOUSES OF THE GENERAL ASSEMBLY,

AND

ACCOMPANIED BY A MAP,

EXECUTED UNDER THE DIRECTION OF THE EXECUTIVE

IN CONFORMITY WITH THAT RESOLUTION..

PRINTED....1816.

STATE OF VIRGINIA.

INLAND NAVIGATION AND IMPROVEMENTS.

PREAMBLE AND RESOLUTION,

For re-printing the Report of the Commissioners on the Navigation of the Great Kanhawa, &c.

[AGREED TO BY BOTH HOUSES OF ASSEMBLY, FEBRUARY 14, 1814.]

WHEREAS, it would greatly promote the welfare of this Commonwealth, and the prosperity of our sister States, to form a more intimate connexion between the Eastern and Western Waters of the United States; and, with a view to that object, the General Assembly of Virginia, at a former session, appointed Commissioners to survey the head waters of James-River and the Great Kanhawa, with instructions to ascertain the practicability of extending their navigation to the base of the chain of mountains which divides them, and at the shortest and easiest portage across it; a trust which was accepted and fulfilled, by the Commissioners who acted therein, in a manner that entitles them to the thanks of their country: And, as the result of their labors has never been presented to the Legislature of

the Union, nor to the governments of the several States, who cannot but feel an interest in the accomplishment of an enterprise so important to the arts, manufactures, and commerce of the United States—

Resolved, therefore, That the executive of this commonwealth be, and they are hereby empowered and requested, to cause the Report of the Commissioners to be re-printed, and the Map and References accompanying it to be reduced to a convenient scale, engraved, printed, and annexed to the Report; and, reserving two hundred and fifty copies thereof for the use of the General Assembly, to forward a copy to each of the Commissioners whose names are subscribed to the Report, to each Member of the Congress of the United States, and to the Executives of the several States and Territories.

PROCEEDINGS

OF THE

COMMISSIONERS.

LETTER OF MR. MARSHALL, ONE OF THE COMMISSIONERS.

A COMMUNICATION from the Governor, enclosing a Letter from the Honorable JOHN MARSHALL, and a report from the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth," was laid before the house.

The said Letter and Report were read as follows:

Richmond, December 26, 1812.

SIR—I hasten to submit to your Excellency, for the purpose of being laid before the General Assembly, the Report of the Commissioners who executed the act of the last session, entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth."

To their distance from each other, and the consequent difficulties attending the interchange of sentiment, and the attainment of their respective signatures, is to be ascribed the delay which has taken place in the performance of this part of their duty.

The more detailed report, to which the enclosed refers, is not yet received, but it is expected in a few days, and will then be transmitted to your Excel-

lency. It was not thought advisable longer to withhold the general report, for the purpose of accompanying it with that more in detail, to which it refers.

I have the honor to be,
Sir, with great respect,
Your obedient servant,

J. MARSHALL.

His Excellency Governor BARBOUR.

INLAND NAVIGATION.

REPORT.

To the Honorable the Speaker and Members of the General Assembly, the undersigned Commissioners, named, with others, in the act entitled "An act appointing Commissioners for the purpose of viewing certain Rivers within this Commonwealth,"

RESPECTFULLY REPORT—

That, supposing the autumn to be the season which afforded the fairest prospects for giving effect to the views of the Legislature, as expressed in their act, your Commissioners agreed that a meeting should be called on the first of September, at Lynchburg. The number required by law, for the execution of the service they were directed to perform, having assembled, and the necessary preparations having been made, your Commissioners began at the Bridge at Lynchburg, to view James-river, and to take its level by sections to the mouth of Dunlop's-creek. Mr. Andrew Alexander, the surveyor of Rockbridge county, had been engaged to execute this duty under their direction. To his report, which your Commissioners believe to be accurate,

they beg leave to refer, as exhibiting, in minute detail, the information required by the law.

As an actual measurement of the whole river would have employed so much time as to defer the completion of the work, until high waters might defeat the object of the Legislature, and was rendered the less necessary by previous surveys; distances were in general conjectured. The eye, aided by a time-piece, and occasionally corrected by actual measurement, furnished information, which, though not perfectly exact, was believed not to vary much from the truth, and to be substantially sufficient. Those places which present serious obstacles were measured by the chain, and the elevation was taken throughout by a spirit level.

On that part of the river which is comprised within the charter already granted, your Commissioners presume that little, if any, information is expected from them, other than will be found in the annexed report of Mr. Alexander.

From Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, no difficulty presents itself, which may not be with certainty surmounted. The falls are no where formidable; there are long stretches of smooth water, and the shalows may be so deepened as to afford water for boats bringing down from six to eight tons, and carrying up from four to six tons, if not throughout the year, through all but a very inconsiderable portion of it. Your Commissioners give the opinion, unanimously, and with great confidence, that the navigation from Crow's Ferry to the mouth of the Cow-Pasture, may, with improvements by no means expenive, be ren-

dered as certain, as useful, and as permanent, as the navigation from the same place to Lynchburg; and that it may be used at all times when the navigation to Lynchburg can be used, with boats carrying an equal burthen—indeed, that it may be rendered more safe and less laborious, than that from the mouth of the North Fork to Lynchburg now is.

From the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, the difficulties become more considerable, and their removal will require greater expenditures of money. The mass of water diminishes, and the elevation increases.—The shoals become longer and shallower, and the intervals of smooth water shorter. Yet, this rugged navigation, though totally unimproved, is now used during high water. Boats, laden with the produce of the country, pass every year from the mouth of Dunlop's-creek to Richmond. It is, therefore, proved to be, even at this time, practicable for some portion of the year. This portion varies with the seasons. Most commonly, it commences in November, and terminates late in May, or early in June.

That, by the removal of rocks, now lying promiscuously and irregularly through the bed of the river, which it will be necessary in only a few instances to blow, and by the judicious application of labor, to the collection of water in narrower spaces than it now covers, this navigation may be rendered much more secure and beneficial, and the time during which it can be used may be considerably extended, will not admit of doubt.—Whether this portion of the river may be rendered at all times boatable,

depends on the depth of water to be collected in particular channels by such means as are applicable to the object.

Some of your Commissioners have been personally engaged in opening the navigation of the North Fork of James-river, through Rockbridge. They are decidedly of opinion, that the river denominated "Jackson's," contains as far as Dunlops-creek, more water and less formidable obstructions than were found in the North Fork. Yet the North Fork, though its improvement is far from being complete, is now actually used to great advantage, and is not much inferior to the river below.—Some experienced and judicious boatmen, who were employed on the expedition, who are well acquainted with the river and its navigation, unite in the declaration, that, if the means be taken which ought to be employed, that part of James-river which is between the Cow-Pasture and Dunlop's-creek, may be used by any boats which will be capable of continuing their voyage to Lynchburg.

Your Commissioners concur in this opinion; and they take occasion now to remark, that should it be deemed advisable still to adhere to the system of improvement heretofore used in the upper part of the river, the difficulties of this navigation would, they think, be much diminished by several facilities which might be given to it. They would particularly suggest chains, with buoys fastened in rocks or otherwise, or walls on which men may walk, of which boatmen might avail themselves to lessen the labor of ascending places of peculiar difficulty; and thus either to increase the load which may be carried up the river, or to diminish the number of persons necessary for carrying up a given load. They will

also mention a fact deemed favorable to the object contemplated by the Legislature. It is this: although the cold may be more intense in the bosom of the mountains than below, this part of the river freezes over.

It will perhaps save the honorable the members of the Legislature some calculation, to observe, that the distance from Lynchburg to the commencement of the Blue Ridge is stated, in the report of Mr. Alexander, to be twenty-five miles one-fourth and thirty poles; the elevation to be one hundred and eleven feet eight inches; shewing an average elevation of four and an half feet to the mile.—The distance through the mountain, that is from Racoon Island to the mouth of the North Fork, is eight miles one-fourth and forty-nine poles, and the elevation one hundred and one feet six inches, giving an average elevation of upwards of twelve feet to the mile. The distance from the mouth of the North Fork to Crow's Ferry, or Beall's Bridge, the highest point to which navigation is to be carried by the James-River Company, is stated at twenty-six miles and thirty-eight poles, and the elevation is one hundred and thirty-one feet four inches; making the average elevation five feet to a mile.

The distance from Beall's Bridge, or Crow's Ferry, to the mouth of the Cow-Pasture, is stated at thirty-six miles fifty-nine poles, and the elevation is one hundred and ninety feet three inches, making the average elevation five and an half feet nearly to a mile. The distance from the mouth of the Cow-Pasture to the mouth of Dunlop's-creek, is stated at twenty-three miles three-fourths and twenty poles, and the elevation is two hundred and twenty-eight feet three inches, making the average elevation nine and an half feet to the mile.

Having reached Dunlop's-creek, your Commissioners proceeded to view and mark out what appeared to them to be the best and most direct way for a turnpike road from the mouth of that creek to the most convenient navigable point on Greenbrier river.

With some inconsiderable deviations, which will appear in the report of Mr. Alexander, already referred to, and some others which will be suggested, the road now leading from the mouth of Dunlop's-creek, by Bowyer's Sulphur Spring, to Anderson's Ford, over Greenbrier, at the mouth of Howard's-creek, is believed to be the most eligible which can be made. To that part of the road which passes from the mouth of Dunlop's-creek to the old Iron Works, a distance of about five miles, there are considerable objections, which your Commissioners are inclined to believe may be diminished. The road crosses the creek eight times, and the ground, during the winter and spring would, if much used and not well covered with stone or gravel, be much cut and be very deep. The creek too is frequently so high as not to be fordable.

Should it be found practicable, which your Commissioners believe to be the fact, to render Dunlop's-creek navigable up to its falls, some distance below the old Iron Works, these inconveniences would be in a great measure removed.

Should it be deemed unadvisable to carry navigation up Dunlop's-creek, a direction, as is understood from some of the inhabitants of that neighborhood, may be given to the road, so as to avoid five crossings of the creek, and at the same time shorten the distance. No attempt to view this way was made, because guides could not readily be procured, and your

Commissioners feared that, by devoting too much time to a minor object, on which complete information is attainable with ease and certainty through various channels, they might hazard the failure of others which were believed to be of much importance.

The road from the Sulphur Spring to Greenbrier crosses Howard's-creek, which is often not fordable, six times, and is in a few places attended with some difficulty. A small improvement may be made in it, and the steepest part avoided, by returning it, near the river, to the ground over which it formerly passed, and from which it has been lately taken.

The road over the mountain has been attentively viewed, and the deviations recommended, from that now in use, carefully and plainly marked. Your Commissioners feel much satisfaction in stating, that the elevation of this part of the road may, in the most unfavorable places, be reduced to an angle of five degrees with the horison. By occasionally removing the earth, for small distances, this angle may be still further diminished. It is believed to be susceptible of improvement on as easy terms as any other road, since the materials for a turnpike are every where convenient, and not more levelling will be necessary than must be expected in passing through a mountainous country.

Your commissioners proceeded down the Greenbrier river in the boat in which they ascended the James. The season had been remarkably dry, and the water was declared by the inhabitants to be as low as at any period within their recollection. It frequently spreads over a wide bed covered with large stone, and is, in its present unimproved state, and at the season when it was viewed, so very shal-

low for the greater part of its course, as not to swim an empty boat. The labor of removing stone, and of dragging the boat over those which could not be removed without implements provided for the purpose, was so great, that your Commissioners at one time were enabled to advance only three miles in two days, even with the assistance of a horse and of many additional laborers. In part of the river the shoals are frequent and long, and the falls, as the report of Mr. Alexander will shew, considerable. At the great falls, which is the most important of them, the descent is twelve feet in forty-eight poles. There is no perpendicular fall at this place, but one continued rapid, with large rocks, irregularly interspersed through the bed of the river. Near the mouth of the river there is a flat rock, which continues for about two hundred and forty poles, with many irregular apertures or fissures through which the water passes. Although, in the usual state of the river, this rock is covered with water of sufficient depth for navigation; yet, such was the drought of the last autumn, it was necessary to drag the boat over its whole extent.

These difficulties present obstacles to navigation during a season when the waters are remarkably low, which can be surmounted only at a considerable expense.

But, from the best information your Commissioners can obtain, and they believe it to be correct, the Greenbrier is seldom so low at any season as it was during the last autumn; and it seldom if ever fails, for eight or nine months in the year, to be at least two feet higher than when viewed by your Commissioners; a depth of water unquestionably sufficient for the purpose of navigation. The testi-

mony given by the inhabitants to this fact, was corroborated by appearances on the river. The indications of a recent considerable diminution of water were not to be mistaken.

On an attentive consideration of the obstacles which were found by your Commissioners to be great, while the river remains in the state in which they viewed it, they are unanimously and decidely of opinion, that its navigation may be rendered as safe, as certain, and as easy as that of the James, at all times, except when the water is unusually low. The rocks are in general loose, and may be removed without extraordinary difficulty, so as to afford a tolerably smooth passage to boats; and, by collecting the water into narrow channels, a sufficient depth may be obtained, with the exception of a short period in a very dry year, to swim any boat which can be brought at the same time down James-river. But so scanty is the supply of water in a time of uncommon drought, that doubts are entertained whether there may not be a short season of the year during which, unless a considerable expense be incurred, the navigation must be suspended. Though aided by men and horses, ten days of unremitting labor were consumed in passing from the mouth of Howard's-creek to the mouth of Greenbrier river, a distance not much exceeding forty-eight miles. In the month of June, the same voyage, if not retarded by measuring the river, might have been performed in a single day. Some of your Commissioners, however, are of opinion, that the Greenbrier may, without great additional expense, be rendered at all times passable for boats carrying half a load.

In addition to the shallowness of the water, (an inconvenience which is common to all rivers as you approach their sources, and which disappears for

eight or nine months in the year) and to the rocks which have been mentioned, the obstructions to the navigation of the Greenbrier consists in its falls, and in the general rapidity of its current.

The great falls alone are of sufficient magnitude to merit particular attention. These unquestionably admit of being rendered navigable, either by opening a sluice judiciously through them, or by locks. The latter would be most expensive, but would leave the navigation less laborious.

The rapidity of the current may be estimated by observing that the descent in forty-eight miles and eighty-four poles, is three hundred and sixty-two feet ten inches, between seven and eight feet to the mile.

This current will present no difficulty to a boat descending the river. To one ascending it, the labor will be considerable, but not so considerable as in some parts of James-river.

The night of the 28th of September, was passed among the islands in the mouth of Greenbrier; and on the morning of the 29th, your Commissioners entered New-river.

The New-river, or that part of the Great Kanhawa which is above the mouth of Gauley, having to search its intricate way, and force a passage through a long chain of lofty and rugged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.

The difficulties encountered in descending this river were of a character essentially different from those which were experienced in the Greenbrier. Uncommon as had been the drought, the supply of

water was abundant. The boat sometimes, though rarely, rubbed upon a shoal; but in every such case it was apparent that a sufficient passage might be opened without much labor or expense. The velocity of the current and the enormous rocks which often interrupt it, the number and magnitude of the rapids and falls, the steepness, cragginess and abruptness of the banks, constitute the great impediments which at present exist to navigation between the mouth of the Greenbrier and the Great Falls of Kanhawa.

The distance from the mouth of Greenbrier to Bowyer's Ferry, is forty miles one quarter and forty-six poles, and the descent is four hundred and sixty-six feet seven inches; that is, eleven feet six inches in each mile. In general, there is much sameness in the appearance of this part of the river. Long rapids, frequently terminated by a fall of from five to ten feet, in a distance of ten, twenty, thirty, and sometimes a greater number of poles; an intervening space, sometimes more, sometimes less considerable, of swift or smooth water; rocks, sometimes above the surface, sometimes near it, so as to require great caution to save a boat from dashing on them; a copious stream, with a current commonly impetuous, constitute its leading characteristics.

Falls too great to come within this general description, will be particularly noticed.

Brook's Falls are about four miles and one-fourth below the mouth of Greenbrier. The water descends thirteen feet seven inches in fifty poles. In its most rapid part the descent is five feet ten inches in fourteen poles. The boat was navigated through this place.

A much more formidable obstruction is the falls

at Richmond's Mill. These are designated in the neighborhood by the name of the "Great Falls of New-river," but are generally called at a distance, "Lick-Creek Falls."

At this place the water may with propriety be said to fall perpendicularly twenty-three feet. For this distance, the sheet which dashes over the summit is intercepted only by huge fragments of broken rock, which, having been successively disjointed from the brink of the precipice, have fallen into the foaming basin below, where, piled on each other, they form one or two benches that break the cataract. A small distance lower down is another fall of three or four feet.

Here, for the first time, the boat was taken out of the water and let down by skids.

The ground along which a canal may be carried around these falls, pursuing the course of Richmond's mill-race, was measured, and the elevation taken. The descent was found to be twenty-two feet nine inches, in one hundred and eighty-one poles.

This estimate excludes a part of the falls, between five and six feet of which are just above the head of Richmond's mill-race.

The bottom of the river for some distance above these falls, is a hard rock, often appearing above the surface, and much covered with moveable stones, some of which are very large. The bottom of the mill-race appears to be of the same description.

From Bowyer's Ferry to the Falls of the Great Kanhawa, was estimated at nineteen miles and fifty-eight poles, in which distance the river falls three hundred and thirty-one feet; that is, seventeen feet to a mile. The honorable the legislature will perceive, that below the ferry the descent, in the same

distance, is greater than above. For a part of this space, the scene is awful and discouraging. The vast volume of water which rolls down New-river, and which, far above the ferry, often spreads, without becoming shallow, over a bed three or four hundred yards wide; is seldom more than one hundred or one hundred and fifty yards wide. In some places, for a mile or more in continuation, it is compressed by the mountains on each side, into a channel of from twenty to sixty yards wide; and even these narrow limits are still more narrowed by enormous rocks which lie promiscuously in the bed of the river, through which it is often difficult to find a passage wide enough for the admission of a boat. In some places the bank is formed of rugged and perpendicular cliffs of entire rock, which appear to be twenty, thirty, and forty feet high; in others, enormous, but unconnected, rocks dip into the water.

There are unequivocal indications of the river's having risen, in these narrows, from thirty to forty feet perpendicularly.

Immediately above the mouth of Gauley, the river opens and presents a beautiful sheet of deep smooth water, which is succeeded by the rocks over which it dashes, and forms the Great Falls of Kanhawa. The height of these falls is twenty feet four inches. With its name, the river looses its wild and savage aspect. It is no longer confined by rugged cliff, by mountains barely separated from each other, nor interrupted by enormous masses of rocks which are scarcely to be avoided.

Within a short distance above the falls, the current is not unmanageably swift, nor the rocks over which it passes uneven. Below, quite to the rocks which have fallen from the brink over which the

cataract rushes, is a deep smooth and beautiful basin. The river is so wide as to rise, in the greatest freshes, only six or seven feet. The falls themselves constitute the impediment, and the only impediment at this place.

Your Commissioners have deemed it proper to state in their full strength, the difficulties which are to be surmounted in opening the intercourse between this part of the state of Virginia and the western country; and to put the legislature, as far as is possible, in possession of the testimony on which their opinion is formed, as well as of their opinion. If, misguided by their conviction of the importance of the object, they are too sanguine in their hopes of its accomplishment, the facts now communicated will enable the General Assembly to correct the mistaken conclusions which have been drawn, and to determine on the course which will best promote the interets of the public.

The practicability of rendering the Greenbrier navigable has already been stated. The system which may be found best adapted for the improvement of James-river, will be equally applicable to the Greenbrier, and will be equally successful.—The one river and the other will be rendered more or less valuable as more or less labor and skill may be employed on them; but there can be no mistake in saying that, without incurring an expense which any would pronounce extravagant they are both capable of being brought into extensive use. Not only in descending, but in ascending also, these rivers may be navigated to great advantage.

With respect to New-river, a judgment cannot be formed quite so decisively, nor pronounced quite so

confidently. The difficulties are great, and deserve to be seriously considered.

The boat which conveyed your Commissioners, passed from the mouth of Greenbrier, to the place where their expedition terminated, without being taken out of the water, except at the Great Falls of New-river, and at the Great Falls of the Kanhawa. It was navigated in the usual way through all the other difficult places which abound in New-river, except two—both below Bowyer's Ferry. Through these it was conducted by ropes.

The boat was not laden, nor was it empty. In addition to the number of hands usually employed in navigation, it carried between two and three thousand weight. The greater part of this burthen was taken out in the most difficult places; but in many of considerable magnitude, it remained in the boat. Where the vessel was guided by ropes, the necessity of resorting to this expedient was occasioned solely by the intervention of rocks, which can be removed.

It is also worthy of notice, that this voyage was performed by boatmen, who, having never before seen the river, were reduced to the necessity of selecting their way at the moment, without the aid of previous information.

The only impediments to the descent of the boat, except at the two great falls already mentioned, were rocks lying so near the surface of the water as to strike the bottom while shooting over them. At the usual height of the river, these rocks would be entirely covered, and all danger from them be removed: but others would be placed in a situation to expose a boat to equal hazard. It is therefore necessary, even for the descending navigation, to open a plain and broad sluice through all the rapids and falls, so as to relieve boats navigating the river from all dan-

ger of being dashed against the rocks. This may be effected by removing some and blowing others.—This sluice may be so conducted as to graduate the falls where they are most sudden, and thereby, in some degree, to diminish the impetuosity of the current.

Brook's Falls, the Great Falls of New-river, and the Great Falls of Kanhawa, will probably require and admit of a different course.

The first of these, which is the least formidable of the three, will present three alternatives to the election of those who may be engaged in improving the navigation.

First—One or more locks, which may unquestionably be constructed at this place.

Second—A canal, which is already almost formed, on the north side of the river. Its completion would require that it be opened for a short distance, both where it would receive the water at the head of the falls and where it would empty itself below them.

To the eligibility of this canal, there can be but one objection. There may be impracticable rock, now hidden by the earth, so near the surface as to render this plan unadvisable.

Third—To open a sluice in the river, along its northern bank, and graduate the fall as far as may be compatible with that system of operation.

The Great Falls of New-river must be turned, by using a canal to be cut on the southern side, pursing nearly the tract of Richmond's mill-race. Should locks be employed, it will most probably be found advisable to place them in this canal. Should locks be dispensed with, there will be no difficulty in descending through this channel; but the toil of ascending, must, at this place, be considerable.

At the Great Falls of Kanhawa, there is, near

Morris's mill, a very eligible place for locks. If a canal be preferred, there is every reason to believe that the ground will admit of one, which may be so extended, and the fall thereby so graduated, as to afford a safe passage to loaded boats.

These observations are formed on the state of the river when viewed by your Commissioners.—It will readily occur, that they cannot judge with certainty of the changes which may be brought about by a great rise of water.

It would seem most probable, that by such rise the falls would be diminished, because the water at their feet would pass off less rapidly than at their head. But the apprehension cannot be entirely discarded, that in the narrows, which have been mentioned, the torrent would, in a flood, be too impetuous to be trusted. It is probable, that a moderate elevation of the water would rather facilitate the passage of the boats; at least of those descending the river; but that great floods would suspend the navigation.

Having stated their view of this subject, your Commissioners will only add their opinion, that the New-river may be relied on with certainty, for the transportation of articles from east to west.

On the practicability of using this channel of conveyance for the transportation of articles from the western country, towards the rivers which empty into the Atlantic, at least so much of it as lies between Bowyer's Ferry and the Great Falls of Kanhawa, they must speak with less confidence. The great difficulty consists in the velocity of the current. For several miles, between Bowyer's Ferry and the Falls, it is believed that a canal would be impracticable. The river is susceptible of no other improvement than may be made in its channel, or on

its banks. The current is often too rapid to be stemmed by a boat impelled by oars; and the water too deep to admit the use of poles. If a channel, sufficient for the safe passage of vessels, be opened, still some other means than oars or poles must be devised for impelling them up the stream.

Your Commissioners submit with diffidence the following proposition:

First—That boats impelled by steam may be employed successfully on New-river.

With the capacities of this powerful agent they are too little acquainted to speak with confidence of the use which may be made of it in the waters of Virginia. Elsewhere, it has certainly been applied with great advantage to the purposes of navigation. Neither have they that intimate knowledge of the velocity of the currents, against which vessels have been propelled by it, to compare them with that of New-river, and to hazard any decided opinion on the comparison.—But they beg leave to say, that the currents of the Hudson, of the Mohawk, and of the Mississippi, are very strong; and that a practice so entirely novel as the use of steam in navigation, will probably receive great improvement, and the power itself be so diversified in its modifications, as to be applied in new and different situations, as their exigencies may require. It is believed, that a sufficient depth of water is certainly obtainable, but whether sufficient employment may be found, to justify the use of a vessel which must, in any state of things, be constructed at considerable expense, is a question your Commissioners cannot attempt to solve.

Second—Should it be found impracticable to apply steam with advantage to the navigation of New-river, it is respectfully suggested, that between the

Great Falls of Kanhawa and Bowyer's Ferry, resort may be had to horse labor.

To give this facility to the navigation, it will be necessary to construct a horse-way along the bank of the river at different heights, or at the most common height of the water. The objection that such way cannot be used at all times, will lose much of its force, when it shall be recollected that the navigation up the river will admit of being suspended for considerable intervals, with less injury to those who use it, than that which conveys to the western country articles imported for general consumption. The construction of this way, however, will require the blowing of a great quantity of rock, and will, consequently, be expensive.

Third—Should neither of these expedients be deemed eligible, it is respectfully suggested, that boats may be forced up the current, where it is too rapid for oars and too deep for poles, by the aid of chains fastened in the rocks on the bank.

Whatever doubts may be entertained respecting the navigation for boats ascending the river between the Great Falls of Kanhawa and Bowyer's Ferry; your Commissioners are entirely persuaded of the practicability of using it advantageously between the ferry and the mouth of Greenbrier.

In obedience to the law under which they have acted, your Commissioners will now proceed to state their ideas of the sums of money which will probably be necessary to open the river and make the road they have viewed.

No part of their duty has been performed with less confidence than this.

It will readily occur to the legislature, that no estimate of expense of executing so great a work as that which is to afford to the western parts of

Virginia the means of conveying the produce of their lands to market, and probably to connect Virginia commercially with her sister states in the west, can have just pretensions to exactness.—Were the system of improvement, and the extent to which that system is to be carried, accurately defined; any calculations which could now be made, even by professional men, of the sum necessary for its execution, might be found to vary widely from that which would be actually expended. Still less precision can be looked for in the calculations of your Commissioners.

But it must be apparent that the expense of improvement will essentially depend on the object for which the improvement shall be made.

If the views of the legislature shall be limited to the conveyance of articles, the growth of the upper country, down James-river, the cheapness of that conveyance will certainly depend much on the degree of perfection to which the improvement may be carried; but the river, being the only channel of conveyance, will, if merely practicable, be used to some extent.

If the views of the legislature shall extend to a free commercial intercourse with the western states, or any of them, the channel selected for that intercourse will come into competition with others which now exist or may be opened, and must recommend itself to a preference by the advantages it offers. With a view to the latter object, no improvement ought to be undertaken but with a determination to make it complete and effectual.

The estimates of expense were more particularly made by Mr. Caruthers, who has been personally engaged in opening the North Fork through Rock-

bridge. This gentleman made his calculations on the plan which has been adopted by the James-River Company, with such improvements as would better adapt that plan to steam navigation. According to his estimate, one hundred and ninety thousand dollars will be sufficient to accomplish the work from Beall's Bridge, or Crow's Ferry, to the Falls of the Great Kanhawa, including the road.—This estimate is formed on a comparison of the impediments to be removed, with those he had himself encountered in opening the North Fork of James-river. Some others of your Commissioners, who have too little knowledge of the labor necessary for the accomplishment of objects of this description, to confide themselves, in their own judgment, much less to recommend it to the confidence of others, are so impressed with the magnitude of the difficulties they have seen, as to be unable to persuade themselves that the work can be completed for the sum at which it has been estimated. That estimate does not appear to them to be extravagant, if the descending navigation alone be contemplated. To make the ascending navigation such as will entitle it to extensive use, and give this a preference over other routes, they submit, though with much diffidence, the opinion that at least a half a million, perhaps six hundred thousand dollars, will be requisite.

From the mouth of Dunlop's-creek to the mouth of Howard's creek, is twenty-eight miles and forty-four poles. From the first mentioned place to the summit of Alleghany mountain, is sixteen miles and thirty-six poles, and the elevation is nine hundred and forty-eight feet, which makes an angle with the horison of less than three-quarters of a degree. From the summit of the mountain to the mouth

of Howard's-creek, the distance is twelve miles and eight poles, and the descent is eight hundred and thirty-eight feet seven inches, making with the horison an angle of about three-quarters of a degree. There are no peculiarities attending this route, which will render any plan the legislature may prefer for turnpiking it, more costly in its application to this road, than to others which have been constructed in various parts of the United States. It is now at least equal to, perhaps better, than any other of equal distance in the same part of the country.

In presenting to the honorable the legislature the advantages which, in the opinion of your Commissioners, will probably accrue to this state from executing the work to which their report relates, it will be necessary to divide this subject, and to consider, separately—first, those which may reasonably be expected to result from executing it in part; next, those which are to be looked for from executing it in the whole.

Should the navigation of James-river be carried up to the mouth of Dunlop's-creek, and a turnpike road be made over the Alleghany mountain, although nothing further should be done, a considerable impulse will be given to the agriculture, and a valuable effect produced on the wealth and population of a considerable tract of country. It cannot reasonably be doubted, that Bath, a part of Botetourt, and a great part of Greenbrier, Monroe, and perhaps even Giles, would find a real interest in searching for a market on James-river, for the produce of their soil, if such safe and cheap conveyance were afforded them as might be given by the improvements which have been stated.—Agriculture

would mingle more than heretofore with grazing; and industry would flourish when the reward of industry should be attainable. Those more western countries, whose distance might forbid the attempt to transport grain manufactured into flour, or distilled into spirits, to the markets on James-river, might still be encouraged to bring to those markets, salt, salted provisions, and various manufactures of hemp. An increase of population would result, not only from the check which this state of things would give to emigration, but also from its operation on the inhabitants, in other respects.

Other parts of the state would derive corresponding advantages from their intercourse with a section of the country which would have more to sell and more to purchase than at present. By the augmentation of the wealth and population of a part, not only would those belonging to that part be improved in their circumstances, but the whole would be more powerful, and the public burdens being more divided, might press less heavily on each individual.

These advantages would probably be extended by improving the navigation of the Greenbrier also.

Should New-river be rendered a safe and easy channel of communication, between the Ohio and the commercial towns on James-river, the subject will assume a more important aspect, and the advantages may be estimated on a larger scale. Not only will that part of our own state which lies on the Kanawa and on the Ohio, receive their supplies and send much of their produce to market through James-river, but an immense tract of fertile country, a great part of the states of Kentucky and Ohio, will most probably give their commerce

the same direction. All that part of the state of Kentucky which lies above Louisville, and all that part of the state of Ohio whose trade would pass through the river of that name, might reasonably be expected to maintain a large portion of their commercial intercourse with the Atlantic states, through the James or the Potowmac. Certainly in a contest for this interesting prize, the states through which those rivers run have geographical advantages, the benefit of which they can lose only by supineness in themselves, or by extraordinary exertions in others. It is far from being impossible, that even the south-western parts of Pennsylvania may look down one of these rivers for their supplies of goods manufactured in Europe.

Let the importance attached by men best acquainted with the subject to the commerce of the west attest its value. The exertions which other states appear to be making to secure it, will probably awaken the attention of Virginia to that part of it which should naturally belong to her.

There is still another aspect in which this subject deserves to be viewed.

That intimate connection which generally attends free commercial intercourse, the strong ties which are formed by mutual interest, and the interchange of good offices, bind together individuals of different counties, and are well calculated to cherish those friendly sentiments, those amicable dispositions, which at present unite Virginia to a considerable portion of the western people. At all times the cultivation of these dispositions must be desirable but, in the vicissitude of human affairs, in that mysterious future, which is in reserve, and is yet hidden from us, events may occur to render their pre-

servation too valuable to be estimated in dollars and cents.

The advantages which may result to Virginia, from opening this communication with the western country, will be shared in common with her by the states of Kentucky and Ohio.

Considering it as a medium for the introduction of foreign articles into those states, it has claims to their serious attention.

The proposition that a nation finds its true interest in multiplying its channels of importation, admitting them to be equally convenient, is believed to be incontrovertible. In addition to those arguments in support of this proposition which belong to every case, the situation of the western states suggests some which are peculiar to themselves, and which well deserve their consideration.

The whole of that extensive and fertile country, a country increasing in wealth and population with a rapidity which baffles calculation, must make its importations up the Mississippi alone, or through the Atlantic states. When we take into view the certain growth of the country, we can scarcely suppose it possible that any commercial city on the banks of that river can keep pace with that growth, and furnish a supply equal to the demand. The unfriendliness of the climate to human life, will agricultural capital still more sensible. It will tend render this disparity between the commercial and still more to retard a population of that sound mercantile character, which would render some great city on that majestic river, a safe emporium for the western world.

In times of profound peace, then, the states on the Ohio would make sacrifices of no inconsidera-

ble magnitude, by restricting their importations to a single river. But, in time of war, their whole trade might be annihilated. When it is recollected that the Mississippi empties itself into the Gulph of Florida, which is surrounded by foreign territory; that the island of Cuba and the coast of East Florida completely guard the passage from its mouth to the ocean; that the immense commerce flowing down its stream, holds forth irresistible allurements to cruizers, the opinion seems well founded, that scarcely a vessel making for that place could reach its port of destination.

But the length of the voyage up the Mississippi and Ohio, must be attended with delay so inconvenient to persons engaged in commerce, as to render a shorter route, though not less expensive, more eligible. For importation of many articles, there is much reason to believe that a decided preference would always be given to the transportation through the United States, were that transportation rendered as easy as it is capable of being made.

The export trade during peace, so far as the articles exported were designed for a foreign market, would, more probably, pass exclusively down the Mississippi. But those articles which are consumed in the United States, as manufactures of hemp, would find their way to market through interior and shorter channels.

If the direct route through the Atlantic states would, for many purposes, be more eligible than that through the Gulph of Florida, which must be often connected with a coasting voyage to or from an Atlantic port, then the multiplication of those routes, if in themselves equal, by presenting a greater choice, and by accommodating more territory, must be desirable.

But your Commissioners are sanguine in the opinion, that the communication through the rivers they have viewed, if properly made, will possess advantages over every other, which cannot fail to recommend it to a large portion of the states of Kentucky and Ohio. All that part of the western country which draws its supplies and transports its produce through the river Ohio, and which lies east of Louisville and west of the Pennsylvania line, perhaps a part of the state of Pennsylvania itself, could probably use this route more advantageously than any other; unless, indeed, that through the Potowmac, connected with Monongehela, Cheat, or Yohaghena, should come into competition with it, for the eastern part of the country just mentioned.

That it would, for the importation of articles from Europe, and from the east, (with a few exceptions) and for the exportation of those which are consumed in the United States, be preferred to the voyage through the Mississippi, unless the introduction of steam boats should essentially vary the present state of things, may safely be assumed from the fact, that a land carriage between Pittsburg and Philadelphia or Baltimore, and a carriage up or down the Ohio, are now used for the purposes described, in preference to the route by New Orleans.

The present price for the transportation of goods from Philadelphia or Baltimore to Pittsburg, is understood to be from seven to ten dollars per hundred weight.

The price of transportation from Richmond, up James-river to the mouth of Dunlop's-creek, thence across the Alleghany to Greenbrier, and down to the mouth of the Great Kanhawa, will certainly depend on the goodness of the road and the degree of perfection to which the navigation may be carried. Your

Commissioners believe that a sound national economy would dictate such improvements as would reduce the price of freight, although the labor employed in making them might be procured by an augmentation of toll, and some expenditure of public money.

Should the navigation of James-river be rendered as safe and as easy as may be reasonably expected, and the Greenbrier and New-river be improved, in such manner as the object will justify, your Commissioners believe they hazard nothing in saying, that the expense of transporting one hundred weight from Richmond to the mouth of the Great Kanhawa, will not exceed half the price of transporting the same weight from Baltimore or Philadelphia, to the same place.

The immense works meditated in New York, will certainly, if executed, give to that state great advantages in a competition for the trade of the lakes. But if other convenient and more direct channels be opened, it is not probable that the commerce of the Ohio will take the circuitous route by the lakes.

The expense of transportation from New York through the canal contemplated, can only be conjectured. The character of the rivers which would be used, is not well understood, but they must possess many advantages to give them a preference over the direct way through Virginia to the Ohio.

Your Commissioners, however, take the liberty to repeat, that the success of any attempt to obtain that share of the commerce of the west, to which this state, from her geographical situation and her rivers, would seem to be entitled, must depend entirely on the safety and cheapness of her navigation. A mode of transportation by water in itself insecure, or so

laborious as to be little less expensive than carriage by land, will never change the channels in which this trade already flows.

The advantages to accrue to the United States, from opening this new channel of intercourse between the eastern and the western states, are those which necessarily result to the whole body from whatever benefits its members, and those which must result to the United States, particularly from every measure which tends to cement more closely the union of the eastern with the western states.

In those operations, too, which the exigencies of government may often require, this central channel of communication by water may be of great value. For the want of it, in the course of the last autumn, government was reduced to the necessity of transporting arms in waggons from Richmond to the falls of the great Kanhawa. A similar necessity may often recur.

All which is respectfully submitted to the General Assembly, by

JOHN MARSHALL,
JAMES BRECKENRIDGE,
WILLIAM LEWIS,
JAMES M'DOWELL,
WILLIAM CARUTHERS,
ANDREW ALEXANDER.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

In Equity. Original, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

ON THE MOTION OF DEFENDANT TO MODIFY THE ORDER OF REFERENCE.

The complainant, by her counsel, respectfully objects to the modifications proposed by the defendant to the order of reference, and for grounds of objection indicates the following, viz:

(1) The order of reference directs the master to ascertain and report:

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863," &c.

The proposed modification of this section is as follows, viz:

> "The territorial area and *assessed* valuation of the States of Virginia and West Virginia June 20, 1863."

The inquiry should not be restricted to the *assessed* value of the territory, but should be allowed to embrace every reasonable and proper means of ascertaining the actual value of all of the elements of wealth that together made up the value of the State. When one State is spoken of as wealthier than another, reference is not had to the *assessed* valuation of the lands, but to all of the resources of the State which are available for producing revenue.

The elements of wealth of West Virginia, even between January, 1861, and June, 1863, were the *coal,* the *oil,* the *gas,* and the *hardwoods,* which then as now abound throughout its eastern half. These elements of wealth have no place in the assessments for taxation which existed at the dates named. The assessments of land were made in Virginia every ten years. The assessment next preceding January, 1861, and June, 1863, was made in 1856, and manifestly affords no just ground for ascertaining the relative values of the two States as a basis on which the common public debt may justly or equitably be apportioned between these States.

In this connection we may say that there is now before us a copy of the official Report of the Auditor of Virginia, giving in tabulated form exact and full statements of the area and *assessed* value of each of the counties in the old State, of the lots in each of the cities and towns, and the value of all the personal property within the limits of the State. These tables of statistics, occupying nearly seven hundred pages of closely printed matter, give all the information that can be desired as to the *assessed valuation* of the real and personal property within the State in the years 1860 and 1861. But this apportionment of the common liability of the two States for the public debt should not and cannot equitably be made on the basis of the *assessed* values of the property of the States, because the assessed value was not in any case intended to express the actual value. Indeed, it was not intended to be more than two-thirds of the actual value of the property.

The assessment of 1856 did not embrace any of the elements of wealth which since 1861 have formed the principal basis of the wealth of the counties forming the State of West Virginia.

(2) It is proposed to modify the third paragraph of the order of reference by adding to it, at the end, the words "prior to January 1, 1861," the effect of which would be to direct that, even although the Commonwealth of Virginia had expended money within the territory now constituting West Virginia since the first of January, 1861, and prior to June 20, 1863, she should not be credited therewith in this account. Why not?

The "restored State of Virginia" had no existence prior to July, 1861, and then only to a limited extent and for certain purposes; but even that phantasm of a State, although "what seemed its head the likeness of a kingly crown had on," yet in time, when it had served its purpose, it faded back into the name and body of the present Commonwealth of Virginia. So it would seem to be but just that if Virginia had at any time prior to the creation of West Virginia expended money within these western counties, and West Virginia reaped the benefit of it, she should be made to account for it.

(3) The fourth paragraph of the order of reference provides as follows, viz:

> "4. Such proportion of the ordinary expenses of the government of Virginia, since any of the debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the average to the population of Virginia, with and without slaves, as shown by the census of the United States."

Defendant proposes to modify this as follows, viz:

> "The ordinary expenses of the government of Virginia, since any of said debt was contracted, *and*

> *prior to January 1, 1861*, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

As stated, the proposed modification, standing alone, is unintelligible. The object of the inquiry is to ascertain what proportion of the ordinary expenses of the State government should be charged to the counties now forming West Virginia.

The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made.

(4) Paragraph 5 of the order of reference is as follows, viz:

> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

Defendant asks to modify as follows, viz:

> "5. And also on the basis of the *assessed valuation* of the property, real and personal, by counties, of the State of Virginia during the same period."

We have already called attention to this attempt to restrict the inquiry to the assessed valuation, in commenting upon the proposed modification to paragraph No. 2. The assessed value of real property never exceeded two-thirds of its market value, and, as appears from the Auditor's Report of 1860 and 1861, the assessments of all lands in Virginia were made in 1856, and none later than that date. This assessment did not embrace, as distinct subjects of valuation, coal, or gas, or oil, or hardwoods, which constitute the basis of the large wealth of West Virginia. These all existed in 1861, and

their presence was considered in estimating the value of land in transactions between vendor and vendee. Oil was produced in immense quantities in 1862, and was prepared for market at the town of Elizabeth, in West Virginia, in that year. These elements of wealth and value would have been taken into account in any proceeding for partition between joint owners, but were not considered in assessment for taxation.

From 1861 to 1865 West Virginia was the seat of war; few, if any, actual transactions of sale of lands took place, and no normal standard of valuation existed. The difficulties are great enough in the way of reaching the actual values of land in that State during that period without adding the inequitable standard of assessment for taxation.

(5) Paragraph 6 of the order of reference provides as follows, viz:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The defendant proposes to modify this section as follows, viz:

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

That is, the defendant wishes to limit the period within which the Commonwealth should be charged with moneys received from the western counties to the 1st of January, 1861, while the court would extend that period to June 20, 1863. As we do not think that either date will make any difference in the account, we leave this matter to the court.

Defendant, in proposing the names of gentlemen from which a selection may be made by the court of a special master to state the account in this cause, has found it needful to advise the court that it has deemed it right not to consider any citizen of centers where "West Virginia certificates" are owned, or sold, or traded in, and then it proceeds to nominate Mr. Charles E. Littlefield, of Maine.

We state for the information of the court that one of the largest certificate-holders who has made himself known to us during this litigation is a good citizen of the State of Maine. The two gentlemen named by defendant are altogether unimpeachable personally. We would not have nominated them because Mr. Littlefield lives so far away from the counsel and from the records from which all the information required is to be had, and because Mr. John W. Yerkes is at present a member of the firm of Hamilton, Yerkes & Colbert, who are the counsel for the Baltimore and Ohio Railroad Co., which is the largest taxpayer in West Virginia, contributing, as we are advised, one-eleventh of the taxes paid into the treasury. It has, therefore, a large interest in reducing the burdens which may rest upon that State and thereby lead to an increase of taxation.

On behalf of the Commonwealth of Virginia, we announced to counsel for West Virginia our purpose to present to the court the name of Mr. John Prentiss Poe, of the city of Baltimore, but were informed by them that Mr. Poe was counsel in a chancery cause of Maryland *v.* West Virginia, pending in this court, and was on that account ineligible. In this we concurred at the moment, but have since learned from unquestionable sources that Mr. Poe did file such a bill in his official character of Attorney General of Maryland, but that since the expiration of his term of office, now many years ago, he has been in nowise concerned in the cause. We therefore add his name to those already presented, and say that Mr. Poe is a graduate of Princeton, some time a bank clerk, and since 1858 a lawyer of recognized standing

in the courts of Maryland and its neighboring States, and for many years a counsellor on the rolls of this court. He is the author of the standard works of Law and Equity Practice in Maryland and was some time the Attorney General of that State.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

I concur in the above.

HOLMES CONRAD,
Of Counsel.

MAY 19, 1908.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, by William G. Conley, Attorney General, humbly prays leave to file the annexed exceptions to the Report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this Court on the 17th day of March, 1910.

And as in duty bound your petitioner will ever pray.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHAS. E. HOGG,
WM. M. O. DAWSON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

EXCEPTIONS OF THE STATE OF WEST VIRGINIA TO THE REPORT OF CHARLES E. LITTLEFIELD, SPECIAL MASTER, FILED IN THE ABOVE CAUSE ON THE 17th DAY OF MARCH, 1910.

Now comes the State of West Virginia, by William G. Conley, her Attorney General, and excepts to the said report as to the following findings set out therein.

In specifying these exceptions this Defendant will set them out by paragraph as numbered in said decree of reference and in said report, and will refer to the item number and page in said report wherever it is possible to do so.

PARAGRAPH III. OF DECREE.

"3. All Expenditures made by the Commonwealth of Virginia within the Territory now constituting the State of West Virginia since any part of the Debt was contracted."

The Defendant, the State of West Virginia, excepts to the finding of the Special Master in reporting as expenditures made by the

Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted the following items:

Page 44. Item 2. Covington & Ohio Railroad, $1,146,460.42,

Page 44. Item 10. Kanawha Turnpike, $152,130.54.

Page 44. Item 11. Kanawha Turnpike, $2,593.92.

Page 44. Item 12. Kanawha Turnpike, $7,189.65.

Page 44. Item 13. Kanawha Turnpike, $80,955.28.

Pages 65-71. Item 14. Kanawha River Improvements, $59,572.36.

Page 72. Item 25. Brandonville, Kingwood & Evansville Road, $10,595.73.

Page 72. Item 28. Clarksburg & Buckhannon Turnpike, $19,259.36.

Page 72. Item 35. Kingwood & West Union Turnpike, $18,140.61.

Pages 75-6. Item 55. Surveys, $106,416.14. The Master finds and allows the sum of $60,873.19, and the exception is to this last amount found by the Master as an expenditure.

Page 80. Item 150. Loan to the Town of Bath, $2,500.00.

Said Defendant also excepts to said report for that said Master has found, under said Paragraph III, at page 83 of his said report, that the total of the expenditures made by the Commonwealth of Virginia within the territory of West Virginia amounts to $2,811,599.98, instead of the sum of $1,251,288.92.

PARAGRAPH IV. OF DECREE.

"4. Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said debt was contracted, as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

The Defendant, the State of West Virginia, excepts to said report of the Special Master in that he finds that the following item is not a just credit against the total of what he finds to be the ordinary expenses of the State Government of Virginia, to wit:

Pages 114-16. Item No. 1. Tobacco Receipts, $353,123.96.

The said Defendant further excepts to said report in that he finds that the following items are part of the ordinary expenses of the State Government of Virginia during the period, from March 19, 1823, to December 31, 1860, inclusive, to wit:

Pages 118-19. Item 5. Maps, Board of Public Works, $11,446.48

Page 120. Item 7. International Exchanges, $2,836.19.

Page 121. Item 9. Printing Treasury Notes, $375.74.

Page 125. Item 16. Calling out Militia at Wheeling in 1836, $1,099.00.

Page 126. Item 18. Attorney General's fees for prosecuting Seldon, Withers & Company, $500.00.

Page 127. Part of Item 19. The item of $5,000.00 expended under the Act of February 14, 1844.

Page 128. Item 23. Sundry Board of Public Works Expenses, $36,728.50.

Pages 128-9. Item 24. Interest on public debt, aggregate, $18,574,747.84.

The next three items, found on pages 129 to 134, inclusive, of the report, are not numbered therein, but for convenience in designation we will call them herein by the serial numbers following item 24, to each of which three items the Defendant excepts, to wit:

Pages 129-31. Item 25. Harper's Ferry Raid, $251,763.65.

Pages 132-4. Item 26. Expended for Primary Schools, $2,400,331.11.

Page 134. Item 27. General expenses connected with surveys, $106,983.67.

The said Defendant further excepts to said report in that the Special Master, at page 135 of his said report, finds that the aggre-

gate amount of the ordinary expenses of the Commonwealth of Virginia for the period, March 19, 1823, to December 31, 1860, inclusive, was $40,274,896.70, instead of the sum of $18,529,960.56.

The said Defendant further excepts to the finding of the Special Master found on a page of his report not numbered, but which is shown by the context should be numbered 141, and which is in the following words:

> "I find that the method adopted by the plaintiff of ascertaining 'the average total population,' is the closest and most accurate approximation upon which the ordinary expenses can be apportioned to 'the average total population,' as the object to be ascertained, is the population in existence, at the time the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method."

And also excepts to the assignment of the ordinary expenses to West Virginia upon the said method, as set forth on pages 139 and 140 of said report.

PARAGRAPH V. OF DECREE.

> "5. **And also on the basis of the fair estimated valuation of the property, Real and Personal, by Counties, of the State of Virginia.**"

The Defendant, the State of West Virginia, excepts to the finding of the Special Master as found on page 155 of his report, in that he finds that the fair estimated valuation of the real estate in the counties in Virgina on the 20th of June, 1863, was only $148,042,730.15.

The said Defendant also excepts to the ruling of the Special Master (page 152), admitting as competent evidence the testimony of J. B. Lightfoot and the schedules accompanying the same, concerning certain private sales and unofficial appraisements of various parcels of real estate in particular localities in the State of Virginia in the year 1863.

The said Defendant also excepts to the ruling of the Special Master (pages 153-5), admitting the opinions of the witnesses, Hunter, Scott, Branch, Wellford, Taylor, Hawes, Williams and McCabe, to show the alleged depreciation of real estate in the State of Virginia in the year 1863.

The said Defendant also excepts to the finding of the Special Master (page 156), wherein he finds that the fair estimated value of the real estate in the counties of West Virginia was on June 20th, 1863, the sum of $67,676,127.44.

The said Defendant also excepts to the finding of the Special Master on page 166 of his said report, that the sum of $11,108,-300.13, assessed by the State of Virginia as income, was not part of her personal property.

PARAGRAPH VI. OF DECREE.

"6. All moneys paid into the treasury of the Commonwealth from the Counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The Defendant, the State of West Virginia, excepts to the report of the Special Master in that he refuses to allow as a credit to the State of West Virginia as moneys paid into the Treasury of the Commonwealth of Virginia from the counties now forming West Virginia the following items, to wit:

Page 176. Item 7. Dividends from Banks in West Virginia counties, $786,666.98.

Page 176. Item 8. Dividends and interest from Turnpike Companies in West Virginia counties, $13,595.48.

Page 176. Item 9. Dividends from Bridge Companies in West Virginia, $6,028.51.

Page 176. Item 10. Dividends from Interstate Turnpike Companies (proportion), $1,355.92.

Said Defendant also excepts to said report because the Special Master finds, at page 179 of his report, that only the sum of $6,105,-

884.75 was paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the period from March 19, 1823, to December 31, 1860, both inclusive, instead of the larger sum, to wit, $7,051,215.56, as shown by Joint Exhibit F-1, pages 805-6 of printed record.

PARAGRAPH VII. OF DECREE.

> **"7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the Restored Government of Virginia, together with the nature and description thereof."**

The Defendant, the State of West Virginia, excepts to the finding of the Special Master on pages 189-193 of his report, that the value of the stock held by the State of Virginia in the Northwestern Bank of Virginia on the 20th day of June, 1863, was the sum of $427,250.00, and further excepts to said report in that he did not find the same was only $136,630.00.

The said Defendant further excepts to many other errors apparent upon the face of said report, and prays that said exceptions, and each of them, heretofore set out may be considered and sustained.

All of which is respectfully submitted.

WILLIAM G. CONLEY,
Attorney General.
JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
WM. M. O. DAWSON,
For West Virginia.

Office Supreme Court, U. S.
FILED.
APR 18 1910
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

MOTION OF DEFENDANT FOR LEAVE TO TAKE FURTHER TESTIMONY.

WM. G. CONLEY,
Attorney General of West Virginia.

JNO. G. CARLISLE,
JNO. C. SPOONER,
WESLEY MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHARLES E. HOGG,
W. M. O. DAWSON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, The State of West Virginia, by William G. Conley, Attorney General, in pursuance of the notice duly given to the plaintiff and filed herein, humbly prays leave to be permitted in some proper way under the order of this court to take and file herein testimony, oral and documentary, for the purpose of proving that the plaintiff, The Commonwealth of Virginia, has no interest or ownership in the subject-matter of this bill.

Your petitioner further shows and avers that no opportunity has been given to the petitioner to take this testimony; that it is testimony pertinent to the issues in this cause as made in the bill and answer filed herein.

That this testimony was not pertinent to any matter referred to the special master, and no testimony could properly

have been admitted by him in relation thereto under the terms of the decree of reference.

Your petitioner further avers that this petition is not filed and motion made for the purpose of delay, but alone for the purpose of properly presenting this cause to the court.

And as in duty bound your petitioner will ever pray.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
WESLEY MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHAS. E. HOGG,
W. M. O. DAWSON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Now comes the State of West Virginia, defendant herein, by William G. Conley, her attorney general, and respectfully moves this honorable court to postpone the hearing of this cause until the same can be argued before and considered by a full bench, for the following reasons:

FIRST. Because the controversy herein is between two sovereign States.

SECOND. Because most of the basic questions involved herein are of great and far-reaching importance. They involve all the measures and acts resulting in the creation of the State of West Virginia. The matters in controversy have been long pending and have aroused deep interest and created widely differing convictions between the citizens of the two States. They have been the subject of legislation and public discussion to such degree that the hearing and

determination of this cause before and by all the justices of this honorable court is in the highest sense proper and desirable.

THIRD. Because, in the present posture of this suit, all questions in respect of law and merits, are still open and stand for argument and judgment, except the question of the jurisdiction of this honorable court to hear and determine the cause which has been heretofore decided "without prejudice to any question."

206 U. S., pp. 290, 322.
209 U. S., p. 514.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

NOTICE.

To the Commonwealth of Virginia and Samuel W. Williams, Attorney General:

You are hereby notified that the defendant, the State of West Virginia, will, on Tuesday, the 11th day of October, 1910, or as soon thereafter as the motion can be made, ask the court to postpone the hearing of this cause until the same can be argued before and considered by a full bench. A copy of the motion is annexed hereto.

OCTOBER 3, 1910.

STATE OF WEST VIRGINIA,

By

Attorney General.

Office Supreme Court, U. S.
FILED.
APR 16 1910
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

COMPLAINANT'S EXCEPTIONS TO REPORT OF THE SPECIAL MASTER, DATED MARCH 17, 1910.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

Complainant's Exceptions to Report of the Special Master, Dated March 17, 1910.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of Virginia, by Samuel W. Williams, Attorney General, humbly prays leave to file the annexed exceptions to the report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this court on the 17th day of March, 1910.

And as in duty bound your petitioner will ever pray.

STATE OF VIRGINIA,
By SAMUEL W. WILLIAMS,
Attorney General

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 3, Original.

COMMONWEALTH OF VIRGINIA, *Complainant,*

vs.

STATE OF WEST VIRGINIA, *Defendant.*

Complainant's Exceptions to Report of the Special Master Dated March 17, 1910.

I. *Complainant's First Exception.*

For errors of law apparent in the record, complainant respectfully excepts to the statements contained in the master's report in regard to the literary fund, save and except so far as they show the creation, existence, and amount of such fund, and especially does complainant except to the master's conclusions that the Board of the Literary Fund (a corporation) had no right to sue and be sued and that the fund was the unconditional property of the State and subject to its control and ownership, while the said fund was under the law held and controlled by the board and the State in trust for educational purposes alone. See Master's Report, pp. 6 to 30, and acts in Appendix to Record, pp. 205-208.

II. *Complainant's Second Exception.*

Complainant respectfully excepts to the report and findings of the special master under paragraph III of the decree of reference, for not allowing to Virginia, and charging against West Virginia, "*all* expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted"; but on the contrary excluding from those charges against West Virginia, a large number of items of expenditure which were made by Virginia in that territory during that period, on the ground that, having been made through the medium of joint stock companies, they were expenditures made by those companies out of their own funds and not by the State, and were "indirect," and not "direct" expenditures (Report of Special Master, pp. 39, 62, and 85).

The items, the disallowance of which by the special master is here respectfully excepted to, are the following expenditures, all of which were made by Virginia for the construction of "works of internal improvement" and were actually made in West Virginia territory, namely:

(1) For Bridges: Expenditures made by Virginia upon bridges in West Virginia territory, built by joint stock companies owned partly by the Commonwealth—Items 57 to 65, inclusive, of Joint Exhibit C-1, p. 4, R., 375; Special Master's Report, p. 85—aggregating	$78,412.50
(2) Expenditures made by Virginia in the improvement of the navigation of West Virginia rivers by joint stock companies—Items 66 to 69, inclusive, of Joint Exhibit C-1, p. 4; R., 375; Special Master's Report, p. 85—aggregating.....	210,500.00

(3) Expenditures made by Virginia upon turnpikes wholly in West Virginia territory, built by joint stock companies:		
(*a*) On Charleston and Berryville turnpike, in West Virginia—Item No. 6 of Joint Exhibit C-1, p. 2; R., p. 373; Special Master's Report, pp. 64 and 84	$11,932.52	
(*b*) On turnpikes and roads mentioned in items 70 to 147, inclusive, of Joint Exhibit C-1, pp. 4, 5, and 6; R., 375, 376, and 377; Special Master's Report, pp. 78, 79, and 85	803,555.83	
Total expenditures by Virginia, through joint stock companies, on turnpikes and roads in West Virginia territory	815,488.35	$815,488.35
Total aggregate of items, the disallowance of which is here excepted to		$1,104,400.85

Paragraph III of the decree, closely following the terms of the Wheeling ordinance, directs the special master to ascertain and report *"all expenditures* made by the Commonwealth of Virginia within the territory now constituting West Virginia," &c.

This required that *all* such expenditures, *however made*, should be included in this account.

The special master has, as we respectfully submit, erred in including in this account only such expenditures as were made "directly," and excluding such as were, as is alleged, made "indirectly" by the Comonwealth.

Joint Exhibit C-1 is an agreed schedule as to the figures stated therein, but not as to the classification or allotment of

the charges therein made. There is, therefore, no question of fact whatever that these expenditures were all made, and were made upon the soil of West Virginia. Nor can there be any question that the amounts of money making up these aggregates were all paid out of the treasury of the Commonwealth to joint stock companies for the express purpose of constructing the several internal improvements in West Virginia counties, which such companies were respectively distinctly formed to construct. The State received certificates of stock for the money so expended, but the expenditures, though they were made on West Virginia territory *immediately* by joint stock companies, the agencies or media selected by the State (of which West Virginia then formed an integral part) for that purpose, were none the less, in fact, made *mediately* by the State.

Whether they were *mediate* or *immediate*, "direct" or "indirect" expenditures made no difference, as neither the Wheeling ordinance nor the decree make or justify any distinction between direct and indirect expenditures; for both the decree and the ordinance require *"all* the State expenditures" to be charged.

While there is no question of fact involved in this exception, we refer the court to Joint Exhibit C-1, pp. 4, 5 and 6; R., pp. 375, 376, and 377; to the acts of the General Assembly of Virginia, Appendix, pp. 3 to 10, 12 to 19, 20 to 23, and 136 to 145; and to the Master's Report, pp. 39 to 43, and p. 83, and last three paragraphs of page 85. See also report of the finance committee of the Senate of West Virginia, filed as Exhibit 3 with defendant's answer, which confirms this view. R., 168-9.

III. *Complainant's Third Exception.*

Complainant respectfully excepts to the finding of the special master, under paragraph V of the decree, of the fair estimated value of the real and personal property in the counties of Virginia as of January 1, 1861 (Special Master's

Report, pp. 167, 168, and 173), as not being responsive to that paragraph or any other paragraph of the decree.

IV. *Complainant's Fourth Exception.*

Complainant respectfully excepts to the findings of the special master under paragraph I' of the decree:

(1) For including slaves in his statement of the fair estimated value of the personal property in Virginia on the 20th of June, 1863, notwithstanding the fact that all of them had been then emancipated by the proclamation of the President which became effective January 1, 1863.

(2) For adopting the assessed value of slaves in June, 1863 ($250,851,591, or $634.89 apiece), as their fair estimated value at that time, and the assessed value of personal property other than slaves ($152,844,637.59) as its fair estimated value at that time, instead of finding the fair estimated value of all personal property then in Virginia (including slaves, which we insist should be excluded) to have been not exceeding 50 per cent of the assessed value as reported by the master. The evidence establishes the fact that there was an enormous destruction and depreciation of personal property in Virginia in June, 1863, in consequence of the violence and waste of the war then raging, and that the ratio of value which gold at that time bore to Confederate currency, the only medium of exchange in Virginia, was from 7 to 8 for 1. Special Master's Report, pp. 168, 169, 170, and Exhibit "E–1," pp. 5, 6, and 7; R., 643, 644, and 645. See also Plaintiff's Exhibit "E–2," R., p. 647, and deposition of Charles U. Williams, p. 780.

(*a*) Slaves, as above stated, should not have been included in the account at all. The President's emancipation proclamation had then become effective, and the tenure by which slaves may have been then nominally held as property was

so precarious and worthless that they constituted no basis upon which to hypothecate any State liability whatever.

(*b*) If they could have been fairly treated as property for any purpose in this litigation, then the special master's statement of their value is greatly excessive. This will be manifest from the following facts:

The master finds all of the personal property in the present State of Virginia, *including slaves*, to have been of the fair estimated value of $403,696,228.59 on the 20th of June, 1863—page 172 of his report.

He finds the fair estimated value of the personal property in Virginia, *without slaves*, on the same day to have been $152,844,637.59. *Idem.*

His estimate of the fair value of the slaves in that territory at that date was, therefore, the difference between $403,696,228.59 and $152,844,637.59, or $250,851,591. This is the amount which the slaves in the present State of Virginia are computed to have been worth in 1863 by said exhibit printed at pages 643, 644, and 645 of the record returned with the master's report, and this computation the master has adopted.

That computation is grossly inaccurate in two particulars: First, it takes the number of slaves in the Commonwealth to have then been 395,105. To do this it assumes, without any proof, that there were in June, 1863, the same number of slaves in the counties and cities occupied or dominated by the military forces of the United States that there were at the time the slaves in those counties were last assessed for taxation. The thousands of slaves in the territory so occupied or dominated were not only then free under the terms of the emancipation proclamation, but they were then actually free, and no longer worth anything as property. There is no evidence anywhere in the record that there were 395,105 slaves in Virginia on the 20th of June, 1863. That number

manifestly includes thousands of former slaves who were then practically free.

The special master places an excessive value upon this excessive number of slaves.

He counts the 395,105 slaves as then worth $250,851,591, or $634.89 apiece.

The *agreed* fair estimated value of the 490,865 slaves in Virginia on the 31st of December, 1860, was $344 apiece, or $162,537,936. Master's Report, p. 167; Stenographic Report of the Hearings before the Master, vol. 20, p. 3153.

The special master's finding is that 395,105 slaves were worth in June, 1863, $98,313,655 more than 490,865 slaves were worth in December, 1860, and that each slave in Virginia was worth in June, 1863, $290.89 more than the sum which the parties have agreed was the fair estimated average value of each in December, 1860.

There is no evidence in the record which shows or tends to show that slaves were more valuable in Virginia in June, 1863, than they were in December, 1860. All the evidence which relates to this subject tends to show that they were vastly less valuable at the latter date. See evidence of Col. John P. Branch, R., 756; of Major P. A. Wellford, R., 763, answer to Q. 35, and the evidence hereinafter referred to as to the general depreciation of all personal property in Virginia in June, 1863, and as to the taxation and assessment of such property, including slaves, at its value in Confederate currency.

(*c*) The uncontradicted testimony in the cause shows that personal property throughout Confederate Virginia had depreciated fifty per cent (50%) *as a minimum* in June, 1863, as compared with the period in 1861 and 1860 before the war. See depositions of R. W. Hunter, W. W. Scott, John P. Branch, Philip A. Wellford, William G. Taylor, S. H. Hawes, Charles U. Williams, and W. Gordon McCabe (R., 739 to 786).

These witnesses prove that there was an enormous de-

terioration, destruction and depreciation in the value of personal property in Virginia between those dates. Major P. A. Wellford says (R., pp. 763, 764, and 765):

> "Q. 37. Taking all the movable personal property, live stock, farming utensils, vehicles of every kind, household and kitchen furniture, the stores of tobacco and corn, what would you say, as a minimum, was the depreciated (depreciation) of all personal property in Virginia in June, 1863, as compared with January, 1861.
>
> "A. Leaving out cotton and tobacco, I would say that it was nearly 75 per cent. Carriages and wagons were all worn out. All farming utensils were almost worn out. There was very little demand for them. Men did not cultivate more than one-half or two-thirds of the acreage that he had done before. They had no new implements, and all the carriages and farming implements were almost worn out.
>
> * * * * * * *
>
> "Q. 40. What would you say, as a minimum, was the depreciation of all personal property in Virginia in June, 1863, upon the basis of any sort of sound money? What was the per cent of depreciation in June, 1863, as compared with January, 1861?
>
> "A. Not less than 50 per cent. There had been no repairs made to furniture. All the mechanics were in the army. If a bed broke down, a man had to fix it the best way he could. The same way with all farming utensils and everything else.
>
> * * * * * * *
>
> "Q. 50. From your observation and knowledge at that time, what was the condition of the people of Virginia in the territory now constituting the Commonwealth?
>
> "A. A large proportion was abject poverty."

See the testimony of the other witnesses above named to the same effect.

(*d*) The above-mentioned witnesses prove, what is so a part of the history of the country and the times as to require

no proof, that in Confederate Virginia in June, 1863, the paper money of the Confederate States was the currency of the people, in which, and with reference to which their contracts were made and their business transacted; that it was practically the only medium of exchange and standard of value, the currency in which all State taxes were levied and were payable, and as a necessary consequence from these uncontroverted and incontrovertible facts, that it was the currency in which or with reference to which as a measure of value, the annual assessments of personal property for taxation were generally made in the portions of the State dominated by the Richmond governments. As to these points see the testimony of R. W. Hunter, R., 744, answers to Q.'s 36, 37, and 38; W. W. Scott, R., 749, answers to Q.'s 14 to 20; of Col. John P. Branch, R., 754, answers to Q.'s 14, 15, and 17, and page 758 and answers to Q.'s 43 to 50; of Major Wellford, R., 765, answers to Q.'s 46 to 50; of Mr. William G. Taylor, R., 768, answers to Q.'s 6 to 12; of Mr. S. H. Hawes, R., 773, answer to Q. 24; of Mr. C. U. Williams, R., 781, answers to Q.'s 1 to 5 on redirect examination. Messrs. Taylor (R., 768-9) and Williams (R., 781) both state in effect that taxes were then assessed in Confederate money.

(*e*) The fact that the assessments of personal property made as of February 1, 1863, were generally made in Confederate Virginia with reference to Confederate values and in Confederate money, and that those assessments were excessive valuations of personal property, if they be treated as valuations in good money, appears from a comparison of the assessments in the counties of Confederate Virginia for 1863 with the assessments of personal property generally in the same counties in 1861, incomplete copies of which assessments are returned by the master with his report.

See also Acts of General Assembly of Virginia at Richmond, of March 22, 1862, and March 28, 1863, making State taxes payable in Confederate money (Appendix to the Record, page 132).

(*f*) Under the foregoing state of facts, and upon the evidence in the cause, the scale of depreciation of Confederate money as compared with specie, which was 4 for 1 on the 1st of February, 1863, should have been applied to all of the assessments of personal property in 1863 in the Virginia counties which were then occupied and dominated by the military and civil forces of the Richmond governments, State and Confederate.

Particularly should this have been done as to the slaves everywhere in Virginia.

(*g*) Upon the above-mentioned proofs the valuation of all personal property in Virginia on the 20th of June, 1863, cannot be fairly estimated at more than one-half of its assessed value for that year.

V. *Complainant's Fifth Exception.*

Complainant respectfully excepts to the finding of the special master under the seventh paragraph of the decree, that "the State of West Virginia received nothing in money from the Commonwealth of Virginia," subsequent to the organization of the Restored Government of Virginia, and for omitting to charge West Virginia with the sums aggregating $170,771.46, paid by Virginia to West Virginia as shown by Plaintiff's Exhibit G-1 (R., p. 819), and the evidence in support thereof (Special Master's Report, pp. 181 and 193).

It will be observed that the master was required by paragraph VII to ascertain and report *all* money which West Virginia received from Virginia, however or whenever received.

The facts as to the receipt by West Virginia from the Commonwealth of the amounts aggregating $170,771.46 stated in Plaintiff's Exhibit G-1 (R., 819), are assented to and certified by the accountants for both parties, and are reported by the master at page 181 of his report.

Note to the Fifth Exception.

It is proper here to call attention to the fact that the special master has included in the charges against West Virginia, under the seventh paragraph of the decree, the value of the stock which represented the amounts expended by the Commonwealth on the turnpikes and bridges built by the following companies:

Sweet and Salt Sulphur Springs Turnpike Co...	$7,578.00
White and Salt Sulphur Springs Turnpike Co...	4,000.00
Fairmount and Palatine Bridge Co.....	12,000.00
	$23,578.00

The complainant has insisted that the expenditures made by the Commonweath in the construction of these internal improvements should be charged against West Virginia under paragraph III of the decree, and by her first exception above has objected to the master's report for not charging West Virginia with items 60, 136, and 145 of joint Exhibit C-1 (R., pp. 375 and 377), which items cover the expenditures made by Virginia on said Fairmount and Palatine Bridge and on the Sweet and Salt Sulphur and White and Salt Sulphur Turnpikes.

If complainant's first exception is sustained as to those items, the corresponding items charged by the master under paragraph VII of the decree, aggregating $23,578.00, should be deducted from the aggregate charged against West Virginia under said seventh paragraph.

VI. *Complainant's Sixth Exception.*

In addition to the five exceptions above set forth, complainant respectfully asks that all of the alternative statements contained in the master's report, made at the request

of and pursuant to objections interposed before the master by the complainant, and not covered by any of the foregoing exceptions, may be taken and treated as exceptions made by the complainant to said report because of and with respect to the errors of law appearing on the face of said report and of the record returned therewith, in the particulars to which said alternative statements respectively refer.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA,
By SAM'L W. WILLIAMS,
Attorney General.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

[Endorsed:] Supreme Court of the U. S. October Term, 1909. No. 3, Original. Commonwealth of Virginia *vs.* State of West Virginia. Complainant's Exceptions to Report of the Special Master, dated March 17, 1910. Office of Attorney-General of Virginia, Richmond.

[Endorsed:] Supreme Court U. S. October Term, 1909. Term No. 3, Original. Commonwealth of Virginia, Complainant, *vs.* State of West Virginia. Complainant's exceptions to report of the Special Master, dated March 17, 1910. Filed April 16, 1910.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT A-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

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A-1
Page 1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT A-1.

The Amount of the Public Debt of the Commonwealth of Virginia on the first day of January, 1861, including the Holdings by the Literary Fund, the Sinking Fund and the Board of Public Works.

Defendant denies that said Holdings by said Funds and by the Board of Public Works constitute any Part of said Public Debt.

PARAGRAPH I OF DECREE.

	5%	6%	Total.
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Plaintiff	$ 2,272,404.50	$33,208,583.96	$35,480,988.46
Accrued interest from July 1st 1860, to December 31st, 1860	56,810.11	996,257.52	1,053,067.63
	$ 2,329,214.61	$34,204,841.48	$36,534,056.09
Aggregate amount of the Public Debt of Virginia, January 1st, 1861, as per Defendant	$ 2,077,204.50	$30,842,659.43	$32,919,863.93
Difference	$ 252,010.11	$ 3,362,182.05	$ 3,614,192.16

The difference is composed of the following items:	5%	6%	Total.
Accrued interest from July 1st, 1860, to December 31st, 1860, on Public Debt as claimed by Defendant.	$ 51,930.11	$ 925,279.78	$ 977,209.89
Holdings by the Sinking Fund	$ 40,000.00	$1,289,557.20	$1,329,557.20
Accrued interest from July 1st, 1860, to December 31st, 1860	1,000.00	38,686.72	39,686.72
	$ 41,000.00	$1,328,243.92	$1,369,243.92
Holdings by the Board of Public Works	.....	$ 146,500.00	$ 146,500.00
Accrued interest from July 1st, 1860, to December 31st, 1860	.....	4,395.00	4,395.00
	.....	$ 150,895.00	$ 150,895.00
Holdings by the Literary Fund	$ 155,200.00	$ 929,867.33	$1,085,067.33
Accrued interest from July 1st, 1860, to Decembe 31st, 1860	3,880.00	27,896.02	31,776.02
	$159,080.00	$ 957,763.35	$1,116,843.35
Total	$252,010.11	$3,362,182.05	$3,614,192.16

The above is a summary of pages numbered 2 to 4 following, which constitutes a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as shown by her Bond Registers and other Records as at January 1st, 1861, showing how the same was distributed between Sinking Fund, Board of Public Works, Literary Fund, and Individuals, Firms, Corporations and others, including the Bonds held by the United States, and any Bonds paid off by Virginia since that date, with the interest accrued and payable thereon for the six months prior to January 1st, 1861.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The above is a summary of pages numbered 2 to 4 following, and is a correct statement of the outstanding funded obligations of the Commonwealth of Virginia, as of January 1st, 1861, as shown by her Bond Registers and other Records, and in addition thereto the holdings by the Sinking Fund, the Literary Fund, and the Board of Public Works as of the same date, which holdings the Defendant denies constitute any part of said Public Debt.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

NOTE.—The amount of $350,000.00 was not evidenced by any form of certificate of debt prior to January 1st, 1861, but is the principal amount required to produce annually at 6% interest, the sum of $21,000.00 guaranteed forever to the stockholders of the James River Company, by the Act of March 23rd, 1860.

It was later actually funded on this basis under the Acts of 1871 and 1872 known as the "Consol" and "Peeler" Acts.

NOTE.—The word "REGULAR" in Maturity Column below means that the bonds are irredeemable for twenty (20) years, and then at the pleasure of the General Assembly.

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of the Public Debt.		Held by Individuals, Firms, Corporations, and others.	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Alleghany & Huntersville Road	March 13, 1849	82	Regular.		$ 5,000.00					$ 2,300.00		$ 2,700.00
Alexandria Canal Co.	" 1, 1847	41	"		234,200.00		$1,800.00					232,400.00
Berryville Turnpike Co.	March 30, 1839; April 8, 1839; February 4, 1847	39	"		8,000.00					8,000.00		
Berryville & Charlestown Turnpike Co	April 8, 1839; March 12, 1849	76	"		6,400.00							6,400.00
Beverly & Fairmont Road	April 8, 1839; January 14, 1848	47	"		16,600.00							16,600.00
Blue Ridge Railroad Co.	March 5, 1849	79	"		32,200.00							32,200.00
City Point Railroad Co.	April 6, 1839	24	"		50,000.00					400.00		49,600.00
Charleston & Point Pleasant Turnpike Co.	January 23, 1835; March 7, 1838; January 25, 1839; April 8, 1839	17	"		20,800.00							20,800.00
do	March 15, 1849	62	"		5,800.00							5,800.00
Cacapon & North Branch Turnpike Co.	April 3, 1838; April 8, 1839	29	"		11,000.00							11,000.00
Cumberland Gap Road	March 21, 1837; April 2, 1839; March 8, 1842	8	"		67,600.00		6,000.00					61,600.00
Clarksburg & Buckhannon T'pke Co.	March 9, 1848; March 29, 1848	61	"		9,000.00					1,000.00		8,000.00
Coal River Navigation Co.	April 8, 1839; March 17, 1849	72	"		4,000.00							4,000.00
Dismal Swamp Canal Co.	February 17, 1837	7	"		16,500.00							16,500.00
Dragon Swamp Navigation Co.	April 3, 1838; April 8, 1839	27	"		1,464.00							1,464.00
Exchange Bank of Virginia & Northwestern Bank of Virginia	March 19, 1839				447,407.00		7,150.00					440,257.00
Giles, Fayette & Kanawha T'pke Co.	April 8, 1839; February 1, 1847; March 15, 1849	42	"		13,400.00					4,400.00		9,000.00
Goose Creek & Little River Nav. Co.	March 27, 1848; March 29, 1848	73	"		7,000.00							7,000.00
Holliday's Cove Turnpike Co.	March 2, 1838; March 26, 1839; April 8, 1839	28	"		4,700.00							4,700.00
Huntersville & Warm Springs Turnpike Co.,	March 20, 1832; April 8, 1839; April 8, 1839	32	"		300.00					300.00		
Hardy & Winchester Turnpike Co.	March 8, 1847; February 22, 1848; March 15, 1849	50	"		19,300.00					3,800.00		15,500.00
Howardsville & Rockfish T'pke Co.	March 9, 1848; March 29, 1848	59	"		9,000.00					4,000.00		5,000.00
Hampshire & Morgan Turnpike Co.	" 15, 1849	80	"		4,600.00							4,600.00
Ice's Ferry Road	" 30, 1837	31	"		1,358.00							1,358.00
Bank of Virginia	" 18, 1840		"		99,000.00		400.00			800.00		97,800.00
James River Co.	February 24, 1823	2	"		149,083.33					149,083.33		
do.	" 16, 1825	4	"	$ 29,000.00					$ 29,000.00			
do.	March 1, 1826	5	"		170,050.00					170,050.00		
do.	January 30, 1829	6	"	37,000.00	13,000.00				37,000.00	13,000.00		
do.	February 28, 1829	7	"	4,000.00	3,500.00				4,000.00	3,500.00		
do.	December 18, 1829	8	"	8,000.00					8,000.00			
do.	March 31, 1831	9	"	15,000.00					15,000.00			
do.	February 20, 1833	10	"	4,000.00					4,000.00			
do.	March 11, 1834	11	"	10,000.00					10,000.00			
do.	" 23, 1860		Perpetual. (See note above)		350,000.00			$142,000.00		112,500.00		95,500.00
James River & Kanawha Co.	" 21, 1837	11	Regular.		1,925,683.59		66,152.00			86,100.00		1,773,431.59
do.	" 25, 1842	36	"		250,000.00		766.00			20,200.00		229,034.00
do.	" 1, 1847	43	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		1,216,950.00		11,850.00					1,205,100.00
Carried forward				$107,000.00	$5,172,895.92		$94,118.00	$142,000.00	$107,000.00	$579,433.33		$4,357,344.59

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of the Public Debt.		Held by Individuals, Firms, Corporations, and others.	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Brought forward				$107,000.00	$5,172,895.92		$ 94,118.00	$142,000.00	$107,000.00	$579,433.33		$4,357,344.59
James River & Kanawha Co.	January 25, 1850	89	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		110,000.00		3,650.00					106,350.00
do. (See Note below.)	March 23, 1860		Irredeemable for 34 years, and then to be redeemed.		2,520,000.00			4,500.00		23,100.00		2,492,400.00
Jordans Furnace & Rockbridge Turnpike Co.	March 7, 1848 / March 29, 1848	58	Regular.		3,600.00					3,600.00		
Louisa Railroad Co.	February 25, 1837 / March 27, 1838	6	"		171,750.00					5,600.00		166,150.00
do.	March 8, 1847	45	"		131,687.00		4,400.00			300.00		126,987.00
do.	March 5, 1849	70	"		12,900.00							12,900.00
Lewisburg & Blue Sulphur Springs Turnpike Co.	March 30, 1837 / April 8, 1839	33	"		1,000.00							1,000.00
Lafayette & English Ferry Turnpike Co.	January 25, 1839 / April 8, 1839	34	"		2,550.00							2,550.00
Lynchburg & Buffalo Springs Turnpike Co.	March 14, 1839 / April 8, 1839	37	"		8,500.00							8,500.00
Little Stone Gap Road	March 7, 1848 / March 29, 1848	56	"		3,000.00							3,000.00
Marshall & Ohio Turnpike Co.	February 11, 1848	65	"		9,000.00							9,000.00
Moorefield & North Branch Turnpike Co.	April 8, 1839 / March 10, 1848	67	"		12,900.00		200.00			2,000.00		10,700.00
Morgantown & Bridgeport Turnpike Co.	March 15, 1849	85	"		1,940.00					900.00		1,040.00
Moorefield & Alleghany Turnpike Co.	March 7, 1849	83	"		3,600.00							3,600.00
Morgantown & Beverly Road (2 Acts)	March 29, 1848	57	"		3,000.00					3,000.00		
Natural Bridge Turnpike Co.	February 28, 1837 / April 8, 1839	26	"		6,100.00							6,100.00
North Carolina & Wytheville Road	January 17, 1848 / March 29, 1848	53	"		100.00							100.00
North Western Turnpike Road	February 29, 1848 / March 17, 1849	51	"		65,850.00					12,300.00		53,850.00
do.	March 19, 1831	1	Irredeemable for 20 years, and then at the pleasure of the General Assembly, within a period not exceeding 15 years.	5,000.00					5,000.00			
do.	February 6, 1834	2	Regular.	12,200.00	16,600.00				12,200.00	10,000.00		6,600.00
do.	March 30, 1837	3	"		2,000.00							2,000.00
do.	April 9, 1838 / January 26, 1839 / January 15, 1840	5	"		12,484.00					12,484.00		
do.	January 15, 1840	6	"		9,354.73					3,450.00		5,904.73
do.	March 14, 1840 / March 19, 1840	7	"		5,100.00					3,000.00		2,100.00
Newmarket & Sperryville Turnpike Co.	March 19, 1849	75	"		9,100.00							9,100.00
Ohio River & Maryland Line Road	February 14, 1838	18	"		12,000.00							12,000.00
do.	March 15, 1836	20	"		2,000.00					2,000.00		
do.	March 30, 1839 / January 13, 1848 / March 29, 1848	86	"		6,600.00							6,600.00
Orange & Alexandria Railroad Co.	March 27, 1848 / March 6, 1849	64	"		108,900.00					700.00		108,200.00
Petersburg Railroad Co.	March 29, 1838	13	"		150,000.00		420.00			2,000.00		147,580.00
Portsmouth & Roanoke Railroad Co.	January 20, 1834 / March 14, 1837 / March 20, 1839	3	"	104,000.00	64,950.00						$104,000.00	64,950.00
do.	March 31, 1838	14	"	100,000.00	50,000.00						100,000.00	50,000.00
Pittsylvania, Franklin & Botetourt Turnpike Co.	April 2, 1839	25	"		9,090.10							9,090.10
Richmond, Fredericksburg & Potomac R. R. Co.	January 23, 1835	4	"	121,000.00		$40,000.00			31,000.00		50,000.00	
Richmond & Petersburg Railroad Co.	January 17, 1837	5	"		176,400.00		500.00					175,900.00
do.	March 30, 1838	21	"		50,000.00		300.00					49,700.00
Rappahannock Co.	March 4, 1836 / March 1, 1838	12	"		13,350.00					450.00		12,900.00
do.	February 3, 1848	48	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		97,100.00		2,100.00					95,000.00
Red & Blue Sulphur Springs Turnpike Co.	March 28, 1838 / March 23, 1839	23	Regular.		4,900.00							4,900.00
Carried forward				$449,200.00	$9,040,301.75	$40,000.00	$105,688.00	$146,500.00	$155,200.00	$664,017.33	$254,000.00	$8,124,096.42

NOTE:—Of this total, viz., $2,520,000.00, certificates of the Commonwealth amounting to $1,982,125.00 had been issued prior to January 1st, 1861.

The balance, viz., $537,875.00, was in the form of certificates of the James River & Kanawha Company, guaranteed by the Commonwealth and actually assumed by it in accordance with the Act of Mch. 23rd, 1860.

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming a ny part of Public Debt.		Held by Individuals, Firms, Corporations, and others	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Brought forward				$ 449,200.00	$ 9,040,301.75	$40,000.00	$ 105,688.00	$146,500.00	$155,200.00	$664,017.33	$ 254,000.00	$ 8,124,096.42
...wana Navigation Co.	March 27, 1837 / April 4, 1838	19	Regular.		6,300.00		300.00					6,000.00
...chmond & Danville Railroad Co.	March 9, 1847	46	"		380,090.00					2,000.00		378,090.00
...chlands to Kentucky Line Road	March 8, 1847	44	"		3,520.00							3,520.00
...cky Mount Turnpike Co.	April 8, 1839 / March 18, 1847 / February 19, 1848	60	"		10,000.00					200.00		9,800.00
...h Patch Turnpike Co.	March 14, 1849	87	"		1,100.00							1,100.00
...unton & Parkersburg Road	March 16, 1838 / April 8, 1839 / February 19, 1845	16	Irredeemable for 20 years, and then to be redeemed.		125,393.27		880.02			17,800.00		106,713.25
do.	February 2, 1848 / March 29, 1848	54	Regular.		4,500.00		200.00			2,400.00		1,900.00
do.	April 8, 1839 / March 12, 1849	71	"		16,510.00							16,510.00
...lem & Peppers Ferry Turnpike Co.	March 25, 1839 / April 8, 1839	30	"		5,400.00		500.00					4,900.00
...lem & Newcastle Turnpike Co.	February 11, 1839 / April 8, 1839	38	"		3,875.00							3,875.00
...th Western Turnpike Road	January 24, 1848 / March 29, 1848	49	"		81,970.00					10,000.00		71,970.00
do.	January 17, 1848	55	"		153,162.00					30,000.00		123,162.00
...ths River Navigation Co.	March 16, 1849	84	"		2,600.00							2,600.00
...well Court House & Fancy Gap Road	March 17, 1849	78	"		3,420.00							3,420.00
...er Appomattox Co.	February 28, 1837 / January 25, 1839 / April 8, 1839	9	"		43,900.00					6,000.00		37,900.00
...ley Turnpike Co.	March 24, 1838 / February 14, 1839 / April 8, 1839 / February 12, 1841	22	"		233,813.00					1,400.00		232,413.00
do.	February 12, 1841	35	"		24,664.00		2,000.00					22,664.00
...rginia (Maryland Bridge Co.	March 17, 1849	63	"		10,000.00					1,800.00		8,200.00
...rginia & Tennessee Railroad Co.	March 6, 1849	81	"		66,800.00							66,800.00
...chester & Potomac Railroad Co.	February 6, 1834 / March 10, 1834 / December 13, 1834	2	"		10,000.00					10,000.00		
do.	February 13, 1838	15	"	8,000.00	133,935.00						8,000.00	133,935.00
...eeling, West Liberty & Bethany Turnpike Co.	March 29, 1848	52	"		10,867.61					2,400.00		8,467.61
...ton & Fairmont Turnpike Co.	March 9, 1848	66	"		4,000.00							4,000.00
...ton & Gauley Bridge Turnpike Co.	March 25, 1848 / March 29, 1848	74	"		5,000.00							5,000.00
...lsburg & Bethany Turnpike Co.	March 15, 1849	68	"		1,700.00							1,700.00
...lliamsport Turnpike Co.	March 15, 1849	77	"		1,250.00					450.00		800.00
...gistered Bonds	March 22, 1850	88	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		2,340,648.00		19,800.00			48,500.00		2,272,348.00
...ring Coupon Bonds	March 29, 1851	90	Redeemable in 35 years.	1,815,204.50							1,815,204.50	
...upon Bonds	March 29, 1851	90	do.		13,082,500.00							13,082,500.00
...gistered Bonds (coupon attached)	March 29, 1851 / May 25, 1852	90	Redeemable in 34 years.		3,050,464.33		445,289.18			107,000.00		2,498,175.15
...gistered Bonds issued for the redemption of outstanding Warrants	March 17, 1856	91	Irredeemable for 34 years, and then to be redeemed.		2,761,100.00		43,700.00			18,700.00		2,698,700.00
...gistered Bonds issued in exchange for Coupon Bonds	March 18, 1856	92	Redeemable in 35 years.		1,059,500.00		546,000.00			1,000.00		512,500.00
...gistered Bonds	March 18, 1858	93	Irredeemable for 34 years, and then to be redeemed.		530,300.00		125,200.00			6,200.00		398,900.00
Total				$2,272,404.50	$33,208,583.96	$40,000.00	$1,289,557.20	$146,500.00	$155,200.00	$929,867.33	$2,077,204.50	$30,842,659.43

COPY BOUND CLOSE IN CENTER

PLAINTIFF'S EXHIBIT A-2

[The forms of Bonds which follow, 101 in number, Constitute the one Exhibit.]

Following are copies of the forms of the various bonds covered by this Exhibit arranged numerically with the following exceptions:

Loan Nos. 18, 20, 31, 32, 39, 53, 57, 58, 68, 70, 73, 78, 80, 82, 87, 90, 91, and J. R. 5, 6, 7, 8, 9, 10, 11.

No cancelled bonds for these issues were found filed with the Treasurer of Virginia.

LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February, 1834, entitled, An Act to amend the Act entitled an Act to authorize a subscription on behalf of the Commonwealth to the Stock of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes; another Act passed on the 10th day of March, 1834, entitled, An Act to amend the charter of the

WINCHESTER AND POTOMAC RAILROAD COMPANY

and for other purposes. The principal whereof, is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX

DARK PAGE

per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of March 1839, entitled, "An Act to authorize a further increase of the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 20th day of January 1834, entitled "An Act to increase the Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

and to authorize a subscription thereunto on behalf of the State, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

GE BLEEDTHRU

LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1837, entitled "An Act to authorize the Board of Public Works to subscribe to two-fifths of the increased Capital Stock of the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day above written.

$

LOAN No. 4.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd day of January, 1835, entitled, An Act authorizing the Board of Public Works to subscribe on behalf of the Commonwealth to the stock of the

DARK PAGE

RICHMOND FREDERICKSBURG AND POTOMAC RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1837, entitled, An Act to authorize a subscription on behalf of the State to the Stock of the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

GE BLEEDTHRU

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, of the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 25th day of February 1837, entitled, "An Act to authorize a subscription on behalf of the State of the stock of the

LOUISA RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th March 1838, entitled, An Act to authorize the

DARK PAGE

LOUISA RAILROAD COMPANY

to construct a railroad from some point on the line of their railroad to Charlottesville, and for other purposes, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 7.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of February 1837, entitled "An Act to authorize the

DISMAL SWAMP CANAL CO.

to increase their Capital Stock and to authorize the loans of the State to said Company to be converted into Stock", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

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GE BLEEDTHRU

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 21st day of March 1837, entitled "An Act to amend the Act entitled an Act to provide for the construction of a road from

PRICES TURNPIKE TO CUMBERLAND GAP

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly, passed on the 2nd day of April 1839, entitled An Act to provide for the completion of that part of the road from

DARK PAGE

PRICES TURNPIKE TO CUMBERLAND GAP

which passes through the County of Lee" and a supplementary Act of 28th February 1842—the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN NO. 8.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of any Act of the General Assembly of the Commonwealth of Virginia passed on the 8th day of March 1842, entitled "An Act to amend the Act passed January 22nd 1838, entitled, an Act to authorize the county courts of the counties of

BOTETOURT, TAZEWELL, GILES, RUSSELL, MERCER, SCOTT & LEE

to borrow money for certain purposes." The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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GE BLEEDTHRU

LOAN No. 9.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

UPPER APPOMATTOX COMPANY.

The principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 11.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the twenty-first day of March eighteen hundred and thirty-seven, entitled "An Act providing for the payment of the Subscription of the State to

DARK PAGE

THE JAMES RIVER and KANAWHA COMPANY"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th day of March 1836, entitled "An Act concerning

THE RAPPAHANNOCK COMPANY"

and of an Act concerning the States subscription to

THE RAPPAHANNOCK COMPANY"

passed the first day of March 1838 the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person, or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEEDTHRU

LOAN No. 12.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 4th March 1836 entitled, An Act concerning the

RAPPAHANNOCK COMPANY" and Act passed March 1st 1838

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 13.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1838, entitled An Act to repeal in part the fourth section, the Act entitled An Act to amend the several Acts concerning the

DARK PAGE

PETERSBURG RAIL ROAD COMPANY"

and for other purposes", the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 14.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 31st day of March 1838, entitled, "An Act authorizing a loan on behalf of the state, to the

PORTSMOUTH AND ROANOKE RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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E BLEEDTHRU

LOAN No. 15.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 13th February 1838

"WINCHESTER AND POTOMAC RAILROAD COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th March, 1838, entitled "An Act to provide for the Construction of a

TURNPIKE ROAD FROM STAUNTON TO PARKERSBURG"

and the third section of "An Act to provide for raising loans heretofore made to certain

RAILROAD COMPANIES

and for other purposes," passed 21st March 1839, the said loan to be redeemable at the expiration of twenty years from the day of , and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 16.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th February 1845, entitled, An Act for completing the

STAUNTON AND PARKERSBURG ROAD,"

and of An Act passed on the 8th April 1839 authorizing Loans for the payment of certain subscriptions and appropriations"; the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 17.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th day of March 1838, entitled "An Act to provide for the payment of the States subscription to the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY"

and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 19.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 27th day of March 1837, entitled, "An Act to au-

thorize a further subscription on behalf of the State to the Stock of the

RIVANNA NAVIGATION COMPANY"

as amended by an Act passed the 4th day of April 1838. The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 21.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1838, entitled, An Act concerning the

RICHMOND AND PETERSBURG RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain subscriptions and appropriations",

VALLEY TURNPIKE COMPANY

Act 14th February 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth of Virginia aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of

Virginia passed on the 24th March 1838, entitled, An Act to provide for the construction of a road from

WINCHESTER TO STAUNTON

and for other purposes and subsequent Acts, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 22.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th February 1839, entitled, "An Act Concerning the

VALLEY TURNPIKE COMPANY"

and "An Act authorizing Loans for the payment of certain subscriptions and appropriations" passed 8th day of April 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 28th day of March, 1838, entitled, "An Act incorporating the

INDIAN DRAFT TURNPIKE COMPANY

(for the Red and Blue Sulphur Springs Turnpike Company) the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 23.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839, entitled, "An Act authorizing loans for the payment of Certain Subscriptions, and Appropriations"

and An Act passed 23rd day of March 1839, entitled, An Act authorizing subscriptions on behalf of the Commonwealth to the original and additional Capital Stock of the

RED AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN NO. 24.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of April, 1839, entitled, an ACT authorizing a loan on behalf of the STATE to the

CITY POINT RAILROAD COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 25.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the second day of April 1839, entitled "An Act providing for the State's subscription to the Stock of the

PITTSYLVANIA, FRANKLIN & BOTETOURT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of 18 and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 26.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an ACT of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled "AN ACT authoriz-

ing loans for the payment of certain subscriptions and appropriations."

"NATURAL BRIDGE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 27.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the First of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839.

"DRAGON SWAMP NAVIGATION CO."

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 28.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "AN ACT" authorizing Loans for the payment of Certain Subscriptions and Appropriations.

HOLLIDAYS COVE TURNPIKE COMPANY

The principal whereof is irredeemable Twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 29.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled AN ACT authorizing Loans for the payment of certain subscriptions and appropriations

CACAPON AND NORTH BRANCH TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 30.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th of April 1839, entitled An Act authorizing Loans for the payment of certain subscriptions and appropriations"

SALEM AND PEPPERS FERRY TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 33.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th April 1839.

"LEWISBURG AND BLUE SULPHUR SPRINGS TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years, from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 34.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, executors, administrators or assigns, the sum Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839 entitled "An Act authorizing Loans for the payment of certain subscriptions and appropriations"

LAFAYETTE AND ENGLISH FERRY TURNPIKE COMPANY

The principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 35.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 12th day of February 1841, entitled, An Act authorizing the increase of the Capital Stock of the

VALLEY TURNPIKE COMPANY

and for other purposes; the principal whereof is irredeemable for twenty years, from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 36.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, semi-annually, on the first day of January and July, in specie or its equivalent; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of March, 1842, entitled, "An Act authorizing a loan to the

JAMES RIVER AND KANAWHA COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 37.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the eighth day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appro-

priations, "and An Act entitled, "An Act to increase the CAPITAL STOCK of the

LYNCHBURG AND BUFFALOE SPRINGS TURNPIKE COMPANY

etc., for other purposes, passed the 14th day of March 1839, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate, is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 38.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto heirs, administrators, executors or assigns, the sum of Dollars, *being* interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations."

THE SALEM AND NEWCASTLE TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 41.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March, 1847, entitled An Act to authorize the Board of Public Works to purchase two-fifths of the Stock of

THE ALEXANDRIA CANAL COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 42.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing

LOANS for the payment of certain Subscriptions and Appropriations,

GILES, FAYETTE AND KANAWHA TURNPIKE COMPANY.

Act 1st February 1847, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 43.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia unto executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 1st day of March 1847, entitled "An Act to provide for the Completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes, the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the Pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 44.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions and Appropriations and An Act passed 8th March 1847, entitled, "An Act to provide for the Construction of a Turnpike Road from the Richlands in Tazewell to the Kentucky Line, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 45.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of March 1847, entitled, "An Act providing for the extension of

LOUISA RAILROAD TO THE EASTERN BASE OF BLUE RIDGE"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 46.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th day of March 1847, entitled, "An Act incorporating the

RICHMOND AND DANVILLE RAILROAD COMPANY,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of January, 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMOUNT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 47.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators, or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing Loans for the payment of Certain Subscriptions, and Appropria-

tions," and an Act passed 14th January 1848, entitled, "An Act to provide for the construction of a turnpike road from

BEVERLEY IN RANDOLPH TO FAIRMONT IN MARION"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

LOAN NO. 48.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the third day of February 1848, entitled, "An Act authorizing a loan by the Commonwealth to the

RAPPAHANNOCK COMPANY"

the principal whereof is irredeemable for twenty-five years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 49.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th day of January 1848, entitled, "an Act to provide for the extension of the

SOUTH-WESTERN ROAD FROM ITS EASTERN TERMINUS TO THE TOWN OF BUCHANAN"

and also of an Act passed 29th March 1848, "entitled an Act prescribing the mode of raising funds for appropriations from the

PUBLIC TREASURY FOR INTERNAL IMPROVEMENTS",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations" also an Act passed 8th March 1847, entitled an Act to amend the Act passed 5th March 1846 incorporating the

HARDY AND WINCHESTER TURNPIKE COMPANY.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22nd day of February 1848, entitled, "An Act to provide for the completion of the

HARDY AND WINCHESTER TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 50.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled An Act to increase the State subscription to the Capital Stock of the

HARDY AND WINCHESTER TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or

assigns, the sum of dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th March 1849.

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 51.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th February 1848. Entitled, An Act to provide for Macadamizing the

NORTH WESTERN TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

LOAN No. 52.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act to amend the Act incorporating the

WHEELING WEST LIBRARY AND BETHANY TURNPIKE COMPANY

passed the 20th day of March 1847," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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LOAN No. 54.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 2nd February 1848, entitled, An Act making an appropriation for bridges on the

STAUNTON AND PARKERSBURG ROAD"

and also of an "Act passed 29th March 1848," entitled An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvements," the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 55.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of January 1848, entitled "An Act to provide for the completion of the

SOUTHWESTERN TURNPIKE ROAD,"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 56.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

LITTLE STONE GAP ROAD

Act 7th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 59.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements.

HOWARDSVILLE AND ROCKFISH TURNPIKE ROAD

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 60.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled, "An Act authorizing loans for the payment of certain subscriptions and appropriations"

ROCKY MOUNT TURNPIKE COMPANY

Act 19th February 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 61.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements"

CLARKSBURG AND BUCHANAN TURNPIKE COMPANY

Act 9th March 1848, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 62.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Vir-

ginia, passed on the 15th March 1849, entitled, directing an additional subscription on behalf of the Commonwealth to the Capital Stock of the

CHARLESTON AND POINT PLEASANT TURNPIKE COMPANY

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN No. 63.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 17th day of March 1849, entitled, "An Act to authorize a subscription to the Capital Stock of the

VIRGINIA AND MARYLAND BRIDGE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 64.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849, entitled, "An Act to amend the Act

'INCORPORATING THE ORANGE AND ALEXANDRIA RAILROAD COMPANY,'

passed March 27th 1848," the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 65.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations"

MARSHALL AND OHIO TURNPIKE COMPANY. ACT 11TH FEB'Y 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 66.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum, per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 9th March 1848, entitled, An Act to provide for the construction of the

WESTON AND FAIRMONT TURNPIKE ROAD

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 67.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of An Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled "An Act authorizing loans for the payment of certain subscriptions and appropriations,

MOOREFIELD AND NORTH BRANCH TURNPIKE COMPANY, ACT 10TH MARCH 1848,

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 71.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 12th day of March, 1849, entitled, "An Act to provide for macadamizing certain parts of the

STAUNTON AND PARKERSBURG ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 72.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 8th April 1839, entitled, "An Act authorizing Loans for the payment of certain Subscriptions and Appropriations

COAL RIVER NAVIGATION COMPANY ACT 17th MARCH 1849

the principle whereof is irredeemable for twenty years from day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 74.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia passed on the 29th March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the Public Treasury for internal improvements

WESTON AND GAULEY BRIDGE TURNPIKE COMPANY, ACT 25th MARCH 1848.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the the Treasury of the Commonwealth aforesaid, on the first day of Jan-

uary and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March, 1849, entitled "An Act to amend the Act passed April 3rd, 1848 ch. 75, concerning the

"NEWMARKET AND SPERRYVILLE TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 75.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 19th March 1849,

"NEWMARKET AND SPERRYVILLE TURNPIKE CO."

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 76.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 8th day of April 1839, entitled An Act authorizing loans for the payment of certain Subscriptions and Appropriations.

BERRYVILLE AND CHARLESTON TURNPIKE CO., ACT 12TH MARCH 1849.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 77.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th March 1849

"WILLIAMSPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 79.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 5th day of March, 1849, entitled, "An Act to incorporate the

BLUE RIDGE RAILROAD COMPANY

and for other purposes", the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 81.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the 1st day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of March 1849 entitled, "An Act authorizing a subscription for the Commonwealth to the Stock of the

VIRGINIA AND TENNESSEE RAILROAD COMPANY",

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 83.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 7th March 1849, entitled, An Act to incorporate the

MOOREFIELD AND ALLEGHANY TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 84.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of March 1849, entitled "An Act amending An Act to incorporate the

SMITH RIVER NAVIGATION COMPANY

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN NO. 85.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of March 1849, entitled "An Act to incorporate the

MORGANTOWN AND BRIDGEPORT TURNPIKE COMPANY"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN NO. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled "An Act prescribing the mode of raising funds for appropriations from the Public Treasury for Internal Improvement"

OHIO RIVER AND MARYLAND ROAD, ACT 13TH JANUARY 1848

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 86.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 29th day of March 1848, entitled, An Act prescribing the mode of raising funds for appropriations from the public Treasury for internal improvement,

FISHING CREEK AND MORGANTOWN ROAD, ACT 13TH JANUARY 1848.

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 88.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 22d day of March, 1850, entitled "An Act providing for the

NEGOTIATION OF LOANS FOR THE PURPOSE OF INTERNAL IMPROVEMENT,

the principal whereof is irredeemable for twenty-five years from the , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 89.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 25th day of January 1850, entitled "An Act to provide for the completion of the

JAMES RIVER AND KANAWHA CANAL

from Tidewater at Richmond to the Town of Buchanan, and for other purposes", the principal whereof is irredeemable for twenty-five years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer the day and year above written.

$

LOAN NO. 92.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, in specie or its equivalent, on first January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 18th March 1856 entitled "An Act providing for and regulating the issue of Certificates of

REGISTERED STOCK

in lieu of Coupon Bonds, the principal whereof is redeemable after the day of (in lieu of Coupon Bond Number issued day of ,returned and cancelled.)

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

LOAN No. 93.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1858, entitled, An Act for the relief of certain Internal Improvement Companies and Holders of Debts on account of the

CONSTRUCTION OF STATE WORKS

by an issue of Certificates of State Stock, the principal whereof is irredeemable for thirty-four years from the day of and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. LOAN No. 1—REISSUE.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 18th day of March 1840, entitled "An Act providing

for the re-issue of certificates of State Stock due the Bank of Virginia''

J. R. Co.

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

J. R. Loan No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

In pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 24th February 1823 entitled "An Act making more effectual provision to carry into effect the Act, entitled, an Act to amend the Act, entitled, an Act for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western waters, by the James and Kanawha Rivers, and for other purposes;'' I, Treasurer of the Commonwealth of Virginia, do hereby certify, that the said Commonwealth is indebted to executors, administrators or assigns, in the sum of Dollars, with interest thereon from the date hereof at the rate of per centum per annum, payable semi-annually at the Treasury of Commonwealth aforesaid; the principal whereof is irredeemable for 20 years and afterwards to be redeemed at pleasure of General Assembly.

This Certificate is transferable on the books of the Second Auditor, by proprietor or proprietors, his, her, or their Attorney.

Witness my hand this day of 182

Countersigned.

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J. L. LOAN No. 4.

TREASURY OFFICE OF VIRGINIA

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an "Act of the General Assembly of the Commonwealth of Virginia, passed on the 16th day of February 1825, entitled ,"An Act making further provision to carry into effect the Act, entitled, "An Act, for clearing and improving the navigation of

JAMES RIVER

and for uniting the Eastern and Western Waters, by the James River and Kanawha Rivers, and for other purposes;" the principal whereof is irredeemable for twenty years, and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

LOAN No. 1—N. W.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns the sum of Dollars, bearing interest at FIVE per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia,

passed on the 19th day of March 1831, entitled, "An Act to provide for the construction of a turnpike road, from

WINCHESTER TO SOME POINT ON THE OHIO RIVER"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly within a period not exceeding fifteen years.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 2.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 6th day of February 1834, entitled "An Act further to provide for the construction of the

NORTH WESTERN ROAD"

as amended by an Act passed on the 7th February 1838"; the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

N. W. LOAN No. 3.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 30th day of March 1837, entitled, An Act further to provide for the construction of the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. LOAN No. 5.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year, being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 26th day of January 1839, entitled, An Act to amend the Act, entitled, an Act to provide for the construction of the

"NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of , and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

$

No. W. LOAN No. 6.

TREASURY OFFICE OF VIRGINIA.

RICHMOND, 18

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 15th day of January 1840, entitled an Act concerning loans heretofore authorized for the

NORTH WESTERN TURNPIKE ROAD"

the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

N. W. Loan No. 7.

TREASURY OFFICE OF VIRGINIA.

Richmond, 18

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK, created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 14th day of March 1840, entitled, An Act to amend the several Acts concerning the

NORTH WESTERN TURNPIKE ROAD"

and an Act farther to amend the same passed 19th March 1840, the principal whereof is irredeemable for twenty years from the day of and afterwards to be redeemed at the pleasure of the General Assembly.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

$

Bank Loan.

TREASURY OFFICE OF VIRGINIA.

Richmond,

No.

Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the day of payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July in each year; being STOCK created in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed 19th day of March 1839, entitled, "An Act to provide for further subscriptions on the part of the State to

THE EXCHANGE BANK
and
NORTHWESTERN BANK OF VIRGINIA

the principal whereof is irredeemable for twenty years from the day of *in whole or in part, at the pleasure of the Commonwealth.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness, the hand of the Treasurer, the day and year above written.

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*This language is vague. Possibly words "And then to be redeemed" just before "in whole or in part at pleasure of General Assembly" were intended to be inserted.

J. R. & K. LOAN (SEPARATE REGISTER).

TREASURY OFFICE OF VIRGINIA.

RICHMOND,

No.

BE IT KNOWN, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at SIX per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being STOCK issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd March 1860, entitled, "An Act to amend the Charter of the

JAMES RIVER AND KANAWHA COMPANY"

the principal whereof is irredeemable for thirty-four years from the first day of January 1860, and then to be redeemed.

This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

Witness the hand of the Treasurer, the day and year above written.

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IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTARY EXHIBIT A-1.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York.

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S SUPPLEMENTAL EXHIBIT A-1

Prepared by
PRICE, WATERHOUSE & CO.
Chartered Accountants
56 William Street, New York.

For the Plaintiff.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

THE AMOUNT OF THE PUBLIC DEBT OF VIRGINIA.

PARAGRAPH I OF DECREE.

Supplementary Statement of Bonds Guaranteed by Virginia Outstanding January 1, 1861.

Undetermined contingent liability of the Commonwealth of Virginia with respect to the Bonds of the Chesapeake & Ohio Canal Co., as follows:

187 6% Bonds of $1,000 } in broken series of numbers
226 6% Bonds of $ 500 } from No. 1 to No. 1,495 . . $300,000.00

bearing dates from Nov. 12, 1847 to Nov. 9, 1849.

Of this issue of Bonds the following were redeemed by the Commonwealth of Virginia, April 11, 1903, (Transfer No. 2888) in her settlement with the United States for Virginia Bonds held by the Secretary of the Interior for the benefit of certain Indian Tribes:

No. 10	$1,000.00	
482	1,000.00	
487	1,000.00	
488	1,000.00	
857	1,000.00	
872	500.00	
873	500.00	
1048	1,000.00	
1140	1,000.00	
1419	1,000.00	
1420	1,000.00	
1490	1,000.00	
1492	1,000.00	
1493	1,000.00	
		$13,000.00

These Bonds are guaranteed by the Commonwealth of Virginia under Act of March 8, 1847, Chapter 107.

Paragraph 1 (after preamble) recites the terms of the Guarantee as follows:

"I, A. B., Treasurer of the Commonwealth of Virginia, in conformity to an Act of the General Assembly, passed on the day of in the year eighteen hundred and forty-seven, do hereby pledge the faith of the state for the punctual payment of the interest, and the ultimate re-

demption of the principal sum of money appearing due by the within (or above) bond, according to the terms therein specified.

In testimony whereof, I have hereunto set my hand and affixed my seal of office, at Richmond, Virginia, this ____ of ____, Eighteen ____.

A. B., Treasurer."

Payable 35 years after date of issue or in 1882, 1883 and 1884.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The defendant agrees that the amounts shown above are correct, but denies that these bonds formed any part of the outstanding debt of the Commonwealth of Virginia on January 1st, 1861, or that they have since become such a debt; and claims that even if these bonds should be paid in full by the Commonwealth of Virginia, her remedy would lie against the Chesapeake & Ohio Canal Co., and not in any case against the State of West Virginia.

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BYRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT B-1

Prepared by

PARCE, MATTHEWS & COMPANY
Chartered Accountants
64 William Street, New York
For the Plaintiff

THOMAS BIRD DUCEY
Certified Public Accountant
20 Church Street, New York
For the Defendant

B-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT B-1.

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Estimated—Without Slaves:		
Virginia	748,171 =	66.4789%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT C-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT C-1.

All Expenditures Made by the Commonwealth of Virginia Within the Territory now Constituting West Virginia, other than Subscriptions to Capital Stock (Shown in Group II), from March 19th, 1823, to December 31st, 1860, Inclusive.

All Figures and Calculations in this Exhibit Agreed to as Correct in Amount by Plaintiff and Defendant.

PARAGRAPH III OF DECREE.

Group I.

	Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree. (See Note below.)	
			Basis.	Amount.	Basis.	Amount.	Basis	Amount.
	Bridges:							
1	Coal River Bridge	$ 3,000.00		$ 3,000.00		$ 3,000.00		
	Railroads:							
2	Covington & Ohio Railroad	$2,787,128.33	Direct Construction	$1,146,460.42			Direct Construction	$1,146,460.42
3	Winchester & Potomac Railroad Company	270,000.00	Mileage 63.16%	170,532.00			Mileage 63.16%	170,532.00
	Total	3,057,128.33		$1,316,992.42				$1,316,992.42
	Turnpikes and Roads:							
4	Abbs Valley and Tug Road	$ 4,450.00	Mileage 90.1%	$ 4,009.45	Mileage 90.1%	$ 4,009.45		
5	Alleghany Mountain Turnpike	1,074.00	" 55.55%	596.66	" 55.55%	596.66		
6	Berryville and Charlestown Turnpike Company	20,455.74	" 58-1/3%	11,932.52			Mileage 58-1/3%	$ 11,932.52
7	do. Purchase of the Road in 1858	7,236.97	" 58-1/3%	4,221.57	Mileage 58-1/3%	4,221.57		
8	Franklin and Monterey Turnpike	13,694.09	" 55.1%	7,545.44	" 55.1%	7,545.44		
9	Harrisonburg to Hardy and Pendleton Co. Road	1,000.00	" 50%	500.00	" 50%	500.00		
10	Kanawha Turnpike	177,054.34	Direct Construction and 82% Mileage	152,130.54			Direct Construction and 82% Mileage	152,130.54
11	do. Extraordinary Repairs (Eastern Section)	6,050.66	Mileage 42.87%	2,593.92			Mileage 42.87%	2,593.92
12	do. do. (Western Section)	7,189.65	Direct Construction	7,189.65			Direct Construction	7,189.65
13	do. Extension	80,955.28	do.	80,955.28			do.	80,955.28
14	Kanawha River Improvements	59,572.36	do.	59,572.36			do.	59,572.36
15	Kanawha Board—Bonds	60,000.00		60,000.00				60,000.00
16	Northwestern Turnpike	620,271.38	Direct Construction	(1) 469,148.53	Direct Construction	469,148.53		
17	do. (Maryland Section)	7,882.92	do.	7,882.92			Direct Construction	7,882.92
18	Prices Turnpike and Cumberland Gap Road	72,780.67	do.	9,212.20	Direct Construction	9,212.20		
19	Raleigh and Grayson Turnpike	38,400.00	Mileage and Percentage	11,394.22	Mileage and Percentage	11,394.22		
20	Staunton and Parkersburg Turnpike	388,936.97	do.	(2) 264,043.07	do.	264,043.07		
21	South Branch of Potomac to Brocks Gap Road	1,400.00	Mileage 29.41%	411.80	Mileage 29.41%	411.80		
22	Skidmore Fork to South Fork of South Branch of Potomac Road	1,000.00	" 58.33%	583.33	" 58.33%	583.33		
23	Beverly and Fairmont Road	75,384.65		75,384.65		75,384.65		
24	Beverly and Clarksburg Road	2,724.00						
	and Road from Monongalia Co. to Beverly and Clarksburg Road	9,276.00		12,000.00		12,000.00		
	Carried forward	1,656,789.68		$1,241,308.11		$859,050.92		$ 382,257.19

NOTE. Items 10 to 14 inclusive, are included by the Defendant under Paragraph VII of the Decree.

(1) Not including repairs, etc. $109,587.74
(2) Not including repairs, etc. 21,700.74

Name of Improvement or Other Charge.	Total Expenditure by Virginia	Claimed by Plaintiff under Paragraph III of Decree as charges against West Virginia.		Admitted by Defendant as proper charges under Paragraph III of the Decree.		Not admitted by Defendant as proper charges under Paragraph III of the Decree.	
		Basis.	Amount.	Basis.	Amount.	Basis.	Amount.
Brought forward	1,656,789.68		$1,241,308.11		$ 859,050.92		$ 382,257.19
Turnpikes and Roads (Continued):							
Brandonville, Kingwood and Evansville Road	$ 10,595.73		10,595.73				10,595.73
Charleston and Weston State Road	4,456.71		4,456.71		4,456.71		
Clarksburg and Point Pleasant State Road	249.00		249.00		249.00		
Clarksburg and Buckhannon Turnpike (Macadamizing)	19,259.36		19,259.36				19,259.36
Cheat Mountain Turnpike	7,697.88		7,697.88		7,697.88		
Fairmont and Wheeling Road	31,848.85		31,848.85		31,848.85		
Huntersville and Lewisburg Turnpike (from Martin's Bottom to Huntersville)	19,976.47		19,976.47		19,976.47		
Huntersville and Parkersburg Road	4,000.00		4,000.00		4,000.00		
Huttonsville and Huntersville Turnpike (to Martin's Bottom)	23,168.72		23,168.72		23,168.72		
Ice's Ferry Road	1,358.00		1,358.00		1,358.00		
Kingwood and West Union Turnpike	18,140.61		18,140.61				18,140.61
Kanawha and Logan Road $5,000.00							
Logan Court House and Kanawha State Road 2,407.50							
Guyandotte to Kanawha State Road 601.50	8,009.00		8,009.00		8,009.00		
Marlins Bottom and Lewisburg Road	12,615.09		12,615.09		12,615.09		
Middle Fork Road	13,867.34		13,867.34		13,867.34		
Middlebourn to Pennsylvania Road $5,653.00							
and Tyler to Green County Road 1,000.00	6,653.00		6,653.00		6,653.00		
Monroe County to Kentucky Line Road	5,000.00		5,000.00		5,000.00		
Moorefield and Alleghany Turnpike Co. (Building stem to Petersburg)	4,500.00		4,500.00		4,500.00		
Morgantown and Beverly Road	2,999.97		2,999.97		2,999.97		
Nicholas Court House and Gauley Bridge Turnpike	1,500.00		1,500.00		1,500.00		
Ohio River and Maryland Road	95,934.37		95,934.37		95,934.37		
South Fork of South Branch of Potomac River to Petersburg Road	900.00		900.00		900.00		
Princeton and Red Sulphur Springs Turnpike	4,200.00		4,200.00		4,200.00		
Sandy River (Wayne Co.) to Kanawha Turnpike (see Wilsons Creek to Kanawha Turnpike)	3,500.00		3,500.00		3,500.00		
Slavin's Cabin and Summerville Road	16,322.30		16,322.30		16,322.30		
Sistersville and Salem Turnpike	11,326.64		11,326.64		11,326.64		
Wilsons Creek to Kanawha Turnpike (see Sandy River to Kanawha Turnpike)	4,000.00		4,000.00		4,000.00		
Wyoming Court House to Bluffs Road	5,954.66		5,954.66		5,954.66		
Total	1,994,823.38		$1,579,341.81		$1,149,088.92		$ 430,252.89
Miscellaneous:							
Twelve Pole River Improvement	$ 1,200.00		$ 1,200.00		$ 1,200.00		
Harpers Ferry Raid $255,745.77							
Deduct—Transportation of Troops, and Ordnance and Ordnance Stores, and Sundry Credits 66,027.18	189,718.59		189,718.59				$ 189,718.59
School Commissioners	830,865.37	Direct Expenditure	830,865.37				830,865.37
Surveys	250,206.56		106,416.14			Direct Expenditure, Mileage and Percentage	106,416.14
Trans-Alleghany Lunatic Asylum	125,000.00		125,000.00		98,000.00		27,000.00

(Group II.) Disbursements made by the Commonwealth of Virginia in payment of subscriptions to the capital stock of joint stock companies and corporations, including banks, created by her, the property or works whereof were situated in whole or in part in the territory now constituting the State of West Virginia, and a loan to the Town of Bath in said territory; all claimed by Virginia under Paragraph III of the decree. The plaintiff and defendant agree to the correctness of the amounts of said disbursements and to the portion of the property situated in West Virginia, as set forth in this table; but the defendant denies that they are a proper charge against her under this paragraph, and denies that some of the items are a proper charge against her in any event, and claims that, so far as she is liable at all, she is liable under Paragraph VII of the decree.

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Bridge Companies:			
57	Buckhannon Bridge Company	$ 1,800.00		$ 1,800.00
58	Cheat River Toll Bridge Company	4,612.50		4,612.50
59	Elk River Bridge Company	6,000.00		6,000.00
60	Fairmont and Palatine Bridge Company	12,000.00		12,000.00
61	Guyandotte Bridge Company	12,000.00		12,000.00
62	Morgantown Bridge Company	24,800.00		24,800.00
63	North Branch Bridge Company	3,000.00		3,000.00
64	South Branch Bridge Company	4,200.00		4,200.00
65	Virginia and Maryland Bridge Company	10,000.00		10,000.00
	Total	$ 78,412.50		$ 78,412.50
	Navigation Companies:			
66	Coal River Navigation Company	$ 96,000.00		$ 96,000.00
67	Guyandotte Navigation Company	106,500.00		106,500.00
68	Monongalia Navigation Company	2,460.00		2,460.00
69	Tug Fork Navigation Company	5,040.00		5,040.00
	Total	$210,500.00		$210,500.00
	Turnpike Companies:			
			Mileage.	
70	Berkeley and Hampshire Turnpike Company	$ 16,572.00	92.46%	$ 15,322.47
71	Cross Roads and Summit Point Turnpike Company	6,000.00	46.38%	2,782.80
72	Giles, Fayette and Kanawha Turnpike Company	44,991.00	97.62%	43,920.59
73	Hardy and Winchester Turnpike Company	23,400.00	67.21%	15,727.14
74	Huntersville and Warm Springs Turnpike Company	6,158.24	21.38%	1,315.61
75	Hillsboro and Harpers Ferry Turnpike Company	6,000.00	2.38%	142.80
76	Martinsburg and Winchester Turnpike Company	27,000.00	59.09%	15,954.30
77	Morgan and Frederick Turnpike Company	5,005.00	73 1-3%	5,870.33
78	Mountain Lake and Salt Sulphur Springs Turnpike Co.	4,800.00	16.2-3%	800.00
79	North Frederick Turnpike Company	11,328.00	11.6%	1,322.76
80	Raleigh and Wythe Line Turnpike Company	400.00	73 1-3%	293.33
81	Brandonville, Kingwood and Evansville Road Company	3,193.46		3,193.46
82	Buckhannon and Little Kanawha Turnpike Company	7,773.00		7,773.00
83	Charleston and Point Pleasant Turnpike Company	31,260.00		31,260.00
84	Charleston, Ripley and Ravenswood Turnpike Company	27,519.41		27,519.41
85	Clarksburg and Philippi Turnpike Company	5,446.25		5,446.25
86	Clarksburg and Wheeling Turnpike Company	4,195.35		4,195.35
87	Clarksburg and Buckhannon Turnpike Co.	9,255.13		9,255.13
88	Cacapon and North Branch Turnpike Company	12,000.00		12,000.00
89	Clear Fork Road Company	600.00		600.00
	Carried forward.	$355,895.44		$204,694.94

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward,	$255,695.44		$204,694.94
	Turnpike Companies (Continued):			
90	Cranberry Summit and Brandonville Turnpike Company,	4,120.11		4,120.11
91	Dunkard Creek Turnpike Company,	6,000.00		6,000.00
92	East River and Princeton Turnpike Company,	4,800.00		4,800.00
93	Fish Creek Turnpike Company,	6,000.00		6,000.00
94	Franklin and Circleville Turnpike Company,	2,175.00		2,175.00
95	Gilmer and Braxton Turnpike Company,	6,699.80		6,699.80
96	Gilmer, Ripley and Ohio Turnpike Company,	29,974.80		29,974.80
97	Gnatty Creek and West Union Turnpike Company,	5,700.56		5,700.56
98	Grave Creek and Pennsylvania Line Turnpike Company,	1,800.00		1,800.00
99	Hampshire and Morgan Turnpike Company,	6,510.00		6,510.00
100	Hardy and Randolph Turnpike Company,	7,134.78		7,134.78
101	Harrisville Turnpike Company,	6,000.00		6,000.00
102	Hedgesville and Potomac Turnpike Company,	5,400.00		5,400.00
103	Holliday Cove Turnpike Company,	4,732.33		4,732.33
103A	Holliday Cove and Wellsburg Turnpike Company,	5,916.67		5,916.67
104	Holliday Cove and New Cumberland Turnpike Company,	2,400.00		2,400.00
105	Kingwood and West Union Turnpike Company,	8,769.48		8,769.48
106	Leading Creek and Buffalo Creek Turnpike Company,	5,847.84		5,847.84
107	Letart Falls and West Columbia Turnpike Company,	2,250.00		2,250.00
108	Lewisburg and Blue Sulphur Springs Turnpike Company,	4,950.00		4,950.00
109	Logan, Raleigh and Monroe Turnpike Company,	7,321.24		7,321.24
110	Marshall and Ohio Turnpike Company,	11,943.75		11,943.75
111	Martinsburg and Potomac Turnpike Company,	15,290.00		15,290.00
112	Middleway and Gerardstown Turnpike Company,	11,943.75		11,943.75
113	Moorefield and North Branch Turnpike Company,	28,137.75		28,137.75
114	Moorefield and Alleghany Turnpike Company,	3,779.78		3,779.78
115	Morgantown and Bridgeport Turnpike Company,	10,687.40		10,687.40
116	New Creek and Hardy Turnpike Company,	5,431.24		5,431.24
117	New Manchester Turnpike Company,	2,000.00		2,000.00
118	Newark Turnpike Company,	2,000.00		2,000.00
119	North River Turnpike Company,	5,400.00		5,400.00
120	Pattersons Creek Valley Turnpike Company,	9,900.00		9,900.00
121	Parkersburg and Elizabethtown Turnpike Company,	4,800.00		4,800.00
122	Pleasant Valley and Tunnelton Turnpike Company,	4,078.45		4,078.45
123	Potomac Turnpike Company,	2,489.70		2,489.70
124	Raleigh and Boone Graded Road Company,	1,800.00		1,800.00
125	Ravenswood and Reedy Creek Turnpike Company,	8,999.99		8,999.99
126	Red and Blue Sulphur Springs Turnpike Company,	8,856.66		8,856.66
	Carried forward,	$524,037.51		$482,537.01

	Name of Joint Stock Company.	Total amount paid on account of State's Subscription to Stock.	Amounts Claimed by Plaintiff and Denied by Defendant as stated above.	
			Basis.	Amount.
	Brought forward.	$534,037.51	.....	$482,837.01
	Turnpike Companies (Continued):			
127	Reedy and Harrisville Turnpike Company.....	1,751.87	.....	1,751.87
128	Ritchie and Gilmer Turnpike Company.....	8,891.18	.....	8,891.18
129	Sandy River Turnpike Company.....	3,000.00	.....	3,000.00
130	Salem and Harrisville Turnpike Company.....	3,817.92	.....	3,817.92
131	Sheperdstown and Smithfield Turnpike Company.....	18,575.00	.....	18,575.00
132	Shinston Turnpike Company.....	13,302.26	.....	13,302.26
133	Smithfield, Charlestown and Harpers Ferry Turnpike Co.	14,000.00	.....	14,000.00
134	Sistersville and Salem Turnpike Company.....	9,000.00	.....	9,000.00
135	St. Mary's Turnpike Company.....	6,000.00	.....	6,000.00
136	Sweet and Salt Sulphur Springs Turnpike Company....	10,104.00	.....	10,104.00
137	Walnut Gap Road Company.....	1,305.37	.....	1,305.37
138	Wellsburg and Washington Turnpike Company.....	7,071.01	.....	7,071.01
139	Wellsburg and Bethany Turnpike Company.....	12,590.22	.....	12,590.22
140	Weston and Gauley Bridge Turnpike Company.....	64,098.31	.....	64,098.31
141	Weston and Fairmont Turnpike Company.....	97,962.50	.....	97,962.50
142	Weston and West Union Turnpike Company.....	5,538.21	.....	5,538.21
143	West Union Turnpike Company.....	3,054.00	.....	3,054.00
144	West Milford and New Salem Turnpike Company.....	10,526.32	.....	10,526.32
145	White and Salt Sulphur Springs Turnpike Company....	4,000.00	.....	4,000.00
146	Wheeling, West Liberty and Bethany Turnpike Company.	21,000.00	.....	21,000.00
147	Williamsport Turnpike Company.....	5,130.65	.....	5,130.65
	Total.....	$854,756.33	.....	$803,555.83
	Banks:			
148	Fairmont Bank.....	$ 50,000.00	.....	$ 50,000.00
149	Northwestern Bank of Virginia at Wheeling.....	341,800.00	.....	341,800.00
	Total.....	$391,800.00	.....	$391,800.00
	Town of Bath:			
150	Loan to Town of Bath for road to St. John's River	$ 2,500.00	.....	$ 2,500.00

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT D-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT D-1.

Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said Debt was Contracted as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Average Total Population of Virginia With and Without Slaves, as shown by the Census of the United States.

PARAGRAPH IV OF DECREE.

Ordinary Expenses of the Government from March 19th, 1823, to December 31st, 1860, Inclusive.

Plaintiff	$37,794,211.18
Defendant	18,207,684.29
Difference	$19,586,526.89

This difference is composed of the following items, all of which are agreed to by the parties to be correct as to amount, but nothing contained herein shall be construed as an admission as to the propriety of including or excluding any disputed items:

No.				
1	Tobacco Receipts (1)			$ 353,123.96
2	Constitutional Conventions			258,906.28
3	Slaves transported and executed			311,168.35
4	Boundary Lines			16,704.78
5	Maps (Commonwealth)	$16,628.04		
	Maps (Board of Public Works)	11,446.48		
				28,074.52
6	Deaf, Dumb and Blind Institution 1845-1860, New Buildings, etc. (See pages 5-7 for details)			80,661.94
7	International Exchanges			2,836.19
8	Overpayment of Treasury Notes			50.00
9	Printing Treasury Notes			375.74
10	Loss account of Counterfeit Money			190.00
11	Virginia Military Institute, New Buildings, etc. (See pages 8-9 for details)			151,000.00
12	University of Virginia, Repairs and Improvements to Buildings and Water Supply (See page 10 for details)			25,000.00
13	Improvements, Public Square (See page 11 for details)			1,456.91
	Improvements, Capitol Square (See page 12 for details)			12,278.47
14	Fugitive Slave Expense	$ 701.00		
	Reward, Additional	1,500.00		
				2,201.00
	Carried forward			$ 1,244,028.14

(1) Deducted from ordinary expenses by defendant.

	Brought forward		$ 1,244,028.14
No. 15	Penitentiary Lot, New Hospital Building, etc. (See page 13 for details)		13,947.48
16	Calling out Militia at Wheeling in 1836		1,099.00
17	Medical College of Virginia, Additions and Improvements to Buildings, etc. (See page 14 for details)		25,000.00
18	Attorney General's Fees, prosecuting Selden, Withers & Company		500.00
19	Eastern and Western Asylums (See pages 15-22 for details):		
	New Buildings, etc.	$336,845.56	
	Support	7,450.01	
			344,295.57
20	Gun House at Alexandria		900.00
21	Cannon House, Surry County		110.00
22	Gun House for Richmond Artillery		1,079.09
23	Sundry B. P. W. Expenses		36,728.50
24	Interest:		
	Interest on Public Debt	$18,324,044.50	
	Interest on Treasury Notes	133,527.34	
	Interest on Temporary Loans	107,844.57	
	Interest on Old Military Debt of 1814 and prior	9,331.43	
			18,574,747.84
			$20,242,435.62
	Less—Amount of payments to School Commissioners admitted by Defendant in Exhibit D-1, under Paragraph IV for		655,908.73
	But charged by Plaintiff as $830,865.37 (being payments into West Virginia Counties) in Exhibit C-1, under Paragraph III.		
	Net Difference		$19,586,526.89

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

THE DIVISION OF THE ORDINARY EXPENSES OF GOVERNMENT IS MADE BY THE PARTIES TO THIS CAUSE AS FOLLOWS:

PLAINTIFF:

"The Average Total Population" *including slaves* is construed to mean the average for each decade determined by averaging the census at the beginning and at the end of that decade. The average total population so found determines the proportion in which the Total Ordinary Expense for that decade is to be charged to the two States. (See page 3 for details.)

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	996,340	85.9789%	West Virginia	162,479	14.0211%
1830 and 1840	"	1,024,871	83.6218%	"	"	200,731	16.3782%
1840 and 1850	"	1,067,304	80.2045%	"	"	263,425	19.7955%
1850 and 1860	"	1,169,489	77.5014%	"	"	339,501	22.4986%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830, Total	$ 3,367,513.89	Virginia,	$ 2,895,351.40	85.9789%	West Virginia,	$ 472,162.49	14.0211%
October 1st, 1830-September 30th, 1840, Total	5,344,600.21	Virginia,	4,469,250.90	83.6218%	West Virginia,	875,349.31	16.3782%
October 1st, 1840-September 30th, 1850, Total	8,700,443.93	Virginia,	6,978,147.55	80.2045%	West Virginia,	1,722,296.38	19.7955%
October 1st, 1850-December 31st, 1860, Total	20,381,653.15	Virginia,	15,796,066.53	77.5014%	West Virginia,	4,585,586.62	22.4986%
Total	$37,794,211.18		$30,138,816.38			$ 7,655,394.80	

"The Average Total Population" *excluding slaves* is treated in the same manner as above, producing the following:

The average population and the percentages are as follows:

Between March 19th, 1823 and 1830 (estimated)	Virginia	559,399	79.3334%	West Virginia,	145,725	20.6666%
1830 and 1840	"	583,579	76.1625%	"	"	182,650	23.8375%
1840 and 1850	"	626,041	71.9611%	"	"	243,931	28.0389%
1850 and 1860	"	707,228	68.8438%	"	"	320,065	31.1562%

The Ordinary Expenses of Government divided by Decades on the above percentages:

March 19th, 1823-September 30th, 1830, Total	$ 3,367,513.89	Virginia,	$ 2,671,563.26	79.3334%	West Virginia,	$ 695,950.63	20.6666%
October 1st, 1830-September 30th, 1840, Total	5,344,600.21	Virginia,	4,070,581.13	76.1625%	West Virginia,	1,274,019.08	23.8375%
October 1st, 1840-September 30th, 1850, Total	8,700,443.93	Virginia,	6,260,935.16	71.9611%	West Virginia,	2,439,508.77	28 0389%
October 1st, 1850-December 31st, 1860, Total	20,381,653.15	Virginia,	14,031,504.53	68.8438%	West Virginia,	6,350,148.62	31.1562%
Total	$37,794,211.18		$27,034,584.08			$10,759,627.10	

Total charge to West Virginia on basis of Average Total Population *including slaves* ..... $ 7,655,394.80

Total charge to West Virginia on basis of Average Total Population *excluding slaves* $10,759,627.10

Certified correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the above calculations are correctly made but objects both to the method adopted and to the division so arrived at as well as the amount to be divided.

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,
For the Defendant.

PLAINTIFF'S METHOD OF ARRIVING AT PERCENTAGES TO DIVIDE ORDINARY EXPENSES OF GOVERNMENT.

TOTAL POPULATION INCLUDING SLAVES.

	Virginia.		*West Virginia.*		
1820	928,558		136,808		
1830	1,034,481		176,924		
10 years' Increase	105,923		40,116		
1022/3652 of Increase	29,642		11,226		
Add—1820	928,558		136,808		
1823	958,200		148,034		
1830	1,034,481		176,924		
	2)1,992,681		2)324,958		
	996,340	85.9789%	162,479	14.0211%	
1830	1,034,481		176,924		
1840	1,015,260		224,537		
	2)2,049,741		2)401,461		
	1,024,871	83.6218%	200,731	16.3782%	
1840	1,015,260		224,537		
1850	1,119,348		302,313		
	2)2,134,608		2)526,850		
	1,067,304	80.2045%	263,425	19.7955%	
1850	1,119,348		302,313		
1860	1,219,630		376,688		
	2)2,338,978		2)679,001		
	1,169,489	77.5014%	339,501	22.4986%	

TOTAL POPULATION EXCLUDING SLAVES.

	Virginia.		*West Virginia.*		
1820	518,529		121,689		
1830	582,397		159,251		
10 years' Increase	63,868		37,562		
1022/3652 of Increase	17,873		10,511		
Add—1820	518,529		121,689		
1823	536,402		132,200		
1830	582,397		159,251		
	2)1,118,799		2)291,451		
	559,399	79.3334%	145,725	20.6666%	
1830	582,397		159,251		
1840	584,761		206,049		
	2)1,167,158		2)365,300		
	583,579	76.1625%	182,650	23.8375%	
1840	584,761		206,049		
1850	667,320		281,813		
	2)1,252,081		2)487,862		
	626,041	71.9611%	243,931	28.0389%	
1850	667,320		281,813		
1860	747,136		358,317		
	2)1,414,456		2)640,130		
	707,228	68.8438%	320,065	31.1562%	

"The Average Total Population of Virginia, with and without Slaves, as shown by the census of the United States" is construed to mean the average of the five censuses from 1820 to 1860 both inclusive; and the proportion of the total ordinary expenses of Virginia for the period from March 19th, 1823, to December 31st, 1860, chargeable to West Virginia on the above basis, is determined by dividing the said total Ordinary Expenses on the ratio which the average total population of Virginia with and without slaves bears to the average total population with and without slaves of those counties which were created into the State of West Virginia:

Virginia:						
Census of 1820	Population with Slaves	928,558		Population without Slaves	518,529	
" " 1830		1,034,481			582,397	
" " 1840		1,015,260			584,761	
" " 1850		1,119,348			667,320	
" " 1860		1,219,630			747,136	
Total 5 censuses		5,317,277			3,100,143	
Average 5 censuses		1,063,455	81.3718%		620,029	73.3369%
West Virginia:						
Census of 1820	Population with Slaves	136,808		Population without Slaves	121,689	
" " 1830		176,924			159,261	
" " 1840		224,537			206,049	
" " 1850		302,313			281,813	
" " 1860		376,688			358,317	
Total 5 censuses		1,217,270			1,127,119	
Average 5 censuses		243,454	18.6282%		225,424	26.6631%

The proportion of the Ordinary Expenses of the government of Virginia assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia as shown by the census of the United States:

With Slaves.....18.6282% of $18,207,684.29 = $3,391,763.84

Without Slaves.....26.6631% of $18,207,684.29 = $4,854,733.07

Certified Correct:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above calculations are correctly made, but objects both to the method adopted, and the division so arrived at, as well as the amount to be divided.

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

No. 6.

DEAF, DUMB AND BLIND INSTITUTE.

This Institute was established under an Act of March 31st, 1838, page 32, Chapter 19, authorizing an appropriation out of the revenue of the Literary Fund, for an amount not exceeding $20,000, for purpose of procuring a site or sites and erecting necessary buildings, etc.

Payments were made as follows:

Year	1839	$10,000.00	
"	1841	5,000.00	
"	1842	2,500.00	
"	1843	2,500.00	
			$20,000.00

An Act of March 20th, 1841, page 37, Chapter 14, authorized the payment of $6,250 for purchase of furniture, musical instruments, books, etc., apparatus, and other articles, required for the outfit of the Institution. Payment was made in 1841 in two amounts—viz: $1,562.50 and $4,687.50. Total..... 6,250.00

An Act of January 23rd, 1845, page 13, Chapter 8, authorized an appropriation of $25,000 for completion of the buildings of the Institution, provided that the aforesaid appropriation should be so expended as to fully complete the said buildings in such mode and style as such appropriations would warrant.

Payments were made as follows:

Year	1845	$ 4,166.66	
"	1846	4,166.66	
"	1846	4,166.66	
"	1847	4,166.66	
"	1847	4,166.66	
"	1848	433.66	
			21,221.96

An Act of March 20th, 1847, page 330, Chapter 272, authorized a payment of $5,998.98 to William C. Adams, or his legal representative, being an allowance on account of work done, materials furnished, etc., in erection of buildings.

Payment was made in 1847..... 5,998.98

An Act of February 24th, 1846, page 20, Chapter 18, authorized a payment of $5,000 for necessary furniture and fixtures.

Payments were made as follows:

Year	1846	$ 2,500.00	
"	1847	2,500.00	
			5,000.00
	Carried forward		$58,570.94

D-1
Page 6

Brought forward		$58,570.94
An Act of March 16th, 1847, page 16, Chapter 15, provided among other things for the following—viz: $2,000 for the purchase of 20 acres of land adjoining and lying south of the present Institution lot; $1,000 for the purchase of raised and common types, moulds, and other printing apparatus as may be required; $2,300 for the purchase of materials, machines and tools for the various workshops of said Institution, and for the completion of said workshops. Payments were made in 1848		5,300.00
An Act of January 25th, 1849, page 14, Chapter 12, authorized payment of an amount not to exceed $4,000 for the erection of a plain, substantial brick building of sufficient size to contain a laundry and bakehouse, and accommodations for servants. Payment was made in 1849		4,000.00
An Act of March 7th, 1851, page 5, Chapter 2, authorthorized payment of $2,500 for completing the buildings of the Institution. Payment was made in 1851		2,500.00
An Act of March 14th, 1850, page 4, Chapter 1, authorized payment of $6,000 for furniture for increased number of pupils in the Institution under Act of March 16th, 1847, and for arrears in support of Institution. Payment was made in 1850.....		6,000.00
An Act of June 5th, 1852, page 29, Chapter 35, authorized the payment of $2,000 for purchase of a library, philosophical apparatus and an organ. Payments were made as follows:		
Year 1852	$ 1,000.00	
" 1853	1,000.00	
		2,000.00
An Act of February 24, 1853, page 126, Chapter 145, authorized the following payments: $7,000 for construction of fixtures for warming buildings; $5,000 for construction of apparatus for lighting buildings with gas; $8,000 for the erection of an additional building. Payments were made as follows:		
Year 1853	$ 5,000.00	
" 1853	2,500.00	
" 1854	10,000.00	
" 1855	2,500.00	
		20,000.00
An Act of March 4th, 1854, page 30, Chapter 41, authorized payment of $10,000 for permanent water supply. Payment was made in 1854.....		10,000.00
Carried forward		$108,370.94

D-1
Page 7

Brought forward		$108,370.94
An Act of March 13th, 1856, page 80, Chapter 93, authorized the following payments: $3,000 for additional boiler, and erection of suitable boiler house to complete the heating of the buildings by steam; $1,000.00 for purchase of fire engine and erection of engine house; $1,500 for purchase of an organ, in addition to amount appropriated by former Act; $1,000 for fencing grounds, and $2,841 for deficiency of Chapel Steam and Gas Fund.		
Payments were made as follows:		
Year 1856	$ 8,341.00	
" 1857	1,000.00	
		9,341.00
An Act of January 10th, 1860, page 106, Chapter 12, authorized an appropriation of $7,000 for the erection of a shop building and to warm and light same with steam and gas. Payment was made in 1860.....		7,000.00
		$124,711.94
Less		
Amounts included by defendant in ordinary expenses of government:		
Under Act of March 20th, 1841.....	$ 6,250.00	
do Feb. 24th, 1846	5,000.00	
do March 16th, 1847	3,800.00	
do March 14th, 1850	6,000.00	
do June 5th, 1852	2,000.00	
do March 13th, 1856 (purchase of organ), ...	1,500.00	
	$24,050.00	
Original buildings under Act of March 31st, 1838....	20,000.00	
		44,050.00
Net amount plaintiff claims as an addition to defendant's ordinary expenses on this account		$ 80,661.94

No. 11.

VIRGINIA MILITARY INSTITUTE.

This Institute was established under an Act of March 29th, 1839, entitled:

"An Act amending and reducing into one the several Acts concerning the reorganization of the Lexington Arsenal and the establishment therewith of a Military School at Washington College."

An Act of March 6th, 1840, page 26, Chapter 15, authorized an appropriation of $4,500 for the erection of a steward's house and for furnishing a supply of water for the Institute, to be paid as follows: $1,500 in the year 1840, $1,500 in 1841 and $1,500 in 1842. Payments were made accordingly		$ 4,500.00
An Act of February 14th, 1844, page 22, Chapter 27, authorized appropriation of an amount not exceeding $1,000 for the erection of a magazine and shelter for artillery at the Institute. Payment was made in 1845		1,000.00
An Act of March 7th, 1848, page 18, Chapter 17, authorized an appropriation of $4,500 for erecting a house for an additional Professor; also a hospital, at the Institute. Payment was made in 1848.....		4,500.00
An Act of March 8th, 1850, page 16, Chapter 19, authorized an appropriation of $46,000—viz: $11,500 a year for four years, for construction of suitable buildings for cadets' quarters, and for other purposes, as specified in the report of the Board of Visitors of September 15th, 1849.		
Payments were made as follows:		
Year 1850	$11,500.00	
" 1851	29,500.00	
		41,000.00
An Act of June 5th, 1852, page 21, Chapter 20, appropriating the public revenue for fiscal year 1851-1852 authorizes payment of the balance of $5,000 for erection of new barracks, etc., under Act of March 5th, 1850 (above). Payment was made in 1852.....		5,000.00
An Act of May 29th, 1852, page 29, Chapter 34, makes provision for additional accommodation for the cadets of the Institute, the new barracks erected under Act of March 8th, 1850, being insufficient to accommodate the additional cadets. This Act also mentions that an addition of funds is needed for the purpose of improved heating and lighting arrangements. An amount of $30,000 was appropriated for these purposes. Payment was made in 1852.....		30,000.00
Carried forward		$ 86,000.00

D-1
Page 9

Brought forward		$ 86,000.00
An Act of March 1st, 1854, page 31, Chapter 42, provided for the completion of the barracks, and the erection of a mess hall at the Institute. An amount of $20,000 was appropriated for these purposes to be paid in four installments of $5,000 each.		
Payments were made as follows:		
Year 1854	$15,000.00	
" 1855	5,000.00	
		20,000.00
An Act of March 31st, 1858, page 115, Chapter 162, provides for the completion of Institute buildings, enclosing its grounds, and procuring a supply of water for said Institute. An appropriation of $25,000 was made as follows: $16,000 to meet the deficiency in Building Fund and complete the barracks and mess hall; $6,000 for procuring a supply of water, and $3,000 for enclosing the grounds.		
Payments were made as follows:		
Year 1858	$10,000.00	
" 1859	9,000.00	
" 1860	6,000.00	
		25,000.00
An Act of March 28th, 1860, page 103, Chapter 7, makes an appropriation of $20,000 for additional buildings. Payment was made in 1860		20,000.00
Total		$151,000.00

No. 12.

D-1
Page 10

UNIVERSITY OF VIRGINIA, $25,000.00.

This payment was authorized by the Act of February 28th, 1854, Chapter 36, page 26, as follows:

"Appropriated to the University of Virginia the sum of $25,000.00 for the purpose of repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said institution."

No. 13.

D-1
Page 11

IMPROVEMENTS PUBLIC SQUARE, $1,456.91.

This amount covers sundry expenditures for the improvement of the Square, for work done at the Capitol, for laying water pipes, and for items of $75, being quarterly allowance to the superintendent of the Capitol Square in 1826 and 1827. While the books do not show the exact nature of the improvements, they were charged to "Public Improvements" account on the books of the Commonwealth.

No. 13.

D-1
Page 12

IMPROVEMENTS CAPITOL SQUARE, $12,278.47.

The items making up this total are as follows:

From General Appropriation:

1825—For guard house	$ 2,700.00
1834—For "graduation" of the grounds about the Capitol, etc.	4,127.69
1833—For water system in Capitol and Governor's house	2,285.70
1851—New gas system	1,024.14
1851— do	660.94
1855—Purchase of lot adjoining Square—Act of April 3rd, 1848	1,280.00
Total	$12,278.47

D-1
Page 18

No. 15.

PENITENTIARY.

An Act of March 9th, 1833, page 18, Chapter 19, authorized an appropriation, not to exceed $7,000.00, for the erection of a hospital, buildings and sheds for the preservation of timber and manufactured articles, and if necessary to enlarge a part of the outer walls to take them within the enclosure.

An Act of March 11th, 1834, page 6, Chapter 2, authorized an appropriation of $4,500.00 for completing the improvements at the Penitentiary.

Payments were made as follows:

Year	1833	$ 787.44	
"	1834	8,169.43	
"	"	150.00	
"	1835	37.80	
"	"	150.73	
"	"	41.58	
			$ 9,346.98

An Act of March 12th, 1835, page 5, Chapter 2, authorized payment of $3,000.00 to Charles L. Winfield for lots condemned to obtain supply of water for use of the Penitentiary. Payment was made in 1837 ..... 3,000.00

A general appropriation Act of March 5th, 1835, authorized payment of $1,600.50 for iron pipes for conducting water to the Penitentiary. Payment was made in 1840 ..... 1,600.50

Total $13,947.48

No. 17.

D-1
Page 14

MEDICAL COLLEGE OF VIRGINIA, $25,000.00

This amount was paid under an Act of March 1st, 1860, page 104, Chapter 8, as follows:

"Act appropriating $30,000.00 to the Medical College of Virginia for enlarging the hospital or infirmary, for extending the College buildings, and for improvement and extension of the College museum."

The Medical College of Virginia succeeded the old Richmond Medical College, and was incorporated in 1860 under the above style.

D-1
Page 15

No. 19.

LUNATIC HOSPITALS.

EASTERN ASYLUM, WILLIASMBURG.....$133,280.19
WESTERN ASYLUM, STAUNTON..... 211,015.38

$344,295.57

EASTERN ASYLUM AT WILLIAMSBURG, ESTABLISHED UNDER ACT OF JANUARY 1st, 1787:

An Act of March 5th, 1824, page 93, Chapter 90, authorized the Directors of the Hospital to contract for the erection of an additional brick building, containing convalescent apartment for females, not to exceed $5,000.

Payments were made as follows:

Year	1824	$ 2,500.00
"	1825	2,500.00
		$5,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $6,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1833 ..... 6,000.00

An Act of March 12th, 1834, page 27 Chapter 19, authorized the Directors of the Hospital to draw upon the Treasury for money to finish their buildings authorized by the Act of March 1st, 1833, the amount not to exceed $9,000. Payment was made in 1834..... 9,000.00

An Act of March 12th, 1835, page 17, Chapter 17, appropriated $2,660.00 necessary for completion of buildings. Payment was made in 1835 ..... 2,660.00

An Act of March 31st, 1837, page 18, Chapter 19, appropriated $1,000 for purchase of land near hospital, a neat 2-horse carriage and a pair of horses, and such other articles as recommended. Payment was made in 1837 ..... 1,000.00

An Act covering general appropriations for the year 1837 authorized payment of an amount of $658.88 for buildings. Payment was made in 1837..... 658.88

An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000 for an additional building to accommodate an additional number of lunatics. Payment was made in 1839... 12,000.00

An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of amount not to exceed $5,000 for enclosures and buildings. Payment was made in 1839 ..... 5,000.00

Carried forward $41,318.88

D-1
Page 16

Brought forward		$41,318.33
An Act of March 25th, 1842, page 16, Chapter 19, authorized payment of an amount not to exceed $12,000 for an addition to the asylum, to be paid in the following manner—viz: $6,000 when the contract is ratified and the bond duly executed, remaining $6,000 on completion of building, provided same shall not be less than twelve months after first payment is drawn.		
Payments were made as follows:		
Year 1842	$ 6,000.00	
" 1844	4,000.00	
		10,000.00
An Act of February 12th, 1844, page 17, Chapter 12, authorized payment of $2,000 for the erection of an additional building. Payment was made in 1844....		2,000.00
An Act of February 14th, 1844, page 16, Chapter 11, authorized payment of $5,000.00 for remodeling and repairing the body of the old building. Payment was made in 1844		5,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount not exceeding $25,000 for additional buildings, to be paid in the following manner—viz: $5,000 on ratification of contract; $5,000 on July 1st, 1848; $5,000 on January 1st, 1849; $5,000 on July 1st, 1849, and $5,000 on January 1st, 1850. Payments were made accordingly		25,000.00
An Act of January 13th, 1849, page 15, Chapter 13, authorized payment of $6,266 for furniture for the additional building, and for such clothing as might be necessary for the additional number of patients to be admitted, and to pay the excess of the price of the buildings contracted for over the appropriation. Payment was made in 1849.....		6,266.00
An Act of January 22nd, 1850, page 16, Chapter 17, authorized payment of an amount of $11,500 for arrears on buildings, and furnishing water and additional accommodation for free colored persons at the Asylum, also to purchase furniture for the new building. Payment was made in 1850.....		11,500.00
An Act of January 21st, 1853, page 126, Chapter 144, authorized payment of an amount of $7,000 for repairing and rebuilding buildings, etc., as follows: $661 for purchase of the "Six Chimney" lot; $1,839 on ratification of contract and execution of bond required; $2,500 after the work shall have been half completed, and $2,000 on completion of the contract hereby authorized.		
Payments were made as follows:		
Year 1853	$ 2,500.00	
" 1854	4,500.00	
		7,000.00
Carried forward		$103,084.33

D-1
Page 17

Brought forward	$108,084.88
An Act of March 1st, 1854, page 29, Chapter 39, authorized payment of an amount of $17,750 for erecting and repairing buildings and enclosures, for purchasing a lot of land, for the use of the Asylum, for improving its grounds, for providing furniture and other conveniences for the same, $11,750.00, and for lighting the institution with gas, $6,000.00.	
Payments were made as follows:	
Year 1854 ..... $ 5,750.00	
" 1855 ..... 6,000.00	
" 1856 ..... 6,000.00	
———	17,750.00
An Act of March 18th, 1856, page 24, Chapter 17, authorized payment of $7,500 for purchase of certain sections of streets penetrating the lands adjacent thereto for the use of the Asylum. Payment was made in 1856	7,500.00
	$133,334.88
Less—Credit—Building Account	54.69
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account	$133,280.19

D-1
Page 18

WESTERN ASYLUM AT STAUNTON, ESTABLISHED UNDER ACT OF JANUARY 22nd, 1825.

This Asylum was established under an Act of January 22nd, 1825, page 30, Chapter 35, authorizing directors to purchase a piece or parcel of land, not exceeding four acres, and contract for the erection thereon of a commodious house or houses, for the accommodation of persons of unsound mind. Provided that the whole expense shall not exceed $10,000.00.

Payments were made as follows:

Year 1825	$ 5,000.00	
" 1826	5,000.00	
		$10,000.00

An Act of February 24th, 1827, page 8, Chapter 4, authorized payment of $12,000.00 toward the completion of the Asylum, to be paid by installments as the work progressed.

Payments were made as follows:

Year 1827	$6,000.00	
" 1827	6,000.00	
		12,000.00

An Act of February 17th, 1830, page 9, Chapter 6, authorized payment of $5,000.00 for enclosing buildings of the Asylum and the lot with a suitable wall of stone or brick. Payment was made in 1830..... 5,000.00

Cost of buildings not claimed by Plaintiff as Ordinary Expenses. (See page 22)..... $ 27,000.00

An Act of March 1st, 1833, page 22, Chapter 29, authorizing payment of an amount not to exceed $6,000.00 for the extension of the buildings of the institution so as to make same fit for the reception and accommodation of an additional number of lunatics. That the plan and dimensions of said building shall be agreed upon and prescribed by the directors and shall contain no more than forty cells, or apartments. Payment was made in 1833..... 6,000.00

Carried forward $33,000.00

D-1
Page 19

Brought forward	$ 33,000.00
An Act of March 1st, 1833, page 22, Chapter 29, authorized payment of an amount not to exceed $1,000.00 to contract for conducting an ample supply of good spring water to the Asylum in iron pipes without the use of forcing pump or other machinery. Payment was made in 1833	1,000.00
An Act of March 12th, 1834, page 27, Chapter 19, authorized appropriations as might be necessary to defray expenses of the additional buildings authorized by an Act of March 1st, 1833. Provided the whole expense shall not exceed $9,000.00 for each hospital over and above the amount already appropriated to these objects by said Act of March 1st, 1833. Payment was made in 1834	9,000.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a sum of money in addition to the sum appropriated by Act of March 1st, 1833, for conducting an ample supply of good spring water to the said Asylum in iron pipes, the additional sum not to exceed $1,200.00. Payment was made in 1835	1,200.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of a further sum not to exceed $1,500.00 in addition to amounts heretofore appropriated by Acts of March 1st, 1833, and March 12th, 1834, necessary for the completion of the additional buildings. Payment was made in 1835	1,500.00
An Act of March 12th, 1835, page 18, Chapter 17, authorized payment of an amount of $1,500.00 for completing the graduation and building partition walls for the male and female wards. Payment was made in 1835	1,500.00
An Act of March 22nd, 1836, page 9, Chapter 8, authorized payment of an amount not to exceed $6,000.00, in addition to amounts heretofore appropriated, for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the Act of March 12th, 1835. Payment was made in 1836	6,000.00
Carried forward	$ 53,200.00

D-1
Page 20

Brought forward	$ 53,200.00
An Act of March 31st, 1837, page 18, Chapter 19, authorized payment of an amount not to exceed $1,000.00 for the purchase of land near hospital, a neat two-horse carriage and a pair of horses, and such other articles as are recommended in the report of the physician of the Western Asylum, and calculated to aid in the restoration of patients confined in a lunatic hospital. Payment was made in 1837	1,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $5,000.00 for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as were recommended by the report of the physician or directors. Payment was made in 1838	5,000.00
An Act of April 3rd, 1838, page 34, Chapter 21, authorized payment of an amount not to exceed $12,000.00 for the extension of buildings so as to make them fit for the accommodation of an additional number of lunatics. Payment was made in 1838.....	12,000.00
An Act of April 10th, 1839, page 14, Chapter 17, authorized payment of an amount not to exceed $5,000.00, in addition to sums heretofore appropriated, for an ample supply of water. Payment was made in 1839	5,000.00
An Act of March 8th, 1842, page 16, Chapter 18, authorized that an amount of $9,060.44 be appropriated to discharge in full, including any claim for interest, the debt due from the Commonwealth to the workmen for completing the additional building to the Asylum. Payment was made in 1842.....	9,060.44
An Act of March 25th, 1842, page 16, Chapter 18, authorized payment of an amount not exceeding $24,000.00 out of the Treasury of the Commonwealth for entire completion of the additional buildings thereby authorized, as follows: $8,000 on the ratification of the contract and execution of the bond required; $8.000 in twelve months thereafter, and remaining $8,000 on the completion of the buildings, provided the same shall not be in less than twelve months from the last payment.	
Payments were made as follows:	
Year 1842 ..... $ 8,000.00	
" 1843 ..... 8,000.00	
" 1844 ..... 8,000.00	
	24,000.00
Carried forward	109,260.44

Brought forward		$109,260.44
An Act of February 12th, 1844, page 16, Chapter 10, authorized payment of $8,000.00 for furnishing the new addition to the Asylum, and to the support and maintenance of said Asylum. Payment of $3,000.00 was made in 1844		3,000.00
An Act of March 4th, 1846, page 19, Chapter 17, authorized payment of $4,000.00 for additional purchase of land. Payment was made in 1846.....		4,000.00
An Act of January 17th, 1848, page 16, Chapter 12, authorized payment of an amount of $36,000.00 for the completion of additional buildings, as follows: $7,000.00 on the ratification of contract and execution of bond required; $7,000.00 on July 1st, 1848; $7,000.00 on January 1st, 1849; $7,000.00 on July 1st, 1849, and $8,000.00 on January 1st, 1850; provided said buildings shall be completed on the day last aforesaid; if not then, upon the completion thereof.		
Payments were made as follows:		
Year 1848	$ 7,000.00	
" 1849	21,000.00	
" 1850	8,000.00	
		36,000.00
An Act of January 13th, 1849, page 14, Chapter 13, authorized payment of an amount not exceeding $8,500.00 for the puurchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Asylum, and for such clothing as may be necessary for the additonal number of patients to be admitted into said Asylum.		
Payments were made as follows:		
Year 1849	$ 5,000.00	
" 1850	3,500.00	
		8,500.00
An Act of January 19th, 1850, page 15, Chapter 16, authorized payment of $14,500.00 for the purpose of erecting a plain and substantial building, to contain a kitchen, bakery, pantry, store rooms, dining room, chapel, clothes rooms, medicine and library rooms, and other rooms rendered necessary by the great enlargement of said Asylum by previous Acts of the General Assembly.		
Payments to be made as follows: $7,250.00 July 1st, 1850, and $7,250.00 January 1st, 1851, same being sufficient to complete entirely, in the opinion of the directors, the necessary out-buildings in conformity with the present enlarged plan of said Asylum.		
Payments were made as follows:		
Year 1850	$ 7,250.00	
" 1851	7,250.00	
		14,500.00
An Act of February 25th, 1852, page 30, Chapter 36, authorized payment of $5,000.00 for constructing fixtures and apparatus for lighting with gas. Payment was made in 1852		5,000.00
Carried forward		$180,260.44

D-1
Page 22

Brought forward		$180,260.44
An Act of March 1st, 1854, page 29, Chapter 40, authorized payment of an amount of $34,188.00 to heat the buildings by steam, to erect covered connections and verandas, and to enclose the grounds of the said Asylum, as follows: $15,000.00 for heating by steam, $9,150.00 for erection of covered connections and verandas, $10,038.00 for enclosing the grounds; one-half to be paid during the present fiscal year and the remaining half the next succeeding fiscal year.		
Payments were made as follows:		
Year 1854	$ 7,500.00	
" 1855	7,500.00	
" "	5,000.00	
" 1856	1,800.00	
" "	2,900.00	
" "	5,038.00	
" 1857	5,350.00	
		34,188.00
An Act of March 18th, 1856, page 23, Chapter 17, authorized appropriation of $4,185.82 to pay deficit on steam account of said Asylum. Payment of $1,000.00 was made in 1857		1,000.00
An Act of April 7th, 1858, page 12, Chapter 14, authorized appropriation of $3,685.82 to pay balance of deficit on steam account. Payment of $3,685.00 was made in 1858		3,685.00
An Act of March 19th, 1858, page 116, Chapter 166, authorized appropriation of $10,000.00 to procure a supply of water for the Asylum.		
Payments were made as follows:		
Year 1858	$ 2,500.00	
" 1859	7,500.00	
		10,000.00
An Act of March 17th, 1860, page 81, Chapter 5, authorized appropriation of $13,000.00 for erection of laundry. Payment was made in 1860		12,931.99
Amount for support in 1835		7,456.01
		$249,515.38
Less:		
Buildings. (See page 18.)	$27,000.00	
Amounts for furniture already included by defendant:		
Under Act of February 12th, 1844. $ 3,000.00		
Under Act of January 13th, 1849. 8,500.00	11,500.00	
		38,500.00
Net amount claimed by plaintiff as an addition to defendant's ordinary expenses, on this account.....		$211,015.38

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by
THOMAS HOOD DEWEY
Certified Public Accountant
30 Church Street
New York

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

LITERARY FUND

DEFENDANT'S EXHIBIT D-2

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant,

30 Church Street,

New York.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE STATE OF WEST VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc	$ 58,959.46
Escheats, less refunds and expenses, ...	4,603.57
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	49,726.61
Sales of runaway slaves and free negroes, less refunds, ...	2,005.82
Total, ...	$114,395.46

STATEMENT "B".

Schedule No. 1.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

MONEYS RECEIVED FROM COUNTIES NOW CONSTITUTING THE COMMONWEALTH OF VIRGINIA, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Fines, Forfeitures and Penalties, less refunds, etc., ...	$306,856.98
Escheats, less refunds and expenses, ...	51,460.55
Lands—Redemption of and sales of delinquent and forfeited, less refunds and expenses, ...	3,996.98
Sales of runaway slaves and free negroes, less refunds, ...	14,514.40
(1) Bristoe Estate:—	
Sale of lots in Prince William County, ...	17,289.18
Net income, ...	7,914.05
Total, ...	$401,973.14

(1) The books of original entry and published reports do not record the origin of the Bristoe estate. It is presumed to have been the property of Robert Bristoe, a British subject, which escheated to the Commonwealth.

STATEMENT "B".

Schedule No. 2.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

INCOME FROM INVESTMENTS AND LOANS, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Dividends on bank stock:—		
Bank of Virginia,		$ 424,209.83
Bank of the Valley,		12,373.00
Farmers' Bank of Virginia,		272,681.75
Northwestern Bank of Virginia,		89,500.00
Fairmont Bank,		2,000.00
Total,		$ 800,764.58
Dividends on James River Company stock, subsequent to dividend of January 1, 1835, received from the James River and Kanawha Company,		155,291.08
Dividends on Richmond Academy stock,		440.88
Dividends on United States Bank stock,		11,350.00
Interest on loans to and dividends on stock of City of Richmond,		16,531.71
Interest on United States 6% stock,		3,200.40
Interest on bonds of the Valley Turnpike Company, guaranteed by the State,		2,090.00
Interest on loans:—		
Emory and Henry College,	$ 3,240.00	
Loans to individuals,	34,241.48	
Library fund,	8,477.76	
Medical College at Winchester,	1,974.93	
Richmond Medical College,	6,552.21	
University of Virginia,	7,200.00	
Washington College,	8,340.00	
Total,		$ 70,026.38
Total,		$1,059,695.03

STATEMENT "B".

Schedule No. 3.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

RECEIPTS FROM OTHER FUNDS OF THE COMMONWEALTH, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

COMMONWEALTH FUND:—		
Capitation Tax,	$ 751,481.63	
United States war claims,	77,216.28	
Interest,	926,919.28	
Total,		$1,755,617.19
INTERNAL IMPROVEMENT FUND:—		
Interest,	$1,303,535.77	
Dividends on James River Company stock, to and including dividend of January 1, 1835, and the July 1, 1860 dividend,	50,686.92	
Total,		$1,354,222.69
Total receipts from other funds,		$3,109,839.88

STATEMENT "B".

Schedule No. 4

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

SALARIES AND EXPENSES OF THE BOARD, FROM MARCH 19, 1823, TO JANUARY 1, 1861.

SALARIES:—		
Second Auditor,	$33,342.84	
Clerks,	35,504.51	
Special Accountant,	100.00	
President,	2,326.81	
Directors,	4,556.50	
Messenger,	1,748.27	
Tax on above salaries	251.31	
Total,		$77,830.14
EXPENSES:—		
Advertising,	$ 123.13	
Legal expenses,	189.55	
Printing,	4,348.89	
General,	2,830.64	
Total,		$ 7,492.31
Total salaries and Expenses,		$85,322.45

STATEMENT "B".

Schedule No. 5.

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

Cash in Fund, March 19, 1823, per Statement "A",			$ 94,021.42
RECEIPTS:—			
From the counties now constituting the State of West Virginia—Statement "B", Schedule No. 1..		$ 114,395.46	
From counties now constituting the Commonwealth of Virginia—Statement "B", Schedule No. 2,		401,972.14	
Dividends and interest on investments of the fund—Statement "B", Schedule No. 3,		1,059,695.03	
From other funds of the Commonwealth of Virginia:—			
Statement "B", Schedule No. 4,	$3,109,839.88		
Commonwealth Fund—Redemption of 7% Military Debt,	30,000.00		
Internal Improvement Fund. On account of balance due from J. Preston, State treasurer,	48.67	3,139,888.55	
United States war claims, less commissions paid		182,441.48	
Profit on United States stock		818.18	
Investments converted into cash:—			
United States 6% stock redeemed,	$ 13,000.00		
Farmers' Bank of Virginia stock sold,	9,762.00		
United States Bank stock,	78,350.00		
Loans to individuals, repaid to Literary Fund	80,000.00		
Loans to Washington College, repaid to Literary Fund	2,000.00	183,112.00	
Total Cash Receipts,			5,082,322.94
			$5,176,344.36

STATEMENT "C".

COMMONWEALTH OF VIRGINIA.

LITERARY FUND.

CASH RECEIPTS AND DISBURSEMENTS FROM MARCH 19, 1823, TO JANUARY 1, 1861.

DISBURSEMENTS:—

For account of the primary schools:—		
Paid from income from investments,	$2,400,331.11	
Paid from Capitation Tax,	655,908.73	$3,056,239.84
University of Virginia, (at Charlottesville),		613,000.00
Institute for the Deaf, Dumb and Blind, (at Staunton),		40,821.63
Virginia Military Institute—support,		28,500.00
Margaret Academy, (Accomac County),		1,500.00
Salaries and Expenses of the Board—Statement "B," Schedule No. 5,		35,332.45
Premium paid on City of Richmond stock,		420.00
Investments in stocks, bonds, etc., at cost:—		
Farmers' Bank of Virginia stock,	$ 2,575.00	
Virginia revolutionary 6% bonds,	3,074.77	
James River Company stock,	44,855.00	
Bank of Virginia stock,	18,449.12	
University of Virginia, loan No. 5,	40,000.00	
" " " loans No. 6 and No. 7,	20,000.00	
Virginia Internal Improvement 5% bonds,	155,750.00	
" " " " 6% bonds,	803,395.33	
James River Company bonds, issued under act passed February 17, 1820,	15,960.00	
Richmond Academy stock,	400.00	
Northwestern Bank of Virginia stock,	50,000.00	
Bank of Valley stock,	10,134.00	
Loan to Emory and Henry College,	18,000.00	
The Faculty of the medical department of the Hampden-Sidney College, at Richmond; amount invested in land and buildings,	25,000.00	
Paid into the Commonwealth Fund in accordance with act passed March 18, 1856,	50,562.55	
Davis's Book on Criminal Law, copyright purchased,	12,000.00	
Fairmont Bank stock,	50,000.00	
Medical College in the Valley of Virginia; investment in property at Winchester,	6,400.00	1,326,555.77
Total Cash Disbursements,		$5,152,359.69
Cash in Fund, January 1, 1861, per Statement "A",		23,985.14
		$5,176,344.83

The foregoing Statements and Schedules on pages 1 to 7, inclusive, certified correct:

CLIFFORD E. SCOVILLE. THOMAS BIRD DIXCY,
For the Defendant.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 7 inclusive, and find them correct, but that all items contained herein affecting this accounting are included in other Exhibits.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

STATEMENT "C".

(Concluded.)

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT E-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

E-1
Page 1

COMMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT E-1.

SUMMARY.

	Virginia.	West Virginia.
Assessed Valuation of Real Property as per latest obtainable Assessment Rolls, prior to June 20th, 1863	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863, (estimated in part)	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves as per latest obtainable Assessment Rolls, prior to June 20th, 1863	152,844,637.59	24,739,894.21
Total Amount of Income on which tax was levied as per latest obtainable Assessment Rolls, prior to June 20th, 1863	11,108,300.13	299.257.45
	$710,889,989.03	$113,142,996.70

The assessed valuation of Slaves for 1860 and 1861, not appearing on the original Assessment Rolls, it is agreed by the parties to this cause that in those counties for which no returns are found for 1862 and 1863, the number of slaves reported for 1860 and 1861 shall be taken and their value estimated on the basis of the average value of all Slaves in counties for which both number and value is reported in 1862 and 1863, making a separate calculation for each State.

Where number of slaves but no assessed valuation is reported in 1862 and 1863 the same average value as above is used.

We hereby certify that the within tables, consisting of pages 5 to 8 following, of which the above is a Summary, are taken from the original Assessment Rolls of the Commonwealth of Virginia, so far as available and from Auditors reports in other cases; that the said Summary is composed of items taken from the latest obtainable authentic sources of information prior to June 20th, 1863, and that the method adopted as above, of valuing the Slaves in those counties for which no value is shown in 1860 and 1861 is fair to both parties.

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed Summary.....	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

Summary.

Plaintiff's Fair Estimated Valuation of Property, Real and Personal—		
In Virginia Counties, as above.....	$186,253,889.55	68.8636%
In West Virginia Counties, per contra.....	84,213,900.15	31.1364%
Total	$270,467,789.70	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 31.1364% as above		$11,767,756.77

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above named counties.	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these counties is 25% of this assessed valuation..		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		13,803,732.21	
(As per agreed summary....	$24,739,894.21)		16,537,772.71
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, in West Virginia Counties.....			$84,213,900.15

FAIR ESTIMATED VALUATION—VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation of Real Property is 50% of this assessed valuation		$148,042,730.15
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment, as per agreed summary	152,844,637.59	
Plaintiff claims that a fair estimated valuation of Personal Property is 25% of this assessed valuation		38,211,159.40
		$186,253,889.55

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal:			
In Virginia Counties, as above	$186,253,889.55	70.2146%	
In West Virginia Counties, per contra	79,009,893.11	29.7854%	
Total	$265,263,782.66	100 %	

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$ 37,794,211.18
Of which Plaintiff claims there is chargeable to West Virginia 29.7854% as above	$ 11,257,156.98

Certified Correct:

ARTHUR G. POTTER,

PRICE, WATERHOUSE & CO.,

For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations :

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY.
For the Defendant.

FAIR ESTIMATED VALUATION—WEST VIRGINIA.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces ..... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimate valuation of Real Property in these Counties is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these Counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property excluding Slaves and Income at latest obtainable assessment in above-named counties	$10,936,162.00		
Plaintiff claims that a fair estimated valuation of Personal Property in these Counties is 25% of this assessed valuation		$ 2,734,040.50	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment		8,599,725.17	
(As per agreed summary	$24,739,894.21)		11,333,765.67
Plaintiff's Fair Estimated Valuation of Property, Real and Personal in West Virginia Counties applying greenback value to Personal Property assessments			$79,009,893.11

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S ALTERNATIVE METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the Fair Estimated Valuation of the property, Real and Personal, by Counties of the State of Virginia.

Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are included as Personal Property, notwithstanding the fact that they had been emancipated by President Lincoln's Proclamation.

AT JUNE 20TH, 1863.

Fair Estimated Valuation—Virginia.

Total Valuation of Real Property at latest obtainable assessment as per agreed summary..	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.....		$148,042,730.15
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary.	403,696,228.59	
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
		$248,966,787.30

Summary.

Plaintiff's Fair Estimated Valuation of Property Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	74.4085%
In West Virginia, per contra.....	85,627,548.40	25.5915%
	$334,594,335.70	100 %

Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1	$37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 25.5915% as above..... ..	$ 9,672,105.55

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:
CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Fair Estimated Valuation—West Virginia.

Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces... Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.	$29,546,249.20		
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation		52,903,002.84	
(As per agreed summary....	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that the assessed valuation is a fair estimated valuation		13,803,732.21	
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia counties..	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		451,449.00	
(As per agreed summary..	$30,394,487.21)		17,951,420.96
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exception noted above.			$85,627,548.40

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Plaintiff's Alternative Method of Determining
Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia on the Basis of the Fair Estimated Valuation of the Property, Real and Personal, by Counties of the State of Virginia.

At June 20th, 1863.
Alternative Estimate of the Valuation of Real and Personal Property, if Slaves are Included as Personal Property, Notwithstanding the Fact That They Had Been Emancipated by President Lincoln's Proclamation; and also if Personal Property Assessment is Reduced From the Alleged Greenback Basis to Gold Basis at Rate Applying on February 1st, 1863, viz., 62.3% (as on Page 2a of This Exhibit.)

FAIR ESTIMATED VALUATION—VIRGINIA			FAIR ESTIMATED VALUATION—WEST VIRGINIA.		
Total Valuation of Real Property at latest obtainable assessment as per agreed Summary	$296,085,460.31		Total Valuation of Real Property at latest obtainable assessment in the following Counties which were for the most part dominated by Confederate Forces	$29,546,249.20	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15			
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment, as per agreed summary	403,696,228.59		Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas.		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		100,924,057.15			
		$248,966,787.30	Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.		$14,773,124.60
SUMMARY					
Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:			Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
In Virginia, as above	$248,966,787.30	75.5841%			
In West Virginia, per contra	80,423,541.36	24.4159%			
	$329,390,328.66	100 %	Plaintiff claims assessed valuation in these counties is a fair estimated valuation.		52,903,002.84
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18	(As per agreed summary	$82,449,252.04)	$67,676,127.44
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81	Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00	
			Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
			Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
			Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment		

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXIT.

SUMMARY

Plaintiff's Fair Estimated Valuation of Property, Real and Personal, with exceptions noted above:		
In Virginia, as above	$248,966,787.30	75.5841%
In West Virginia, per contra	80,423,541.36	24.4159%
	$329,390,328.66	100 %
Total Ordinary Expenses of Government claimed by Plaintiff from March 19th, 1823, to December 31st, 1860, as per Joint Exhibit D-1		$ 37,794,211.18
Of which Plaintiff claims, with exceptions noted above, there is chargeable to West Virginia 24.4159% as above		$ 9,227,796.81

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff

Defendant agrees that the figures and calculations in this Exhibit are correct but objects to the method adopted in arriving at a Fair Estimated Valuation, and objects to the division so arrived at as well as to the amount of Ordinary Expenses to be divided.

Certified Correct as to figures and calculations:

CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

		$248,966,787.30	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation.			$14,773,124.60
Total Valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Plaintiff claims assessed valuation in these counties is a fair estimated valuation.			52,903,002.84
(As per agreed summary	$82,449,252.04)		$67,676,127.44
Total Valuation of Personal Property, including Slaves but excluding Income, at latest obtainable assessment in above-named counties	$14,784,959.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation			$ 3,696,239.75
Total Valuation of Personal Property, excluding Slaves and Income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Plaintiff claims that for the purposes of this Exhibit, viz., to show the alleged greenback assessment value reduced to a gold basis, a fair estimated valuation is 62.3% of the assessment, which is the average ratio of gold to greenbacks for February 1863, the date of the assessment			8,599,725.17
Total Valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00		
Plaintiff claims that for the purpose of this Exhibit a fair estimated valuation is 25% of this assessed valuation			451,449.00
(As per agreed summary	$30,394,487.21)		12,747,413.92
Plaintiff's fair estimated valuation of property, real and personal, in West Virginia counties with exceptions noted above			$80,423,541.36

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

DEFENDANT'S METHOD OF DETERMINING

Such proportion of the Ordinary Expenses of the Government of Virginia as was properly assignable to the Counties which were created into the State of West Virginia, on the basis of the Fair Estimated valuations of the Property, Real and Personal, by Counties of the State of Virginia.

AT JUNE 20TH, 1863.

	Virginia.	West Virginia.
Assessed Valuation of Real Property at latest obtainable assessment, as per agreed Summary	$296,085,460.31	$ 82,449,252.04
Assessed Valuation of Slaves at latest obtainable assessment, as per agreed Summary	250,851,591.00	5,654,593.00
Assessed Valuation of Personal Property other than Slaves, at latest obtainable assessment, as per agreed Summary	152,844,637.59	24,739,894.21
Total amount of Income on which tax was levied, at latest obtainable assessment, as per agreed Summary	11,108,300.13	299,257.45
Total	$710,889,989.03	$113,142,996.70

Defendant claims that the assessed valuation here shown is a Fair Estimated Valuation to be used as the basis for the division of the Ordinary Expenses of Government, viz.:

Virginia	$710,889,989.03	86.2696%
West Virginia	113,142,996.70	13.7304%
	$824,032,985.73	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th, 1823, to December 31st, 1860, amount to $18,207,684.29

as shown in Joint Exhibit D-1, and that the amount to be charged to West Virginia is 13.7304% as above..... $ 2,499,987.88

Certified Correct:

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being used as a FAIR ESTIMATE of the valuation; objects to the inclusion of income, on which tax is levied, as Personal Property; objects to Slaves being considered Personal Property; objects to the use of the percentages so obtained and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified correct as to figures and calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

County.	1860				1861				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			Num
VIRGINIA:									
Accomac	2,645		$ 1,353,505.00	$ 7,693.00	2,739		$ 1,354,953.60	$ 3,822.00	
Albemarle	.....		.....	.....	7,449		2,626,742.00	116,956.00	12
Alexandria	709		816,186.00	161,521.45	709		816,186.00	160,900.45	
Alleghany	589		355,465.00	27,510.00	522		380,427.00	16,986.00	
Amelia	4,269		979,016.00	35,738.00	4,195		1,017,215.00	14,840.00	7
Amherst	3,211		761,320.00	9,539.00	3,405		882,485.00	7,080.00	5
Appomattox	2,444		661,245.00	14,315.00	2,526		711,061.00	6,340.00	4
Augusta	2,545		3,052,439.00	12,310.00	2,587		3,133,015.00	10,015.00	4
Staunton	.....		.....	.....	441		435,404.08	43,366.00	
Bath	475		425,836.00	2,875.00	517		384,645.00	.....	
Bedford	5,303		2,115,884.00	9,592.00	5,660		2,011,160.00	8,422.00	9
Bland	.....		.....	.....	113		154,400.00	.....	
Botetourt	1,728		1,044,030.00	20,093.43	1,671		1,001,191.00	13,313.12	1
Brunswick	5,209		1,412,920.00	15,283.00	5,381		1,442,560.00	7,754.00	9
Buchanan	14		81,548.00	.....	13		84,904.00	.....	
Buckingham	4,827		933,423.00	21,310.00	4,866		838,847.00	12,114.00	8
Campbell	4,932		1,452,167.00	150,927.00	4,981		1,571,830.00	115,157.00	8
Lynchburg	1,822		984,599.00	242,409.00	1,611		1,078,978.00	148,148.00	3
Caroline	6,029		1,460,978.00	19,540.00	6,074		1,490,234.00	1,744.00	10
Carroll	65		156,233.87	.....	104		290,028.93	300.00	
Charles City	1,783		405,592.00	13,858.00	1,877		434,720.00	7,301.00	2
Charlotte	5,489		1,562,782.00	39,456.00	5,560		1,509,757.00	17,080.00	9
Chesterfield	.....		.....	.....	.....		.....	.....	
Clarke	1,834		748,762.00	4,018.00	1,798		720,928.00	2,190.00	2
Craig	215		262,376.00	.....	225		253,431.00	.....	
Culpeper	3,245		928,245.00	18,561.00	3,259		1,046,014.00	7,923.00	4
Cumberland	3,899		937,357.00	37,125.00	3,834		808,050.00	6,254.00	6
Dinwiddie	3,918		814,161.00	13,665.00	4,010		810,776.00	6,100.00	8
Petersburg	3,538		2,520,019.00	626,747.00	3,453		2,754,673.00	199,288.00	4
Elizabeth City	.....		.....	.....	1,196		334,069.00	2,680.00	
Essex	3,921		1,062,457.62	44,483.85	3,873		1,005,861.30	14,278.00	8
Fairfax	1,607		804,195.00	30,343.00	1,611		899,020.00	13,656.00	
Fauquier	5,025		2,578,876.00	7,621.00	5,016		2,544,018.00	6,335.00	
Floyd	224		305,154.00	3,721.00	244		271,282.00	.....	
Fluvanna	2,877		801,182.00	12,121.00	2,883		753,155.00	5,200.00	4
Franklin	3,330		1,237,755.00	2,327.00	3,394		1,137,392.00	44.00	5
Frederick	844		1,096,876.00	8,092.00	824		1,666,656.00	1,036.00	
Winchester	330		669,739.00	40,754.80	342		1,060,637.00	23,972.80	
Giles	444		390,735.00	1,925.00	438		373,820.00	2,000.00	
Gloucester	3,038		723,846.00	5,675.00	3,053		653,340.00	3,819.00	
Carried forward	92,377		$35,896,904.49	$1,661,149.53	102,454		$40,143,835.31	$1,006,414.37	14

1863				Total of Latest Assessment.					County.
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
2,263	.....	$ 971,261.00	$ 1,020.00	2,263	$ *1,135,121.00	$ 971,261.00	$ 1,020.00	$ 3,006,019.01	Accomac
12,916	$ 7,647,305.00	4,212,185.00	201,569.00	12,916	7,647,305.00	4,212,185.00	201,569.00	7,521,011.47	Albemarle
.....	.....	371,202.45	5,250.00	.....	.....	371,202.45	5,250.00	4,246,781.48	Alexandria
677	484,935.00	617,220.00	3,190.00	677	484,935.00	617,220.00	3,190.00	886,218.89	Alleghany
7,538	5,840,450.00	1,524,152.00	17,997.00	7,538	5,840,450.00	1,524,152.00	17,997.00	2,227,607.77	Amelia
6,368	4,839,000.00	1,798,230.00	6,091.19	6,368	4,839,000.00	1,798,230.00	6,091.19	2,285,852.00	Amherst
4,446	3,350,375.00	1,216,929.00	13,334.00	4,446	3,350,375.00	1,216,929.00	13,334.00	1,517,274.47	Appomattox
4,515	3,930,430.00	6,078,024.00	73,864.50	4,515	3,930,430.00	6,078,024.00	73,864.50	10,447,385.19	Augusta
749	630,890.00	831,077.00	130,348.00	749	630,890.00	831,077.00	130,348.00	.....	Staunton
740	521,407.00	641,091.00	200.00	740	521,407.00	641,091.00	200.00	1,022,626.72	Bath
9,623	4,825,805.00	2,886,851.00	54,269.00	9,623	4,825,805.00	2,886,851.00	54,269.00	4,915,374.34	Bedford
252	163,850.00	435,115.00	.....	252	163,850.00	435,115.00	.....	677,408.17	Bland
2,671	1,966,055.00	1,681,013.00	8,327.00	2,671	1,966,055.00	1,681,013.00	8,327.00	3,093,896.88	Botetourt
9,479	6,819,700.00	1,847,050.00	11,849.00	9,479	6,819,700.00	1,847,050.00	11,849.00	1,571,475.99	Brunswick
33	17,500.00	142,252.00	.....	33	17,500.00	142,252.00	.....	145,260.55	Buchanan
7,096	5,062,000.00	1,346,710.00	13,585.00	7,096	5,062,000.00	1,346,710.00	13,585.00	2,419,172.74	Buckingham
8,524	6,336,915.00	3,022,783.00	89,508.00	8,524	6,336,915.00	3,022,783.00	89,508.00	6,072,524.78	Campbell
1,722	1,482,500.00	5,156,421.00	819,025.00	1,722	1,482,500.00	5,156,421.00	819,025.00	.....	Lynchburg
8,554	5,974,572.00	2,490,952.00	9,238.36	8,554	5,974,572.00	2,490,952.00	9,238.36	3,451,136.32	Caroline
280	143,990.00	426,303.00	.....	280	143,990.00	426,303.00	.....	827,284.23	Carroll
1,784	596,895.00	486,689.00	7,564.80	1,784	596,895.00	486,689.00	7,564.80	1,033,531.77	Charles City
9,589	6,596,820.00	2,020,267.00	21,019.00	9,589	6,596,820.00	2,020,267.00	21,019.00	3,393,480.56	Charlotte
7,671	5,722,220.00	1,760,777.00	27,337.00	7,671	5,722,220.00	1,760,777.00	27,337.00	3,944,786.00	Chesterfield
.....	.....	.....	.....	2,623	916,545.00	744,163.00	700.00	3,865,795.11	Clarke
447	275,775.00	429,280.00	2,000.00	447	275,775.00	429,280.00	2,000.00	870,973.94	Craig
3,253	1,902,550.00	1,476,177.50	34,919.00	3,253	1,902,550.00	1,476,177.50	34,919.00	3,271,412.76	Culpeper
6,537	4,605,600.00	1,184,638.00	.....	6,537	4,605,600.00	1,184,638.00	.....	2,127,944.91	Cumberland
6,515	4,400,087.00	1,011,982.00	4,800.00	6,515	4,400,087.00	1,011,982.00	4,800.00	2,427,991.10	Dinwiddie
4,203	4,219,950.00	6,177,730.00	2,176,281.00	4,203	4,219,950.00	6,177,730.00	2,176,281.00	6,604,014.00	Petersburg
....	.....	.....	.....	1,196	* 599,914.00	334,069.00	2,680.00	1,032,933.00	Elizabeth City
6,265	1,904,900.00	1,291,389.03	14,526.00	6,265	1,904,900.00	1,291,389.03	14,526.00	2,095,105.24	Essex
.....	.....	.....	.....	1,611	* 808,078.00	899,020.00	13,656.00	5,028,362.73	Fairfax
.....	.....	.....	.....	5,016	*2,516,026.00	2,544,018.00	6,335.00	9,250,346.87	Fauquier
493	372,300.00	744,784.00	6,478.00	493	372,300.00	744,784.00	6,478.00	871,642.70	Floyd
5,107	3,910,900.00	1,393,673.00	15,168.00	5,107	3,910,900.00	1,393,673.00	15,168.00	2,160,783.87	Fluvanna
6,262	4,230,100.00	1,754,029.00	500.00	6,262	4,230,100.00	1,754,029.00	500.00	2,506,642.31	Franklin
.....	.....	.....	.....	715	281,300.00	525,825.00	2,300.00	5,681,169.61	Frederick
.....	.....	.....	.....	428	180,900.00	1,045,582.00	16,848.00	.....	Winchester
651	290,025.00	511,210.00	700.00	651	290,025.00	511,210.00	700.00	1,030,201.85	Giles
.....	.....	.....	.....	3,053	*1,531,385.00	653,340.00	3,819.00	1,936,241.88	Gloucester
147,223	$99,065,801.00	$57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$64,685,463.98	$3,816,295.85	$115,467,671.21	

* This value is based on the average value of the total number of slaves in counties for which both number and value is shown in 1862 and 1863.

County.	1860				1861				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			
Brought forward.....	92,377	.....	$35,896,904.49	$1,661,149.53	102,454	.....	$40,143,865.31	$1,006,414.37	
Goochland	3,507	.....	882,985.00	25,975.00	.....	.....	.....	.....	
Grayson	280	.....	279,337.00	1,200.00	294	.....	320,568.00	200.00	
Greene	981	.....	371,965.00	1,535.00	997	.....	359,706.00	768.00	
Greensville	2,213	.....	438,850.00	450.00	2,280	.....	466,020.00	750.00	
Halifax	8,696	.....	2,636,968.00	77,631.00	8,818	.....	2,602,942.00	33,507.00	
Hanover	4,984	.....	1,408,020.00	30,737.00	5,115	.....	1,328,990.00	17,762.00	
Henrico	3,860	.....	1,425,038.00	144,932.00	4,494	.....	1,386,853.00	68,944.68	
Richmond	7,639	.....	4,073,365.00	605,795.43	6,474	.....	4,274,884.00	459,347.00	
Henry	2,678	.....	845,159.00	6,827.00	2,779	.....	813,485.00	2,860.00	
Highland	208	.....	314,790.00	1,200.00	219	.....	312,288.00	150.00	
Isle of Wight.....	1,040	.....	447,528.00	8,620.00	2,148	.....	867,977.00	11,968.00	
James City	1,141	.....	267,597.00	8,619.00	1,162	.....	287,899.00	2,712.00	
Williamsburg	405	.....	276,220.00	25,743.00	410	.....	269,541.00	9,997.00	
King and Queen.....	3,288	.....	912,999.00	4,532.00	3,406	.....	937,602.00	7,216.00	
King George	2,066	.....	473,874.00	9,022.00	1,984	.....	513,311.00	7,280.00	
King William	2,916	.....	423,670.00	6,970.00	3,248	.....	441,115.00	1,220.00	
Lancaster	1,605	.....	313,610.00	4,350.00	1,583	.....	306,475.00	3,055.00	
Lee	486	.....	699,153.00	2,320.00	481	.....	742,706.00	342.00	
Loudoun	3,063	.....	2,590,444.00	34,478.40	3,000	.....	3,207,617.00	21,171.40	
Louisa	5,429	.....	1,618,875.00	34,093.00	5,366	.....	1,663,795.00	17,013.00	
Lunenburg	4,163	.....	926,401.00	3,147.00	4,212	.....	861,074.00	3,904.00	
Madison	2,408	.....	1,156,079.00	9,462.56	2,373	.....	1,121,577.00	1,608.00	
Matthews	1,507	.....	327,884.00	2,650.00	1,479	.....	343,250.00	800.00	
Mecklenburg	7,392	.....	1,553,038.00	31,894.00	7,506	.....	1,642,462.00	28,225.00	
Middlesex	1,526	.....	324,513.00	7,812.00	1,550	.....	347,625.00	3,657.00	
Montgomery	1,141	.....	753,910.00	9,460.00	1,173	.....	780,915.00	3,890.00	
Nansemond	2,571	.....	1,005,005.00	17,804.00	2,677	.....	1,036,998.00	12,228.00	
Nelson	3,215	.....	569,377.00	3,160.00	3,158	.....	531,572.00	1,377.00	
New Kent	1,780	.....	320,945.00	5,706.20	1,808	.....	316,990.00	5,771.00	
Norfolk	2,887	.....	654,166.00	14,305.00	2,751	.....	619,528.00	8,441.28	
Norfolk City	1,997	.....	1,298,477.50	271,297.00	1,951	.....	1,258,780.00	164,856.00	
Portsmouth	736	.....	232,765.00	51,508.00	689	.....	248,455.00	57,939.00	
Northampton	.....	.....	.....	.....	2,250	.....	642,880.00	2,494.00	
Northumberland	1,733	.....	426,450.00	650.00	1,823	.....	417,340.00	.....	
Nottoway	3,856	.....	854,726.00	19,564.00	3,953	.....	859,740.00	14,602.00	
Orange	3,309	.....	779,770.00	10,469.00	3,486	.....	819,151.00	7,440.00	
Page	495	.....	867,587.00	6,224.00	483	.....	860,453.00	1,569.00	
Patrick	1,026	.....	527,418.00	4,659.00	1,024	.....	530,975.00	1,050.00	
Pittsylvania	7,417	.....	2,104,281.00	21,541.00	7,171	.....	1,990,008.00	7,840.00	
Danville	763	.....	268,746.00	31,451.00	573	.....	238,404.00	14,578.00	
Carried forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	

	1862				1863				Total	
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.	
	Number.	Value.			Number.	Value.			Number.	Value.
7	145,108	$ 49,682,101.00	$36,563,472.93	$ 682,319.66	147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00
.	5,768	2,165,145.00	815,925.00	15,192.00	5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00
0	551	187,550.00	396,525.00	1,200.00	579	417,525.00	789,990.00	300.00	579	417,525.00
0	1,838	545,525.00	374,200.00	.....	1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00
0	3,963	1,274,234.00	440,404.00	300.00	4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00
0	14,770	5,338,625.00	2,638,665.00	22,397.00	15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00
0	8,621	3,017,450.00	1,355,520.00	13,876.00	7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00
8	6,557	2,534,345.00	1,841,535.00	58,235.77	7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00
0	7,917	3,350,340.00	6,864,734.00	452,495.00	6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00
0	4,978	1,633,430.00	862,235.00	2,300.00	5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00
0	341	102,680.00	365,655.00	.....	279	77,450.00	405,433.00	40.00	279	77,450.00
0	1,643	601,750.00	466,225.00	7,626.00	.....	.....	.....	.....	1,643	601,750.00
0	.....	.....	.....	.....	.....	.....	.....	.....	1,162	* 582,859.00
0	.....	.....	.....	.....	.....	.....	.....	.....	410	* 205,656.00
0	5,882	1,592,590.00	941,935.00	8,765.00	5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00
0	2,999	1,123,260.00	560,735.00	5,849.00	.....	.....	.....	.....	2,999	1,123,260.00
0	5,029	1,526,300.00	487,950.00	1,050.00	4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00
0	2,340	710,670.00	297,175.00	.....	2,306	772,475.00	405,854.00	457.00	2,306	772,475.00
0	958	468,976.00	895,991.00	400.00	1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00
0	.....	.....	.....	.....	.....	.....	.....	.....	3,000	*1,504,800.00
0	9,169	3,217,660.00	1,790,134.00	22,388.00	8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00
0	7,219	2,636,663.00	959,409.00	1,945.00	7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00
0	4,235	1,322,375.00	1,199,813.00	1,608.00	3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00
0	2,110	599,090.00	318,030.00	800.00	.....	.....	.....	.....	2,110	599,090.00
0	12,481	3,818,238.00	1,552,399.00	12,672.00	13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00
0	2,546	652,119.00	338,778.00	618.00	2,450	644,320.00	425,137.00	288.00	2,450	644,320.00
0	2,132	879,400.00	888,875.00	4,400.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00
0	.....	.....	.....	.....	.....	.....	.....	.....	2,677	*1,342,783.00
0	5,356	1,306,830.00	520,321.00	1,662.00	5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00
0	2,958	892,670.00	405,200.00	.....	1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00
8	1,390	501,225.00	230,875.00	3,028.00	.....	.....	.....	.....	1,390	501,225.00
0	2,327	860,820.00	1,086,205.00	115,972.00	.....	.....	.....	.....	2,327	860,820.00
0	941	276,960.00	215,605.00	62,909.00	.....	.....	.....	.....	941	276,960.00
0	2,123	.....	582,199.00	1,920.00	1,870	.....	519,841.00	1,500.00	1,870	* 937,992.00
..	2,884	818,975.00	375,054.00	.....	2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00
0	6,342	2,373,533.00	860,331.00	12,210.00	6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00
0	5,873	1,767,080.00	932,497.00	9,236.00	5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00
0	944	355,960.00	932,654.00	695.00	725	280,435.00	1,275,110.00	8,240.00	725	280,435.00
0	1,872	663,395.00	578,840.00	.....	2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00
0	12,362	4,377,479.00	2,103,801.00	14,210.00	13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00
0	1,023	418,550.00	278,954.00	15,241.00	1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00
3	305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00

1863				Total of Latest Assessment.					County
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
147,223	$ 99,065,801.00	$ 57,939,446.98	$3,769,957.85	161,865	$107,035,070.00	$ 64,685,463.98	$3,816,295.85	$115,467,671.21	
5,664	3,513,700.00	1,255,630.00	10,656.00	5,664	3,513,700.00	1,255,630.00	10,656.00	2,698,185.52	Goochland
579	417,525.00	789,990.00	300.00	579	417,525.00	789,990.00	300.00	939,744.26	Grayson
1,785	845,785.00	539,725.00	2,000.00	1,785	845,785.00	539,725.00	2,000.00	961,860.60	Greene
4,029	2,936,075.00	753,273.00	.....	4,029	2,936,075.00	753,273.00	.....	768,704.12	Greensville
15,198	11,735,360.00	3,304,526.00	137,833.00	15,198	11,735,360.00	3,304,526.00	137,833.00	5,245,749.29	Halifax
7,893	5,185,600.00	1,977,545.00	16,994.00	7,893	5,185,600.00	1,977,545.00	16,994.00	3,243,892.30	Hanover
7,167	5,542,380.00	2,651,135.00	409,964.00	7,167	5,542,380.00	2,651,135.00	409,964.00	8,271,529.00	Henrico
6,648	7,154,365.00	7,336,275.00	3,803,636.64	6,648	7,154,365.00	7,336,275.00	3,803,636.64	19,662,313.00	Richmond
5,385	3,527,843.00	1,411,336.00	63,321.83	5,385	3,527,843.00	1,411,336.00	63,321.83	1,811,520.71	Henry
279	77,450.00	405,433.00	40.00	279	77,450.00	405,433.00	40.00	1,296,097.42	Highland
.....	.....	.....	.....	1,643	601,750.00	466,225.00	7,626.00	1,407,738.36	Isle of Wight
.....	.....	.....	.....	1,162	• 582,859.00	287,899.00	2,712.00	1,102,552.98	James City
.....	.....	.....	.....	410	• 205,656.00	269,541.00	9,997.00	.....	Williamsburg
5,746	2,616,895.00	1,242,571.00	11,936.00	5,746	2,616,895.00	1,242,571.00	11,936.00	1,764,398.74	King and Queen
.....	.....	.....	.....	2,999	1,123,260.00	560,735.00	5,849.00	1,544,464.85	King George
4,569	2,283,550.00	731,665.00	3,700.00	4,569	2,283,550.00	731,665.00	3,700.00	1,729,586.10	King William
2,306	772,475.00	405,854.00	457.00	2,306	772,475.00	405,854.00	457.00	981,261.00	Lancaster
1,121	784,712.00	1,140,423.00	.....	1,121	784,712.00	1,140,423.00	.....	1,633,215 73	Lee
.....	.....	.....	.....	3,000	•1,504,800.00	3,207,617.00	21,171.40	11,684,915 00	Loudoun
8,963	5,838,915.00	2,397,065.00	24,707.00	8,963	5,838,915.00	2,397,065.00	24,707.00	3,544,387 57	Louisa
7,366	5,234,275.00	1,210,225.00	2,782.00	7,366	5,234,275.00	1,210,225.00	2,782.00	1,598,421 72	Lunenburg
3,620	1,970,505.00	1,601,701.00	10,107.33	3,620	1,970,505.00	1,601,701.00	10,107.33	2,150,811 93	Madison
.....	.....	.....	.....	2,110	599,090.00	318,030.00	800.00	777,059 78	Matthews
13,399	7,824,030.00	2,748,784.00	100,206.50	13,399	7,824,030.00	2,748,784.00	100,206.50	3,530,539 97	Mecklenburg
2,450	644,320.00	425,137.00	288.00	2,450	644,320.00	425,137.00	288.00	870,729.64	Middlesex
2,150	1,691,530.00	1,526,377.00	23,280.00	2,150	1,691,530.00	1,526,377.00	23,280.00	2,729,449 75	Montgomery
.....	.....	.....	.....	2,677	•1,342,783.00	1,036,998.00	12,228.00	1,770,113.08	Nansemond
5,549	3,460,892.00	978,717.00	19,426.00	5,549	3,460,892.00	978,717.00	19,426.00	2,694,440.00	Nelson
1,852	1,115,725.00	519,072.00	.....	1,852	1,115,725.00	519,072.00	.....	926,208.29	New Kent
.....	.....	.....	.....	1,390	501,225.00	230,875.00	3,028.00	2,918,682.83	Norfolk
.....	.....	.....	.....	2,327	860,890.00	1,086,205.00	115,972.00	5,749,810.86	Norfolk City
.....	.....	.....	.....	941	276,960.00	215,605.00	62,909.00	2,090,080.00	Portsmouth
1,870	.....	519,841.00	1,500.00	1,870	• 937,992.00	519,841.00	1,500.00	1,397,328.00	Northampton
2,731	780,393.00	438,316.00	2,160.00	2,731	780,393.00	438,316.00	2,160.00	1,219,354.00	Northumberland
6,337	3,592,725.00	1,136,136.00	11,880.00	6,337	3,592,725.00	1,136,136.00	11,880.00	1,964,321.92	Nottoway.
5,483	3,043,025.00	1,557,107.00	41,813.00	5,483	3,043,025.00	1,557,107.00	41,813.00	2,805,006.00	Orange
725	280,435.00	1,275,110.00	8,240.00	725	280,435.00	1,275,110.00	8,240.00	2,140,857.54	Page
2,007	1,707,065.00	1,034,030.00	1,800.00	2,007	1,707,065.00	1,034,030.00	1,800.00	1,261,441.00	Patrick
13,818	8,757,754.00	3,097,599.00	171,200.00	13,818	8,757,754.00	3,097,599.00	171,200.00	4,789,153.21	Pittsylvania
1,162	977,000.00	867,949.50	1,007,359.28	1,162	977,000.00	867,949.50	1,007,359.28	770,158.00	Danville
295,074	$193,378,105.00	$103,217,994.48	$9,657,545.43	328,375	$209,884,569.00	$117,643,741.48	$9,946,175.83	$229,853,755.18	

County.	1860				1861				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			Numb
Brought forward.....	198,784	.....	$71,553,889.99	$3,218,943.12	208,802	.....	$76,715,816.31	$2,014,946.73	306,6
Powhatan	3,177	.....	789,892.00	11,487.00	3,156	.....	781,924.00	4,593.00	5,2
Prince Edward	4,362	.....	1,035,329.00	41,213.00	4,279	.....	963,827.00	18,096.00	6,5
Prince George	2,894	.....	787,372.00	18,209.00	2,926	.....	895,394.00	10,121.00	4,0
Prince William	1,269	.....	615,710.00	14,734.80	1,243	.....	578,707.00	8,514.80	...
Princess Anne	1,818	.....	562,412.00	12,825.00	224	.....	563,823.00	.....	...
Pulaski	918	.....	765,562.00	5,250.00	928	.....	754,557.00	950.00	1,0
Rappahannock	1,721	.....	566,869.00	802.00	1,748	.....	643,857.00	1,150.00	3,3
Richmond	1,373	.....	361,865.61	3,175.00	1,384	.....	336,457.92	1,759.00	2,0
Roanoke	1,603	.....	879,608.00	18,778.00	1,580	.....	977,989.00	16,606.00	2,7
Rockbridge	2,328	.....	1,991,203.00	54,634.71	2,273	.....	1,924,718.81	28,630.21	4,0
Rockingham	1,268	.....	2,855,817.00	32,082.00	1,241	.....	2,793,172.50	14,407.00	2,1
Russell	516	.....	628,823.00	700.00	573	.....	660,922.00	.....	1,0
Scott	324	.....	668,486.00	2,591.00	331	.....	661,765.00	2,017.00	4
Shenandoah	484	.....	1,408,887.00	4,755.00	457	.....	1,487,641.00	780.00	5
Smyth	508	.....	502,340.00	6,835.00	500	.....	500,160.00	5,570.00	1,0
Southampton	3,174	.....	1,287,193.00	11,157.00	3,141	.....	1,326,697.00	7,108.00	5,0
Spottsylvania	2,382	.....	1,066,307.00	17,451.90	3,409	.....	976,683.00	18,590.00	3,3
Fredericksburg	724	.....	698,492.00	75,965.00	685	.....	612,077.00	61,804.00	1,1
Stafford	1,575	.....	478,025.50	22,461.00	1,545	.....	441,672.50	22,209.00	...
Surry	1,552	.....	348,872.99	8,265.06	1,544	.....	349,580.40	4,725.00	2,3
Sussex	3,604	.....	801,725.00	4,398.82	3,598	.....	810,060.00	400.00	6,0
Tazewell	676	.....	566,828.00	6,911.00	670	.....	566,078.00	4,470.00	1,2
Warren	804	.....	548,143.00	5,640.00	822	.....	520,794.00	1,250.00	1,3
Warwick	602	.....	80,085.00	1,120.00	616	.....	90,080.00	1,120.00	...
Washington	1,319	.....	1,290,488.00	26,152.00	1,375	.....	1,455,589.00	16,135.00	2,6
Westmoreland	2,088	.....	347,612.00	9,470.00	2,153	.....	350,571.00	9,668.00	3,5
Wise	34	.....	148,505.00	1,475.00	38	.....	165,646.00	1,725.00	...
Wythe	1,116	.....	1,143,261.00	25,095.00	1,120	.....	1,100,401.00	19,620.00	1,5
York	999	.....	215,671.00	2,500.00	990	.....	195,190.00	.....	...
Total	243,986	.....	$94,995,274.09	$3,665,076.41	253,351	.....	$100,201,850.44	$2,296,964.74	363,4
WEST VIRGINIA:									
Barbour	68	.....	$ 516,950.00	$ 4,508.00	.....	.....	.....	.....	.....
Berkeley	911	.....	797,998.00	3,080.00	926	.....	$ 862,022.00	$4,826.00	.....
Boone	86	.....	187,680.00	2,815.00	.....	.....	.....	.....	.....
Braxton	54	.....	289,435.00	825.00	57	.....	311,153.00	.....	.....
Brooke	5	.....	407,487.00	7,650.00	.....	.....	.....	.....	.....
Cabell	216	.....	605,462.00	4,800.00	.....	.....	.....	.....	.....
Calhoun	6	.....	55,955.00	400.00	.....	.....	.....	.....	.....
Clay	25	.....	105,320.00	510.00	9	.....	57,527.00	847.00	.....
Doddridge	17	.....	165,220.00	2,362.00	.....	.....	.....	.....	.....
Fayette	127	.....	219,158.00	1,020.00	124	.....	242,411.00	.....	.....
Carried forward	1,515	.....	$3,350,665.00	$27,970.00	1,116	.....	$1,473,113.00	$5,673.00	.....

1862				1863				Total or
Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Pr
Number.	Value.			Number.	Value.			Number.	Value.	
305,550	$103,593,993.00	$72,318,905.93	$1,553,519.43	295,074	$193,378,105.00	$103,217,994.48	$ 9,657,545.43	328,375	$209,884,569.00	$117,
5,266	1,965,820.00	728,410.00	10,144.00	5,344	4,332,910.00	1,124,730.00	5,590.00	5,344	4,332,910.00	1,
6,998	2,673,880.00	1,027,941.00	17,638.00	7,081	5,141,651.00	1,690,959.00	68,592.00	7,081	5,141,651.00	1,
4,536	1,810,132.00	892,677.00	11,576.00	.....	.....	.....	.....	4,536	1,810,132.00	
.....	.....	.....	.....	.....	.....	.....	.....	1,243	*623,489.00	
....	.....	.....	.....	.....	.....	.....	.....	224	*112,358.00	
1,636	611,015.00	834,437.00	535.00	1,766	1,181,545.00	1,470,895.00	2,750.00	1,766	1,181,545.00	1,
3,316	1,122,450.00	801,219.00	600.00	2,281	1,663,150.00	1,046,446.00	.....	2,281	1,663,150.00	1,
1,954	672,335.00	472,179.22	.....	2,112	725,870.00	561,667.81	.....	2,112	725,870.00	
2,763	896,650.00	997,282.00	4,100.00	2,766	2,157,455.00	1,558,317.00	128,727.00	2,766	2,157,455.00	1,
4,024	1,457,367.00	2,253,946.00	22,325.00	4,145	3,097,825.00	3,533,582.00	57,370.00	4,145	3,097,825.00	3,
2,164	768,405.00	3,019,088.00	4,933.00	2,039	1,564,820.00	4,726,373.00	57,522.50	2,039	1,564,820.00	4,
1,061	357,490.00	690,654.00	.....	1,081	909,880.00	1,187,672.00	.....	1,081	909,880.00	1,
465	186,175.00	726,728.00	300.00	517	327,500.00	998,689.00	300.00	517	327,500.00	
549	220,600.00	1,531,642.00	800.00	255	163,750.00	1,159,671.00	476.00	255	163,750.00	1,
1,044	424,570.00	621,355.00	.....	1,624	1,701,190.00	1,621,730.00	414,460.00	1,624	1,701,190.00	1,
5,081	1,812,250.00	1,419,703.00	5,290.00	4,783	2,464,255.00	1,841,724.80	1,955.00	4,783	2,464,255.00	1,
3,220	1,292,815.00	637,604.00	9,577.00	.....	.....	.....	.....	3,220	1,292,815.00	
1,117	441,675.00	654,447.00	57,016.00	.....	.....	.....	.....	1,117	441,675.00	
.....	.....	.....	.....	.....	.....	.....	.....	1,545	*774,972.00	
2,280	688,603.00	361,492.72	2,654.00	1,835	921,995.00	466,413.00	37,562.00	1,835	921,995.00	
6,043	2,372,325.00	941,440.00	1,382.00	5,921	3,209,560.00	1,273,032.00	1,852.00	5,921	3,209,560.00	1,
1,124	378,318.00	595,882.00	2,250.00	1,186	820,420.00	1,059,241.00	2,000.00	1,186	820,420.00	1,
1,348	429,775.00	536,819.00	340.00	.....	.....	.....	.....	1,348	429,775.00	
.....	.....	.....	.....	.....	.....	.....	.....	616	*308,986.00	
2,507	864,335.00	1,466,021.00	4,250.00	2,771	1,754,750.00	2,216,805.00	86,554.00	2,771	1,754,750.00	2,
3,328	1,086,393.00	404,323.00	1,333.00	2,127	850,150.00	598,204.00	670.00	2,127	850,150.00	
51	24,000.00	175,155.00	.....	67	55,920.00	274,984.00	.....	67	55,920.00	
1,941	638,540.00	1,223,559.00	8,750.00	2,190	1,631,640.00	2,198,741.00	185,391.00	2,190	1,631,640.00	2,
.....	.....	.....	.....	.....	.....	.....	.....	990	*496,584.00	
369,466	$126,789,911.00	$95,332,909.87	$1,719,312.43	346,965	$228,054,341.00	$133,827,871.09	$10,709,316.93	395,105	$250,851,591.00	$152,
.....	.....	.....	.....	.....	.....	.....	.....	68	*$ 33,201.00	$
.....	.....	.....	.....	.....	.....	.....	.....	926	*452,119.00	
.....	.....	.....	.....	.....	.....	.....	.....	86	*41,989.00	
.....	.....	.....	.....	.....	.....	.....	.....	57	*27,830.00	
.....	.....	.....	.....	.....	.....	.....	.....	5	*2,441.00	
.....	.....	.....	.....	.....	.....	.....	.....	216	*105,462.00	
.....	.....	.....	.....	.....	.....	.....	.....	6	*2,929.00	
.....	.....	.....	.....	.....	.....	.....	.....	9	*4,394.00	
.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00	
.....	.....	.....	.....	.....	.....	.....	.....	124	*60,543.00	
.....	.....	.....	.....	.....	.....	.....	.....	1,514	$739,208.00	$

County.	1860				1861				
	Slaves.		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	
	Number.	Value.			Number.	Value.			Num
Brought forward	1,515	.....	$ 3,350,665.00	$ 27,970.00	1,116	.....	$ 1,473,113.00	$ 5,673.00	.....
Gilmer	21	.....	161,522.00	1,601.00	28	.....	175,772.00	935.00	.....
Greenbrier	996	.....	1,808,705.00	33,240.32	984	.....	1,902,530.00	18,250,26	1,
Hampshire	729	.....	1,082,218.00	14,207.50	.....	.....	.....	.....	.....
Hancock	1	.....	262,146.00	450.00	.....	.....	.....	.....	.....
Hardy	645	.....	942,419.00	5,679.00	641	.....	1,014,392.00	7,710.00	.....
Harrison	292	.....	1,083,482.00	5,751.00	.....	.....	.....	.....	.....
Jackson	42	.....	294,986.00	4,217.00	41	.....	303,932.00	600.00	.....
Jefferson	2,256	.....	1,910,687.00	24,365.00	2,256	.....	1,888,233.00	13,190.20	.....
Kanawha	1,238	.....	720,969.00	30,271.00	1,237	.....	749,570.00	28,542.00	.....
Lewis	103	.....	432,826.00	5,246.00	.....	.....	.....	.....	.....
Logan	30	.....	120,156.00	.....	.....	.....	.....	.....	.....
McDowell	.....	.....	31,138.00	.....	.....	.....	35,595.00	.....	.....
Marion	46	.....	717,028.00	10,600.00	.....	.....	.....	.....	.....
Marshall	20	.....	340,471.00	3,758.00	.....	.....	.....	.....	.....
Mason	200	.....	548,385.00	2,500.00	.....	.....	.....	.....	.....
Mercer	192	.....	279,050.00	1,500.00	191	.....	300,545.00	.....	.....
Monongalia	69	.....	1,071,376.00	4,700.00	.....	.....	.....	.....	.....
Monroe	611	.....	1,408,522.00	12,588.00	627	.....	1,416,431.00	5,663.00	1,
Morgan	60	.....	186,232.00	150.00	59	.....	202,144.00	400.00	.....
Nicholas	85	.....	264,084.00	1,636.00	76	.....	237,162.00	50.00	.....
Ohio	21	.....	347,555.00	1,600.00	.....	.....	.....	.....	.....
Wheeling	2	.....	470,005.00	95,748.00	.....	.....	.....	.....	.....
Pendleton	138	.....	523,324.00	1,805.00	139	.....	520,629.00	15.00	.....
Pleasants	7	.....	129,035.00	800.00	.....	.....	.....	.....	.....
Pocahontas	.....	.....	.....	.....	139	.....	470,156.00	.....	.....
Preston	41	.....	679,170.00	2,500.00	.....	.....	.....	.....	.....
Putnam	353	.....	299,725.00	930.00	345	.....	332,887.00	540.00	.....
Raleigh	28	.....	125,355.00	1,000.00	35	.....	134,835.00	.....	.....
Randolph	107	.....	306,617.00	1,561.00	20	.....	126,805.00	.....	.....
Ritchie	12	.....	261,832.00	2,726.00	.....	.....	.....	.....	.....
Roane	35	.....	158,731.00	2,130.00	37	.....	185,404.00	1,440.00	.....
Taylor	68	.....	361,874.00	800.00	.....	.....	.....	.....	.....
Tucker	17	.....	77,679.00	698.00	.....	.....	.....	.....	.....
Tyler	7	.....	308,536.00	948.00	.....	.....	.....	.....	.....
Upshur	97	.....	401,914.00	2,202.00	.....	.....	.....	.....	.....
Wayne	74	.....	363,127.00	1,045.00	77	.....	380,000.00	265.00	.....
Webster	.....	.....	21,554.00	.....	.....	.....	59,546.21	.....	.....
Wetzel	8	.....	19,060.00	430.00	.....	.....	.....	.....	.....
Wirt	17	.....	110,893.00	1,470.00	.....	.....	.....	.....	.....
Wood	82	.....	683,030.00	29,758.50	.....	.....	.....	.....	.....
Wyoming	36	.....	121,083.00	506.00	35	.....	112,066.00	.....	.....
Total	10,301	.....	$22,787,166.00	$339,087.32	8,983	.....	$12,021,747.21	$83,273.46	

	1862				1863				Total	
	Slaves.		Other Personal Property.	Income.	Slaves		Other Personal Property.	Income.	Slaves.	
me.	Number.	Value.			Number.	Value.			Number.	Value.
673.09	.....	.....	.....	.....	.....	.....	.....	.....	1,514	$ 739,208.00
935.00	.....	.....	.....	.....	.....	.....	.....	.....	28	*13,671.00
250.26	1,419	$ 599,761.00	$1,883,100.00	$10,295.00	223	$ 745,220.00	$2,252,197.00	$17,630.75	923	745,220.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	729	*355,934.00
710.00	.....	.....	.....	.....	.....	.....	.....	.....	1	*488.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	641	*312,968.00
600.00	.....	.....	.....	.....	.....	.....	.....	.....	292	*142,569.00
190.20	.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00
542.00	.....	.....	.....	.....	.....	.....	.....	.....	2,256	*1,101,492.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	1,237	*603,965.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	103	*50,290.00
.....	.....	.....	33,995.00	.....	177	19,295.00	29,455.00	.....	30	*14,647.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	177	19,295.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	46	*22,459.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	20	*9,765.00
.....	301	95,370.00	308,960.00	30.00	176	123,615.00	368,388.00	.....	200	*97,650.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	176	123,615.00
663.00	1,136	401,830.00	1,541,052.00	1,687.00	1,052	569,325.00	2,010,111.00	12,853.50	69	*33,689.00
400.00	.....	.....	.....	.....	.....	.....	.....	.....	1,052	569,325.00
50.00	.....	.....	.....	.....	.....	.....	.....	.....	59	*28,807.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	76	*37,107.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	21	*10,253.00
15.00	261	61,450.00	555,093.00	80.00	155	91,450.00	786,301.00	.....	2	*976.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	155	91,450.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	139	*67,867.00
540.00	.....	.....	.....	.....	.....	.....	.....	.....	41	*20,018.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	345	*168,446.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	20	*9,765.00
440.00	.....	.....	.....	.....	.....	.....	.....	.....	12	*5,859.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	37	*18,065.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	68	*33,201.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	7	*3,418.00
265.00	.....	.....	.....	.....	.....	.....	.....	.....	97	*47,360.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	77	*37,595.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	8	*3,906.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	17	*8,300.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	82	*40,036.00
.....	.....	.....	.....	.....	.....	.....	.....	.....	35	*17,089.00
273.46	3,057	$1,158,411.00	$4,322,200.00	$12,092.00	2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,593.00

1863				Total of Latest Assessment.					County.
Slaves		Other Personal Property.	Income.	Slaves.		Other Personal Property.	Income.	Real Estate.	
Number.	Value.			Number.	Value.				
.....	.....	.....	.....	1,514	$ 739,208.00	$ 3,411,867.00	$ 28,208.00	$13,466,302.00	
.....	.....	.....	.....	28	*13,671.00	175,772.00	935.00	769,507.31	Gilmer.
928	$ 745,220.00	$2,252,197.00	$17,630.75	928	745,220.00	2,252,197.00	17,630.75	3,466,378.52	Greenbrier.
.....	.....	.....	.....	729	*355,934.00	1,082,218.00	14,207.50	3,958,442.86	Hampshire.
.....	.....	.....	.....	1	*488.00	262,146.00	450.00	909,007.51	Hancock.
.....	.....	.....	.....	641	*312,968.00	1,014,392.00	7,710.00	2,911,771.10	Hardy.
.....	.....	.....	.....	292	*142,569.00	1,083,482.00	5,751.00	3,797,604.16	Harrison.
.....	.....	.....	.....	41	*20,018.00	303,932.00	600.00	1,648,682.47	Jackson.
.....	.....	.....	.....	2,256	*1,101,492.00	1,888,233.00	13,190.20	6,802,928.00	Jefferson.
.....	.....	.....	.....	1,237	*603,965.00	749,570.00	28,542.00	3,287,882.51	Kanawha.
.....	.....	.....	.....	103	*50,290.00	432,826.00	5,246.00	1,278,235.39	Lewis.
.....	.....	.....	.....	30	*14,647.00	120,156.00	.....	388,650.94	Logan.
177	19,295.00	29,455.00	.....	177	19,295.00	29,455.00	.....	173,698.05	McDowell.
.....	.....	.....	.....	46	*22,459.00	717,028.00	10,600.00	2,721,068.13	Marion.
.....	.....	.....	.....	20	*9,765.00	340,471.00	3,758.00	2,371,997.95	Marshall.
.....	.....	.....	.....	200	*97,650.00	548,385.00	2,500.00	2,814,941.08	Mason.
176	123,615.00	368,388.00	.....	176	123,615.00	368,388.00	.....	679,564.35	Mercer.
.....	.....	.....	.....	69	*33,689.00	1,071,376.00	4,700.00	2,954,126.46	Monongalia.
1,052	569,325.00	2,010,111.00	12,853.50	1,052	569,325.00	2,010,111.00	12,853.50	3,399,322.99	Monroe.
.....	.....	.....	.....	59	*28,807.00	202,144.00	400.00	740,758.44	Morgan.
.....	.....	.....	.....	76	*37,107.00	237,162.00	50.00	778,012.33	Nicholas.
.....	.....	.....	.....	21	*10,253.00	347,555.00	1,600.00	5,074,553.00	Ohio.
.....	.....	.....	.....	2	*976.00	470,005.00	95,748.00	.....	Wheeling.
155	91,450.00	786,301.00	.....	155	91,450.00	786,301.00	.....	1,098,709.70	Pendleton.
.....	.....	.....	.....	7	*3,418.00	129,035.00	800.00	577,606.79	Pleasants.
.....	.....	.....	.....	139	*67,867.00	470,156.00	.....	1,189,733.24	Pocahontas.
.....	.....	.....	.....	41	*20,018.00	679,170.00	2,500.00	1,679,082.61	Preston.
.....	.....	.....	.....	345	*168,446.00	332,887.00	540.00	982,826.02	Putnam.
.....	.....	.....	.....	35	*17,089.00	134,835.00	.....	498,330.90	Raleigh.
.....	.....	.....	.....	20	*9,765.00	126,805.00	.....	1,136,745.77	Randolph.
.....	.....	.....	.....	12	*5,859.00	261,832.00	2,726.00	1,166,737.79	Ritchie.
.....	.....	.....	.....	37	*18,065.00	185,404.00	1,440.00	468,005.20	Roane.
.....	.....	.....	.....	68	*33,201.00	361,871.00	800.00	1,241,003.36	Taylor.
.....	.....	.....	.....	17	*8,300.00	77,679.00	698.00	288,520.66	Tucker.
.....	.....	.....	.....	7	*3,418.00	308,536.00	948.00	878,326.00	Tyler.
.....	.....	.....	.....	97	*47,360.00	401,914.00	2,202.00	1,329,680.83	Upshur.
.....	.....	.....	.....	77	*37,595.00	380,000.00	265.00	1,135,038.58	Wayne.
.....	.....	.....	.....	.....	....	59,546.21	.....	216,085.00	Webster.
.....	.....	.....	.....	8	*3,906.00	19,060.00	430.00	789,068.00	Wetzel.
.....	.....	.....	.....	17	*8,300.00	110,893.00	1,470.00	508,578.48	Wirt.
.....	.....	.....	.....	82	*40,036.00	683,030.00	29,758.50	2,600,610.50	Wood.
.....	.....	.....	.....	35	*17,089.00	112,066.00	.....	271,127.06	Wyoming.
2,488	$1,548,905.00	$5,446,452.00	$30,484.25	10,897	$5,654,593.00	$24,739,894.21	$299,257.45	$82,449,252.04	

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA *vs* STATE OF WEST VIRGINIA.

COMPARISON OF ASSESSED VALUATION OF ALL PROPERTY FROM 1867 TO 1908 INCLUSIVE.

{ Virginia and }
{ West Virginia }

PLAINTIFF'S EXHIBIT E-3.

VIRGINIA FIGURES TAKEN FROM VIRGINIA AUDITORS REPORT FOR RESPECTIVE YEARS.

WEST VIRGINIA FIGURES TAKEN FROM "BIENNIAL REPORT OF THE AUDITOR" OF WEST VIRGINIA FOR 1907-8. PAGE 126 STATEMENT LXVIII.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff

PLAINTIFF'S EXHIBIT E-3.

TOTAL ASSESSED VALUATION OF REAL ESTATE, PERSONAL AND RAILROAD PROPERTY IN VIRGINIA AND WEST VIRGINIA WITH PERCENTAGES OF EACH TO THE TOTAL.

NOTE.—The Assessed Valuation of Railroads from 1867 to 1879, inclusive, in Virginia is not shown in Auditor's reports, so we estimate their value at $9,000,000.00 and add that amount in each year.

1867	Virginia	$354,848,482.69	73.79%
	West Virginia	126,060,743.00	26.21%
1868	Virginia	357,699,144.00	72.17%
	West Virginia	137,952,255.00	27.83%
1869	Virginia	363,480,163.33	72.41%
	West Virginia	138,510,065.00	27.59%
1870	Virginia	388,557,534.00	73.40%
	West Virginia	140,783,286.00	26.60%
1871	Virginia	370,202,374.38	72.07%
	West Virginia	143,436,703.00	27.93%
1872	Virginia	351,552,630.38	71.05%
	West Virginia	143,270,414.00	28.95%
1873	Virginia	345,686,411.23	70.19%
	West Virginia	146,845,522.00	29.81%
1874	Virginia	341,428,256.00	69.72%
	West Virginia	148,305,419.00	30.28%
1875	Virginia	335,309,651.49	68.09%
	West Virginia	157,118,644.00	31.91%
1876	Virginia	330,317,488.75	68.49%
	West Virginia	151,977,231.00	31.51%
1877	Virginia	332,989,771.56	68.70%
	West Virginia	151,681,708.00	31.30%
1878	Virginia	325,686,872.31	68.90%
	West Virginia	147,021,912.00	31.10%
1879	Virginia	328,393,559.22	69.04%
	West Virginia	147,266,120.00	30.96%
1880	Virginia	317,191,383.17	68.33%
	West Virginia	146,991,740.00	31.67%
1881	Virginia	333,469,913.75	68.76%
	West Virginia	151,479,428.00	31.24%
1882	Virginia	343,813,689.50	68.92%
	West Virginia	155,050,076.00	31.08%
1883	Virginia	353,975,149.88	67.00%
	West Virginia	174,309,734.00	33.00%
1884	Virginia	364,638,390.03	67.34%
	West Virginia	176,796,754.00	32.66%
1885	Virginia	383,723,692.70	68.07%
	West Virginia	179,958,334.00	31.93%
1886	Virginia	375,375,333.50	68.33%
	West Virginia	173,993,762.00	31.67%
1887	Virginia	375,043,238.31	67.28%
	West Virginia	182,346,389.06	32.72%
1888	Virginia	$380,429,882.52	67.95%
	West Virginia	179,385,329.00	32.05%
1889	Virginia	384,014,695.75	67.68%
	West Virginia	183,381,499.75	32.32%
1890	Virginia	404,923,584.55	68.38%
	West Virginia	187,165,353.61	31.62%
1891	Virginia	439,832,800.41	69.44%
	West Virginia	193,533,458.00	30.56%
1892	Virginia	448,039,022.67	67.28%
	West Virginia	217,858,413.64	32.72%
1893	Virginia	453,151,823.73	67.09%
	West Virginia	222,218,154.37	32.91%
1894	Virginia	450,277,768.08	67.17%
	West Virginia	220,007,517.00	32.83%
1895	Virginia	438,258,777.14	66.17%
	West Virginia	224,025,744.40	33.83%
1896	Virginia	451,931,676.89	67.69%
	West Virginia	215,669,932.30	32.31%
1897	Virginia	459,023,847.08	67.75%
	West Virginia	218,517,105.72	32.25%
1898	Virginia	462,892,204.46	67.57%
	West Virginia	222,195,486.10	32.43%
1899	Virginia	469,732,937.09	67.28%
	West Virginia	228,409,289.26	32.72%
1900	Virginia	488,773,981.77	66.95%
	West Virginia	241,313,244.18	33.05%
1901	Virginia	497,956,643.30	66.69%
	West Virginia	248,749,692.90	33.31%
1902	Virginia	501,284,776.89	67.67%
	West Virginia	239,476,148.94	32.33%
1903	Virginia	519,352,393.00	65.82%
	West Virginia	269,644,299.60	34.18%
1904	Virginia	533,757,406.00	65.76%
	West Virginia	277,859,198.92	34.24%
1905	Virginia	571,997,927.00	63.05%
	West Virginia	335,203,005.85	36.95%
1906	Virginia	597,835,020.00	40.42%
	West Virginia	881,285,710.95	59.58%
1907	Virginia	632,285,784.00	40.48%
	West Virginia	929,663,694.63	59.52%
1908	Virginia	661,796,631.00	41.38%
	West Virginia	937,232,718.54	58.62%

Certified Correct:
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

PLAINTIFF'S EXHIBIT E-6.

Prepared by
PRICE, WATERHOUSE & CO.,
Chartered Accountants,
54 William Street, New York,

For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

THE VALUATION OF SLAVES IN 1860 AND 1861.

COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES IN 1862 AND 1863.

DEFENDANT'S EXHIBIT E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

COMMONWEALTH OF VIRGINIA VERSUS STATE OF WEST VIRGINIA.

Defendant's Exhibit E-2.

(Supplementing Plaintiff's and Defendant's Joint Exhibit E-1.)

THE NUMBER OF SLAVES IN 1860 AND 1861, BASED ON THE ASSESSMENT ROLLS OF COUNTIES FOR WHICH RETURNS WERE FOUND, AND THE VALUE THEREOF, COMPUTED FROM THE AVERAGE ASSESSED VALUATION OF SLAVES FOR WHICH RETURNS WERE FOUND IN 1862 AND 1863:

	1860		1861	
County.	No. of slaves.	Value.	No. of slaves.	Value.
VIRGINIA:				
Accomac,	2,645	$ 1,326,732	2,739	$ 1,373,862
Albemarle	....	.....	7,449	3,736,418
Alexandria,	709	355,634	709	355,634
Alleghany,	589	295,442	522	261,835
Amelia,	4,269	2,141,330	4,195	2,104,212
Amherst,	3,211	1,610,638	3,405	1,707,948
Appomattox,	2,444	1,225,910	2,526	1,267,042
Augusta,	2,545	1,276,572	2,587	1,297,639
Staunton,	....	.....	441	221,206
Bath,	475	238,260	517	259,327
Bedford,	5,303	2,659,985	5,660	2,839,056
Bland,	....	.....	113	56,681
Botetourt,	1,728	866,765	1,671	838,174
Brunswick,	5,209	2,612,834	5,381	2,699,110
Buchanan,	14	7,022	13	6,521
Buckingham,	4,827	2,421,223	4,866	2,440,786
Campbell,	4,932	2,473,891	4,981	2,498,470
Lynchburg,	1,822	913,915	1,611	808,078
Caroline,	6,029	3,024,146	6,074	3,046,718
Carroll,	65	32,604	104	52,166
Charles City,	1,783	894,353	1,877	941,503
Charlotte,	5,489	2,753,282	5,560	2,788,896
Chesterfield,	....	.....	....	.....
Clarke,	1,834	919,934	1,798	901,877
Craig,	215	107,844	225	112,860
Culpeper,	3,245	1,627,692	3,259	1,634,714
Cumberland,	3,899	1,955,738	3,834	1,923,134
Dinwiddie,	3,918	1,965,269	4,010	2,011,416
Petersburg,	3,538	1,774,661	3,453	1,732,025
Elizabeth City,	....	.....	1,196	599,914
Essex,	3,921	1,966,774	3,873	1,942,697
Fairfax,	1,607	806,071	1,611	808,078
Fauquier,	5,025	2,520,540	5,016	2,516,026
Floyd,	224	112,358	244	122,390
Fluvanna,	2,877	1,443,103	2,883	1,446,113
Franklin,	3,330	1,670,328	3,394	1,702,430
Frederick,	844	423,350	824	413,318
Winchester,	330	165,528	342	171,547
Giles,	444	222,710	438	219,701
Gloucester,	3,038	1,523,861	3,053	1,531,385
Goochland,	3,507	1,759,111	....	.....
Grayson,	280	140,448	294	147,470
Greene,	981	492,070	997	500,095
Greensville,	2,213	1,110,041	2,280	1,143,648
Halifax,	8,696	4,361,914	8,818	4,423,109
Hanover,	4,984	2,499,974	5,115	2,565,634
Henrico,	3,860	1,936,176	4,494	2,254,190
Richmond City,	7,639	3,831,722	6,474	3,247,358
Henry,	2,678	1,343,285	2,779	1,393,946
Forward,	127,215	$63,811,040	133,705	$67,066,427

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
Forward,	127,215	$63,811,040	133,705	$67,066,427
Highland,	208	104,333	219	109,850
Isle of Wight,	1,040	521,664	2,148	1,077,437
James City,	1,141	572,326	1,162	582,859
Williamsburg,	405	203,148	410	205,656
King and Queen,	3,288	1,649,261	3,406	1,708,450
King George,	2,066	1,036,306	1,984	995,174
King William,	2,916	1,462,666	3,248	1,629,197
Lancaster,	1,605	805,068	1,583	794,033
Lee,	486	243,778	481	241,270
Loudoun,	3,063	1,536,401	3,000	1,504,800
Louisa,	5,429	2,723,186	5,366	2,691,536
Lunenburg,	4,163	2,088,161	4,212	2,112,739
Madison,	2,408	1,207,853	2,373	1,190,297
Mathews,	1,507	755,911	1,479	741,866
Mecklenburg,	7,392	3,707,827	7,506	3,765,010
Middlesex,	1,526	765,442	1,550	777,480
Montgomery,	1,141	572,326	1,173	588,377
Nansemond,	2,571	1,289,614	2,677	1,342,783
Nelson,	3,215	1,612,644	3,158	1,584,053
New Kent,	1,780	892,848	1,808	906,893
Norfolk,	2,887	1,448,119	2,751	1,379,903
Norfolk City,	1,997	1,001,695	1,951	978,622
Portsmouth,	736	369,178	689	345,602
Northampton,	....	.....	2,250	1,128,600
Northumberland,	1,733	869,273	1,823	914,417
Nottoway,	3,856	1,934,170	3,953	1,982,825
Orange,	3,309	1,659,794	3,486	1,748,573
Page,	495	248,292	483	242,273
Patrick,	1,026	514,642	1,024	513,633
Pittsylvania,	7,417	3,720,367	7,171	3,596,974
Danville,	763	382,721	573	287,417
Powhatan,	3,177	1,593,583	3,156	1,583,050
Prince Edward,	4,352	2,182,963	4,279	2,146,346
Prince George,	2,894	1,451,630	2,926	1,467,682
Prince William,	1,269	636,530	1,243	623,489
Princess Anne,	1,818	911,909	224	112,353
Pulaski,	918	460,469	928	465,485
Rappahannock,	1,721	863,254	1,748	876,797
Richmond,	1,373	688,697	1,384	694,214
Roanoke,	1,603	804,065	1,580	792,528
Rockbridge,	2,328	1,167,725	2,273	1,140,137
Rockingham,	1,268	636,029	1,241	622,456
Russell,	516	258,826	573	287,417
Scott,	324	162,518	331	166,030
Shenandoah,	484	242,774	457	229,231
Smyth,	508	254,813	500	250,800
Southampton,	3,174	1,592,078	3,141	1,575,536
Spottsylvania,	2,382	1,194,811	3,409	1,709,954
Fredericksb'g,	724	363,158	685	343,596
Stafford,	1,575	790,020	1,545	774,973
Surry,	1,552	778,483	1,544	774,479
Sussex,	3,604	1,807,766	3,598	1,804,757
Tazewell,	676	339,082	670	336,072
Warren,	804	403,286	822	412,315
Warwick,	602	301,963	616	308,932
Washington,	1,319	661,610	1,375	689,700
Westmoreland,	2,088	1,047,341	2,153	1,079,906
Wise,	34	17,054	38	19,061
Wythe,	1,116	559,786	1,130	561,792
York,	999	501,098	990	496,584
Total,	243,986	$122,383,375	253,351	$127,080,865

County.	1860 No. of slaves.	1860 Value.	1861 No. of slaves.	1861 Value.
WEST VIRGINIA:				
Barbour,	68	$ 33,201	....	.....
Berkeley,	911	444,796	926	$ 452,120
Boone,	86	41,990	....	.....
Braxton,	54	26,366	57	27,830
Brooke,	5	2,441	....	.....
Cabell,	216	105,462	....	.....
Calhoun,	6	2,930	....	.....
Clay,	25	12,206	9	4,394
Doddridge,	17	8,300	....	.....
Fayette,	127	62,008	124	60,543
Gilmer,	21	10,253	28	13,671
Greenbrier,	996	486,297	984	480,438
Hampshire,	729	355,934	....	.....
Hancock,	1	488	....	.....
Hardy,	645	314,921	641	312,968
Harrison,	292	142,569	....	.....
Jackson,	42	20,507	41	20,018
Jefferson,	2,256	1,101,492	2,256	1,101,492
Kanawha,	1,238	604,454	1,237	603,965
Lewis,	103	50,290	....	.....
Logan,	30	14,648	....	.....
McDowell,	....	.....	....	.....
Marion,	46	22,460	....	.....
Marshall,	20	9,765	....	.....
Mason,	200	97,650	....	.....
Mercer,	192	93,744	191	93,256
Monongalia,	69	33,689	....	.....
Monroe,	611	298,321	627	306,133
Morgan,	60	29,295	59	28,807
Nicholas,	85	41,501	76	37,107
Ohio,	21	10,253	....	.....
Wheeling,	2	977	....	.....
Pendleton,	138	67,379	139	67,867
Pleasants,	7	3,418	....	.....
Pocohontas,	....	.....	139	67,867
Preston,	41	20,018	....	.....
Putnam,	353	172,352	345	168,446
Raleigh,	28	13,671	35	17,089
Randolph,	107	52,243	20	9,765
Ritchie,	13	5,859	....	.....
Roane,	35	17,089	37	18,065
Taylor,	68	33,201	....	.....
Tucker,	17	8,300	....	.....
Tyler,	7	3,418	....	.....
Upshur,	97	47,360	....	.....
Wayne,	74	36,131	77	37,595
Webster,	....	.....	....	.....
Wetzel,	8	3,906	....	.....
Wirt,	17	8,300	....	.....
Wood,	82	40,037	....	.....
Wyoming,	36	17,577	35	17,089
Total,	10,301	$5,029,467	8,083	$3,946,525

NOTE: The valuation of slaves for 1860 and 1861 is based on the average assessed valuation of slaves in 1862 and 1863, as shown by the original assessment rolls of counties reporting both the number and value.

Such values are:

For Virginia,	$501.60
For West Virginia,	488.25

Certified Correct:

CLIFFORD E. SCOVILLE, THOMAS BIRD DIXCY,
For the Defendant.

Plaintiff objects to the use of the average assessed valuation of Slaves in 1862 and 1863 as a basis of their assessed valuation in 1860 and 1861, as the Records of the Commonwealth of Virginia clearly show that slaves were assessed in the last mentioned years at 40c per $100 of value and as the tax levied on all slaves over 12 years was $1.20, their assessed valuation was $300; and for the further reason that in 1862 and 1863 the assessed value of the slaves in Virginia was estimated with reference to Confederate money as a standard of value.

We have checked all figures in this exhibit consisting of pages 1, 2, and 3, and find them to be correct.

Certified Correct:

ARTHUR G. POTTER, PRICE WATERHOUSE & CO.,
For the Plaintiff.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA.

vs.

STATE OF WEST VIRGINIA.

DEFENDANT'S EXHIBIT E 3.

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant,

30 Church Street,

New York.

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH

STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

Treasury Department
Office of the Government Actuary.
Form No. 11-Ed. 5-17-95-1,000.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

Average Relative Values of Gold and U. S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period o 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Table showing the Average Value in Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Ye uary 1, 1862, to December 31, 1878, both inclusive.

PERIODS.	1862.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	18
January	102.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	11
February	103.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	11
March	101.8	154.5	162.9	173.8	130.5	135.	139.5	134.3	112.6	111.	110.1	115.5	112.1	11
April	101.5	151.5	172.7	148.5	127.5	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	11
May	103.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4	11
June	106 5	144.5	210.7	140.1	148.7	137.5	140.1	138.1	112.9	112.4	113.9	116.5	111.5	10
July	115.5	150.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	11
August	114.5	125.8	254.1	143.5	148.7	140.8	146.5	134.2	117.9	112.4	114.4	115.4	109.7	10
September	118.5	134.2	222.5	143.9	145.5	143.4	143.6	136.3	114.8	114.5	113.5	112.7	109.7	11
October	128.5	147.7	207.2	145.5	148.3	143.5	137.1	130.2	112.8	113.2	113.2	108.9	110.	11
November	131.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9	11
December	132.5	151.1	227.5	146.2	136.7	134.8	135.2	121.5	110.7	109.5	112.2	110.	111.7	11
First quarter-year	102.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.8	111.1	109.8	114.1	111.9	11
Second quarter-year	103.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	113.6	111.5	112.9	117.3	112.4	11
Third quarter year	116.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	11
Fourth quarter-year	130.6	148.9	222.7	146.2	142.9	139.3	135.6	126.	111.6	111.2	112.8	109.2	110.9	11
First half-year	103.2	150.8	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	11
Second half-year	123.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	11
Calendar year	113.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	11
Fiscal year ended June 30th	.....	137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.	11

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

Defendant's Exhibit E-3

DEFENDANT'S ALTERNATIVE METHOD OF DETERMINING

ARY EXPENSES OF THE GOVERNMENT OF VIRGINIA AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA AT JUNE 20TH, 1863.

COPY OF A STATEMENT FURNISHED BY THE TREASURY DEPARTMENT OF THE UNITED STATES

OF THE

S. Paper Currency in the New York Market from the Suspension to the Resumption of Specie Payments, during the Period of Seventeen Years from 1862 to 1878, both inclusive—Prepared by the U. S. Treasury Department.

CURRENCY VALUE OF GOLD.

Currency of One Hundred Dollars in Gold in the New York Market, by Months, Quarter years, Half-years, Calendar Years, and Fiscal Years, from January 1, 1862, to December 31, 1878, both inclusive.

2.	1863.	1864.	1865.	1866.	1867.	1868	1869.	1870.	1871.	1872.	1873.	1874.	1875.	1876.	1877.	1878.
.5	145.1	155.5	216.2	140.1	134.6	138.5	135.6	121.3	110.7	109.1	112.7	111.4	112.5	112.8	106.3	102.1
.5	160.5	158.6	205.5	138.4	137.4	141.4	134.4	119.5	111.5	110.5	114.1	112.3	114.5	113.4	105.4	102.
.8	154.5	162.9	173.8	130.5	135.	139.5	131.3	112.6	111.	110.1	115.5	112.1	115.5	114.3	104.8	101.2
.5	151.5	172.7	148.5	127.5	135.6	138.7	132.9	113.1	110.6	111.1	117.8	113.4	114.8	113.	106.2	100.6
.3	148.9	176.3	135.6	131.8	137.	139.6	139.2	114.7	111.5	113.7	117.7	112.4	115.8	112.6	106.9	100.7
.5	144.5	210.7	140.1	148.7	137.5	140.1	139.1	112.9	112.4	113.9	116.5	111.5	117.	112.5	105.4	100.8
.5	130.6	258.1	142.1	151.6	139.4	142.7	136.1	116.8	112.4	114.3	115.7	110.	114.8	111.9	105.4	100.5
.5	125.8	264.1	143.5	148.7	140.8	145.5	134.2	117.9	112.4	114.4	115.4	109.7	113.5	111.2	105.	100.6
.5	134.2	223.5	143.9	145.5	143.4	143.6	136.8	114.8	114.5	113.5	112.7	109.7	115.8	110.	103.3	100.4
.5	147.7	207.2	145.5	148.3	143.5	137.1	130.2	112.8	113.2	113.2	108.9	110.	116.4	109.7	102.8	100.6
.1	148.	233.5	147.	143.8	139.6	134.4	126.2	111.4	111.2	112.9	108.6	110.9	114.7	109.1	102.8	100.2
.5	151.1	227.5	146.2	136.7	134.8	135.2	131.5	110.7	109.5	112.2	110.	111.7	113.9	107.9	102.8	100.1
.6	153.4	159.	198.5	136.3	135.7	139.8	133.8	117.5	111.1	109.8	114.1	111.9	114.2	113.5	105.5	101.7
.8	148.3	186.6	141.4	135.9	136.7	139.5	136.7	115.6	111.5	112.9	117.3	112.4	115.9	112.7	106.2	100.7
.2	130.2	244.9	143.2	148.6	141.2	143.9	135.7	116.5	113.1	114.1	114.6	109.8	114.7	111.	104.6	100.5
.6	148.9	222.7	146.2	142.9	139.3	135.6	126.	111.6	111.2	112.8	109.2	110.9	115.	108.9	103.8	100.3
.2	150.5	172.8	169.9	136.1	136.2	139.6	135.3	115.7	111.3	111.4	115.7	112.2	115.1	113.1	105.9	101.2
.4	139.6	233.8	144.7	145.8	140.3	139.8	130.8	114.	121.1	113.4	111.9	110.3	114.8	109.9	105.7	100.4
.3	145.2	203.3	157.3	140.9	138.2	139.7	133.	114.9	111.7	112.4	113.8	111.2	114.9	111.5	104.8	100.8
..	137.1	156.2	201.9	140.4	141.	139.9	137.5	123.3	112.7	111.8	114.6	112.	112.7	113.9	107.9	102.5

Defendant's Alternative Method of Determining

Such Proportion of the Ordinary Expenses of the Government of Virginia as was Properly Assignable to the Counties which were Created into the State of West Virginia.

At June 20th, 1863.

VIRGINIA.			WEST VIRGINIA.		
l Valuation of Real Property at latest obinable assessment, as per agreed summary	$296,085,460.31		Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20	
ntiff claims that a fair estimated valuation 50% of this assessed valuation		$148,042,730.15	Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60
u valuation of Personal Property, including slaves but excluding Income at latest tainable assessment, as per agreed summary	403,696,228.59		Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84	
ntiff claims that a fair estimated valuation 25% of this assessed valuation		100,924,057.15	Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97
Total		$248,966,787.30	Total as per agreed summary	$82,449,252.04	
SUMMARY.					
ntiff claims the fair estimated valuation Property, Real and Personal, in Virginia, noted above, to be	248,966,787.30	79.2765%	Total fair estimated valuation of Real Property, as noted above		$51,382,002.57
ndant claims the valuation of Property, al and Personal, in West Virginia, estited on the basis, and according to the inciple, adopted by the Plaintiff, to be per contra	65,081,874.01	20.7235%	Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00	
Total	$314,048,661.31	100 %	Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75
ndant further claims that the Ordinary penses of Government from March 19th 63, to December 31st, 1860, amount to	$ 12,207,684.29		Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21	
shown in Joint Exhibit D-1 and that e amount to be charged to West Virginia, mputed on the principle adopted by the laintiff, is 20.7235%, as above		$ 3,773,369.45	Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69
			Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties	1,805,796.00	
			Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00
			Total as per agreed summary	$30,394,487.21	
			Total fair estimated valuation of Personal Property, including Slaves but excluding in-		

ited Correct as to amounts and calcula-
ns.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,

For the Defendant.

ntiff agrees that the above figures are cor-
d and that all calculations are correctly
de but objects to the total assessment of
al and Personal Property being reduced to
% and to the use of this amount as a
IR ESTIMATE of the valuation; objects
Slaves being considered Personal Prop-
y; objects to the use of percentages so
ained and objects to the amount of Ordi-
y Expenses Defendant uses in determin-
the proportion chargeable to West Vir-
ia.

COPY BOUND CLOSE IN CENTER

At June 20th, 1863.

VIRGINIA.

Valuation of Real Property at latest obtainable assessment, as per agreed summary	$296,085,460.31	
Plaintiff claims that a fair estimated valuation is 50% of this assessed valuation		$148,042,730.15
Total valuation of Personal Property, including slaves but excluding Income at latest obtainable assessment, as per agreed summary	403,696,228.59	
Plaintiff claims that a fair estimated valuation is 25% of this assessed valuation		100,924,057.15
Total		$248,966,787.30

SUMMARY.

Plaintiff claims the fair estimated valuation of Property, Real and Personal, in Virginia, as noted above, to be	248,966,787.30	79.2765%
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis, and according to the principle, adopted by the Plaintiff, to be		
per contra	65,081,874.01	20.7235%
Total	$314,048,661.31	100 %

Defendant further claims that the Ordinary Expenses of Government from March 19th 1863, to December 31st, 1860, amount to.... $ 12,207,684.29

Shown in Joint Exhibit D-1 and that the amount to be charged to West Virginia, computed on the principle adopted by the Plaintiff, is 20.7235%, as above..... $ 3,773,269.45

Certified Correct as to amounts and calculations.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXOY,

For the Defendant.

Plaintiff agrees that the above figures are correct and that all calculations are correctly made but objects to the total assessment of Real and Personal Property being reduced to 50% and to the use of this amount as a FAIR ESTIMATE of the valuation; objects to Slaves being considered Personal Property; objects to the use of percentages so determined and objects to the amount of Ordinary Expenses Defendant uses in determining the proportion chargeable to West Virginia.

Certified Correct as to figures and Calculations.
ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

WEST VIRGINIA.

Total valuation of Real Property, at latest obtainable assessment, in the following counties which were, for the most part, dominated by confederate forces: Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas	$29,546,249.20		
Plaintiff admits that a fair estimated valuation is 50% of this assessed valuation		$14,773,124.60	
Total valuation of Real Property at latest obtainable assessment in all other West Virginia Counties	52,903,002.84		
Defendant claims that 69.2% of the assessed valuation in these Counties is a fair estimated valuation		36,608,877.97	
Total as per agreed summary	$82,449,252.04		
Total fair estimated valuation of Real Property, as noted above			$51,382,002.57
Total valuation of Personal Property, including slaves but excluding income, at latest obtainable assessment in above Counties	$14,784,959.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		$ 3,696,239.75	
Total valuation of Personal Property, excluding Slaves and income, at latest obtainable assessment in all other West Virginia Counties	13,803,732.21		
Defendant claims that 69.2% of the assessed valuation is a fair estimated valuation		9,552,182.69	
Total valuation of Slaves at latest obtainable assessment in all other West Virginia Counties..	1,805,796.00		
Plaintiff admits that a fair estimated valuation is 25% of this assessed valuation		451,449.00	
Total as per agreed summary	$30,394,487.21		
Total fair estimated valuation of Personal Property, including Slaves, but excluding income as noted above			13,699,871.44
Defendant claims the valuation of Property, Real and Personal, in West Virginia, estimated on the basis and according to the principle adopted by the Plaintiff, to be			$65,081,874.01

COPY BOUND CLOSE IN CENTER

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

JOINT EXHIBIT F-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

THOMAS BIRD DIXCY
Certified Public Accountant
30 Church Street, New York
For the Defendant

P-1

COMMONWEALTH OF VIRGINIA vs. STATE OF WEST VIRGINIA.

PLAINTIFF'S AND DEFENDANT'S JOINT EXHIBIT F-1.

All Moneys Paid into the Treasury of the Commonwealth from the Counties Included Within the State of West Virginia from March 19th, 1823, to December 31st, 1860, Inclusive.

PARAGRAPH VI OF DECREE.

		Amounts agreed upon by Plaintiff and Defendant as credits to West Virginia.	Items claimed by Defendant, agreed to as to amounts, but not admitted by Plaintiff to be credits to West Virginia.
1	Bonus received from Banks in West Virginia Counties		$ 96,253.62
2	Clerks of County and Corporation Courts	$ 161,223.06	
3	Clerks of Superior Courts	96,880.51	
4	Clerks of District Courts	769.28	
5	Clerks of Superior Courts of Chancery	2,797.59	
6	Costs—Civil and Criminal Prosecutions	1,926.36	
7	Dividends from Banks in West Virginia Counties		786,666.98
8	Dividends and Interest from Turnpike Companies in West Virginia Counties		13,595.48
9	Dividends from Bridge Companies in West Virginia Counties		6,028.51
10	Dividends from Interstate Turnpike Companies (Proportion)		1,355.92
11	Dividends from James River & Kanawha Company (Proportion)		352.21
12	Escheats	4,603.57	
13	Fines, Forfeitures and Penalties	57,911.76	
14	Interest from City of Wheeling		571.51
15	Land—Sale of Unappropriated	109,103.64	
16	Land—Redemption of	58,944.10	
17	Land—Sale of Delinquent and Forfeited	17,694.73	
18	Land—Redemption of and Sale of Delinquent and Forfeited	48,699.36	
19	Militia Fines	73,926.39	
20	Merchants and Mechanics Bank Stock sold (Bonus Stock)		43,103.35
21	Northwestern Bank—Profit on 1,082 shares sold		5,471.42
22	Northwestern Turnpike Road—Tolls		126,339.89
23	Staunton & Parkersburg Road—Tolls		17,080.71
24	Taxes—General Revenue	5,037,421.46	
25	Taxes—Capitation	123,111.10	
26	Tax on Free Negroes	4,079.52	
27	Tax on Dividends	53,202.60	
28	Tax on Railroad Travel	49,202.01	
29	Tax on Notarial Seals	48,247.02	
30	Voluntary Enslavement	47.50	
31	Miscellaneous — Unclassified Receipts	4,604.16	
	Total	$5,954,395.66	$1,096,819.90

F-1
P-2

SUMMARY.

Total claimed by Defendant	$7,051,215.56
Total admitted by Plaintiff	5,954,395.66
Total not admitted by Plaintiff	$1,096,819.90

Certified Correct:

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

CLIFFORD E. SCOVILLE.

THOMAS BIRD DIXCY,
For the Defendant.

In the Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

PLAINTIFF'S EXHIBIT G-1

Prepared by

PRICE, WATERHOUSE & COMPANY
Chartered Accountants
54 William Street, New York
For the Plaintiff

A. Money

B. Property

C. Stocks

D. Credits

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

MONEY, PROPERTY, STOCKS AND CREDITS RECEIVED BY WEST VIRGINIA.

DEFENDANT'S EXHIBIT G-1.

Prepared by
THOMAS BIRD DIXCY
Certified Public Accountant,
30 Church Street,
New York.

DEFENDANT'S EXHIBIT G-1.

SUMMARY OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY PRECEDING EXHIBIT, BUT NOT INCLUDING ANY PROPERTY, STOCKS, OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA;

TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF, SHOWING WHETHER SUCH PROPERTY WAS LOCATED WHOLLY IN WEST VIRGINIA OR PARTLY IN WEST VIRGINIA; AND THE AMOUNT PAID BY THE COMMONWEALTH IN SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE COMPANIES OWNING SUCH PROPERTY. ALSO SHOWING WHICH OF SAID COMPANIES AND BANKS PAID DIVIDENDS AND THE DATES AND AMOUNTS OF SUCH PAYMENTS.

PARAGRAPH VII OF DECREE.

NOTE:—In the following statements and schedules, no value is shown as chargeable to West Virginia except in the cases of the Fairmont Bank in Marion County and the Northwestern Bank of Virginia at Wheeling, for the reason that no evidence has been produced to determine the value of the stock of any of the said companies other than the two above mentioned.

	Total amount paid by Virginia.	Dividends.	Value chargeable to West Virginia.
Total, turnpikes and roads lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock	$ 700,103.49	$ 12,600.54	
Total, navigation companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	210,500.00		
Total, bridge companies lying wholly within the territory now constituting the State of West Virginia, in which the Commonwealth of Virginia held stock,	78,412.50	6,028.51	
Total, turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia, in which the Commonwealth held stock,	154,652.84	1,901.27	
Northwestern Bank of Virginia (at Wheeling)	341,800.00	534,815.16	$341,800.00
Fairmont Bank, (Marion County),	50,000.00	2,000.00	50,000.00
James River and Kanawha Company,	9,547,582.21	10,092.00	
Total,	$11,083,051.04		

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Brandonville, Kingwood and Evansville Road,	March 13, 1837	$ 45,000.00	$ 25.00	$ 3,000.00	$ 3,193.46			
Buckhannon and Little Kanawha Turnpike Company,	March 15, 1849	13,800.00	25.00	8,280.00	7,773.00			
Charleston and Point Pleasant Turnpike Company,	January 23, 1835	67,460.00	50.00	31,260.00	31,260.00			
Charleston, Ripley and Ravenswood Turnpike Company,	March 25, 1853	50,000.00	50.00	30,000.00	27,519.41			
Cacapon and North Branch Turnpike Company,	April 3, 1838	32,500.00	15.00	13,000.00	12,000.00			
Clarksburg and Buchanan Turnpike Company,	March 9, 1848	20,000.00	25.00	12,000.00	9,255.13			
Cranberry Summit and Brandonville Turnpike Company,	February 10, 1853	8,025.00	25.00	4,815.00	4,120.11			
Clarksburg and Philippi Turnpike Company,	March 13, 1849	10,000.00	25.00	6,000.00	5,446.25			
Clarksburg and Wheeling Turnpike Company,	February 2, 1850	17,000.00	25.00	10,200.00	4,195.35			
Clear Fork Road Company,	March 27, 1858	5,000.00	25.00	3,000.00	600.00			
Dunkard Creek Turnpike Company,	February 1, 1839	10,000.00	20.00	6,000.00	6,000.00			
East River and Princeton Turnpike Company,	March 31, 1858	7,000.00	25.00	4,800.00	4,800.00			
Fish Creek Road Company,	" 30, 1853	10,000.00	20.00	6,000.00	6,000.00			
Franklin and Circleville Turnpike Company,	" 10, 1853	4,000.00	25.00	2,400.00	2,175.00			
Gilmer, Ripley and Ohio Turnpike Company,	" 19, 1850	62,000.00	25.00	37,200.00	29,974.80			
Gnatty Creek and West Union Turnpike Company,	February 16, 1853	18,000.00	25.00	10,800.00	5,700.55			
Gilmer and Braxton Turnpike Company,	March 29, 1853	12,000.00	25.00	7,200.00	6,699.80			
Grave Creek and Pennsylvania Line Turnpike Company,	" 21, 1850	8,000.00	25.00	4,800.00	1,800.00	1860	$ 412.50	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in which the Commonwealth of Virginia Held Stock

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value Chargeable to West Virginia.
						1848	$ 69.66	
						1849	35.50	
						1850	47.20	
						1851	83.00	
						1852	94.66	
						1853	59.26	
Holliday's Cove Turnpike Company,	March 2, 1838	$ 25,000.00	$ 50.00	$ 15,000.00	$ 4,733.33	1854	71.00	
						1856	23.66	
						1857	83.75	
						1858	66.27	
						1859	20.69	
						1860	55.91	
						Total,	$ 715.50	
Holliday's Cove and Wellsburg Turnpike Company,	April 5, 1858	Included in above.	25.00	Included in above.	5,916.67			
Hampshire and Morgan Turnpike Company,	March 15, 1849	11,000.00	25.00	6,600.00	6,510.00			
Harrisville Turnpike Company,	" 28, 1848	13,500.00	50.00	8,100.00	6,000.00			
Hedgesville and Potomac Turnpike Company,	February 18, 1850	16,000.00	25.00	6,000.00	5,400.00			
Hardy and Randolph Turnpike Company,	March 24, 1851	30,000.00	25.00	18,000.00	7,134.78			
Holliday's Cove and New Cumberland Turnpike Company,	" 29, 1851	4,000.00	25.00	2,400.00	2,400.00			
Kingwood and West Union Turnpike Company,	" 25, 1848	20,000.00	25.00	12,000.00	8,769.48			
Lewisburg and Blue Sulphur Springs Turnpike Company,	" 12, 1834	12,500.00	50.00	5,000.00	4,950.00			
Leading Creek and Buffalo Creek Turnpike Company,	" 31, 1851	16,000.00	25.00	9,600.00	5,847.84			
Letart Falls and West Columbia Turnpike Company,	February 15, 1854	3,500.00	20.00	2,100.00	2,350.00			
Logan, Raleigh and Monroe Turnpike Company,	March 17, 1849	46,000.00	25.00	27,600.00	7,321.24			
Marshall and Ohio Turnpike Company,	February 11, 1848	20,000.00	25.00	12,000.00	11,943.75			
						1853	$ 146.00	
						1854	306.00	
Martinsburg and Potomac Turnpike Company,	March 17, 1849	30,000.00	100.00	18,000.00	15,290.00	1859	459.00	
						1860	765.00	
						Total,	$1,676.00	
Middleway and Gerardstown Turnpike Company,	February 18, 1854	20,000.00	25.00	12,000.00	11,943.75			
Morgantown and Bridgeport Turnpike Company,	March 15, 1849	34,000.00	25.00	20,400.00	10,687.40			
Moorfield and Alleghany Turnpike Company,	" 7, 1849	17,000.00	50.00	10,200.00	8,779.78			
Moorfield and North Branch Turnpike Company,	" 22, 1847	65,500.00	50.00	39,300.00	28,137.75			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Newark Turnpike Company,	March 28, 1851	$ 6,000.00	$ 25.00	$ 3,600.00	$ 3,000.00			
North River Turnpike Company,	February 17, 1851	9,000.00	20.00	5,400.00	5,400.00			
New Manchester Turnpike Company,	April 4, 1848	5,000.00	25.00	2,000.00	2,000.00			
New Creek and Hardy Turnpike Company,	February 25, 1850	10,000.00	25.00	6,000.00	5,431.24	1857	$ 271.25	
Patterson's Creek Valley Turnpike Company,	March 17, 1849	20,500.00	25.00	12,300.00	9,900.00			
Parkersburg and Elizabethtown Turnpike Company,	" 11, 1850	8,000.00	25.00	4,800.00	4,800.00			
Pleasant Valley and Tunnelton Turnpike Company,	" 30, 1853	10,000.00	20.00	6,000.00	4,078.45			
Potomac Turnpike Company,	" 4, 1851	4,500.00	20.00	2,700.00	2,469.70			
Red and Blue Sulphur Springs Turnpike Company,	January 18, 1836	22,000.00	50.00	10,100.00	8,856.66			
Ravenswood and Reedy Creek Turnpike Company,	February 18, 1850	15,000.00	25.00	9,000.00	8,999.99			
Ritchie and Gilmer Turnpike Company,	March 12, 1851	15,000.00	25.00	9,000.00	8,891.18			
Reedy and Harrisville Turnpike Company,	" 24, 1851	12,000.00	25.00	7,200.00	1,751.87			
Raleigh and Boone Graded Road Company,	January 20, 1854	5,000.00	25.00	3,000.00	1,800.00			
Smithfield, Charlestown and Harper's Ferry Turnpike Company,	February 18, 1830	45,000.00	50.00	18,000.00	14,000.00			
Salem and Harrisville Turnpike Company,	March 10, 1851	12,000.00	25.00	7,200.00	3,817.92			
						1832	$ 399.38	
						1833	309.64	
						1834	354.82	
						1835	269.37	
Shepherdstown and Smithfield Turnpike Company,	January 31, 1816	(?)	50.00	18,575.00	18,575.00	1836	126.00	
						1837	98.00	
						1838	58.30	
						1839	40.00	
						Total,	$1,655.41	
Sistersville and Salem Turnpike Company,	March 27, 1851	15,000.00	25.00	9,000.00	9,000.00			
Shinston Turnpike Company,	February 7, 1850	28,000.00	25.00	13,200.00	13,302.26			
Sandy River Turnpike Company,	March 31, 1851	5,000.00	25.00	3,000.00	3,000.00			
						1855	$ 400.12	
						1856	654.75	
Sweet and Salt Sulphur Springs Turnpike Company,	" 15, 1849	17,000.00	25.00	10,200.00	10,104.00	1857	582.00	
						1858	363.75	
						1859	459.00	
						Total,	$2,459.62	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
St. Mary's Turnpike Company,	February 24, 1851	$ 10,000.00	$ 25.00	$ 6,000.00	$ 6,000.00			
Weston and Gauley Bridge Turnpike Company,	March 25, 1848	90,000.00	25.00	66,000.00	64,098.31			
Weston and West Union Turnpike Company,	February 17, 1851	14,000.00	25.00	8,400.00	5,538.21			
Weston and Fairmont Turnpike Company,	March 9, 1848	106,000.00	25.00	98,000.00	97,962.50			
Wheeling, West Liberty and Bethany Turnpike Company,	" 20, 1847	35,000.00	50.00	21,000.00	21,000.00			
						1838	$ 140.00	
						1839	280.00	
						1840	240.00	
						1841	320.00	
						1842	160.00	
						1844	220.00	
						1845	140.00	
						1846	200.00	
						1847	200.00	
						1848	240.00	
White and Salt Sulphur Springs Turnpike Company,	January 8, 1834	10,000.00	50.00	4,000.00	4,000.00	1849	220.00	
						1550	220.00	
						1851	300.00	
						1852	300.00	
						1853	240.00	
						1854	260.00	
						1856	160.00	
						1857	240.00	
						1858	260.00	
						1859	180.00	
						1860	400.00	
						Total,	$5,020.00	
Wellsburg and Bethany Turnpike Company,	March 15, 1849	27,000.00	50.00	16,200.00	12,590.22			
Wellsburg and Washington Turnpike Company,	January 18, 1808	17,833.33	50.00	7,133.33	7,071.01	1837	$ 178.13	
						1838	212.13	
						Total,	$ 390.26	
Williamsport Turnpike Company,	March 15, 1849	10,000.00	25.00	5,000.00	5,130.65			
West Milford and New Salem Turnpike Company,	" 7, 1850	23,000.00	25.00	13,800.00	10,526.32			
West Union Turnpike Company,	February 24, 1851	12,000.00	25.00	7,200.00	3,054.00			
Walnut Gap Road Company,	" 15, 1854	5,000.00	20.00	3,000.00	1,305.37			
Total, Turnpikes and Roads,		$1,407,615.33		$847,163.33	$700,103.49		$12,600.54	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Lying Wholly Within the Territory Now Constituting the State of West Virginia, in Which the Commonwealth of Virginia Held Stock.

Navigation companies, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends Date	Dividends Amount.	Value chargeable to West Virginia.
Coal River Navigation Company,	March 17, 1849	$210,000.00	$ 25.00	$ 96,000.00	$ 96,000.00			
Guyandotte Navigation Company,	" 16, 1849	200,000.00	50.00	120,000.00	106,800.00			
Monongalia Navigation Company,	January 29, 1817	35,000.00	(?)	14,000.00	2,660.00			
Tug Fork Navigation Company,	March 15, 1853	15,000.00	50.00	9,000.00	5,040.00			
Total, Navigation Companies,		$460,000.00		$239,000.00	$210,500.00			
Bridge companies, From March 19, 1823, to January 1, 1861.								
Buckhannon Bridge Company,	December 15, 1853	$ 3,000.00	$ 25.00	$ 1,800.00	$ 1,800.00			
Cheat River Toll Bridge Company,	January 15, 1848	10,000.00	25.00	6,000.00	4,612.50	1853	$ 374.00	
						1854	166.51	
						Total,	$ 540.51	
Elk River Bridge Company,	March 27, 1848	20,000.00	50.00	6,000.00	6,000.00	1857	$ 420.00	
						1858	210.00	
						1859	210.00	
						1860	320.00	
						Total,	$1,160.00	
Fairmont and Palatine Bridge Company,	" 12, 1850	20,000.00	25.00	12,000.00	12,000.00			
Guyandotte Bridge Company,	" 27, 1848	20,000.00	20.00	12,000.00	12,000.00			
Morgantown Bridge Company,	" 11, 1850	36,000.00	25.00	24,800.00	24,800.00			
North Branch Bridge Company,	January 14, 1848	5,000.00	20.00	3,000.00	3,000.00			
South Branch Bridge Company,	February 15, 1851	7,000.00	25.00	4,200.00	4,200.00	1860	$ 378.00	
Virginia and Maryland Bridge Company,	January 17, 1848	60,000.00	50.00	10,000.00	10,000.00	1852	$ 600.00	
						1853	600.00	
						1854	250.00	
						1855	300.00	
						1856	600.00	
						1857	200.00	
						1858	550.00	
						1859	450.00	
						1860	400.00	
						Total,	$3,950.00	
Total, Bridge Companies,		$181,000.00		$79,800.00	$ 78,412.50		$6,028.51	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Berkeley and Hampshire Turnpike Company, ... From Martinsburg, Berkeley County, by way of Boyd's Gap and Bloomery Gap in Hampshire County, to some point on Northwestern road at or near French's Tavern in same County. Road estimated to be 49¾ miles in length, 3¾ miles of which run through Frederick County, Va., making 92.46% in West Virginia and 7.54% in Virginia.	March 1, 1851	$ 36,000.00	$ 25.00	$ 21,600.00	$ 16,572.00			
Cross Roads and Summit Point Turnpike Company, ... From a point of intersection on the Charlestown and Berryville Turnpike at the cross road leading to Summit Point, to Summit Point depot, on the Winchester and Potomac railroad, in Jefferson County. The length of this road was reported as 5 miles, 690 yds. or 5.39 miles, of which 2½ miles, or 46.38% are estimated to be in Jefferson County, West Virginia.	March 29, 1851	10,000.00	25.00	6,000.00	6,000.00			
Giles, Fayette and Kanawha Turnpike Company, ... From Fauer's Furnace, (above Kanawha Salt Works) by Falls of Kanawha and Vandal's in the Loop, to Giles Court House. The total length of this road was reported in 1841 as 134 miles, 17.5 chains, from which is deducted 7 miles, 54.8 chains which run over the Fincastle and Cumberland Gap Road, leaving 126 miles, 42.7 chains constructed by the Giles, Fayette and Kanawha Company, practically 126½ miles. Of this number of miles, 3 miles are estimated to be in Giles County, Va., (allowing for change in boundary) making West Virginia's proportion 97.62%. The reports of this company show total capital stock of $76,850.00 paid and unpaid, which is apparently $6,850.00 more than authorized.	March 1, 1837	70,000.00	25.00	45,000.00	44,991.60			
Huntersville and Warm Springs Turnpike Company,..... From the Warm Springs in Bath County, to Huntersville in Pocahontas County. The length of this road was reported in 1834 as 26¼ miles. The first half mile ran over a turnpike already built which left 25¾ miles to be built. This is notwithstanding the fact that the distance by direct line was only 16⅓ miles. 5½ miles, or 21.36% is estimated as West Virginia's proportion. The road was destroyed in 1842 and 1843. In 1860 a new company was formed to which the State subscribed, but nothing was paid.	March 20, 1832	16,000.00	50.00	6,400.00	6,159.24			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
Hardy and Winchester Turnpike Company, ... From Moorfield by way of Wardensville to within four miles of Winchester, with branch to Capon Springs. From reports this road, including the branch, is ascertained to be 61 miles in length, 41 miles of which, or 67.21% are estimated to lie in West Virginia.	March 5, 1846	$ 39,000.00	$ 50.00	$ 23,400.00	$ 23,400.00			
Hillsborough and Harper's Ferry Turnpike Company, ... From Hillsborough, Loudoun County, to some point near the bridge across the Shenandoah river at Harper's Ferry, Jefferson County. The length of this road is reported as 10½ miles, of which ¼ mile, or 2.38% is ascertained to be in West Virginia.	March 9, 1849	10,000.00	25.00	6,000.00	6,000.00	1856	$ 240.00	
Martinsburg and Winchester Turnpike Company, ... From Martinsburg, Berkeley County, to Winchester, Frederick County. This road is ascertained to be 22 miles in length, of which 13 miles, or 59.09% are found to be in West Virginia. Letters on file show that as late as in 1874 there was $1,300.00 on deposit at Winchester to the credit of this company. This was after West Virginia had released her part of the road to the County of Berkeley.	March 24, 1838	46,550.00	25.00	27,000.00	27,000.00	1859 1860 Total,	803.27 405.00 $1,208.27	
Morgan and Frederick Turnpike Company, ... From Potomac River, opposite Hancock, to the North Frederick Grade in Frederick County. From reports the road is ascertained to be about 30 miles in length, of which 22 miles, or 73⅓% are estimated to be in Morgan County, West Virginia.	February 25, 1851	15,000.00	20.00	9,000.00	8,005.00			
Mountain Lake and Salt Sulphur Springs Turnpike Company, ... From Salt Sulphur Springs, Monroe County, by way of Mountain Lake, Giles County, to Christiansburg, Montgomery County. Length of road 48 miles, 8 miles, or 16⅔% of which is in Monroe County, West Virginia.	March 3, 1856	20,000.00	25.00	4,800.00	4,800.00			

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Internal Improvements Which Extend into and Between the Territory Now Constituting the Commonwealth of Virginia and the State of West Virginia, in Which the Undivided Commonwealth Held Stock.

Turnpikes and roads, From March 19, 1823, to January 1, 1861.	Date of act of incorporation.	Total authorized capital stock.	Par value of shares.	Subscription authorized by Commonwealth.	Amount paid by Commonwealth on account of subscriptions.	Dividends received by Commonwealth. Date	Dividends received by Commonwealth. Amount.	Value chargeable to West Virginia.
North Frederick Turnpike Company, ... From a point at or near the house of Frederick B. Jenkins in Hampshire County, through Gainesborough to Winchester. The road was reported as 19¼ miles in length of which we estimate, exact location not being clear, 2¼ miles, or 11.68%, to be in West Virginia.	February 24, 1851	$ 19,000.00	$ 25.00	$ 11,400.00	$ 11,335.00	1857	$ 453.00	
Raleigh and Wythe Line Turnpike Company, ... That portion of the Raleigh and North Carolina turnpike lying between the Giles, Fayette and Kanawha turnpike in Raleigh County and the county line of Wythe and Tazewell counties. This road is estimated to be 60 miles in length, 44 miles of which, or 73⅓%, are estimated to be in West Virginia.	March 3, 1860	8,000.00	20.00	4,800.00	400.00			
Total, turnpikes and roads, ...		$289,550.00		$165,400.00	$154,652.84		$1,901.27	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

Banks Located Within the Territory Now Constituting the State of West Virginia in Which the Commonwealth of Virginia Held Stock.

(From March 19, 1823, to January 1, 1861.)

	Number of shares.	Par value of shares.	Dividends received by Commonwealth. Date.	Amount.	Value chargeable to West Virginia.
Northwestern Bank of Virginia, at Wheeling.					
Held by Commonwealth Fund,	2,918	$291,800.00	Regularly 1838-1860 on 2,918 shares,	$445,315.16	
The Commonwealth Fund originally held 4,000 shares which were paid for as follows:					
Cash, $375,091.33					
Net dividends and interest 24,908.67					
4,000 shares at $100.00 per share, $400,000.00					
In 1857 the Commonwealth sold 1,082 shares for $113,671.42 and turned this amount over to the Sinking Fund.					
Held by Literary Fund, Purchased in 1832.	500	$ 50,000.00	Regularly 1835-1860 both inclusive except 1843,	$ 89,500.00	
Total, Northwestern Bank stock, January 1, 1861,	3,418	$341,800.00	Total,	$534,815.16	
Fairmont Bank, (Marion County)					
Held by Literary Fund, Purchased in 1860.	1,000	$ 50,000.00	1860	$ 2,000.00	

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund.	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividend received by Commonwealth. Date	Dividend received by Commonwealth. Amount.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30	1836	$10,092.00
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00		9,200.00		
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,092.00
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00						
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,541.66	$145,670.45	$181,202.80	$1,022,415.91		
Cash loans, ...				890,000.00		890,000.00		
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00		
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00		
The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—								
Loan of Bank of Virginia stock, ... $ 37,500.00								
Cash, ... 12,500.00								
Total, ... $ 50,000.00								
Premium on the above stock, ... 4,078.12								
Total, ... $ 54,078.12								
Interest on $54,078.12, ... 33,714.69								

	Number of shares.	Par value of shares.	Expended through the Commonwealth Fund.	Expended through the Internal Improvement Fund.	Expended through the Sinking Fund.	Total cost.	Dividend received by Commonwealth. Date	Dividend received by Commonwealth. Amount.
Expenditures by the Commonwealth, ... For construction work and improvements on the James River Canal, Blue Ridge Canal and Kanawha road and river which were turned over to the James River and Kanawha Company for 10,000 shares of capital stock of that company in accordance with act passed March 16, 1832. (P. 73.)	10,000	$1,000,000.00		$1,216,666.30		$1,216,666.30	1836	$10,092.00
Capital Stock of James River and Kanawha Company, ... Received in part payment of cost of Blue Ridge Canal Turnpike in accordance with act passed February 25, 1833, (P. 57). The balance of the cost of this turnpike, viz: $58.80, was paid to the State in cash by the James River and Kanawha Company.	92	9,200.00		9,200.00		9,200.00		
Expenditures by the Commonwealth, ... On account of subscriptions to capital stock.	19,908	1,990,800.00		1,990,800.00		1,990,800.00		
State bonds issued in accordance with the act passed March 23, 1860, .. (P. 113). In exchange for a similar amount of capital stock.	2,000	200,000.00		200,000.00		200,000.00		
	32,000	$3,200,000.00		$3,416,666.30		$3,416,666.30		$10,092.00
Capital stock issued to the Commonwealth on account of the items below,	72,000	$7,200,000.00						
Expenditures on account of interest on guaranteed bonds and annuity to stockholders of the James River Company; deducting from the latter, the amount of the annuity repaid to the Commonwealth by the James River and Kanawha Company, ...			$695,542.66	$145,670.45	$181,202.80	$1,022,415.91		
Cash loans, ...				890,000.00		890,000.00		
Principal amount required to produce annually, at six per cent, the sum of $21,000.00, guaranteed forever to the stockholders of the James River Company, by the act of March 23, 1860, ...				350,000.00		350,000.00		
Cash loans to the Richmond Dock Company by the Board of Public Works, transferred to the Commonwealth Fund; being a part of the debt amounting to $94,128.96, so transferred, ...			12,500.00			12,500.00		

The said debt became a liability of the James River and Kanawha Company through its purchase of the Richmond Dock Company, and is as below:—

Loan of Bank of Virginia stock, ...	$ 37,500.00
Cash, ...	12,500.00
Total, ...	$ 50,000.00
Premium on the above stock, ...	4,078.12
Total, ...	$ 54,078.12
Interest on $54,078.12, ...	33,714.69
Total amount of decree obtained by the Board of Public Works in February 1845, ...	$ 87,792.81
Interest on $87,792.81 to February 1845, ...	6,336.15
Total transferred to the Commonwealth Fund in exchange for a certificate of state stock for $100,000.00; the difference being paid in cash, ...	94,128.96

The total amount of $94,128.96 was received by the Commonwealth, in stock of the James River and Kanawha Company; but this account is charged only with that part thereof, which was expended in cash from March 19, 1823, to January 1, 1861, viz:—$12,500.00.

STATEMENT OF THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS, AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, ETC., Continued.

JAMES RIVER AND KANAWHA COMPANY.

Capital Stock Acquired and Owned by the Commonwealth of Virginia; and the Cost Thereof, in Cash, to the Commonwealth, from March 19, 1823, to January 1, 1861.

	Number of shares.	Par value of shares.	COST: Expended through the Commonwealth Fund.	COST: Expended through the Internal Improvement Fund	COST: Expended through the Sinking Fund.	COST: Total cost.	Dividends received by Commonwealth: Date	Dividends received by Commonwealth: Amount.
Capital Stock issued to the Commonwealth, (Continued.)								
Bonds of the State loaned to the James River and Kanawha Company:								
As per act passed March 25, 1842, ... $ 250,000.00								
" " " " " 1, 1847, ... 1,236,000.00								
" " " " January 25, 1850, ... 110,000.00				$1,596,000.00		$1,596,000.00		
Bonds of the James River and Kanawha Company: Guaranteed by the State and assumed in accordance with the act of March 23, 1860:								
As per act passed March 23, 1839, ... $1,400,000.00								
" " " " " 9, 1849 ..... 350,000.00								
" " " " " 12, 1849, ... 150,000.00								
" " " " " 15, 1850, ... 360,000.00				$2,260,000.00		$2,260,000.00		
Total amount due the Commonwealth and capital stock issued therefor, in accordance with the act passed March 23, 1860, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		$10,092.00

RECAPITULATION OF THE ACCOUNT OF THE JAMES RIVER AND KANAWHA COMPANY.

Account of construction and subscription to capital stock, ...	32,000	$ 3,200,000.00		$3,416,666.30		$3,416,666.30		
Account of debt due the Commonwealth, guaranteed bonds and annuity assumed, ...	72,000	$ 7,200,000.00	$708,042.66	$5,241,670.45	$181,202.80	$6,130,915.91		
Total, ...	104,000	$10,400,000.00	$708,042.66	$8,658,336.75	$181,202.80	$9,547,582.21		

Par value of the stock of the James River and Kanawha Company owned by the Commonwealth on January 1, 1861, and the cost thereof in cash from March 19, 1823, to January 1, 1861, excluding the Bank of Virginia stock, referred to above, and all interest due the Commonwealth at March 23, 1860.

We have examined the figures contained in this Exhibit, consisting of pages 1 to 12 inclusive, and find them to be correct as to the amount and that they represent expenditures by the Commonwealth of Virginia for the purposes indicated.

Certified Correct:
ARTHUR G. POTTER.

PRICE WATERHOUSE & CO.,
For the Plaintiff.

Of the total capital investment of the James River and Kanawha Company as reported by that Company at September 30, 1860, 3.49% was located in West Virginia.

Certified Correct:
CLIFFORD E. SCOVILLE,

THOMAS BIRD DIXCY,
For the Defendant.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

DEFENDANT'S EXHIBIT

Summary of

CASH RECEIPTS AND DISBURSEMENTS

of the

COMMONWEALTH OF VIRGINIA

From March 19, 1823, to January 1, 1861

Prepared by

THOMAS BIRD DIXCY

Certified Public Accountant,

30 Church Street,

New York.

COMMONWEALTH OF VIRGINIA.

Summary of Cash Receipts and Disbursements from March 19, 1823 to January 1, 1861.

Balances, March 19, 1823:		
Commonwealth Fund	$189,019.23	
Internal Improvement Fund	21,022.19	
Literary Fund	94,021.42	$295,062.84
Net profit on State bonds and certificates of indebtedness purchased, below par, from March 19, 1823 to January 1, 1861, Schedule No. 1		90,788.35
Value of shares of stock of James River Company, at $500.00 per share, purchased by the Commonwealth prior to March 19, 1823, deducted from principal of annuity to stockholders of the James River Company included in the Public Debt, per Joint Exhibit "A-1":		
Shares		
Held by the Board of Public Works	284	
Held by the Literary Fund	138	
Total	422	
422 shares at $500.00 per share		211,000.00

RECEIPTS.

Amount of the public debt on the first day of January, 1861, per Joint Exhibit "A-1"	$32,919,863.03
All moneys paid into the Treasury of the Commonwealth from the counties included within the present State of West Virginia during the period from March 19, 1823 to January 1, 1861; admitted to this account by counsel for West Virginia, per Joint Exhibit "F-1"	7,051,215.56
Moneys received from counties within the territory now constituting the Commonwealth of Virginia, per Schedule No. 2	38,482,170.14
Obligations of the Commonwealth of Virginia, other than the debt, for public internal improvements, outstanding on the first day of January, 1861, per Schedule No. 3	2,204,898.19
Other receipts, per Schedule No. 4	3,702,135.98
Total receipts	84,360,283.80
Total	$84,957,134.99

DISBURSEMENTS.

Expenditures on account of appropriations made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, from March 19, 1823 to January 1, 1861; not including subscriptions to capital stock of internal improvement companies, nor such other expenditures as have been rejected from this account by counsel for West Virginia, per Joint Exhibit "C-1"	$ 1,251,288.92	
Expenses of the government of Virginia from March 19, 1823 to January 1, 1861, admitted as "ordinary expenses" by agreement between counsel for Virginia and for West Virginia, per Joint Exhibit "D-1"	18,207,684.29	
Expenditures on account of subscriptions to capital stock of joint stock companies, including banks, wholly or partly within the territory now constituting the State of West Virginia, in which the value of the equity of West Virginia, therein, is to be ascertained, except in banks, where the value of such equity is shown in the exhibit, per Defendant's Exhibit "G-1"	11,083,051.04	
Expenditures on account of banks and public internal improvements charged, by the Defendant, to the present Commonwealth of Virginia, per Schedule No. 5	27,586,527.60	
Expenditures on account of items not charged, by the Defendant, to the State of West Virginia, per Schedule No. 6	24,356,330.05	
Investments in bonds other than State bonds (for public improvements) and other investments not charged to the State of West Virginia, per Schedule No. 7	305,375.64	
Total disbursements		$82,790,257.54
Balances due from State agents on account of State bonds delivered for sale; and loss thereon and discount on bonds sold; at January 1, 1861, per Schedule No. 8		1,062,502.87
Balances, January 1, 1861:		
Commonwealth Fund	255,180.99	
Internal Improvement Fund	5,958.28	
Literary Fund	23,985.18	
Sinking Fund	819,250.03	1,104,374.48
Total		$84,957,134.99

Net Profit on State Bonds and Certificates of Indebtedness Purchased, Below Par, from March 19, 1823 to January 1, 1861.

On State bonds issued under act of February 16, 1825, account of James River Company, par value of $7,400.00, purchased for $6,290.00, through the Internal Improvement Fund		$ 1,110.00
On State bonds and bonds of the James River and Kanawha Company guaranteed by the State, purchased by the sinking Fund, established by act of March 10, 1835		872.39
On State bonds purchased and canceled by the Sinking Fund, established by act of March 26, 1853, less interest accrued at time of purchase, where not separated from principal on books		12,091.04
On State bonds purchased by the Sinking Fund, established under act of March 26, 1853, and held uncanceled, less interest accrued at time of purchase, not separated from principal on books		65,905.42
On State bonds purchased by the Literary Fund, and held uncanceled		13,422.00
Total		$93,400.85
Less:		
Premium on a bond of the James River and Kanawha Company guaranteed by the State, par value $500.00, purchased, through the Internal Improvement Fund, for $507.50	$ 7.50	
Premium on $50,000 of State bonds issued under act of Feb. 24, 1823, account of James River Co., purchased through the Internal Improvement Fund	1,250.00	
Difference between value at $500.00 per share, at which amount the shares are included in the principal of the annuity to the stockholders of the James River Company, assumed by the State in accordance with act passed March 23, 1860, of 87 shares, viz: $43,500.00, and cost of these shares, viz: $44,855.00, purchased by the Literary Fund	1,355.00	
		2,612.50
Net profit		$90,788.35

SCHEDULE NO. 1.

Moneys Received from Counties Within the Territory Now Constituting the Commonwealth of Virginia.

Bonus, received in cash, from banks within the present State of Virginia		$ 1,036,932.93
Bristoe estate (presumed to be an escheat):		
Sale of lots in Prince William County	$17,289.18	
Net income from the estate	7,914.05	25,203.23
Buckingham Furnace Lands	5,671.77	
Less charges applicable thereto	973.66	4,698.11
Clerks of County and Corporation Courts		571,053.84
Clerks of Superior Courts		308,238.45
Clerks of District Courts		2,890.90
Clerks of Superior Courts of Chancery		12,427.29
Costs, Civil and Criminal Prosecutions		6,273.00
Dividends on bank stocks		5,936,628.70
Dividends and interest received from turnpikes and roads lying wholly within the present State of Virginia		118,115.18
Dividends and Interest received from railroad companies, wholly within the Present State of Virginia		1,748,570.23
Dividends and interest received from canal and navigation companies, wholly within the present State of Virginia		321,467.78
Dividends received from turnpikes and roads extending into and between the territory now constituting the Commonwealth of Virginia and the State of West Virginia: Virginia's proportion on mileage basis		1,545.35
Escheats, less refunds and expenses		51,400.55
Fines, forfeitures and penalties, less refunds, etc.		307,004.68
James River and Kanawha Company		9,739.79
Virginia's proportion of dividend, amounting to $10,092.00 on stock of above company, on the basis of amount of capital invested within the territory now constituting the two present States.		
Lands, sale of unappropriated		46,873.48
Lands, redemption of		26,050.07
Lands, sales of delinquent and forfeited		18,804.75
Lands, redemption of and sales of delinquent and forfeited, less refunds and expenses		5,024.29
Militia fines, net		360,268.92
Northwestern Turnpike Road		38,788.51
Tolls collected at gates located within the present State of Virginia.		
Staunton and Parkersburg Road		8,740.68
Tolls collected at gates located within the present State of Virginia.		

Southwestern Turnpike Road, tolls		28,117.91
Taxes, general, net		26,407,649.32
Taxes, capitation, net		307,362.97
Taxes, free negroes, net		79,720.29
Tax on dividends, net		362,659.18
Tax on railroad travel		123,613.34
Tax on notarial seals		177,994.21
Taxes, collateral inheritance:		
Virginia	3,330.24	
County not recorded	348.85	3,679.09
Voluntary enslavement		4,695.79
Miscellaneous:		
Virginia	10,069.73	
Undivided (not claimed for West Virginia.)	9,867.60	19,937.33
Total		$38,482,170.14

SCHEDULE NO. 2.

Obligations of the Commonwealth of Virginia, Other Than the Debt for Public Internal Improvements, Outstanding on the First Day of January, 1861.

Temporary loans, in anticipation of taxes, as per the act of March 7, 1851	$ 2,000.00
United States; amount of surplus revenue received by Virginia, which was distributed by act of Congress, approved June 23, 1836, and accepted by the State in accordance with act passed December 20, 1836	2,198,427.99
Unclaimed dividends of incorporated companies	4,470.20
Total	$2,204,898.19

SCHEDULE NO. 3.

Other Receipts.

Bank of the United States:		
Dividends	$ 45,750.00	
Sale of 500 shares	50,351.00	
		$ 96,101.00
Chesapeake and Ohio Canal Company:		
Interest on debt to state for interest paid on guaranteed bonds		6,372.00
Dismal Swamp Canal Company:		
Repayment of loan made prior to March 19, 1823..		37,560.00
Dividends on capital stock of the James River Company owned by the Board of Public Works, being dividends on and after July 1, 1835, received from the James River and Kanawha Company.....		166,140.00
Interest:		
On shortage of Jerman Baker, State Treasurer, in Commonwealth Fund	$ 1,258.65	
On surplus revenue of the United States, deposited with Virginia, loaned to banks, etc.....	111,419.37	
On loan to Richmond and Petersburg Railroad Company	2,695.88	
On debt of the James River and Kanawha Company, due the State	142,181.74	
On guaranteed bonds of the James River and Kanawha Company, less amount of interest accrued at time of purchase of the bonds.....	2,713.33	
On United States five per cent. stock of 1821....	888.67	
On loans to the James River and Kanawha Company	603,965.37	
On loans to Kanawha Board, of James River and Kanawha Company in accordance with act of March 23, 1860	1,500.00	
		866,122.51
James River Company (on State account):		
Tolls and other income, net	$557,677.38	
Re-sale of James River Company bonds, purchased prior to March 19, 1823	30,300.00	
		587,977.38
Literary Fund, amounts received on account of principal of investments made prior to March 19, 1823:		
United States six per cent. stock redeemed....	$ 13,000.00	
Farmers Bank of Virginia stock sold for $9,762.00, less $2,575.00, paid for stock purchased after March 19, 1823	7,187.00	
United States Bank stock	78,350.00	
Loans to individuals	80,000.00	
Washington College loan	2,000.00	
Profit on United States stock redeemed $818.18, less premium of $420.00 on City of Richmond stock purchased after March 19, 1823	398.18	
		180,935.18
Net income from sundry investments of the Literary Fund not including interest on State bonds, so held, dividends on James River Company stock paid by the State nor dividends from banks in the present State of West Virginia		968,195.03

Northwestern Turnpike Road:		
Profit on Investment in United States stock...	$ 805.43	
Profit on investment in Bank of the Valley stock..	378.00	
		1,183.43
Preston, John, State Treasurer, on account of shortage prior to the year 1820		53,884.40
Premium on State bonds sold		354,176.75
Rentals, net		49,158.99
Staunton and Parkersburg Road:		
Interest on sundry accounts		451.16
United States, Revolutionary Claims:		
Through the Commonwealth Fund	$ 474,475.46	
Less payments on account of half pay claims and fees	410,703.50	
	$ 63,771.96	
Through the Literary Fund, less commissions	182,441.48	
		246,213.44
Upper Appomatox Company:		
Repayment of loan made prior to March 19, 1823 and interest thereon		11,791.74
Winchester and Potomac Railroad Company:		
Annuity	$ 65,075.00	
Interest on loans	10,856.97	
		75,931.97
Total		$3,702,135.98

SCHEDULE NO. 4.

Expenditures on Account of Banks and Public Internal Improvements, Charged, by the Defendant, to the Present Commonwealth of Virginia.

On account of subscriptions to capital stock of banks within the territory now constituting the Commonwealth of Virginia	$ 2,108,591.00
On account of subscriptions to capital stock of turnpike and road joint stock companies, wholly within the territory now constituting the Commonwealth of Virginia	1,897,747.22
On account of subscriptions to capital stock of bridge companies, wholly within the territory now constituting the Commonwealth of Virginia	49,622.16
On account of subscriptions to capital stock of Navigation companies, wholly within the territory now constituting the Commonwealth of Virginia	908,173.17
On account of subscriptions to capital stock of railroad companies, wholly within the territory now constituting the Commonwealth of Virginia	13,713,256.55
On account of appropriations to turnpikes and roads wholly within the territory now constituting the Commonwealth of Virginia	791,888.04
On account of the construction of the Blue Ridge	

railroad	1,604,824.73
On account of appropriation for bridge at Covington	6,007.07
On account of appropriations to turnpikes and roads extending into and between the territory now constituting the two present States; Virginia's proportion on an actual cost and mileage basis	247,289.33
Alexandria Canal Company stock subscription..	272,000.00
Amount of loans to railroad companies, wholly within the territory now constituting the Commonwealth of Virginia, which were unpaid on January 1, 1861	2,930,000.00
On account of the construction of the Covington and Ohio Railroad, lying partly in the present Commonwealth of Virginia and partly in the present State of West Virginia, no part of the cost of which has been charged to West Virginia by the Defendant, under instruction of her counsel	2,787,128.33
Winchester and Potomac Railroad Company:	
Subscription to capital stock..... $120,000.00	
Money loaned by the State..... 150.000.00	270,000.00
The above railroad lay, partly, within the territory now constituting the State of West Virginia. The stock and debt as above was surrendered, by Virginia, in the year 1846, for an annuity of $5,000.00. Under authority of an act passed by the Commonwealth of Virginia, February 22, 1866, the Winchester and Potomac Railroad Company was relieved from payment of the annuity by paying into the treasury of Virginia, bonds of the State amounting to $83.333.33, to cover the principal of the annuity, and a further sum to cover the amount of annuity in arrears. In view of the above no part of the original expen diture amounting to $270,000.00 is charged to West Virginia.	
Total	$27,586,527.60

SCHEDULE NO. 5.

Expenditures on Account of Items Not Charged by the Defendant to the State of West Virginia.

Brandonville, Kingwood & Evansville Road		$ 10,595.73
Bath, Town of, Loan to		2,500.00
Berryville & Charlestown Turnpike Co.		20,455.74
On account of subscription to the capital stock of the Berryville and Charlestown Turnpike Company, which turnpike extended into and between the territory now constituting the Commonwealth of Virginia and State of West Virginia. Omitted from Defendant's Exhibit "G-1" (the seventh inquiry of the decree of reference), because the road was purchased by the State, the stock interests, thereafter becoming valueless. A proportion of the purchase price paid for the physical property is included in Joint Exhibit "C-1"		
Birthplace of Washington, Land		139.21
Boundary Lines		16,704.78
Connollee, Thornton, Refund		186.70
Conventions, Expenses of		258,906.28
Chief Justice Marshall, Portrait of		500.00
Commission to South Carolina regarding Federal Relations		2,500.00
Contingent Fund (gun houses in Virginia)		1,000.00
Counterfeit Money, charged off		190.00
Cannon-house, 71st Regiment		110.00
Clarksburg & Buckhannon Turnpike Co.		19,259.36
Chesapeake & Ohio Canal Company stock subscription (in Maryland)		250,000.00
Calling out Militia at Wheeling in 1836		1,099.00
Damages remitted		93.96
Deaf, Dumb and Blind, Institute for:		
For site and buildings	$ 68,320.94	
Land, fencing, boiler-house, etc.	7,000.00	
Heating, lighting, etc., plant	25,341.00	
		100,661.94
Experimental Railway		10,000.00
Entertaining		3,602.03
Eastern Lunatic Asylum (Williamsburg):		
Buildings	$ 72,318.88	
Less receipts	4,054.69	
		68,264.19
Gas installation		6,000.00
Enclosure walls, etc.		13,161.00
Additional charges on buildings, etc.		38,589.00
Furniture, buildings, land, etc.		7,266.00
Exchange, expense of in paying interest on bonds		17,071.57
Expenses of the Board of Public Works	$ 203,379.38	
Less amount included in Joint Exhibit "D-1," as ordinary, amount excluded being extraordinary	164,917.76	
		38,461.62

Free persons of color—transportation to Liberia		26,103.50
Fugitive slave expense		2,201.00
Gun-house at Alexandria		900.00
Gun-house at Richmond, Fayette Artillery		1,079.09
Harper's Ferry raid	$ 255,745.77	
Less receipts	3,982.12	
		251,763.65
Insurrection of slaves in year 1831		18,969.41
International exchanges		2,836.19
Improvement of Public Square		1,456.91
Interest:		
On Public Debt	$18,324,044.50	
On Treasury Notes	133,527.34	
On Temporary Loans	107,844.57	
On old Military Debt of 1814 and prior	9,331.43	
		18,574,747.84
Interest on payment made to penitentiary before due		12,897.96
Interest on payments by the State for subscription to stock of Northwestern Bank of Virginia		8,091.33
Interest paid on bonds of the Chesapeake and Ohio Canal Company, guaranteed by the State		250,709.66
Interest on sundry current accounts, net		40,373.13
James River Company dividends, etc., accruing while property of that company was owned by State, paid afterward		3,619.09
James River Company:		
Dividends paid by the State to stockholders of, not including dividends on stock owned by the State	$ 81,415.28	
On account of annuity to stockholders assumed in accordance with act passed March 23, 1860	2,820.00	
		84,235.28
Jefferson, Statue		9,950.00
Kingwood & West Union Turnpike Co		18,140.61
Lafayette Reception		11,998.17
Lyle, amount received in 1780, refunded		125.38
Lemmon Slave Case—expense of prosecution		1,648.85
Lot on Governor street	$ 3,827.25	
Less, for lot on Franklin street, sold	2,843.33	
		983.92
Museum property		6,958.50
Maps (Commonwealth Fund)	$ 16,628.04	
Maps (through Internal Improvement Fund)	11,446.48	
		28,074.52
Medical College of Virginia (Richmond): Construction		25,000.00
Mexican War expense	$ 32,101.16	
Less receipts	27,943.66	
		4,157.50

Monroe Monument and Burial	$ 4,280.54	
Less receipts	393.00	
		3,887.54
Margaret Academy (Accomac county, Va.):		
For support	$ 500.00	
For improvement and repairs	1,000.00	
		1,500.00
Northwestern Turnpike Road, repairs, etc. (West Virginia's proportion)		109,587.74
Northwestern Turnpike Company of Alleghany, a Maryland corporation, formed for the purpose of constructing that part of the Northwestern Turnpike Road which ran through formerly Alleghany county, now Garrett county, Maryland, on account of subscription to the capital stock		7,882.92
Pensioners, Cincinnati Society		696.87
Pensioners		65,997.02
Penitentiary, erecting Hospital		9,346.98
Penitentiary, lot for		3,000.00
Penitentiary, pipe for water supply		1,600.50
Pauley, L. A. (Augusta county), claims dating from 1782		434.15
Powder, arms and armory, year 1860		79,471.59
Primary Schools, out of income		2,400,331.11
Slaves executed, condemned and transported	$ 575,450.03	
Less receipts from sales	247,761.46	
	$ 327,688.57	
Less net amount received through the Literary Fund for sales of runaway slaves and free negroes	16,520.22	
		311,168.35
Swords and medals voted by Assembly		11,681.35
Surveying: Paid to James River and Kanawha Company for surveying Potts and Second Creeks		852.37
Surveying		250,206.56
State bonds loaned to the James River and Kanawha Company, Kanawha Board, for improvements in accordance with act passed March 23, 1860, omitted from charges against West Virginia by the Defendant under instructions of her counsel		60,000.00

Staunton & Parkersburg Road, repairs, etc. (West Virginia's proportion)		21,700.74
State Courthouse		22,387.54
Square, Capitol, Governor's Mansion, etc.: Guard-house, grading, etc., installing water and gas, and purchase of lot		12,278.47
Treasury Notes, overpayment of		50.00
Treasury Notes, expense of printing, etc.		375.74
Tucker, J. Randolph, Attorney General, amount paid to, in the year 1859, on account of prosecution, etc., of Selden, Withers & Company		500.00
Trans-Alleghany Lunatic Asylum		27,000.00
University of Virginia, buildings and water system		25,000.00
Virginia Military Institute, buildings		151,000.00
Virginia Military Institute, Statue of Washington		10,000.00
Washington College, unexplained payment in 1848		8,114.64
Warehouses purchased in present State of Virginia		37,550.15
Washington Monument (at Richmond)	$ 262,249.22	
Less receipts	92,542.41	
		169,706.81
Wheeling, City of, for interest on guaranteed bonds	$ 30,627.45	
Less receipts	14,940.00	
		15,687.45
War, arms and munitions of		3,346.13
Wars, expenses of old		20,132.35
Weighmaster of Live Stock, land at Richmond		1,500.00
Western Lunatic Asylum (Staunton):		
Buildings	$ 164,642.37	
Less receipts	4,000.00	
		160,642.37
Water, gas and heating plant		40,685.00
Land, enclosure walls, etc.		25,988.01
Support, land, etc.		10,700.00
Total		$24,356,330.05

SCHEDULE NO. 6.

Investment in Bonds Other Than State Bonds (for Public Improvements), and Other Investments Not Charged to the State of West Virginia.

Through the Internal Improvement Fund:		
Bonds of the James River Company, issued under act passed February 17, 1820	$31,300.00	
State bonds issued for bonds of the James River Company, under act of March 18, 1840	$40,000.00	
under act of March 16, 1847	25,300.00	65,300.00
		$ 96,600.00
Through the Literary Fund:		
Virginia Revolutionary 6% bonds	$ 3,074.77	
Bank of Virginia, stock	18,449.12	
University of Virginia, loan No. 5	40,000.00	
University of Virginia, loans No. 6 and No. 7	20,000.00	

Bonds of the James River Company, issued under act passed February 17, 1820, par value of $15,000.00 purchased for	15,960.00	
Richmond Academy stock	400.00	
Bank of the Valley, stock	10,134.00	
Loan to Emory and Henry College	18,000.00	
The Faculty of the Medical Department of the Hampden Sidney College, at Richmond: Amount invested in land and buildings	25,000.00	
Medical College in the valley of Virginia; invested in property (at Winchester)	6,400.00	
Davis's book on Criminal Law, copyright purchased	12,000.00	
		169,417.89
Through the Commonwealth Fund: Virginia Revolutionary 6% bonds		39,357.75
Total		$305,375.64

SCHEDULE NO. 7.

Balances Due from State Agents on Account of State Bonds Delivered for Sale; and Loss Thereon and Discount on Bonds Sold, At January 1, 1861.

From Selden, Withers Company:		
Account of coupon bonds	$548,173.98	
Account of sterling coupon bonds	265,447.83	
Total	$813,621.81	
Less amount received through the Sinking Fund, applied on above	22,800.00	
		$ 790,821.81
From James F. Soutter:		
Account of coupon bonds	$100,000.00	
Account of sterling coupon bonds	86,650.00	
Total	$186,650.00	
Less amount received through the Sinking Fund, in full settlement	17,333.59	
Loss		169,316.41
Discount on sterling coupon bonds sold by Selden, Withers and Company		102,364.75
Total		$1,062,502.97

SCHEDULE NO. 8.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 4, Original.

COMMONWEALTH OF VIRGINIA,
Complainant,

v.

STATE OF WEST VIRGINIA.

I, CHARLES E. LITTLEFIELD, SPECIAL MASTER APPOINTED UNDER AN ORDER MADE IN THE FOREGOING CASE, RESPECTFULLY SUBMIT THE FOLLOWING REPORT:

PARAGRAPH 1 OF DECREE.

1. THE AMOUNT OF THE PUBLIC DEBT OF THE COMMONWEALTH OF VIRGINIA ON THE FIRST DAY OF JANUARY, 1861, STATING SPECIFICALLY HOW AND IN WHAT FORM THE SAME WAS EVIDENCED, BY WHAT AUTHORITY OF LAW AND FOR WHAT PURPOSES THE SAME WAS CREATED, AND THE DATES AND NATURE OF THE BONDS OR OTHER EVIDENCE OF SAID INDEBTEDNESS.

The parties agree to the extent of $32,919,863.93 upon the amount of the public debt of the Com-

monwealth of Virginia on the 1st day of January, 1861 (Rec., p. 215). The plaintiff claimed at the time of making the joint schedule A-1, p. 1, that there should be added to this aggregate:

First—		
Unpaid and accrued interest from July 1st, 1860, to December 31, 1860, on the public debt.....		$ 977,209.89
Second—		
Bonds of the Commonwealth of Virginia, held by the Sinking Fund $1,329,557.20		
Unpaid and accrued interest as above..	39,686.72	
Total		1,369,243.92
Bonds of the Commonwealth held by the Board of Public Works .....$	146,500.00	
Unpaid and accrued interest as above..	4,395.00	
Total		150,895.00
Bonds of the Commonwealth held by the Literary Fund..	1,085,067.33	
Unpaid and accrued interest as above..	31,776.02	
Total		1,116,843.35

(Rec., p. 215.)

These items were all in the first instance contested by the defendant. The item of $977,209.89, unpaid and accrued interest, is conceded by the defendant and I treat it as a part of the public debt.

It is conceded that the bonds held by the Board of Public Works were bonds of the Commonwealth placed in its hands for sale in connection with the prosecution of the works under its charge, but that the bonds referred to were never issued, and therefore never became a part of the public debt. For this reason this item has been withdrawn by the plaintiff.

There remains in controversy the bonds in the Sinking Fund and the Literary Fund. Whether the bonds of the State held by these two funds are within the meaning of the Decree, a part of "the public debt of the Commonwealth of Virginia" is the question. This involves a review of the constitutional and statutory provisions creating them.

Sinking Fund.

The Constitution of Virginia required the maintenance of a Sinking Fund to

> "be applied to the payment of the interest of the State debt and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be *invested in the bonds or certificates of debt* of this Commonwealth or of the United States or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable."
>
> (Con. Va. Art. 4, Sec. 29, p. 47.)

The sum necessary was to "be set apart annually from the accruing revenues." (Con. Va., Art. IV., Sec. 29; Code Va. 1860, p. 47.) Proceeds of the "sale of the stocks held by the Commonwealth for internal improvement and other companies, if made before the payment of the public debt" were to "constitute a part of the Sinking Fund" (do. Sec. 30). The "Auditor of Public Accounts, Register and Secretary of the Commonwealth for the time being" were constituted a "corporate body under the style of 'The Commissioners of the Sinking Fund.' * * * For the purpose of managing, preserving and applying the Sinking Fund created by this Act." (Code of Va. 1860, Chap. 44, sec. 6, p. 261.) The Auditor of Public Accounts was required, "to pay into the Treasury of the Commonwealth [not the Treasury of the Commissioners of the Sinking Fund] annually thereafter out of the accruing revenues" the specified "portion of the sum set apart for the Sinking Fund". He was also required to "pay into the Treasury to the credit of said Fund" the amount of the semi-annual interest. (do. Chap. 44, sec. 4, p. 260). To provide for subsequent debts, he was also required to "pay in like manner into the Treasury", that is, of the Commonwealth, "to the credit of the Sinking Fund, one per centum, &c." and also "in like manner into the Treasury to the credit of the said fund * * * the amount of the semi-annual interest", and in case of coupon bonds, the "amount of the interest" was to be "set apart and paid into the Treasury to the credit of said fund" thirty days in advance of their becoming due. (do. Chap. 44, sec. 5, p. 261.) It was "their duty to apply the moneys appropriated out of the said Fund to the payment

of the interest and redemption of the principal of the State debt," &c., and to "invest any part of the appropriations * * * which cannot be so applied to the purchase of public stock" (do. Sec. 7, p. 261). Instalments of interest and sums for the redemption of any part of the principal of the debt were to be paid by special order of the Commissioners entered on their minutes authorizing "the second auditor to issue his warrants on the treasury". (do. Sec. 10, p. 261.) The second auditor was required to "keep the accounts of the Sinking Fund with the Treasury in such manner as to show distinctly at all times the amount of the transactions on account of each appropriate head of receipts and expenditures," (do. Sec. 13, p. 262).

> "All moneys belonging to the Sinking Fund shall be paid into the Treasury on the warrant of the second auditor and shall be paid out in like manner when authorized by the Commissioners of said Fund" (do. sec. 14, p. 262).
>
> "The Treasurer [State Treasurer], shall receive and pay the moneys belonging to the Sinking Fund as herein required. He shall keep a distinct account of the same and report to each session of the Legislature the aggregate receipts and disbursements on account thereof * * *" (do. sec. 15, p. 262).

The Treasurer of the Commonwealth was required to

> "keep separate accounts of the money *belonging to the Literary Fund*, to the Fund for Internal Improvement, *to the Sinking Fund* and to the Washington Monument Fund, showing the receipts and disbursements on account of each" (Chap. 45, Sec. 31, p. 270).

Semi-annual interest on the debt of 1839 was to "be paid out of the Public Treasury" but no part of it "out of the Sinking Fund," thus recognizing the Sinking Fund as being in the Public Treasury (Chap. 44, Sec. 19, p. 263).

Literary Fund.

By an Act passed March 3, 1819 (Rev. Code of Va., 1819, Vol. 1, page 82), certain public officials were

> "constituted a body corporate and politic under the denomination of the President and Directors of the Literary Fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or improve for the purposes hereafter mentioned" (Chap. 33, Sec. 6).

and

> "All sums of money which have accrued or may hereafter accrue to the Literary Fund in consequence of the appropriations thereto already, now or hereafter to be made,"

were vested in said persons (do., Sec. 6).

Actions were authorized to be brought "in the name of the said President and Directors" (do. sec. 7), and in an Act consisting of 22 sections an elaborate plan for the management of the Literary Fund was prescribed.

March 2, 1821, "An Act concerning the Literary Fund" was passed (Acts of Va., 1820-1821, p. 12). It repealed "all acts and parts of acts coming within the purview of this Act," (Sec. 13, p. 14). It changed the personnel of the Board (Sec. 1). It

did not vest in them the money which was vested in the original board. It provided "that all moneys accruing for the benefit of the Literary Fund" should "be paid into the public treasury and shall be kept by the Treasurer of the Commonwealth *ex officio* in the same manner that *other public moneys* are kept by him except only that there shall be a separate account raised therefor in the name and for the benefit of the Literary Fund" and that it should only "be checked or drawn for in his official capacity as such Treasurer" (Sec. 3, p. 13). The State Treasurer was to "be accountable for the moneys so paid into the Treasury" (Sec. 4). Dividends and interest upon stock belonging to the Fund and interest on moneys loaned were to be "paid into the Treasury" (Sec. 5). Sheriffs collecting executions were "to pay the same into the Treasury" (Sec. 6). "Money belonging to the Literary Fund" could "be paid out of the treasury" only on a "warrant from the auditor drawn in pursuance of an order of the president and directors" (Sec. 7). An accountant was provided for who was required,

> "to keep distinct accounts of all the stock and other property belonging to the Literary Fund and distinct accounts of all monies authorized to be paid into the Treasury and to be drawn therefrom on account of said Fund."

And he was to be furnished by the auditor with

> "statements of all warrants for the payment of money into the Treasury for the benefit of the Literary Fund" (Sec. 11, p. 14).

"An Act to amend the several Acts concerning the Literary Fund" passed February 25, 1829 Acts of Va. 1828-9, page 13), provided for a detailed plan for the supervision of the Fund, and Section 13, vested in the second auditor, "The Superintendent of the Literary Fund, all the power heretofore vested in the president and directors of the Literary Fund," with certain exceptions not material, and created a board with certain supervising powers "to perpetuate the corporation heretofore established."

Referring to this corporation the Code of 1860, page 414, provides:

> "The Governor, Treasurer, two auditors and register of the land office shall be a corporation under the style of 'The Board of the Literary Fund' "

and be vested with all the rights and powers here tofore vested in the President and Directors of the Literary Fund (Chap. 78, sec. 1). There is no provision in the Code vesting this "corporation" with any title to the funds or property of the Literary Fund. "Any money which ought to be paid into the public Treasury to the credit of the Literary Fund" is to be recovered not by the Board but by the second auditor of the Treasury (do. Chap. 78, sec. 7—Chap. 72, sec. 1). The Board is authorized to

> "*invest* all the unappropriated capital and income of the Literary Fund in certificates of debt of the United States *or certificates of debt* of or guaranteed by this State or in stocks of banks incorporated by it" (do. sec. 8, p. 414).

It is provided that

> "All money belonging to the Literary Fund shall be received into and paid out of the *Public Treasury* upon the warrant of the second auditor."

The only control that the Board has over this fund is by virtue of a provision that,

> "no warrant for paying out such money shall be issued without the special authority of the Board" (do., sec. 13, p. 415).

The second auditor adjusts, settles and balances all accounts of persons "having accounts with the Literary Fund" (do. Sec. 14, p. 415). The board does not have the right to the possession of "securities for money belonging to the Literary Fund," as all such securities are to be deposited "with the second auditor for safe keeping" (do. sec. 15, p. 415).

"Money, stocks or other property" are all referred to as belonging "to the Literary Fund" undoubtedly for convenience and identification. (Code Va. 1860, Chap. 79, sec. 1, p. 416.) As the money belonging to this Fund is in the Treasury of the Commonwealth as a part of its common assets kept in "a separate and distinct account," "the money, stocks or other property" would seem for the same reason to be the property of the State in the "Literary Fund."

The Courts of Virginia in a recent case have authoritatively construed legislation of a similar character relating to the Eastern State Hospital, which in its character is more indicative of constituting the Board in question a separate legal entity or a corporation independent of the State

than is the legislation relating to the Sinking Fund or the Literary Fund.

By an Act passed March 6, 1841 (Acts of Va. 1840-1841, Chap. 15, page 38), the

> "present Directors of the Hospital in the City of Williamsburg"

were constituted

> "a body politic and corporate to have perpetual succession by the name of the 'Directors of the Eastern Asylum for the maintenance and cure of insane persons' and by that name may sue and be sued and may and shall have and use a common seal and are enabled to take and hold any estate real or personal given or to be given to the said Asylum or to themselves for the use thereof" (do. sec. 1).

By the Code of Virginia, 1860, Chap. 85, sec. 2, page 435, it is provided that

> "The directors for the Asylums at Williamsburg and Staunton shall respectively continue to be corporations,"

the first being known as the "Eastern Lunatic Asylum."

The name of the hospital at Williamsburg was changed to the "Eastern State Hospital" and it was provided that its directors should continue to be a corporation (Va. Code, annotated, Sec. 1661). Neither of the Codes appear to have changed the powers vested in the corporation. The directors of this hospital are provided for by the Constitution (Art. XI, Sec. 149-150, p. 248). The Board has the "management of the Hospital for

which it is appointed" (sec. 1662). Its funds are to be deposited in a "solvent bank" designated by the Board and Commissioners (sec. 1665). Unlike the Sinking and Literary Fund its funds are not to be deposited in the State Treasury. They are "disbursed by checks drawn by the Superintendent of the Hospital and approved and countersigned by the Chairman of said special board" (sec. 1666). This separates the fund of the Hospital from the general fund of the State and the Treasury of the State. The directors have power to release claims for the "removal, maintenance or care of an insane person" (sec. 1708). In addition to the general corporate right to sue originally granted to the board, it has the right to sue "in the name of the hospital or of the Commonwealth" (sec. 1709).

While in this Code the State Treasurer is required to keep separate accounts of the money belonging to the Literary Fund, Interest on the Public Debt and the Sinking Fund, and the Miller Fund, the Hospital Fund is not recognized as being in his hands and he is not required to keep any account thereof (sec. 781).

Eastern State Hospital v. *Graves,* 105 Va. 151, was a suit brought by the hospital to recover sums due for board and medical services and the question was whether the Statute of Limitations could be pleaded in the suit, it being contended on the part of the plaintiff that the hospital was in effect the State and the Statute of Limitations did not run against the State, and therefore it could not be pleaded; and in holding that the Statute of Limitations could not be pleaded, the Court said that the

> "hospital was created and exists for purely Governmental purposes—is a public corpora-

> tion, governed and controlled by the State and acts exclusively as an agency of the State * * * that it has no stockholders, no members even except directors having no interest in it or its affairs, who are appointed by the Governor and with the consent of the Senate and are in fact public, rather than corporate officials endued with corporate being for a more convenient administration of the duties imposed upon them by law * * * if not collected the loss falls wholly upon the State, and if there is a recovery it will be for the benefit of the State and the State alone—not for the benefit of the directors nor for the benefit of any subordinate division of the State but for the whole people—the State at large" (p. 153).

The same doctrine in substance had been previously announced in *Maia* v. *Eastern State Hospital,* 97 Va., 507. The case of *Eastern State Hospital* v. *Graves,* expressly overrules the case of *McClanahan* v. *Western Lunatic Asylum,* 88 Va., 466, which holds that a plea of the Statute of Limitations was good on the ground that the asylum

> "is a corporation—an authorized legal entity —a personality in law with power to sue and be sued" (p. 468),

The McClanahan case seemed to turn almost wholly upon the fact that the Asylum had the power to sue and be sued. It is not only expressly overruled on that point by *Eastern State Hospital* v. *Graves,* but inasmuch as neither the Commissioners of the "Sinking Fund" or the "Literary Fund" have the power to sue and be sued, it would not be in point as to those funds in establishing that the respective boards were organized legal entities and personalities in law as distin-

guished from mere public agencies. This construction given to a state statute by the Supreme Court of Virginia having now become the well settled law of Virginia, will be held to be the authoritative construction of that statute by the Federal Courts as no Federal question is involved.

> Soper *v.* Lawrence Bros., 201 U. S., 359-370.
> N. Y. Cent. R. R. Co. *v.* Miller, 202 U. S., 584, 595.

On the authority of that case and by reason of the fact that they have neither stockholders or assets or control over assets and its officers are public, rather than corporate officials, invested with corporate capacity for convenient administration, and the funds are kept in the State Treasury subject to the control of its Treasurer, he being responsible therefor, in separate and distinct accounts for the purpose of convenience in maintaining the identity of and keeping the accounts of its Treasurer with each, I find that these funds are the property of the State.

Bonds purchased by and for either of these funds were bonds purchased by and for and on account of and with the funds of and became the property of the Commonwealth of Virginia, kept for convenience in the accounts to which they respectively belonged.

The remaining question is what was the legal effect upon the "public debt" of Virginia of the purchase of its bonds for each of these funds by the Commonwealth itself.

The plaintiff contends that they have remained after such purchase in the respective funds a part of the "public debt" of the State.

My attention has been called to the case of *State ex rel. Heller* v. *Young,* 18 Wash., 21, as sustaining the contention of the plaintiff. In that case the Court held that under an Act authorizing the State Treasurer "to invest all money now in his hands * * * belonging to the Tide Land Fund * * * in the general fund warrants of the state" (p. 23) that the authority conferred was "to *purchase* and not to pay" (p. 25) the general fund warrants. In the majority opinion the case turned upon the question as to whether the act contemplated "the payment and extinguishment of the warrants" or only authorized "the purchase for the benefit of the tide land fund of such warrants" (p. 24). Three of the Court held that the act contemplated a purchase and that the State could not compel the holder of a warrant to sell it to the State, the case seeming to turn largely upon the question of the power to compel the holder of a warrant to sell it to the State. While inferentially the reasoning indicates the continued existence of the warrant as a part of the debt of the State, its character in that respect is not discussed in the opinion. Two of the Court dissent and Chief Justice Scott in his dissenting opinion says:

> "It is immaterial whether the transaction contemplated an investment, a payment or a purchase. By it the State would become the holder of its own paper to a considerable amount. The original holder would be paid for it would undoubtedly be a payment to him. It might still be an investment upon the part of the State for the benefit of a particular fund. This could make no difference with the prior holder. The warrants would be *in effect discharged,* for they could not be reissued without express legislative

> authority reviving them and directing it. The State might preserve them as *evidence of the amounts* due a particular fund, which it might at some time desire to replace. * * * The word 'invest' was probably used through a desire to preserve the particular fund as a distinctive one, but these questions are not in this case and do not concern the relator in any way" (p. 32).

thus indicating clearly that the legal effect of the transaction as to whether it did or did not affect the character of the warrant as a continuing indebtedness was not involved in the case, and also clearly indicating that in the opinion of the Chief Justice the purchase of a warrant under such circumstances extinguished it as an indebtedness of the State.

The case of *State ex rel. Stull Bros.* vs. *Bartley*, 41 Nebr., 277, is cited by the majority in *State* v. *Young*. In that case the Court held that the Constitution had created a trust fund known as the Permanent School Fund, and that an Act providing for the payment of a warrant drawn on the general fund by the Treasurer and also that the Treasurer "shall hold said warrant as an investment of said permanent school fund" was void, as "said Act provides in substance for a transfer to the general fund of the permanent school fund" (p. 283). In the opinion the Court said:

> "We shall not argue to prove that an Act which provides for the defraying of current expenses of the State, and the enforced payment of outstanding general fund warrants from the permanent school fund is a transfer of that fund. The fact that such a transaction is by the legislature denominated an investment is wholly immaterial" (p. 284).

In defining "investment" they said:

> "It implies the contractural relation of purchaser and seller or borrower and lender, and in that sense it is employed in the Constitution" (p. 284),

undoubtedly having in mind the relation between the State and the holder of the warrant proposed to be credited by the Act rather than the specific relation of the State itself to its own warrant thus purchased, as they immediately proceed to say:

> "It follows that the State in its relation as Trustee can no more require the holder of State warrants to part with them than it can enforce the sale by a citizen of any other species of property" (p. 284).

While the case is not put upon that ground, it seems to involve the necessary conclusion that the warrants as "State securities" ceased to exist after such payment and although denominated an "investment," by the Act they were not after such purchase a debt or liability of the State, as if they were the "permanent school fund" would still have existed untransferred but invested in the warrants.

In *In re State Warrants,* 25 Nebr., 659, the Court held that "State warrants drawing interest" were "State securities" within the meaning of the Constitutional provision, authorizing the investment of the school funds in "United States or State Securities" but did not discuss the question as to what the effect of such a purchase would be upon such warrants as a continuing indebtedness of the State.

In *State* v. *Stuefer,* 06 Nebr., 381, the opinion of the Commissioner, who was appointed by the Court, seems to treat the proceeding contemplated by the Statute being construed by the Court in *In re State Warrants* (*supra*), as a guarantee by the State of the integrity and security of the "permanent school fund," and did not discuss the question as to the effect upon a State security, as a continuing indebtedness after its purchase by the State.

These cases, while in some respects analogous, are not in point upon the contention of the plaintiff.

In *Commissioners* v. *Walker,* 7 Miss. (6. How), 143, upon the ground that "There was a legal conveyance of the Sinking Fund to persons capable of holding it for the use and benefit of the State in the extinguishment of a certain debt" (p. 187); the Court held that the Commissioners were Trustees of the Sinking Fund; and as such could maintain the suit to recover money loaned by them from the Sinking Fund "for the use of the party beneficially interested" (p. 188); and did not discuss the question involved here.

The case of *Elser* v. *City of Fort Worth,* 27 S. W., 739, is closely in point for the plaintiff. In that case the Court said:

> "The next contention of appellant is that if the City can invest these funds otherwise than in paying off and canceling the bonds themselves it cannot invest them in the purchase of its own outstanding bonds of another series because a purchase by a debtor of a debt against himself *ipso facto* works a cancellation thereof. It must be conceded that this is a correct statement of the law in its application to ordinary cases in which the

purchase is made by the debtor in the same capacity in which he owes the debt; * * *

But, be this as it may, it will hardly be contended that if the purchase be made in a different capacity than that in which the debt is owed (for instance, if A as Trustee should with a trust fund purchase a debt which he owes as an individual), the rule would apply; and we are of opinion that as to those funds set apart for special purposes both by the law and the ordinances passed by the City Council as in this case, the City must be regarded as a Trustee purchasing with the trust fund a debt which it owes as an individual and that the debt so purchased is not canceled but is kept alive for all purposes and becomes the property of the *cestui que trust*—the special fund—just as the house and lot taken from a defaulting collector was said by our Supreme Court in the case of *City of Sherman* v. *Williams*, 84 Tex., 421, 19 S. W. 606, to become the property of such a fund. We think this view receives striking illustration in numerous provisions of our constitution and laws authorizing the investment of special funds such as the university and public school funds held by the State in its own bonds and by the different counties in their own obligations. We believe it has never been contended that a purchase of this kind cancelled the bonds thus acquired" (p. 740).

The Court distinguishes 102 N. Y., 313, and 102 N. Y., 410, upon the ground that they turn upon statutes "quite dissimilar to the provisions contained in the Charter of this City." The Charter provided:

> "The City Council shall have power to invest the sinking fund * * * in bonds of the City of Fort Worth" (p. 741).

An examination of the essential and substantial features of the legislation construed in the New York cases will, I think, show their substantial identity with this provision in the Charter of the City of Fort Worth. The opinion of the Court seems to be mainly predicated upon the analogy of the collector's house and proceeds upon an apparent misconception of the legal situation. The house had physical existence and could be impressed with a trust in connection with the fund without any reference to its ownership or any contractual relations to or interests therein. There is no parallel between such a piece of physical property and the bonds in question. A bond is merely the evidence of an indebtedness and entitles the holder to recover of the maker the amount evidenced by its terms. Independent of establishing the right of such recovery the bond has no value. To assume that it is in all respects parallel to a piece of physical property for the purpose of demonstrating that it still has valid existence as an evidence of indebtedness after its purchase by the maker, is to beg the question and assume its continued existence as a debt. The bond is a promise to pay and the real question is whether the obligation which the City assumed to pay, the sum stipulated in the bond, to the payee, still remains an obligation when the City makes the purchase itself and becomes by virtue thereof the other party to the contract. On the theory of a trust relied on by the Court the debt may well have been extinguished, as a debt, and the proceeds in the hands of the City be impressed with a trust in favor of the fund in which the debt had merged.

This was a decision of an intermediate Court. It does not appear to have gone to the Supreme Court, and I do not find that it has ever been cited with approval.

There are a number of authorities which clearly sustain the contention of the defendants, some of which are directly in point.

In *Young* v. *Hughes,* 20 Miss. (12 S. & M.), 93, the State subscribed for stock in the Planter's Bank and paid for the subscription in bonds and provided that the surplus of the dividends on the stock after the payment of the interest of the bonds was to "constitute a Sinking Fund * * * for the redemption of the said bonds" (p. 96) and a State Commissioner was afterwards provided for with power to "manage, collect and receive the Sinking Fund" (p. 98) and authorized to coerce by suit or otherwise payments of all debts due that fund. The fund was held to be the property of the State.

In *Miss.* v. *Dickinson,* 20 Miss. (12 S. & M.), 579, the State Treasurer was required to set off the indebtedness of the State to the defendant against the amount the defendant owed the Sinking Fund, notwithstanding the fact that the Sinking Fund was in a sense a trust fund because "an indebtedness to the sinking fund is therefore, an indebtedness to the State of Mississippi, the latter being the sole owner of that fund" (p. 583).

In *Comr. of Baltimore Co.* vs. *Board of Managers of the Maryland Hospital for the Insane,* 62 Md. 127, the Board of Managers of the Hospital held the title by deed of "all the real estate and other property belonging to said trust" (p. 130). They were "a body politic and corporate" might "sue and be sued" (p. 131). They

had no "power to mortgage or pledge any of the property real or personal of said hospital" (p. 130). The hospital was "declared to have been built and established on its said site by the authority and direction of this State" and the hospital was "to be a public agency of this State for the administration of one of the charities thereof" (p. 131). The Court held that the hospital was the property of the State and not subject to an assessment for the construction of a public roadway and that the "corporate form was adopted by the State only more conveniently and efficiently to administer the affairs of the Institution" (p. 132).

In *New England Life Ins Co.* v. *Phillips,* 141 Mass., 535, the Court was deciding the effect of a purchase by trustees of a Sinking Fund, of railroad bonds, which the fund was created to buy, and under the provisions of the Statute they held that it was the duty of the Trustees to cancel the certificates of the road's indebtedness when purchased by them with the Sinking Fund. They said,

> "Now if it were a plain misuse of the term to say 'invested' when preservation for the purpose of collecting income is not intended, there would be some force in the argument. But the word 'invest' has no such absolute and universal meaning. It is not uncommon to hear it said that the best investment of money is in the payment of one's debts" (p. 540).
>
> "but as has already been seen the word 'invest' does not necessarily imply a permanent keeping for income (p. 543). * * * But in the view which we take of the proper construction of the Statute it might reasonably be anticipated that the Trustees though having the liberty to invest in other securities

would give the preference to the certificates of indebtedness if these could be obtained at a fair price as compared with the other authorized securites for the purpose of reducing the debt as fast as possible" (p. 544).

While the point is not emphasized, this last remark of the Court indicates that it understood the purchase of securities under such circumstances to result in a reduction of the debt.

In *Brooke et al.* v. *Phila.* 162 Pa. St., 123, 24 L. R. A., 781, in considering the debt limit fixed by the Constitution and the relation thereto of the bonds of the city held in its Sinking Fund, the Court said:

"When used in the purchase of the debt, there is a release of the pledge and a discharge of the obligation to the amount of the purchase.

It is not important in determining the actual debt that the Commissioners have not authority immediately on purchase to cancel or destroy the city certificate; it is paid for by the money of the obligor; put into the fund for that very purpose; *as an outstanding unpaid obligation, it can as to the obligor have no real effective existence after it is purchased and paid for with the city's* money" (p. 131). * * * It "ceases to be longer a part of the actual debt of the city. That much of the debt the City is no longer bound to pay because practically it is paid. We are speaking now of the actual obligation of the city as affected by these certificates in the fund but not yet canceled" (p. 131) * * * "The City owes now just what it is bound to pay; not one cent more. If it has through the Sinking Fund purchased its own certificates, placed them uncancelled in the fund and *even pays interest on them annually it can-*

not pay them again. The payment of annual interest is only a method or device for the annual appropriation to the fund" (p. 132).

The Sinking Fund Act provided for the "extinguishment of the bonds and funded debt" and that "said bonds when purchased shall be conspicuously stamped to show that they were purchased for the Sinking Fund of said City and the *interest on said bonds* shall be collected and used in like manner with the taxes collected for said Sinking Fund" (Laws Pa., 1874, page 234, Chap. 452, sec. 11), clearly treating the bonds as an existing investment with interest accruing thereon. This case is followed on this point in *Bruce et al.* v. *Pittsburg et al.,* 166 Pa. St., 152, and in *Houston* v. *Lancaster,* 191 Pa. St., 143.

In *Kelly* v. *Minneapolis,* 63 Minn., 125, the Court said:

"This Board [Sinking Fund Commissioners] with the consent of the council may invest the fund in the bonds of the city or in certain other designated bonds. If it is *invested in the bonds of the city* they are not to be *canceled* but the *interest thereon is to be collected* and added to the fund; and when the principal of any city bonds becomes due, such of the bonds in the Sinking Fund as may be necessary are to be sold with the consent of the council and the matured bonds paid" (p. 134).

"It appears from the record in this case that all of the bonds held by the Sinking Fund are the bonds of the City, hence the amount of the bonds and the money in the fund necessarily represent an equal amount of the out-

standing and uncanceled bonds and indebtedness of the city which has already been realized from taxation to pay the bonds, and to ascertain the further amount to be raised by taxation in order to extinguish the entire indebtedness of the city it necessarily follows that the amount of the Sinking Fund is to be deducted from the entire amount of the apparent indebtedness of the City. *The balance is its actual debt.* The debt limit of the statute has reference to an actual indebtedness for the payment of which a tax must be levied, not to an *uncanceled apparent liability*" (p. 135).

In *Stone* v. *Chicago*, 207 Ill., 492, it was held that the sum reported as due the Sinking Fund was

> "not a debt of the city but the amount in the hands of the City Treasurer belonging to the Sinking Fund should be deducted from the amount of the city's bonded indebtedness * * * *" (p. 510).

Citing with approval *Kelly* v. *Minneapolis* (*supra*). It does not appear from this case whether or not the Sinking Fund was invested in whole or in part in the City bonds.

In *Savings Bank* v. *Grace*, 102 N. Y., 313, the Court said:

> "Re-purchase of notes or other evidences of debt by the issuer from the holder is redemption, and is equivalent to and has the force of payment" (p. 319).

Under the law being construed the Commissioners of the Sinking Fund were required to

> " 'invest the moneys which shall constitute the Sinking Fund for the redemption of the

> city debt * * * in the purchase of stocks created by the corporation of the City of New York' " (p. 321).

The stock was not to be cancelled by them until the final redemption of the stock and all interest accruing thereon was to be regularly carried to the said Sinking Fund for the redemption of the debt, and provision was made for its sale. The Court said:

> "From the time of its inception then to its final redemption it is the subject of sale; at all times the basis of interest, and, in the hands of all owners save the Commissioners, a part of the apparent indebtedness of the city" (p. 323).

Commenting upon a Statute authorizing the Commissioners to cancel the stock they said:

> "Its actual cancellation deprived it of no efficacy, for by redemption it was already for all practical purposes extinguished" (p. 324).

> "But the object of every Sinking Fund is to diminish the debt whose existence warranted its foundation" (p. 325).

In holding that stock thus invested in was not a debt, they said:

> "It satisfies also the intent of the Constitutional prohibition. That is aimed at an actual, not a theoretical indebtedness—at a substantial liability which can be discharged only by the enforcement of a tax or an assessment which when levied will be a charge upon the tax payer and a burden for him to remove—not a formal obligation which may remain as evidence of a *once existing debt,*

but which can in no way be regarded as a *present debt to be enforced,* and which, if not before cancelled in the discretion of the Commissioners, becomes waste paper by the mere efflux of time" (pp. 325, 326).

> "It is *by force of the ordinance* that interest is to be credited, *not by reason of the contract* or the terms upon which the stock was issued. Nor could that interest or other money be applied in payment of the stock held by the commissioners. That was paid by the purchase, yet if the argument of the respondent should prevail, it must be paid again before its extinguishment" (p. 326).

In applying similar principles to a railroad bond, the Court in *Wilds* v. *St. Louis, A. & T. H. R. R. Co.,* 102 N. Y., 410, held that conceding the bonds themselves immediately upon their purchase ceased to constitute any part of the corporate debt and were practically extinguished, and "that the provision for interest payments was only a mode for measuring and determining the amount of prescribed contributions to the Sinking Fund; those contributions at least are directed to be made so long as interest accrues upon the bonds treated as valid obligations" (p. 413).

The case of *Savings Bank* v. *Grace* (*supra*) was expressly approved in the recent and thoroughly considered case of *Levy* v. *McClellan,* 196 N. Y., 178, where the Court of Appeals of New York, said:

> "City stocks or bonds so held are not debts which it can be called upon to pay within the meaning of the Constitutional prohibition. * * * 'The object of every sinking fund, it was said, is to diminish the debt whose ex-

istence warrants its foundation,' and the amount 'required to pay off the city debt if it all came presently to maturity' would be a sum 'equal to its bonds or stock not including that held by the Sinking Fund' " (p. 197).

The amount of the "public debt" is to be ascertained for the purpose of determining the proportion to be paid by West Virginia. The Sinking Fund by which the bonds in that fund were purchased came from the current revenues raised by taxation in Virginia, while West Virginia was a part thereof, and to those current revenues she contributed her proportion. If the bonds thus purchased by the Fund to which she contributed are to be treated as a part of the existing debt, she will be required to contribute again her proportion in payment thereof and will therefore in effect pay that proportion twice. The bonds in the Literary Fund were purchased by assets that were the common property of the whole State in which West Virginia owned her proportion. The common assets having been used for the purchase of the bonds now in the Fund, if the bonds are still treated as a part of the public debt and in the final adjustment made a charge upon West Virginia, West Virginia will be compelled to pay her proportion of the bonds and lose entirely the benefit of her share of the assets thus used in making the investment therein.

Inasmuch as both the Sinking Fund and the Literary Fund under the provisions of the Statute regulating their conduct and management are very clearly the property of the State and only kept in separate and distinct accounts for the convenience of the State, it is difficult to see how a

purchase by the State for either of these funds of its own obligation, does not extinguish the bond as a debt of the State. The State can hardly be debtor and creditor at the same time.

I am satisfied that the great weight of reason and authority is against the contention of the plaintiff, and I therefore find that the Sinking Fund with interest and the Literary Fund with interest, within the meaning of the decree, were not a part of the "public debt" of the Commonwealth of Virginia on the first day of January, 1861, and that the amount of the public debt was the sum of Thirty-two million, nine hundred and nineteen thousand, eight hundred and sixty-three 93/100 dollars ($32,919,863.93) plus the unpaid and accrued interest thereon amounting to Nine hundred and seventy-seven thousand two hundred and nine 89/100 dollars ($977,209.89) in all $33,-897,073.82.

I state as a "special circumstance" that I consider of importance that on the first day of January, 1861, there was held by the Commonwealth of Virginia in its Sinking Fund, bonds of the Commonwealth of Virginia that had been purchased by its funds and were its property in the amount of One million, three hundred and twenty-nine thousand five hundred and fifty-seven 20/100 dollars ($1,329,557.20), and that the unpaid and accrued interest thereon up to December 31, 1860 was Thirty-nine thousand six hundred and eighty-six 72/100 dollars ($39,686.72), aggregating one million three hundred and sixty-nine thousand two hundred and forty-three and 92/100 dollars ($1,-369,243.92), and that the Commonwealth of Virginia held in its Literary Fund bonds of the Commonwealth of Virginia that had been purchased by

its funds and were its property, one million eighty-five thousand and sixty-seven 33/100 dollars ($1,085,067.33) with unpaid and accrued interest thereon up to December 31, 1860 of Thirty-one thousand seven hundred and seventy-six 2/100 dollars ($31,776.02) total One million, one hundred and sixteen thousand eight hundred and forty-three 35/100 dollars ($1,116,843.35).

I further state that the Commonwealth of Virginia was liable under a guaranty made in 1847 upon the bonds of the Chesapeake & Ohio Canal Co. for the "punctual payment of the interest and ultimate redemption of the principal sum of money appearing due" in the sum of Three hundred thousand dollars. That of this sum, bonds aggregating Thirteen thousand dollars ($13,000) were redeemed by the Commonwealth of Virginia April 11, 1903, in her settlement with the United States for Virginia bonds held by the Secretary of the Interior for the benefit of certain Indian tribes, and that the State now holds the same as a claim against the Chesapeake & Ohio Canal Company. The sum of Thirteen thousand dollars ($13,000) does not enter in any way into the aggregate of the indebtedenss as above stated (Rec., p. 289).

The schedules hereto annexed and marked Paragraph 1, Ex. 1, Paragraph 1, Ex. 2 and Paragraph 1, Ex. 3, show by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness.

SUMMARY.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

NOTE.—The word "REGULAR" in Maturity Column below means that the bonds are irredeemable for twenty (20) years, and then at the pleasure of the General Assembly.

NOTE.—The amount of $350,000.00 was not evidenced by any form of certificate of debt prior to January 1st, 1861, but is the principal amount required to produce annually at 6% interest, the sum of $21,000.00 guaranteed forever to the stockholders of the James River Company, by the Act of March 23rd, 1860.

It was later actually funded on this basis under the Acts of 1871 and 1872 known as the "Consol" and "Peeler" Acts.

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of the Public Debt.		Held by Individuals, Firms, Corporations, and others.	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Alleghany & Huntersville Road	March 13, 1849	82	Regular.		$ 5,000.00					$2,300.00		$2,700.00
Alexandria Canal Co	" 1, 1847	41	"		234,200.00		$1,800.00					232,400.00
Berryville Turnpike Co	March 30, 1839; April 8, 1839; February 4, 1847	39	"		8,000.00					8,000.00		
Berryville & Charlestown Turnpike Co	April 8, 1839; March 12, 1849	76	"		6,400.00							6,400.00
Beverly & Fairmont Road	April 8, 1839; January 14, 1848	47	"		16,600.00							16,600.00
Blue Ridge Railroad Co	March 5, 1849	79	"		32,200.00							32,200.00
City Point Railroad Co	April 6, 1839	24	"		50,000.00					400.00		49,600.00
Charleston & Point Pleasant Turnpike Co	January 23, 1835; March 7, 1838; January 25, 1839; April 8, 1839	17	"		20,800.00							20,800.00
do	March 15, 1849	62	"		5,800.00							5,800.00
Cacapon & North Branch Turnpike Co	April 3, 1838; April 8, 1839	29	"		11,000.00							11,000.00
Cumberland Gap Road	March 21, 1837; April 2, 1839; March 8, 1842	8	"		67,600.00		6,000.00					61,600.00
Clarksburg & Buckhannon T'pke Co	March 9, 1848; March 29, 1848	61	"		9,000.00					1,000.00		8,000.00
Coal River Navigation Co	April 8, 1839; March 17, 1849	72	"		4,000.00							4,000.00
Dismal Swamp Canal Co	February 17, 1837	7	"		16,500.00							16,500.00
Dragon Swamp Navigation Co	April 3, 1838; April 8, 1839	27	"		1,464.00							1,464.00
Exchange Bank of Virginia & Northwestern Bank of Virginia	March 19, 1839				447,407.00		7,150.00					440,257.00
Giles, Fayette & Kanawha T'pke Co	April 8, 1839; February 1, 1847; March 15, 1849	42	"		13,400.00					4,400.00		9,000.00
Goose Creek & Little River Nav. Co	March 27, 1848; March 29, 1848	73	"		7,000.00							7,000.00
Holliday's Cove Turnpike Co	March 2, 1838; March 26, 1839; April 8, 1839	28	"		4,700.00							4,700.00
Huntersville & Warm Springs Turnpike Co	March 20, 1832; April 8, 1839; April 3, 1839	32	"		300.00					300.00		
Hardy & Winchester Turnpike Co	March 8, 1847; February 22, 1848; March 15, 1849	50	"		19,300.00					3,800.00		15,500.00
Howardsville & Rockfish T'pke Co	March 9, 1848; March 29, 1848	59	"		9,000.00					4,000.00		5,000.00
Hampshire & Morgan Turnpike Co	" 15, 1849	80	"		4,600.00							4,600.00
Ice's Ferry Road	" 30, 1837	31	"		1,358.00							1,358.00
Bank of Virginia	" 13, 1840		"		99,000.00		400.00			800.00		97,800.00
James River Co	February 24, 1823	2	"		149,083.33					149,083.33		
do	" 16, 1825	4	"	$29,000.00					$29,000.00			
do	March 1, 1826	5	"		170,050.00					170,050.00		
do	January 30, 1829	6	"	37,000.00	13,000.00				37,000.00	13,000.00		
do	February 28, 1829	7	"	4,000.00	3,500.00				4,000.00	3,500.00		
do	December 18, 1829	8	"	8,000.00					8,000.00			
do	March 31, 1831	9	"	15,000.00					15,000.00			
do	February 20, 1833	10	"	4,000.00					4,000.00			

	Act of Assembly.				In Debt.									
					5%	6%	5%	6%	6%	5%	6%	5%	6%	
Alleghany & Huntersville Road	March	13, 1849	82	Regular.	.....	$ 5,000.00	.....	.....	.....	.....	$2,300.00	.....	$2,700.00	
Alexandria Canal Co	"	1, 1847	41	"	.....	234,200.00	.....	$1,800.00	.....	.....	.....	.....	232,400.00	
Berryville Turnpike Co	March 30, 1839 April 8, 1839 February 4, 1847		39	"	.....	8,000.00	.....	.....	.....	.....	8,000.00	.....		
Berryville & Charlestown Turnpike Co	April 8, 1839 March 12, 1849		76	"	.....	6,400.00	.....	.....	.....	.....	.....	.....	6,400.00	
Beverly & Fairmont Road	April 8, 1839 January 14, 1848		47	"	.....	16,600.00	.....	.....	.....	.....	.....	.....	16,600.00	
Blue Ridge Railroad Co	March	5, 1849	79	"	.....	32,200.00	.....	.....	.....	.....	.....	.....	32,200.00	
City Point Railroad Co	April	6, 1839	24	"	.....	50,000.00	.....	.....	.....	.....	400.00	.....	49,600.00	
Charleston & Point Pleasant Turnpike Co	January 23, 1835 March 7, 1838 January 25, 1839 April 8, 1839		17	"	.....	20,800.00	.....	.....	.....	.....	.....	.....	20,800.00	
do	March	15, 1849	62	"	.....	5,800.00	.....	.....	.....	.....	.....	.....	5,800.00	
Cacapon & North Branch Turnpike Co	April 3, 1838 April 8, 1839		29	"	.....	11,000.00	.....	.....	.....	.....	.....	.....	11,000.00	
Cumberland Gap Road	March 21, 1837 April 2, 1839 March 8, 1842		8	"	.....	67,600.00	.....	6,000.00	.....	.....	.....	.....	61,600.00	
Clarksburg & Buckhannon T'pke Co	March 9, 1848 March 29, 1848		61	"	.....	9,000.00	.....	.....	.....	.....	1,000.00	.....	8,000.00	
Coal River Navigation Co	April 8, 1839 March 17, 1849		72	"	.....	4,000.00	.....	.....	.....	.....	.....	.....	4,000.00	
Dismal Swamp Canal Co	February	17, 1837	7	"	.....	16,500.00	.....	.....	.....	.....	.....	.....	16,500.00	
Dragon Swamp Navigation Co	April 3, 1838 April 8, 1839		27	"	.....	1,464.00	.....	.....	.....	.....	.....	.....	1,464.00	
Exchange Bank of Virginia & Northwestern Bank of Virginia	March	19, 1839			.....	447,407.00	.....	7,150.00	.....	.....	.....	.....	440,257.00	
Giles, Fayette & Kanawha T'pke Co	April 8, 1839 February 1, 1847 March 15, 1849		42	"	.....	13,400.00	.....	.....	.....	.....	4,400.00	.....	9,000.00	
Goose Creek & Little River Nav. Co	March 27, 1848 March 29, 1848		73	"	.....	7,000.00	.....	.....	.....	.....	.....	.....	7,000.00	
Holliday's Cove Turnpike Co	March 2, 1838 March 26, 1839 April 8, 1839		28	"	.....	4,700.00	.....	.....	.....	.....	.....	.....	4,700.00	
Huntersville & Warm Springs Turnpike Co	March 20, 1832 April 8, 1839		32	"	.....	300.00	.....	.....	.....	.....	300.00			
Hardy & Winchester Turnpike Co	April 8, 1839 March 8, 1847 February 22, 1848 March 15, 1849		50	"	.....	19,300.00	.....	.....	.....	.....	3,800.00	.....	15,500.00	
Howardsville & Rockfish T'pke Co	March 9, 1848 March 29, 1848		59	"	.....	9,000.00	.....	.....	.....	.....	4,000.00	.....	5,000.00	
Hampshire & Morgan Turnpike Co	"	15, 1849	80	"	.....	4,600.00	.....	.....	.....	.....	.....	.....	4,600.00	
Ice's Ferry Road	"	30, 1837	31	"	.....	1,358.00	.....	.....	.....	.....	.....	.....	1,358.00	
Bank of Virginia	"	18, 1840	.....	"	.....	99,000.00	.....	400.00	.....	.....	800.00	.....	97,800.00	
James River Co	February	24, 1823	2	"	.....	149,083.33	.....	.....	.....	.....	149,083.33			
do	"	16, 1825	4	"	$29,000.00	.....	.....	.....	.....	$29,000.00	.....			
do	March	1, 1826	5	"	.....	170,050.00	.....	.....	.....	.....	170,050.00			
do	January	30, 1829	6	"	37,000.00	13,000.00	.....	.....	.....	37,000.00	13,000.00			
do	February	28, 1829	7	"	4,000.00	3,500.00	.....	.....	.....	4,000.00	3,500.00			
do	December	18, 1829	8	"	8,000.00	.....	.....	.....	.....	8,000.00				
do	March	31, 1831	9	"	15,000.00	.....	.....	.....	.....	15,000.00				
do	February	20, 1833	10	"	4,000.00	.....	.....	.....	.....	4,000.00				
do	March	11, 1834	11	"	10,000.00	.....	.....	.....	.....	10,000.00				
do	"	23, 1860	.....	Perpetual. (See note above)	.....	350,000.00	.....	.....	$142,000.00	.....	112,500.00	.....	95,500.00	
James River & Kanawha Co	"	21, 1837	11	Regular.	.....	1,925,683.59	.....	66,152.00	.....	.....	86,100.00	.....	1,773,431.59	
do	"	25, 1842	36	"	.....	250,000.00	.....	766.00	.....	.....	20,200.00	.....	229,034.00	
do	"	1, 1847	43	Irredeemable for 25 years, and then at the pleasure of the General Assembly.	.....	1,216,950.00	.....	11,850.00	.....	.....	.....	.....	1,205,100.00	
Carried forward					$107,000.00	$5,172,895.92	.....	$94,118.00	$142,000.00	$107,000.00	$579,433.33	.....	$4,357,344.59	

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of the Public Debt.		Held by Individuals, Firms, Corporations, and others.	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Brought forward				$107,000.00	$5,172,895.92		$94,118.00	$142,000.00	$107,000.00	$579,433.33		$4,357,344.59
James River & Kanawha Co.	January 25, 1850	89	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		110,000.00		3,650.00					106,350.00
do (See Note below.)	March 23, 1860		Irredeemable for 34 years, and then to be redeemed.		2,520,000.00			4,500.00		23,100.00		2,492,400.00
Jordans Furnace & Rockbridge Turnpike Co.	March 7, 1848; March 29, 1848	58	Regular.		3,600.00					3,600.00		
Louisa Railroad Co.	February 25, 1837; March 27, 1838	6	"		171,750.00					5,600.00		166,150.00
do.	March 8, 1847	45	"		131,687.00		4,400.00			300.00		126,987.00
do.	March 5, 1849	70	"		12,900.00							12,900.00
Lewisburg & Blue Sulphur Springs Turnpike Co.	March 30, 1837; April 8, 1839	33	"		1,000.00							1,000.00
Lafayette & English Ferry Turnpike Co.	January 25, 1839; April 8, 1839	34	"		2,550.00							2,550.00
Lynchburg & Buffalo Springs Turnpike Co.	March 14, 1839; April 8, 1839	37	"		8,500.00							8,500.00
Little Stone Gap Road	March 7, 1848; March 29, 1848	56	"		3,000.00							3,000.00
Marshall & Ohio Turnpike Co.	February 11, 1848	65	"		9,000.00							9,000.00
Moorefield & North Branch Turnpike Co.	April 8, 1839; March 10, 1848	67	"		12,900.00		200.00			2,000.00		10,700.00
Morgantown & Bridgeport Turnpike Co.	March 15, 1849	85	"		1,940.00					900.00		1,040.00
Moorefield & Alleghany Turnpike Co.	March 7, 1849	83	"		3,600.00							3,600.00
Morgantown & Beverly Road (2 Acts)	March 29, 1848	57	"		3,000.00					3,000.00		
Natural Bridge Turnpike Co.	February 28, 1837; April 8, 1839	26	"		6,100.00							6,100.00
North Carolina & Wytheville Road	January 17, 1848; March 29, 1848	53	"		100.00							100.00
North Western Turnpike Road	February 29, 1848; March 17, 1849	51	"		65,850.00					13,000.00		52,850.00
do	March 19, 1831	1	Irredeemable for 20 years, and then at the pleasure of the General Assembly, within a period not exceeding 15 years.	5,000.00					5,000.00			
do	February 6, 1834	2	Regular.	12,200.00	16,600.00				12,200.00	10,000.00		6,600.00
do	March 30, 1837	3	"		2,000.00							2,000.00
do	April 9, 1838; January 26, 1839; January 15, 1840	5	"		12,484.00					12,484.00		
do	January 15, 1840	6	"		9,354.73					3,450.00		5,904.73
do	March 14, 1840; March 19, 1840	7	"		5,100.00					3,000.00		2,100.00
Newmarket & Sperryville Turnpike Co.	March 19, 1849	75	"		9,100.00							9,100.00
Ohio River & Maryland Line Road	February 14, 1838	18	"		12,000.00							12,000.00
do	March 15, 1836	20	"		2,000.00					2,000.00		
do	March 30, 1839; January 13, 1848; March 29, 1848	86	"		6,600.00							6,600.00
Orange & Alexandria Railroad Co.	March 27, 1848; March 6, 1849	64	"		108,900.00					700.00		108,200.00
Petersburg Railroad Co.	March 29, 1838	13	"		150,000.00		420.00			2,000.00		147,580.00
Portsmouth & Roanoke Railroad Co.	January 20, 1834; March 14 1887; March 20, 1839	3	"	104,000.00	64,950.00						$104,000.00	64,950.00
do	March 31, 1838	14	"	100,000.00	50,000.00						120,000.00	50,000.00
Pittsylvania, Franklin & Botetourt Turnpike Co.	April 2, 1839	25	"		9,090.10							9,090.10
Richmond, Fredericksburg & Potomac R. R. Co.	January 23, 1835	4	"	121,000.0		$40,000.00			31,000.00		50,000.00	
Richmond & Petersburg Railroad Co.	January 17, 1837	5	"		176,400.00		500.00					175,900.00
do	March 30, 1838	21	"		50,000.00		300.00					49,700.00
Rappahannock Co.	March 4, 1836; March 1, 1838	12	"		13,350.00					450.00		12,900.00
do	February 9, 1843	40	Irredeemable for 25 years									

Jordans Furnace & Rockbridge Turnpike Co.	March 7, 1848 March 29, 1848	58	and then to be redeemed. Regular.		2,520,000.00 3,600.00			4,500.00		23,100.00 3,600.00		2,492,400.00
Louisa Railroad Co.	February 25, 1837 March 27, 1838	6	"		171,750.00					5,600.00		166,150.00
do	March 8, 1847	45	"		131,687.00		4,400.00			300.00		126,987.00
do	March 5, 1849	70	"		12,900.00							12,900.00
Lewisburg & Blue Sulphur Springs Turnpike Co.	March 30, 1837 April 8, 1839	33	"		1,000.00							1,000.00
Lafayette & English Ferry Turnpike Co.	January 25, 1839 April 8, 1839	34	"		2,550.00							2,550.00
Lynchburg & Buffalo Springs Turnpike Co.	March 14, 1839 April 8, 1839	37	"		8,500.00							8,500.00
Little Stone Gap Road	March 7, 1848 March 29, 1848	56	"		3,000.00							3,000.00
Marshall & Ohio Turnpike Co.	February 11, 1848	65	"		9,000.00							9,000.00
Moorefield & North Branch Turnpike Co.	April 8, 1839 March 10, 1848	67	"		12,900.00		200.00			2,000.00		10,700.00
Morgantown & Bridgeport Turnpike Co.	March 15, 1849	85	"		1,940.00					900.00		1,040.00
Moorefield & Alleghany Turnpike Co.	March 7, 1849	82	"		3,600.00							3,600.00
Morgantown & Beverly Road (2 Acts)	March 29, 1848	57	"		3,000.00					3,000.00		
Natural Bridge Turnpike Co.	February 28, 1837 April 8, 1839	26	"		6,100.00							6,100.00
North Carolina & Wytheville Road	January 17, 1848 March 29, 1848	53	"		100.00							100.00
North Western Turnpike Road	February 29, 1848 March 17, 1849	51	"		65,850.00					12,000.00		53,850.00
do	March 19, 1831	1	Irredeemable for 20 years, and then at the pleasure of the General Assembly, within a period not exceeding 15 years.	5,000.00					5,000.00			
do	February 6, 1834	2	Regular.	12,200.00	16,600.00				12,200.00	10,000.00		6,600.00
do	March 30, 1837	3	"		2,000.00							2,000.00
do	April 9, 1838 January 26, 1839 January 15, 1840	5	"		12,484.00					12,484.00		
do	January 15, 1840	6	"		9,354.73					3,450.00		5,904.73
do	March 14, 1840 March 19, 1840	7	"		5,100.00					3,000.00		2,100.00
Newmarket & Sperryville Turnpike Co.	March 19, 1849	75	"		9,100.00							9,100.00
Ohio River & Maryland Line Road	February 14, 1838	18	"		12,000.00							12,000.00
do	March 15, 1836	20	"		2,000.00					2,000.00		
do	March 30, 1839 January 13, 1848 March 29, 1848	86	"		6,600.00							6,600.00
Orange & Alexandria Railroad Co.	March 27, 1848 March 6, 1849	64	"		108,900.00					700.00		108,200.00
Petersburg Railroad Co.	March 29, 1838	13	"		150,000.00		420.00			2,000.00		147,580.00
Portsmouth & Roanoke Railroad Co.	January 20, 1834 March 14 1837 March 20, 1839	3	"	104,000.00	64,950.00						$104,000.00	64,950.00
do	March 31, 1838	14	"	100,000.00	50,000.00						100,000.00	50,000.00
Pittsylvania, Franklin & Botetourt Turnpike Co.	April 2, 1839	25	"		9,090.10							9,090.10
Richmond, Fredericksburg & Potomac R. R. Co.	January 23, 1835	4	"	121,000.0		$40,000.00			31,000.00		50,000.00	
Richmond & Petersburg Railroad Co.	January 17, 1837	5	"		176,400.00		500.00					175,900.00
do	March 30, 1838	21	"		50,000.00		300.00					49,700.00
Rappahannock Co.	March 4, 1836 March 1, 1838	12	"		13,350.00					450.00		12,900.00
do	February 3, 1848	48	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		97,100.00		2,100.00					95,000.00
Red & Blue Sulphur Springs Turnpike Co.	March 28, 1838 March 23, 1839	23	Regular.		4,900.00							4,900.00
Carried forward				$449,200.00	$9,040,301.75	$40,000.00	$105,688.00	$146,500.00	$155,200.00	$664,017.73	$254,000.00	$8,134,096.42

NOTE.—Of this total, viz., $2,520,000.00, certificates of the Commonwealth amounting to $1,982,125.00 had been issued prior to January 1st, 1861.

The balance, viz., $537,875.00, was in the form of certificates of the James River & Kanawha Company, guaranteed by the Commonwealth and actually assumed by it in accordance with the Act of Mch. 23rd, 1860.

For What Purpose Created.	By Authority of Acts of	Number of Loan.	Maturity.	Total.		Held by the Sinking Fund. Not admitted by Defendant as forming any part of Public Debt.		Held by the Board of Public Works. Not admitted by Defendant as forming any part of Public Debt.	Held by the Literary Fund. Not admitted by Defendant as forming any part of the Public Debt.		Held by Individuals, Firms, Corporations, and others.	
				5%	6%	5%	6%	6%	5%	6%	5%	6%
Brought forward				$449,200.00	$9,040,301.75	$40,000.00	$105,688.00	$146,500.00	$155,200.00	$664,017.33	$254,000.00	$3,124,096.42
Rivanna Navigation Co	March 27, 1837 / April 4, 1838	19	Regular.		6,300.00		300.00					6,000.00
Richmond & Danville Railroad Co	March 9, 1847	46	"		380,090.00					2,000.00		378,090.00
Richlands to Kentucky Line Road	March 8, 1847 / April 8, 1839	44	"		3,520.00							3,520.00
Rocky Mount Turnpike Co	March 18, 1847 / February 19, 1848	60	"		10,000.00					200.00		9,800.00
Rich Patch Turnpike Co	March 14, 1849	87	"		1,100.00							1,100.00
Staunton & Parkersburg Road	March 16, 1838 / April 8, 1839 / February 19, 1845	16	Irredeemable for 20 years, and then to be redeemed.		125,393.27		880.02			17,800.00		106,713.25
do	February 2, 1848 / March 29, 1848	54	Regular.		4,500.00		200.00			2,400.00		1,900.00
do	April 8, 1839 / March 12, 1849	71	"		16,510.00							16,510.00
Salem & Peppers Ferry Turnpike Co	March 25, 1839 / April 8, 1839	30	"		5,400.00		500.00					4,900.00
Salem & Newcastle Turnpike Co	February 11, 1839 / April 8, 1839	38	"		3,875.00							3,875.00
South Western Turnpike Co	January 24, 1848 / March 29, 1848	49	"		81,970.00					10,000.00		71,970.00
do	January 17, 1848	55	"		153,162.00					30,000.00		123,162.00
Smiths River Navigation Co	March 16, 1849	84	"		2,600.00							2,600.00
Tazewell Court House & Fancy Gap Road	March 17, 1849	78	"		3,420.00							3,420.00
Upper Appomattox Co	February 28, 1837 / January 25, 1839 / April 8, 1839 / March 24, 1838	9	"		43,900.00					6,000.00		37,900.00
Valley Turnpike Co	February 14, 1839 / April 8, 1839 / February 12, 1841	22	"		233,813.00					1,400.00		232,413.00
do	February 12, 1841	35	"		24,664.00		2,000.00					22,664.00
Virginia & Maryland Bridge Co	March 17, 1849	63	"		10,000.00					1,800.00		8,200.00
Virginia & Tennessee Railroad Co	March 6, 1849	81	"		66,800.00							66,800.00
Winchester & Potomac Railroad Co	February 6, 1834 / March 10, 1834 / December 13, 1834	2	"		10,000.00					10,000.00		
do	February 13, 1838	15	"	8,000.00	133,935.00						8,000.00	133,935.00
Wheeling, West Liberty & Bethany Turnpike Co	March 29, 1848	52	"		10,867.61					2,400.00		8,467.61
Weston & Fairmont Turnpike Co	March 9, 1848	66	"		4,000.00							4,000.00
Weston & Gauley Bridge Turnpike Co	March 25, 1848 / March 29, 1848	74	"		5,000.00							5,000.00
Wellsburg & Bethany Turnpike Co	March 15, 1849	68	"		1,700.00							1,700.00
Williamsport Turnpike Co	March 15, 1849	77	"		1,250.00					450.00		800.00
Registered Bonds	March 22, 1850	88	Irredeemable for 25 years, and then at the pleasure of the General Assembly.		2,340,648.00		19,800.00			48,500.00		2,272,348.00
Sterling Coupon Bonds	March 29, 1851	90	Redeemable in 35 years.	1,815,204.50							1,815,204.50	
Coupon Bonds	March 29, 1851	90	do.		13,082,500.00							13,082,500.00
Registered Bonds (coupon attached)	March 29, 1851 / May 25, 1852	90	Redeemable in 34 years.		3,050,464.33		445,289.18			107,000.00		2,498,175.15
Registered Bonds issued for the redemption of outstanding Warrants	March 17, 1856	91	Irredeemable for 34 years, and then to be redeemed.		2,761,100.00		43,700.00			18,700.00		2,698,700.00
Registered Bonds issued in exchange for Coupon Bonds	March 18, 1856	92	Redeemable in 35 years.		1,059,500.00		546,000.00			1,000.00		512,500.00
Registered Bonds	March 18, 1858	93	Irredeemable for 34 years, and then to be redeemed.		530,300.00		125,200.00			6,200.00		398,900.00
Total				$2,272,404.50	$32,208,583.96	$40,000.00	$1,289,557.20	$146,500.00	$155,200.00	$929,867.33	$2,077,204.50	$30,842,659.43

PARAGRAPH II OF DECREE.

2. "THE EXTENT AND ASSESSED VALUATION OF THE TERRITORY OF VIRGINIA AND OF WEST VIRGINIA JUNE 20, 1863, AND THE POPULATION THEREOF, WITH AND WITHOUT SLAVES, SEPARATELY."

"The extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof with and without slaves, separately," is as follows (Rec., p. 347):

1. EXTENT:			
Land Area:			
Virginia	40,262	Square Miles	= 62.6314%
West Virginia	24,022	do.	= 37.3686%
Total	64,284	do.	= 100%
Total Area:			
Virginia	42,627	Square Miles	= 63.8157%
West Virginia	24,170	do.	= 36.1843%
Total	66,797	do.	= 100%
2. ASSESSED VALUATION:			
Real Estate:			
Virginia	$296,085,460.31		= 78.2188%
West Virginia	82,449,252.04		= 21.7812%
Total	$378,534,712.35		= 100%
3. POPULATION:			
With Slaves:			
Virginia	1,221,319		= 75.4855%
West Virginia	396,633		= 24.5145%
Total	1,617,952		= 100%
Without Slaves:			
Virginia	748,171		= 66.4769%
West Virginia	377,289		= 33.5231%
Total	1,125,460		= 100%

ALTERNATIVE FINDING.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by

the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

"Supplemental Ex. 7."

PARAGRAPH III OF DECREE.

3. "ALL EXPENDITURES MADE BY THE COMMONWEALTH OF VIRGINIA WITHIN THE TERRITORY NOW CONSTITUTING THE STATE OF WEST VIRGINIA SINCE ANY PART OF THE DEBT WAS CONTRACTED."

This paragraph is clearly based upon the Wheeling Ordinance, which so far as material, reads as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during the same period" (Appendix to Rec., p. 122).

The Wheeling Ordinance is not predicated upon the *amount* of the public debt. Upon the assumption that West Virginia would be liable for "a just proportion of the public debt" in case of separation, the Ordinance prescribes an arbitrary method by which that "just proportion" shall be ascertained. It treats the question as an equation involving three factors: first "by charging to it all State expenditures within the limits thereof"; second, "and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted"; and third, "and deducting therefrom all moneys paid into the Treasury of the Commonwealth from the

counties included within the said new State during the same period."

The result of this equation was to be a "just proportion" without any reference to the amount of the debt itself. The assumed liability was the occasion of the arbitrary equation, and whether, standing alone, it would result in a "just proportion of the public debt" is so far as the ordinance is concerned entirely immaterial. The ordinance declares that the result thus "ascertained" is "a just proportion." If the ordinance is contractural in its character, it is the agreed method between the States of ascertaining "a just proportion of the public debt." In such case the States would be bound thereby as in case of any other contract.

Next in the order of events comes the Constitution of West Virginia, which upon this point provides:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State" (App., p. 125).

The Court has held that this section is to be read *in pari materia* with the ordinance. The rules of construction seem to be well settled by the following authorities:

> "The rule is familiar and well settled that in case of obscure and doubtful words or phraseology, the intention of the law makers is to be resorted to if discoverable from the context, in order to fix and control their meaning so as to reconcile it if possible with the general policy of the law" (p. 677).
>
> *Wilson* v. *Rousseau*, 4 How. U. S., 646.

"It seems all sufficiently plain, and in such case there is a well-settled rule which we must observe. The object of construction applied to a Constitution is to give effect to the intent of its framers and of the people in adopting it. This intent is to be found in the instrument itself, and when the text of a constitutional provision is not ambiguous, the Courts, in giving construction thereto, are not at liberty to search for its meaning beyond the instrument. * * *.

So also where a law is expressed in plain and unambiguous terms whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction" (pp. 670, 671).

Lake Co. Com. v. *Rollins*, 130 U. S., 662.

"The general rule is perfectly well settled that where a statute is of doubtful meaning and susceptible upon its face of two constructions, the Court may look into prior and contemporaneous acts, the reasons which induce the act in question, the mischiefs intended to be remedied, the extraneous circumstances and the purpose intended to be accomplished by it, to determine its proper construction. But where the act is clear upon its face and when standing alone it is fairly susceptible of but one construction, that construction must be given to it" (p. 419).

Hamilton v. *Rathbone*, 175 U. S., 414.

"Consequently if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated requiring that the subsequent should be incor-

porated into the foregoing act is a direction to Courts in expounding the provisions of the law" (p. 8).

Alexander v. *Mayor*, 5 Cranch., 1.

"And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute they will amount to a legislative declaration of its meaning and will govern the construction of the first statute" (p. 565).

U. S. v. *Freeman*, 3 How., 556.

"In cases of *doubt or uncertainty* acts *in pari materia* passed either before or after, and whether repealed or still in force may be referred to in order to discern the intent of the legislature in the use of particular terms, or in the enactment of particular provisions" (p. 235).

Vane v. *Newcomb*, 132 U. S., 220.

The only question that can arise here is as to the application of these rules to the Ordinance and the Constitutional provision read together. I understand a proper application of these rules, at bar, to be that where there is any doubtful uncertain or ambiguous word, phrase or sentence, which is susceptible of two constructions, one of which would operate equitably and one inequitably, that the "equitable" purpose declared by the Constitutional provision requires a construction that would produce the equitable result. Where, on the other hand, the language is clear and unambiguous there is no room for construction, and the clear and obvious meaning is to be adopted. If it is to be held that by reason of the Constitu-

tional provision equitable results should be reached in every instance, notwithstanding the plain provisions of the Ordinance may operate inequitably, the Constitutional provision would in such case in effect eliminate each or every factor in the equation stated in the Ordinance. This would substitute the Constitutional provision for, rather than read it with, the Ordinance. They are to stand and to be read together, the Constitutional provision being invoked only when it is needed for the purpose of interpreting and making certain what is uncertain and ambiguous.

Bearing upon the equitable construction, it is to be observed that both the Ordinance and the Constitutional provision proceed upon the assumption that by the act of separation, West Virginia became liable for a portion of the "public debt of Virginia," which if liquidated before the separation, would have been borne by the citizens of the whole State upon some equal basis. So far as the liability of the State can be predicated upon the citizens constituting the State as distinguished from the State itself, it can be predicated upon either population, territory or property or upon a combination of two or more or all of them. In either case the same proportional liability would rest upon population, territory or property wherever it might be situated. The unit of liability ascertained, each unit would be liable for its *pro rata* share of the whole debt wherever the unit might be. It would be so liable no matter how the debt might have been incurred or in what section its proceeds might have been expended, or what particular benefit or advantage any particular unit or set of units might have received therefrom. The relation of the

units to each other would be joint and indivisible, the debt a common debt and its proceeds expended from a common fund. Each unit was bound by the action of the lawful majority in incurring the debt and expending the proceeds. Any construction that tends to relieve any of these units from their *pro rata* share of such common liability for the whole public debt would to that extent be inequitable as it must necessarily result in increasing the liability of the remaining units.

The amount claimed under this paragraph by Virginia is $5,639,302.66

(Rec., p. 371, c. 1, p. 1.)

The amount conceded by West West Virginia is..... $1,251,288.92

(Rec., p. 371, c. 1, p. 1.)

The items in controversy are as follows:

Item 2 (Rec., p. 373, c. 1, p. 2)—Covington & Ohio Railroad, $1,146,460.42.

By an Act passed February 15, 1853, the Board of Public Works were made "a body politic under the name of the Covington and Ohio Railroad Company" (App., p. 33). This Company had no capital stock or stockholders or officers except as the Board of Public Works acted as its officers.

By Section 3 it was provided that

> "The Board of Public Works shall commence and continue the construction of said road," etc.

By Section 4, the same Board was

> "authorized to borrow on the credit of the Commonwealth * * * the money necessary to construct and equip said road."

March 13, 1856, the same Board were

> "authorized and directed to borrow from time to time * * * the sum of Five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio Railroad" (App., p. 34).

A specific provision was made for the manner in which the money was to be expended. March 20, 1858, they were again authorized to borrow for the same purpose under the same restrictions, Eight hundred thousand dollars. (App., p. 34), and on February 29, 1860, the sum of Two and one-half millions. Under these various Acts, it is conceded that prior to January 1, 1861, the sum above mentioned had been expended within the limits of West Virginia.

I find that the sum thus expended was an expenditure by the Commonwealth of Virginia within the territory now constituting the State of West Virginia prior to January 1, 1861.

Alternative Finding.

At the request of the defendant I find in the alternative that it appears that on February 26, 1866, the Commonwealth of Virginia passed an Act incorporating the "Covington and Ohio Railroad Company" (App., p. 35) and on March 1, 1866, West Virginia (App., p. 37) passed an Act incorporating the same Company. By these Acts

upon the performance of the conditions therein specified, the Company was to

> "have all the rights, interests and privileges of whatsoever kind in and to the Covington and Ohio Railroad and appurtenances thereto belonging, now the property"

of either state (Sec. 2, of each Act).

On February 26, 1867 (App., p. 40) additional legislation to enable the completion of the road and authorizing its consolidation with four other railroads was passed by West Virginia. An Act for the same purpose and with substantially the same provisions, with some immaterial variations, was passed by Virginia March 1, 1867 (App., p. 43). The name of the road was changed by both Acts to the Chesapeake & Ohio Railroad Company. By section 14, of the latter Act, the Railroad was given the

> "right * * * to purchase the stock held by the State in said company * * * to pay any debt which it may owe the State * * * by surrendering * * * bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the State in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road, etc." (App., p. 45).

Nothing appears in the Record to show whether any such purchase of stock of the State by the Road was made, nor does anything appear to show whether any debt of the Road to the State was paid. It does appear and I find as a fact that the State of Virginia received in 1870 for the

Blue Ridge Railroad from said Chesapeake and Ohio R. R. Co., $625,348.08 (Rec., p. 487).

I find as a fact that the State of Virginia was relieved by the Chesapeake & Ohio Railroad Company of a guarantee of the bonds of the Virginia Central Railroad, amounting to One hundred thousand dollars (Rec., p. 487).

Item 3.—Winchester & Potomac Railroad, $170,532.00.

This item results from an item of $270,000 which consists of $120,000 paid for stock subscribed, and paid for by the State, and $150,000 loaned by the State to the Railroad Company (Rec., p. 489).

It raises the question as to whether the subscribing and paying for stock in an internal improvement company, whose improvements were located within the limits of West Virginia was "an expenditure made by the Commonwealth of Virginia within the territory now constituting the state of West Virginia," etc.

It is contended upon the part of the plaintiff that the various improvement companies were merely the method or machinery adopted by the State for the purpose of creating internal improvements, and that as declared by its Board of Public Works,

> "It was not the original purpose of the legislature in creating the fund for internal improvement that the aid to be extended to joint stock companies should be afforded upon the principle of mere money making" (Rep. Bd. of Public Works, Vol. 6, p. 10).

and

> "It must be remembered that these improvements were not fostered by the legislature through contributions in subscriptions and loans merely as investments of so much money in profitable stocks but that they were actuated by a higher consideration, that of promoting the prosperity of the State at large by contracting to build up the local prosperity of its different sections" (Same Vol. 12, p. 8).

and that this being the dominating and controlling purpose these were, within a proper construction of the decree, "expenditures made by the Commonwealth of Virginia," &c., &c.

I have no doubt that the purpose thus declared by the Board of Public Works was the controlling purpose that led the State to engage in these public improvements through the method adopted of organizing joint stock companies and the State becoming a stockholder therein. It is at the same time clear that the element of investment and an expected return therefrom and a belief in the value of the investment was an important element from the beginning. In giving the reasons for adopting this method, the same Board said:

> "Private wealth will of itself take the direction which personal interest prompts."
> * * *
>
> "But it can never be to its [the State] interest, for many reasons, to become the sole proprietor of all the public works within its territory.
>
> Experience testifies that they will be more economically improved and better repaired if the management be left to the individuals who subscribe to their stock, with a view to

> private gain, than if confined to public officers or agents. The Commonwealth should subscribe to so much of their stock and upon such terms as will suffice to elicit individual wealth for public improvement" * * * (Rep. Bd. Pub. Works Vol. 1, p. 48).

For the purpose of inducing subscriptions they suggest,

> "By yielding to the individual subscribers the profit of the State on its shares of the stock of any company where required to secure such individuals against temporary loss, a much smaller subscription of the public money will suffice to draw forth private enterprise."

On page 81, they say, after having discussed the failure of the stock of some of the companies to yield an immediate income, that the foundation had been laid that would

> "assure to the Commonwealth a speedy return for such sums as the General Assembly may authorize the Board of Public Works to subscribe out of the funds for internal improvement."

and referred to the method adopted to

> "arouse the enterprise and patriotism of their fellow citizens in general to embark their private fortunes in the career of internal improvement."

A report of this Board for 1818 shows that returns were expected from the James River project of Thirty-five thousand dollars per year, and the report for 1819 shows that the stock of the Dismal

Swamp Company and Roanoke Navigation Company were above par, and the Swift Run Gap Turnpike Company had paid from five to ten per cent dividends for several years. In the report for 1831, referring to the completion of the James River Improvement they say that

> "A revenue not only sufficient to pay the interest upon the amount of the expenditure but that a surplus greatly beyond it will be realized."

It was the expectation of these profits that justified the Act of 1820 (App., p. 50) under which the State practically took over the property of the James River Company and guaranteed its stockholders 12 per cent. dividend for twelve years and 15 per cent. "forever thereafter."

Substantially all of the Acts, both general and special in their character, authorizing the Board of Public Works to subscribe for stock of the various improvement companies, comtemplated the receipt of dividends on the stock of the State and made specific provision for its disposal and use, recognizing the value of the stock.

Under the Act of 1817, Sec. 32 (App., p. 16) a general provision was made giving the state the prior right to purchase the stock of other stockholders and prohibiting its offer to others until it was offered to the State. In order to induce the investment of private capital in the stock of the companies it suspended its right to dividends upon its own stock until the stock of other subscribers had "netted to them six per cent. per annum" (App., p. 6). Under a Statute passed in 1816 private subscription to 3/5 of the stock was required before the subscriptions were made on

behalf of the Commonwealth (App., p. 5). The privilege as to suspending dividends for the benefit of the other stockholders was repealed in 1828 (App., p. 10). While the proportion of stock taken by the Commonwealth was at first 2/5 of the capital, this proportion was changed in 1848, so that in most, if not all of the instances thereafter, the State was authorized to subscribe 3/5 of the capital. (See Acts of 1848, Chap. 196, sec. 3, p. 220.)

The Act of April 9, 1838 (Acts of Va., 1838, Chap. 12, Sec. 3, p. 24), provided for the payment of the interest and final redemption of the principal sum borrowed for the payment of stock subscriptions. It also provided that

> "the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth or to the fund for internal improvement, shall be and the same are hereby appropriated and pledged," &c.,

for the payment of such loans, thus holding out the stock of the Commonwealth with its expected dividends as a security of value as an inducement to investors.

The Constitution of Virginia of 1851 recognized these stocks as the property of the Commonwealth by the following provisions:

> "The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvement and other companies, but the proceeds of such sale, if made before the payment of the public

debt, shall constitute a part of the Sinking Fund and be applied in like manner."

(Art. IV, Sec. 30, Code of Va., 1860, page 47.)

The Board of Public Works was authorized

"when in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road or any part thereof in the County or Counties in which said road may lie"

(Code Va., 1860, Ch. 61, Sec. 52, p. 365) (App., p. 20);

thus clearly treating the stock as the property of the State. That its interest as a stockholder was the interest referred to appears from the next section, which provides for a transfer of the

"interests of the stockholders other than the State."

Section 54 prohibits the transfer of any road that can in their opinion

"be made productive or self-sustaining,"

and the Act shall not take effect

"until the stockholders other than the State shall have transferred their interest to said County,"

evidently contemplating that the State was the owner of certain stocks at least that were its property and were of value as assets.

By an Act passed by the Pierpont or Restored Government, Feb. 13, 1863, a formal transfer of

> "all stocks of any other company or corporation the principal office or place of business whereof is located within the said boundaries standing in the name of this State or of the said President or Directors or of the said Board of Public Works or of any person or persons for the use of this State"

purports to have been made to West Virginia (App. 128).

The plaintiff in paragraph 8 of its bill of complaint (Rec., p. 8) referred to and recited this portion of the Act of 1863 and alleged:

> "that the property which was by the operation of this Act appropriated and transferred to the State of West Virginia aggregates"

several millions of dollars, and

> "that of the bank stocks alone which were transferred under the operation of this Act,"

defendant received

> "from the sale thereof about Six hundred thousand dollars."

The record does not disclose the existence of any stocks other than those in controversy, upon which the Constitutional provision or the Act of 1863 or the allegations of the plaintiff's bill can apparently be predicated.

That the State early appreciated that its legal relation to these various companies was that of a stockholder only, seems clear.

The Act authorizing the subscription to the stock of the Shepherdstown and Smithfield Turnpike Company by the Board of Public Works, passed February 20, 1826 (Acts of Va. 1825-26, p. 66), contains this proviso:

> "Provided that the money hereby authorized to be advanced to said company by taking part of the stock thereof shall be applied exclusively to the completion of said road should any part of it be unfinished when the aforesaid sums of money shall respectively become payable."

A similar act relating to the Petersburg Railroad Company, passed March 22, 1831 (Acts of Va. 1830-31, p. 205), contains a similar proviso:

> "Provided that no part of the stock herein authorized to be subscribed shall be payable until said three-fifth shall have been fully paid and expended by the said company in the construction of the road aforesaid unless at the option of the said Board."

The General Act of February 11, 1832, contains this provision:

> "When the Board of Public Works having made any subscription to the stock of any company shall have good cause to believe * * * that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said Board to withhold payment of their subscriptions until proper legal measures can be taken to secure * * * the faithful application of the funds of the company" (App., Sec. 4, p. 18).

The conditions thus imposed by the Commonwealth to enable it to thus indirectly control or dispose of the funds of the corporation is clearly inconsistent with the idea that it had any right to control the assets other than that of an ordinary stockholder, as, if they were within its control, such legislation would have been unnecessary.

The act to amend the Charter of the James River and Kanawha Company, passed March, 1860, clearly recognized the distinction between the rights of the State as a stockholder and a creditor of the Company (App., p. 108).

Code of Virginia, 1860, Chapter 67, Sec. 28, p. 391, authorized the Board of Public Works to purchase

> "any work of any internal improvement in which the State is a stockholder, or otherwise interested,"

at a sale

> "by virtue of mortgage, judgment or other lien, * * * on the part and for the use of the Commonwealth" (p. 391).

That the state fully recognized these stocks as investments of value and that its rights were those of a stockholder only, seems clear.

The case of U. S. *v.* Stanford, 161 U. S., 412, is relied upon as sustaining the contention of the plaintiff. The only question involved in that case was whether a stockholder of the Central Pacific Railroad Company, the California Company, was personally liable as such stockholder for the bonds of the United States "loaned to railroad companies for the purposes indicated in the Act of

1862" (p. 428). The Statutes of California made such stockholders liable for all of the road's "debts and liabilities" (p. 414) the Union Pacific Railroad chartered by Congress and enjoying on the same terms with the Central Pacific Railroad Company the benefit of the bonds, not being so liable. It is true that in the opinion, the Court said:

> "These ends were to be attained through the agency of a corporation created by Congress and of certain corporations organized under State laws which Congress selected as instruments to be employed in accomplishing the public objects specified in its legislation" (p. 427).

I do not understand that by the use of this language the Court intended to be understood as holding that the relation of principal and agent existed between the United States and the corporations in question, or that their property or assets and the right to control the same was in any way changed or affected by reason of their having been selected as such "agency" or "instrument," or that by reason of their having been so selected the United States acquired any control of or interest in the assets of such companies. They were agencies and instrumentalities in the same sense that all public service corporations are instrumentalities and agencies of the State, and only in that sense did Congress extend its aid to these particular corporations to accomplish the objects desired. The opinion in effect so states:

> "The Supreme end sought to be attained was by means of private capital and Governmental aid to secure the construction of the

> whole line, for the benefit primarily of the United States and for the use of all the people" (p. 430).

The companies "private capital" was building the road and the Government was simply rendering aid to an "agency" selected by it for that purpose and in that sense only was the road in question the agent of, or instrumentality of, the Government. That the assets of these companies were their own and not the property of the United States was expressly held in the *Sinking Fund cases,* 99 U. S., 700, where the Court said:

> "It is a matter of no consequence that the Secretary of the Treasury is made the Sinking Fund agent and the Treasury of the United States the depository or that the investment is to be made in the public funds of the United States. This does not make the deposit a payment of the debt due the United States (p. 725),"

because as the Court said:

> "While the money is retained it is only that it may be put into the fund which, although kept in the Treasury, is owned by the Company" (p. 726),

and

> "Under the circumstances the retaining of the money in the Treasury as a part of the Sinking Fund is in law a payment to the company" (p. 726).

There is no intimation in the opinion that there was any financial relation existing between the United States and the companies other than that

of creditor and debtor or that the money that the companies expended in constructing the road was in any sense, either directly or indirectly, money of the United States or an expenditure by the United States.

I find nothing in the case that justifies the inference that these corporations were agents to apply money put into their hands by the Government to construct the road and were therefore expending the money of the Government therefor.

In *Liverpool Ins. Co.* v. *Massachusetts,* 10 Wall., 566, the Court stated the conditions under which joint stock associations will be held to be a corporation within the scope of a Statute which "permits it to exercise its corporate function in that State on the condition of payment of a specific tax," and for the purpose of suits and in some other particulars, such associations have been recognized by the Courts as corporations.

See also

Fargo v. *L. N. & Chic. R. R.,* 6 F. R., 787.
Edgeworth v. *Wood,* 58 N. J. L., 463.

The following well considered authorities seem to establish clearly the distinction between the State as a stockholder and the corporation as a legal entity.

In *Bank of U. S.* v. *Planters Bank of Ga.,* 9 Wheat., 904 the State of Georgia was a stockholder in the Planters Bank. The point was raised that the State was a "party defendant." In overrul-

ing this contention Mr. Chief Justice Marshall said:

> "A suit against the Planters Bank of Georgia is no more a suit against the State of Georgia than against any other individual corporator (p. 906). * * *
>
> The state does not by becoming a corporator identify itself with the corporation. The Planters Bank of Georgia is not the State of Georgia although the State holds an interest in it.
>
> It is, we think, a sound principle that when a government becomes a partner in any trading company, it devests itself so far as concerns the transactions of that company of its sovereign character and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself and takes the character which belongs to its associates, and to the business which is to be transacted (p. 907). * * * As a member of a corporation a Government never exercises its sovereignty. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation than are expressly given by the incorporating act * * * and exercises no power or privilege which is not derived from the Charter" (p. 908).

This case has been frequently approved on this point. (See Rose's Notes.)

In *Bank of Kentucky* v. *Wister,* 2 Peters, 318, where the State owned the whole of the stock of the Bank, a case much stronger than the case presented at bar, the Court said:

> "it was insisted that the suit was virtually against a sovereign state," (p. 322).

In affirming 9 Wheat., 904, and holding against the contention, the Court said:

> "But this Court is of the opinion that the question is no longer open here" (p. 322).

In *Briscoe* v. *Bank of Kentucky,* 11 Pet., 257, the question was whether the notes of the Bank were bills of credit issued by the State. The State was the sole owner of the stock of the Bank and all private interest was expressly excluded. Its officers were chosen by the Legislature. It was contended that the Bank was the "mere agent of the State." In holding the contrary, the Court said, answering the following question in the negative:

> "The State of Kentucky is the exclusive stockholder in the Bank of the Commonwealth, but does this fact change the character of the corporation? Does it make the Bank identical with the State? And are the operations of the Bank the operations of the State? Is the Bank the mere instrument of the sovereignty to effectuate its designs and is the State responsible for its acts?" (p. 323).

and again:

> "If the Bank of the Commonwealth is not the State nor the agent of the State, if it possesses no more power than is given to it in the act of incorporation and precisely the same as if the stock were owned by private individuals, how can it be contended that the notes of the Bank can be called bills of credit in contradistinction from the notes of other banks?" (p. 326).

See Rose's Notes for approving citations and also *Curran* v. *Arkansas,* 15 How., 304.

This question seems to have been clearly settled by the Courts of Virginia.

The case of *James River & Kanawha Co.* v. *Early,* 13 Gratt., 541, was an action to recover for the negligence of the corporation. In discussing the question of the liability of the Company, the Court said:

> "It is not a *public corporation* representing the *public* and *administering public funds* for the benefit of *the public,* but it is a joint stock company which has undertaken the construction of a work, useful to the public certainly, but *intended for the private emolument* of the stockholders in dividends of the profits" (p. 552).

> "That the State owned a large interest in the stock of the company will not vary the case * * * a mere interest taken by the Commonwealth in the stock would not be sufficient to bring an action against the company for neglect of its corporate duty within the influence of the decision in the case of *Sayre* v. *The Northwestern Turnpike Road,* 10 Leigh, 454 * * *" (p. 553).

This case is clearly in line with the decisions of the United States Supreme Court upon the relation of the State to a corporation. These corporations were not "*administering public funds* for the benefit of the public."

It seems to me clear that the relation of principal and agent did not exist between the State and these corporations in which it was a stockholder. While in a popular general sense they may be termed the machinery, instrumentality or agency through which the State operated in making the particular disbursement, they were such agency, machinery and instrumentality in

the same sense that they were the agency, machinery or instrumentality of the other stockholders, or perhaps, in the added sense in which every public service corporation is the agency, machinery or instrumentality of the State. The State held two-fifths or three-fifths of the stock, but had no more control over the funds of the company, or any more title to the assets of the company, than any other stockholder holding a like amount of the stock. Like other stockholders it was an investor with the same rights and privileges. It may be said that as a matter of public policy, in a general way, the State was in this manner, indirectly, at least, making an expenditure, and no investment can be made without an expenditure. This case must be determined, however, by well-recognized legal rules. The language of the decree is plain and unambiguous. To hold these subscriptions thus made for investment to be expenditures by the State "within the territory" it would be necessary to read into the decree the words "either directly or indirectly" which I do not feel at liberty to do.

I find therefore that the sums in question in case of the joint stock companies in which the State was a stockholder were expenditures made by the respective companies from their own funds and not by the State. I therefore disallow the sum of $120,000, subscribed and paid for stock in the Winchester & Potomac Railroad Company by virtue of the Acts of 1832 and 1833 (App., pp. 28 and 29).

By an Act passed February 13, 1838 (App., p. 29), the Board of Public Works were

> "directed to loan on behalf of the Commonwealth * * * to the Winchester & Poto-

> mac Railroad Company * * * upon the condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt",

and upon

> " a mortgage upon the whole property, real and personal, and upon the net income of all their tolls and receipts"

the sum of $150,000. Specific provision as to security was made. Acceptance of the loan gave the Legislature " a right to tax the stock, property and profits" of said Company, and the Company was required to pay off all prior liens so as to make the mortgage of the State a first lien (App., p. 30).

This is clearly a loan with specific and careful provision made to secure its repayment, and was so intended by each party thereto. I therefore disallow the item.

ALTERNATIVE FINDING.

At the request of the plaintiff under this item, I make the alternative finding:

First.—That $120,000 was subscribed and paid by the Commonwealth for stock in the Winchester and Potomac Railroad under the Act of 1832, and

Second.—That the sum of One hundred and fifty thousand dollars, with specific provision to secure its repayment with interest thereon was loaned by the Commonwealth to said Railroad

under the Act of 1838, and that the portion of the road in West Virginia was 63.16%.

As a special circumstance that I consider of importance, I also find that an Act was passed February 24, 1846 (App., p. 30), providing for an annuity of $5,000 in lieu of interest upon the debt due by said Company to the Commonwealth, and all dividends upon the stock of the Commonwealth in said company. So long as the annuity was paid, "the payment of the principal of said debt shall be so long postponed" (App., Sec. 2, p. 31). If default were made in payment "the whole of said debt and interest due" are to be collected (Sec. 3) and the lien for the whole debt and interest was fully retained (Sec. 4).

February 22, 1866, the Company was authorized "to pay into the Treasury of the Commonwealth" $83,333.33 (Sec. 1, App., p. 31). Payment could be made in State bonds at their par value, and when made the "claim of the State against said Company shall be lifted and discharged." Under this Act there was paid into the Treasury of the State in bonds and interest in 1866, $118,518.12 (Rec., p. 462).

Item 6.—Berryville & Charlestown Turnpike Company, $11,932.52.

This sum was paid upon a stock subscription and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth subscribed and paid for stock in said road under Acts of 1849

and 1850 $20,455.74, and that 58 1/3% of the road was in West Virginia.

Items 10, 11, 12, 13 and 14 all relate to the Kanawha Turnpike and the Kanawha River Improvements.

An Act was passed February 17, 1820, relating to the James River Company (App., p. 50). In its preamble it declared that that company was willing to consent to such modification of its charter as would enable the company

> "as an *agent* acting and holding *in trust* for the benefit of this Commonwealth to undertake and carry the said improvements into effect in such manner as the General Assembly shall from time to time direct and require, and under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose by appropriating to these objects such sums of money as they may borrow," &c.,

upon the condition that the company would consent to applying its surplus tolls and income

> "to the payment of the interest on the money which they may so borrow,"

except so much as might be necessary to pay a dividend on the present stock of the company of twelve per cent. for twelve years and fifteen per cent. forever thereafter. It was stipulated

> "that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed which may remain to be provided for

> after applying the surplus tolls and other income of the said company with the exceptions aforesaid to the payment of interest as aforesaid" (App., p. 51).

It was provided that upon its acceptance by the Company, the Act should be

> "considered a compact between this Commonwealth and the said company"

and while subject to change and modification, no such change and modification should be made

> "as will take from the James River Company their right to the dividends or any part of the dividends upon their stock allowed to them by this Act" (App., p. 51).

The improvements contemplated were to be "prescribed by the Legislature" and should from time to time be made under the superintendence of the Commissioner or Commissioners, agent or agents as the General Assembly should from time to time appoint. It was provided that the works of the Company

> "shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever * * * and the road, canals, locks dams and other works when perfected with all tolls, and other profits and emoluments arising therefrom shall be and the same are hereby vested in the said company as *agents in trust* for this Commonwealth" (App., p. 53);

and in Section 10 the company was referred to as, after giving their assent,

"holding as an *agent in trust* for the benefit of the Commonwealth."

Repairs were to be

"contracted for and made by the Company from time to time under the control, direction and superintendence of the Commissioners on the part of the Commonwealth" (App. p. 56).

Commissioners were provided for, and no contracts were to be made by the Company for the improvement of the Kanawha River and Road until the same should be submitted to and approved in writing by the Commissioners, named to superintend the works on such River and Road (do. p. 56). All contracts for making any improvements on the James and Jackson River were to be

"submitted to and approved in writing by the Commissioners" (do. p. 56).

The Treasurer of the State was made *ex officio* the Treasurer of the Company. Money was to be borrowed "as the General Assembly shall hereafter direct" (do. p. 57). Certificates issued for money borrowed were

"to be redeemed only at the pleasure of the General Assembly."

The surplus of such tolls and other incomes after the

"payment of the expenses, dividends and interest as aforesaid shall from time to time be paid into the Treasury of this Comonwealth to the credit of the fund for Internal Im-

> provement, to be disposed of as may from time to time be directed by law" (do. p. 58).

By an Act passed February 24, 1823 (App., p. 64), a much more pronounced change in the character of the legal relation was made. All of the powers and duties of the existing President and Directors were "superseded and annulled." Certain officials of the State were made *ex officio* the President and Directors of the Company and they succeeded to and possessed

> "all the rights, powers, duties and privileges of the existing President and Directors" (do., p. 64),

except so far as may be otherwise directed by the provisions of the act. All of the moneys were to be

> "kept in the public treasury separate from other public moneys" (do., p. 65).

The funds raised and used were to be paid into and disbursed from the Public Treasury (do., pp. 65, 66 and 67). Commissioners were created with powers to carry into effect the provisions of the Act (do., pp. 67 and 68). They were to appoint such "engineers, managers or agents" as they might think necessary and remove them at their pleasure. Provision was made for carrying out the contracts made by the Company "as if the powers of the said company had continued" (do., p. 69). Its superintendents and officers were to continue until

> "superseded by appointments under this Act or their offices annulled by the provisions thereof" (do., p. 69).

These and numerous provisions show that the State by virtue of these two acts had in effect acquired title to all the property of the company. The Acts were so construed in the case of *Higginbotham Exr.* v. *The Commonwealth,* 25 Grattan, 627, where the Court said, in describing the relation of the State to the Company:

> "Here then we have a solemn 'compact' between the State and the Company. * * * Such was the solemn obligation assumed by the State as the price of the stockholders' property" (p. 628).

and referring to the Act of March 16, 1832:

> "On that day, however, a new company with greatly extended powers was chartered called the James River and Kanawha Company, to which all the interest of the State in the old James River Company was transferred" (p. 628).

The record does not disclose when, and what for, or how, these items were paid. In order to supply the deficiency of proof in this regard, I have had recourse to the notes of the accountants and report as a part of the case so much of their notes, agreed to by them, as relates to these items as "Supplemental Exhibit I."

I find by these notes that of Item 10, $152,130.54, the sum of $149,491.90 was expended by the State "within the Territory" after March 19, 1823, and before March 16, 1832, on the Kanawha Turnpike Road. There is nothing in the record to show when the actual transfer by the State was made under the provisions of the Act of March 16, 1832. I find that the sum of $2,638.64 was expended by

the Commonwealth after March 16, 1832, but was an actual expenditure, not an investment or a loan, and I therefore allow the whole sum of $152,130.54 as an expenditure.

I find that Item 11, $2,593.92 was expended by the Commonwealth "within the territory" upon the Kanawha after December 31, 1834, and that it was an actual expenditure by the State and not an investment or a loan, and I therefore allow it as an expenditure.

I find that Item 12, $7,189.65 was also expended by the Commonwealth "within the territory" upon the Kanawha Turnpike after December 31, 1834, and was an expenditure and not an investment or a loan and I therefore allow the item.

I find that under Item 13, the Commonwealth expended after March 13, 1823, and prior to March 16, 1832, "within the territory" upon the Kanawha Turnpike, $3,202.53 and that the State expended "within the Territory" upon the same turnpike, the sum of $77,752.75, after March 16, 1832 ($49,935 of which was on account of contracts made and services rendered prior to March 16, 1832); that the whole sum was an expenditure by the State and not an investment or a loan and I therefore allow the whole sum.

As to Item 14, I find that the amount of $59,572.36 was all expended by the Commonwealth within the territory after March 19, 1823, and prior to March 19, 1832, and I therefore allow the same.

Alternative Finding.

As an alternative finding at the request of the defendant I find that the State was to transfer

> "her whole interest in the works and property of the present James River Company to the James River and Kanawha Company in payment for its subscription for 10,000 shares of stock" (App. p. 87).

There is nothing in the record to show whether this transfer was actually made. It does not appear whether there was a general meeting of the stockholders upon which the transfer was to be made.

Item 15—Kanawha Board bonds, $60,000.

I find that this was a loan of $60,000 in bonds to the James River and Kanawha Company under the provisions of the Act of March 23, 1860, sec. 9 (App. p. 110) which authorized a loan for $300,000 to the James River and Kanawha Company upon a "deed of trust or mortgage upon the works, property and net revenue to the Commonwealth for the payment of the principal and interest of said $300,000." It was also provided that such lien

> "shall take precedence over any lien created by said company to secure their bonds authorized to be issued by this Act."

Under this Act, $60,000 was loaned (Rec., p. 490).

There is nothing in the record to show whether it has or not been repaid, although counsel for West Virginia stated at the argument that he did not think it had been repaid.

This was a clear loan with careful provisions made to secure and a reasonable expectation of

its repayment, and I therefore disallow it as an expenditure.

ATERNATIVE FINDING.

I find, as an alternative finding at the request of the plaintiff that the sum of $60,000 was loaned to the James River and Kanawha Company by virtue of the provisions of the Act of March 23, 1860, sec. 9 (App., p. 110), and that the loan has not been paid.

Item 17, $7,882.92 was withdrawn by the plaintiff upon the ground that the portion of the road charged for was wholly in the State of Maryland.

Item 25,—Brandonville, Kingwood and Evansville Road—$10,595.73

Item 28, Clarksburg & Buchanan Turnpike, $19,259.36.

Item 35, Kingwood and West Union Turnpike, $18,140.61,

are all for macadamizing (Rec., p. 451).

In the case of the Brandonville, Kingwood and Evansville Road, the State although a small stockholder therein, paid out the sum independent of its interest as a stockholder (Rec., p. 480).

By an Act passed March 18, 1853, the Board of Public Works were directed

> "to have such parts of the Clarksburg and Buchannon Turnpike Road macadamized or planked as they may think stand in need of such improvement" (App., p. 140).

By an Act passed February 28, 1853, $28,000 was appropriated for the purpose of macadamizing the Kingwood and West Union Turnpike and the Board of Public Works was authorized

> "to pay the said appropriation as is provided by law" (App. p. 143).

These were not investments or loans. They were sums directly expended by the State upon the public improvements owned by these companies to be sure, and while the expenditure no doubt increased the value of the properties the expenditure was in my judgment made by the State, for the sole purpose of promoting the public convenience, and were not intended, so far as anything disclosed in the record shows, as gratuities to the companies involved. I therefore think they come fairly within the scope of an expenditure and allow them as such.

Item 53—Harpers Ferry Raid—$189,718.59—

I think that "an expenditure within the territory" in question means expenditures that are local in their character; that are localized by the subjects upon, or for, which they are expended, and the benefits which enure from such expenditures are benefits that the territory in question received the benefit of, it remaining therein, as distinguished from the rest of the State outside of that territory, the result of which in case of physical property remained within the territory after the expenditure had been made, not expenditures the benefit of which were common to all of the people of the State irrespective of the localities in which

they resided. These expenses do not appear to me to come within the scope of such an expenditure. The only benefit the "territory" derived therefrom was the same benefit that it derived in common with the rest of the State. It was not an expenditure made for the benefit of that particular "territory." The money was appropriated and paid "for the Defense of the Commonwealth" (App., p. 149) not for any particular part of the Commonwealth. I therefore disallow this item as a direct expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the Commonwealth paid on account of the Harpers Ferry Raid that occurred "within the territory" of West Virginia, the sum of $189,718.59.

Item 54—School Commissioners—$830,865.37.

This amount is claimed by the plaintiff as an expenditure "within the territory" out of a total of expenditure for like purpose in the whole Commonwealth of $3,056,239.84 (Rec., p. 538-H).

The Constitution of Virginia directed that

> "One equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools" (Con. Va. Art. VI. Sec. 24—Code Va. 1860, p. 46).

February 21, 1818, an annual appropriation of $45,000 for the education of poor children was made.

This was increased to $70,000; and in 1851 to $75,000 and to $80,000 in 1853-4 (Code Va. 1860,

p. 417, note). The sum expended by Virginia for primary schools was a regular, current, annual and permanent charge upon the State by virtue of Constitutional and Statutory provisions. Being thus a permanent requirement of its fundamental law it was an expenditure that the State was bound to make annually and was a part of "ordinary expenses of the Government." It was an expenditure general in its character, not confined to or appropriated to any particular district and as much a general charge as the expense of the Judicial or Executive branches or the Board of Public Works which are treated by both parties as ordinary expenses; I therefore disallow the item as an expenditure.

ALTERNATIVE FINDING.

At the request of the plaintiff I find that the sum paid the School Commissioners "within the territory of West Virginia" was $830,865.37.

Item 55, Surveys—$106,416.14.

This item comes from an aggregate of $250,-206.56. An analysis of this sum shows by a statement agreed to by the accountants, which is reported as a part of the case and marked "Supplemental Ex. 2," that the sum of $106,983.67 was for expenditures that were general in their character (such as a salary paid by the State to the Chief Engineer $30,809.73, &c.), and the proportion charged to West Virginia of that sum was reached by a percentage based upon the sum that was actually charged upon the books in the different sections, so that the general charge would be in pro-

portion thereto. This left $143,222.89 that was actually charged upon the books of the State and could be traced into each section; the sum that was thus charged and was thus traceable that was expended in the territory of West Virginia was $60,873.19. While it is a narrow and close question, I think the general charge should be deducted from this item and charged under ordinary expenses as they were regular, ordinary and current expenses of a branch of the State Government and general in their character, not allocated to, or apportioned to, any particular territory. It is suggested that many of these surveys were not productive of result, no roads being built. It might also be said that the roads, if built, proving worthless, might have been abandoned. None the less the money would have been expended. No road could be built without the preliminary survey, and if the initial expense, disclosed the unwisdom of proceeding further, it seems to me it was no less an expense properly incurred whether the survey was or not followed by construction and does not affect the fact that the money was expended in that locality for a legitimate purpose. A direct expenditure for the work is treated by both parties as an "expenditure" and for the same reason the survey preliminary to and, if constructed, a necessary part of, the work is also an expenditure. The sum which this branch of the Government actually expended "within the limits of the territory of West Virginia," $60,873.19 I allow as an "expenditure."

Item 56, Trans-Allegheny Lunatic Asylum, $27,000.

It was conceded that on January 1, 1861, this sum was in the hands of the Treasurer of the Asylum unexpended. The record, p. 452, should read "and had not been expended." It was to be used in completing its building. (Rec., p. 471) It was on deposit with the Weston Branch of the Exchange Bank of Virginia and was taken therefrom by the so-called Pierpoint or Restored Government. (Wheeling Acts, Extra Session, July 1, 1861) (App., p. 135) On that date $5,316.98 was "placed at the disposal of the Board of Directors of the Lunatic Asylum" and by an Act passed January 14 , 1862, the sum of $21,684 (making with the previous sum $.98 more than the $27,000) was appropriated to the Lunatic Asylum to be expended in

> "completing the South wing of said building being the balance of the amount taken from the branch of the Exchange Bank of Virginia at Weston" (App., p. 136).

Under the authority of Eastern State Hospital *v.* Graves (*supra*), this money thus in the hands of the Treasurer of the Asylum, prior to its being taken by the Restored Government, was the property of the Commonweatlh, and while it was intended to be used in the completion of the buildings, it had not been so used, and had not therefore been expended on January 1, 1861. I therefore disallow this item.

Alternative Finding.

I find in the alternative at the request of the plaintiff that $27,000 was in the hands of the Treasurer of the Asylum the property of the

Commonwealth on or before January 1st, 1861, for the purpose of being expended in the completion of its buildings and that it was afterwards taken therefrom by the Restored State of Virginia, and returned to the Asylum—$5,316.98 July 1, 1866, and $21,684 January 14, 1862.

Items 57 to 65 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in Bridge Companies, aggregating $78,412.50, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $78,412.50 was actually paid by the Commonwealth on account of its subscriptions to the stock of the various Bridge Companies mentioned in said items, and that all of the bridges were located "within the territory now constituting the State of West Virginia."

Items 66 to 69 inclusive.

These are all for sums paid by the Commonwealth on account of stock subscriptions in navigation companies aggregating $210,500. and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $210,500 was actually paid by the Commonwealth on account of its subscriptions to

the stock of the various navigation companies mentioned therein and that the property of all of the companies was located within the territory now constituting the State of West Virginia.

Items 70 to 147 inclusive.

These are all for sums paid by the Commonwealth on account of its stock subscriptions to the various turnpike companies mentioned therein, aggregating $803,555.83, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $803,555.83 was actually paid by the Commonwealth on account of its subscription to the stock of the various turnpike companies mentioned therein.

The property of all of these companies except those mentioned in items 70 to 80 inclusive is "within the territory now constituting West Virginia" and aggregates $700,103.49. A portion of the property of the companies mentioned in items 70 to 80 inclusive is in part within those limits. Apportioning the total amount paid to the amount within those limits would give the sum of $103,-452.34.

Items 148 and 149, $391,800.

These are for sums paid by the Commonwealth on account of its stock subscriptions to the banks mentioned therein, and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that $391,800 was actually paid by the Commonwealth on account of its subscription to the stock of the banks therein mentioned, and that they were located "within the limits of the territory now constituting West Virginia."

Item 150—Loan to the Town of Bath $2,500.

March 8, 1847, an Act was passed,

> "to provide for the construction of a road from Bath in Morgan County to the mouth of the St. John's run on the Potomac."

The Board of Public Works was authorized

> "to pay from time to time out of the fund for Internal improvement a sum or sums of money not exceeding $2,500 to the Treasurer of the Trustees of the Town of Bath * * * for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac."

The Treasurer was to

> "pay or deliver such sums as may be required from time to time"

and he was to be liable for any defaults therein "as for other defaults upon his official bond," anticipating the question that might be raised that in the relation thus created the money received by him would not be the town's money and he be liable therefor as its Treasurer (App., p. 155, Sec. 1). The Act provided that the Trustees were to

have "the disposition of the money" and to exercise the same powers as the "president and directors of turnpike companies." The Board of Public Works were to prescribe the tolls "such tolls to be applied to the necessary expenses and repairs of the road" (do., Sec. 2). The surplus after the payment of the

> "necessary expenses and repairs of the road"

was

> "to be applied in payment of the interest on the sum paid on the part of the Commonwealth for the construction of said road"

and

> "Any deficiency of the net surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the Commonwealth in said Town of Bath" (do., sec. 2).

In Section 3, it was provided that no part of the appropriation should be advanced

> "until the said Trustees shall have given bond with good security payable to the said Board [not to the Town of Bath] and approved by them for the punctual payment of interest annually on the sum advanced by the Commonwealth for the construction of said Road."

Except for the provisions of Section 3, it is not perceived how the Town of Bath or its trustees would have assumed any responsibility or liability of any kind in connection with the sums used for the construction of the road, except their

faithful disbursement. It had no power to fix the tolls. The trustees were not responsible to the city for the expenditure of the money. It was not the money of the city. There is no intimation in the Act that the Town of Bath or its trustees was to return the amount the State expended or any part or it, or that indicates that the State ever expected it to be returned. In every instance where the State made a loan to which my attention has been called, specific and detailed provisions for security and repayment have been made. The Act must be read as a whole, and so reading it, the only liability assumed by the Town of Bath was to make good any deficit in interest that might exist, after exhausing for each payment, first the surplus of tolls after the payment of the "necessary expenses and repairs of the road" and second, "the receipts on account of bathing at the medicinal springs belonging to the commonwealth in the Town of Bath." That this has not been a very great burden appears from the fact that while nearly 13 years had elapsed the town had paid during that time for that deficit the sum of $750, less than 3% per annum.

It is earnestly insisted that the fact that the auditor of Virginia described this as a loan in his report, that both accountants so described it in their joint schedules and that the act is printed in the appendix under the heading "Loan to the Trustees of the Town of Bath," should be given determining weight in establishing its character as a loan. It is believed that the Act itself and not the manner in which some one has characterized, or described it, must control. It is difficult to conceive of a loan in which the sum loaned is not under some contingency to be returned, an

essential element wanting in this instance. It is also difficult to conceive of the beneficial ownership of a public work the use of which the owner has no right to control. This was not an investment or a loan and comes fairly within the scope of an expenditure "within the territory now constituting the State of West Virginia" and is allowed as such.

SUMMARY.

I find that the expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1.	Amount agreed upon by both parties	$1,251,288.92
2.	Covington & Ohio R. R.	$1,146,460.42
10.	Kanawha Turnpike	$ 152,130.54
11.	" "	$ 2,593.92
12.	" "	$ 7,189.65
13.	" "	$ 80,955.28
14.	Kanawha River Improvements.	$ 59,572.36
25.	Brandonville, Kingwood & Evansville Road	$ 10,595.73
28.	Clarksburg & Buchannon Turnpike (Macadamizing)	$ 19,259.36
35.	Kingwood & West Union Turnpike	$ 18,140.61
55.	Surveys—expended directly within the territory	$ 60,873.19
150.	Road from Bath to St. Johns River	$ 2,500.00
	Total	$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest.... $625,348.08

and was relieved from a contingent liability upon a guarantee of... $100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company $150,000.00

Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is $170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that $27,000
was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83

700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs" and profits received from the operation of a spring, were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV OF DECREE.

4. "SUCH PROPORTION OF THE ORDINARY EXPENSES OF THE GOVERNMENT OF VIRGINIA SINCE ANY OF SAID DEBT WAS CONTRACTED, AS WAS PROPERLY ASSIGNABLE TO THE COUNTIES WHICH WERE CREATED INTO THE STATE OF WEST VIRGINIA ON THE BASIS OF THE AVERAGE TOTAL POPULATION OF VIRGINIA, WITH AND WITHOUT SLAVES, AS SHOWN BY THE CENSUS OF THE UNITED STATES."

This paragraph involves the determination of the question as to what expenses are to be included within the term "ordinary expenses of the Government of Virginia.

The defendant contends that the language should receive a construction that would make "ordinary" synonymous with "necessary" or "essential" used in the sense of indispensable expenses,—expenses which if not paid the wheels of Government will cease to revolve, without the payment of which the State Government cannot be administered.

Whenever I use the term "essential" in the discussion, I shall use it in the sense of being indispensable. I have made an exhaustive examination of the cases where state or municipal expenditures have been under consideration or in which reference has been made to them. I find there are very few cases that attempt to define the term "ordinary expenses." The term does not appear to have been used with much precision unless it is to be held to be in fact synonymous with "current" or "necessary." There are many cases that use the terms "ordinary" and "current" interchangeably as though they were synonymous and

attention does not appear to have been called to the question as to whether or not there is any distinction between them. They are here cited:

State ex rel. v. Mayor Kansas City, 58 Mo. App., 124-129.

Com. v. Commissioners, 1 Wharton (Pa.), 1-3.

Ward v. Piper, 69 Kan. 773-775.

Iowa R. R. Land Co. v. Co. of Sac, 39 Iowa, 124, 134-135.

Grant v. Davenport, 36 Iowa, 396, 401.

French v. Burlington, 42 Iowa, 614, 618.

Council Bluffs v. Stewart, 51 Iowa, 385, 396.

Windsor v. DesMoines, 110 Iowa, 175, 190.

Cedar Rapids v. Betchel, 110 Iowa, 196-198.

Swanson v. Ottumwa, 118 Ia., 161-172-179.

Kent v. U. S., 113 F. R., 232, 238-9.

Dawson v. Water Works Co., 106 Ga., 696, 717.

Walla Walla v. Walla Walla Water Co., 172 U. S., 1-20-21.

Smith v. Dedham, 144 Mass., 177-180.

Watkins v. Macon County Court, 68 Mo., 29-42.

Security Co. v. Baker, 33 Ore., 338, 350.

Sherman v. Smith, 12 Texas Civil App. 580-583.

State v. Sheldon, 53 Neb., 365-6.

Valpariso v. Gardiner, 97 Ind., 1-12.
Corpus Christi v. Woessner, 58 Texas, 462-7.
Wichita Falls v. Skeen, et al., 18 Tex. Civ. App., 632-3.
McNeill v. Waco, 33 S. W. R., 322-3.
Luther v. Wheeler, 4 L. R. A., N. S., 746-749.
Arnold v. *Hawkins,* 95 Mo., 569-571.
Cyc, Vol. 28, p. 688.
In re State Warrants, 6 S. D., 518-521.
Lumber Co. v. Munising, 123 Mich., 138-141-2.
Book v. Earl, 87 Mo., 246-255.

The term "ordinary" has frequently been used in the discussion of expenses of this character, as synonymous with "necessary."

The cases that use these terms interchangeably are as follows:

Coffin v. Davenport, 26 Iowa, 515-20.
South Bend v. Reynolds, 155 Ind., 70-73.
Voss v. Waterloo Water Co., 163 Ind., 69-84.
Laycock v. Baton Rouge, 35 La. Ann., 475-480.
Lumber Co. v. Munising, 123 Mich., 138-141.
In re Lim. Taxation, 3 S. D., 456-8.

There are a number of cases that use the term "ordinary expenses" alone, such as the following:

Williamsport v. *Com.* 90 Pa. St., 498-503.
Polk v. *Winett,* 37 Iowa, 34-5.
Cleveland v. *U. S.,* 111 F. R., 341-346.
Law v. *People,* 87 Ill., 385-409.
Water Works v. *Carterville,* 153 Mo., 128-134.
California v. *McCauley,* 15 Cal., 429-455.
Livingston v. *Pippin,* 31 Ala., 542-550.
Scott v. *Peterborough,* 19 U. C., Q. B., 469-472.
Cross v. *Ottawa,* 23 U. C., Q. B., 288-291.
Com. v. *Gregg & ano.,* 161 Pa. St., 582-7-8.
Brown v. *Corry,* 175 Pa. St., 528-31-32.
Nougues v. *Douglas,* 7 Cal., 65-7-8.
Lehigh Coal Nav. Co. Appeal, 112 Pa. St., 360-9.
Stetson v. *Kempton,* 13 Mass., 271-8.
Mills v. *Richland,* 72 Mich., 100.
Marathon v. *Oregon,* 8 Mich,, 372-382.
Quincy v. *Jackson,* 113 U. S., 332-6.
Clark v. *Davenport,* 14 Iowa, 494-501.
Sherman v. *Carr,* 8 R. I., 431.

There are other cases that refer to such expenses as "current expenses" like the following:

White v. *Mayor & Council of Decatur,* 119 Ala., 476-80.

Pettibone v. *West Chicago Park Comrs.*, 215 Ill., 304, 322.
Anniston v. *Hurt*, 140 Ala., 394-9.
E. St. Louis v. *U. S.*, 110 U. S., 321-4.
Sibley v. *Mobile*, 3 Woods (U. S. C. C.), 535-41.
Foland v. *Frankton*, 142 Ind., 546-50.
Spilman v. *Parkersburg*, 35 W. Va., 605-618.
Valpariso v. *Gardiner*, 97 Ind., 1-13.
Humphrey v. *Mercantile Association*, 50 Iowa, 607-611.
Comrs. Leake Co. v. *Keene Savings Bank*, 108 F. R., 505-514.
Brashear v. *Madison*, 142 Ind., 685-690.
Laporte v. *Gamewell and Fire Alarm Tel. Co.*, 146 Ind., 466-470.
State v. *City of Helena*, 24 Mont., 521-30.
E. St. Louis v. *Flannigan*, 26 Ill. App., 449, 463.
E. St. Louis v. *People*, 6 Ill., App., 76-9.
Fowler v. *Austin Mfg. Co.*, 5 Ind. App., 489-490.
Amer. & Eng. Ency. of Law, Vol. 20, p. 1176.
Denison v. *Foster*, 37 S. W., 167.
Weinstein v. *Newbern*, 71 N. C., 535-6.
State ex rel. v. *Graham*, 23 La., 402-407.
City of Erie, 91 Pa. St., 398-402.
C. & A. R. R. v. *People*, 77 Ill., 91-3.

Under the authorities heretofore cited it would seem to be clear that the courts treat the terms

"ordinary" and "current" when applied to the expenditures of a state or a municipality, as synonymous.

The great question in this case is whether interest on the public debt is an "ordinary expense."

The defendant relies upon the line of cases where judgment creditors seeking to recover payments from the revenues of the municipality have been postponed to ordinary, current or necessary expenses, which are made a primary charge upon revenues. The cases clearly establish the general doctrine. From some of them it might perhaps be inferred that interest was not a primary charge or an ordinary, current or necessary expense. I find none of them however where the specific question as to whether interest is or not an "ordinary expense" is discussed. It is very clear that all essential expenses are also "ordinary expenses," but it does not by any means follow that all "ordinary expenses" are essential expenses, that there may not be "ordinary expenses" which are not essential expenses. If it were true that judgment creditors were postponed only to essential or indispensable expenses, the cases might be entitled to considerable significance. On the contrary, however, the postponing of judgment creditors is not confined to essential or indispensable expenses, as expenses which do not come within that class, are often held to be primary in their character and to precede judgment creditors as a charge upon the current revenues.

The following cases show that such current or ordinary expenses as light, water and fire protection, none of which are essential to the revolution of the wheels of government, have been held to be

ordinary or current expenses that will be made a charge upon the revenues prior to the claims of judgment creditors thus demonstrating that the essential character of the expenditure is not the test of an "ordinary expense."

Foland v. *Frankton,* 142 Ind. 546, 550.
Valpariso v. *Gardiner,* 97 Ind. 1.
Cleveland v. *U. S.,* 111 F. R. 341-346.
White v. Mayor and Council of Decatur, 119 Ala., 476,

where the Court thinks that while

> "the support and maintenance of public schools is not an essential municipal function" (p. 482),

they would treat it as a "current expense of administering the municipal government" (p. 482).

Leporte v. *Gamewell,* 146 Ind. 466-70.
Sherman v. *Smith,* 12 Tex. Civ. App. 580-582-3.
Laycock v. *Baton Rouge,* 35 La. 475-81.

In *Sherman* v. *Smith* (*supra*) the Court recognized the fact that expenses for fire, water and lights were not essential but held that they were a part of the current expenses and preferred to judgment creditors.

> "we may consider that they could be dispensed with and an efficient City Government conducted without them" (p. 583).

Expenses for fire, water, lights and repairs and construction of bridges, are held in the following cases to be ordinary or current expenses:

Valpariso v. *Gardner,* 97 Ind. 1.
Brown v. *Corry,* 175 Pa. St. 528-32.
Voss v. *Waterloo Water Co.,* 163 Ind. 69-88.
Brodnax v. Groom, 64 N. C. 244-9.
Satterthwaite v. *Beaufort,* 76 N. C. 153.
Evans v. *Com.,* 89 N. C. 154-9.
McKethan v. *Com. Cumberland,* 92 N. C. 243.
Livngston v. Pippin, 31 Ala. 542-50.

It would seem that the term "necessary town charges" was at least as exclusive and restrictive as "ordinary expenses," and yet it has been frequently held that under that designation, many expenses can be properly incurred, that cannot be held to be essential, or indispensable, to the operations of the government.

The Statutes of Maine authorize, after specifying a variety of purposes for which funds can be raised, the raising of taxes for "other necessary town charges."

In *Gale* v. *South Berwick,* 51 Maine, 174-6-7 in defining that provision the Court said:

> "They embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the powers conferred upon towns. Accordingly they have ever received liberal construction."

Clocks, repair of fire engines, construction of reservoirs to supply water, building a market

house and town halls were cited as illustrations of the proper exercise of the power. In answering an inquiry from the Governor and Council the Court defined this clause as follows:

> "The words 'other necessary town charges' * * * embrace all incidental expenses arising directly or indirectly in the due and legitimate exercise of the various powers conferred by statute."
>
> Opinion of Justices, 52 Me. 598.

In Massachusetts, under a Statute authorizing a tax for "other necessary charges," the Court held that

> "towns might raise such sums as should be necessary to meet the ordinary expenses of the year"

and that the

> "erection of public buildings for the accommodation of the inhabitants, such as town houses to assemble in, and market houses for the sale of provisions may also be a proper town charge and may come within the fair meaning of the term necessary; for these may be essential to the *comfort and convenience of the citizens.*"
>
> *Stetson* v. *Kempton,* 13 Mass. 271-8.

Under this clause towns can indemnify officers in the *bona fide* discharge of their duties.

> *Bancroft* v. *Lynnfield,* 18 Pick. 566.

Make repairs on clocks,

> *Willard* v. *Newberryport,* 12 Pick. 227.

Invest in fire engines,

Allen v. *Taunton*, 19 Pick. 485.

Build a market house,

Spaulding v. *Corcall*, 23 Pick. 71.

A town house,

Friend v. *Gilbert*, 108 Mass. 408.

"Make contracts necessary and convenient for the exercise of their corporate powers,"

Agawam Nat. Bank v. *South Hadley*, 128 Mass. 503-5,

and build a public hall—

Wheelock v. *Lowell*, 196 Mass. 220.

These cases clearly extend the scope of necessary town charges beyond those which are absolutely essential or indispensable to the orperations of government. Great stress was laid in the argument upon the part of the defendant upon the particular language of the decree which requires a finding of the "ordinary expenses of the Government". The Ordinance upon which the decree is predicated reads in this particular: "the ordinary expenses of the state government". The language of the decree so far as there is any distinction is less emphatic if regard is had to the technical language used, the word "state" being omitted, but it is improbable that any significance is to be attached to the omission, and very doubtful if the Court had in mind in making the decree the distinction con-

tended for. The argument is that the ordinary expenses are confined to the expenses of "*the state government*" or of "*the government*" as contradistinguished from what might be termed in a broader sense state or municipal expenses. The contention being that there are expenses which are proper expenses, on the part of the state that the not essential, or indispensable, to the operations of the Government, and that the language of the ordinance and the decree mean that the ordinary expenses "of the government" or "of the state government", are essential expenses, and thus limit the ordinary expenses, to such expenses, as are indispensable to the operations "of the state government."

I find that similar language has been frequently used in the opinions, without attributing to it the technical and restrictive meaning contended for by the defendant. It has quite clearly been used as synonymous with state or municipal expenses generally rather than as restricting the term to essential expenses.

In *White* v. *Mayor & Council of Decatur,* 119 Ala., 476, the court referred to current, legitimate municipal expenses and in the same paragraph referred to the same expenses as "*governmental expenditures*" (480) and "current expense of administering the municipal government" (p. 482) evidently meaning the same thing. The Court expressly held in that case that while the support and maintenance of public schools are not an essential, municipal function, they would treat is as a necessary "*governmental expenditure*" as that function was "vested in the Mayor and Council of Decatur" by statute and the "power and duty" were "in and upon them".

In *Anniston* v. *Hurt,* 140 Ala. 394, 400, the Court referred to "necessary expenses of *administrating the municipal government*" and "the object of corporation expenditures" and "expenses for *governmental purposes*" and "expenditure for *administration of governmental purposes*" and "necessary current expenditures" as apparently meaning one and the same thing. The question of what was or was not an "ordinary expense" did not arise in that case, and the Court discussed the question as to whether interest was or not a necessary current expenditure as a question depending upon the construction of the particular statutes being discussed.

In *City of Erie,* 91 Pa. St. 398, the Court referred to "ordinary expenses of *the City Government*" (p. 403) without indicating that they were confined to expenses indispensable to the operations of the government.

In *Corpus Christi* v. *Woessner* 58 Tex. 462-7, the Court referred to ordinary, "current expenses of *her local government*" in the same connection in which they speak of current and ordinary expenses, and without a suggestion of any distinction between governmental and current or ordinary expenses.

In *Nougues* v. *Douglas,* 7 Cal. 65-7-8, the Court referred to "ordinary expenses of *the state government*" and "ordinary expenses *of the state*" and "the expenses *of the state government*" and the necessary and "ordinary expenses *of the state*" and the "ordinary expenses of government", evidently meaning the same thing in each instance.

In *Weinstein* v. *Newburn,* 71 N. Y., 535, 536, the Court speak of "current expenses of the city *government*" and "the necessary current expenses" clearly meaning the same thing.

In *Sherman* v. *Smith,* 12 Tex. Civ. App., 580, 583, the court likewise referred to "her current and ordinary expenses" and then "for the payment of expenses of government," and "proper current expenses" (p. 584) all meaning the same thing. In Wilson *v.* Charlotte, 74 N. C., 748, 749, the Court referred to "the necessary expenses *of the government of a city*" (p. 759) clearly meaning "necessary expenses of the year," and with the same meaning the Court in Mills *v.* Richland, 72 Mich., 100, 107, said "necessary expenses incurred in administering *the government* of the township." So in Herman *v.* Oconto, 110 Wis., 666-678, the Court said "such as are necessary to carry on *the city government.*"

The frequency with which this language has been used by the Court with its general signification would seem to indicate that the language of the decree is hardly entitled to the technical construction relied upon by the defendants.

Did the framers of the ordinance have in mind any distinction between "ordinary expenses of the state government" and ordinary expenses of the Commonwealth? What distinction is there between them in their relation to a "just proportion of the public debt"? Are they not each equally a common burden paid from a common fund for the common benefit? What reason is there that would require the inclusion of one that would justify the exclusion of the other?

Moreover, the defendants concede as ordinary expenses items which do not appear to be essential to the revolution of the wheels of government.

Board of Public Works, Salaries and Expenses	$134,108.03
Deaf, Dumb and Blind Institute	$384,161.09
Geological Survey	$42,480.61
Lunatic Hospitals	$1,635,583.36
Military Establishment	$1,030,694.11
Primary Schools	$655,908.73
University of Va	$613,287.00
Virginia Military Institute	$207,084.87

(Defts.' original Ex. D 1.)

There are very few cases undertaking to give anything like a definition of what "ordinary expenses" are, and perhaps with but one exception none of those are very closely in point on the question of interest, though a number of them give definitions broad enough to include interest.

In *East St. Louis* v. *U. S.*, 110 U. S. 321, the Court in discussing the general question of municipal expenses said:

> "That fund by the terms of the Charter of the City under which the bonds were issued is authorized for the purpose of paying the necessary, current expenses of administration *not including payments on account of the bonds of the municipal corporation*" (p. 324).

The fact that the Court found it necessary to exclude specifically from the scope of "necessary current expenses" bonds of the municipal corporation gives rise to some inference at least that they understood that without such exception such bonds would be fairly included within the

term "necessary current expenses." If payment on account of bonds was included interest on the bonds would also be included.

In *Wilson* v. *Charlotte,* 74 N. C., 748, the Court said:

> "It would be difficult or impossible to draw a precise line between what are and what are not the necessary expenses *of the government* of a city. The analogy of the law of necessaries for infants is the only one that occurs to us. It is held, that if, considering the means and station in life of the infant. the articles sold to him *may* be necessaries under any circumstances, they come within a class for which the infant may be liable, and upon his refusal to pay, it is for a jury to determine whether under the actual circumstances they were necessary. If, however, the articles are merely ornamental, and such as cannot, under any circumstances be necessary to one of the means and station of the infant, a Court may, as matter of law, declare that the infant is not liable. We do not undertake to say that this analogy will furnish a rule which will admit of a close application, but if treated merely as an analogy in the absence of other guides, it may be of some general use (p. 759).

In *Brown* v. *Corry,* 175 Pa. St., 528, the Court said:

> "The ordinary expenses, at least many of the ordinary expenses, must be incurred and paid or the city cannot exist. * * * And any expense that recurs with regularity and certainty and is necessary for the existence of the municipality, or for the health, comfort and perhaps convenience of the inhabitants may well be called an ordinary expense" (p. 531).

In *Mills* v. *Richland,* 72 Mich., 100, the Court said:

> "What shall be deemed as the ordinary expenses of a township is a question which has never received any very satisfactory answer, and it would be difficult to glean one from what has been said in this Court. I think, however, it may well be said the answer can *never include less than the necessary expenses incurred in administering the Government* of the Township under the Statutes creating it and relating thereto, in such manner as will best promote the convenience, peace, health, prosperity and happiness of the people residing therein. This would, as has been held by this Court in *Marathon* v. *Oregon,* 8 Mich., 382, include the payment of the indebtedness to the Township of Mills" (pp. 106-7).

It seems that the Town of Richland had been set off from Mills and this was an action to recover a portion of the debt due from Richland to Mills. The opinion in *Marathon* v. *Oregon* above cited, proceeds upon the peculiar language of the statute being construed. It authorized the Township

> "to vote such sums as they may deem necessary for defraying *all proper charges and expenses arising in the Township*" (p. 381).

and the Court held that both charges and expenses were included in the term ordinary township expenses, saying

> "It is certainly no violation of terms to class the payment of debts ascertained among ordinary expenses" (p. 382).

In *Smith* v. *Dedham,* 144 Mass., 177, 180 the Court seemed to make annual payment the criterion as they held that an annual payment for water for a period of five years was "for a sum of money to be paid annually, among the *other* current expenses of the town."

In *Livingston* v. *Pippin,* 31 Ala., 542-50, the Court gave this definition, "Ordinary expenses are the expenses which are necessary to carry into effect the ordinary powers of the corporation. * * * Under the rule above laid down, the implied and incidental powers of corporations must be classed as ordinary powers"

In Herman *v.* Oconto, 110 Wis., 660, the Court said:

> "It cannot be said with any show of right that the building of a sewer system is a current expense. While it is not easy to accurately define what may be included under that head still it is plain that it must be limited to such as are necessary to carry on the city government—such as are usual and ordinary from year to year" (p. 678).

The case of *State* v. *Leaphart,* 11 S. C., 458, is very closely in point. All three of the judges wrote opinions, and all concurred in holding that interest was an ordinary expense. *C. J. Willard,* in his opinion, said:

> "Ordinary expenses include the current expenses of the government and debts to mature during the current fiscal year" (p. 469).

> "* * * to such purposes as properly fall within the description of 'ordinary expenses of the government,' that is to current expenses and debts maturing during the fiscal year" (p. 471).

He held that the Act being construed could only be regarded as a general annual tax levied for ordinary expenses, and ordered a mandamus to issue for the payment of the interest on the public debt out of the tax as an "ordinary expense." *Haskell, J.,* said:

> "When bonds have been issued to raise money to meet an 'extraordinary expenditure' they become a standing liability of the State, and the interest as it falls due becomes an 'ordinary expense' to be included within the 'estimated expenses,' to make up the amount to be levied annually and appropriated annually" (p. 477).

and again

> "The only difference between the interest on such bonds and any other annual expense is, that the interest is made by the Constitution, an obligatory expense, while many other expenses may be at the option of the legislature" (p. 477).
>
> "The tax is levied for the expenses of the current fiscal year. The objects to which the tax *must* be applied are the items contained in those estimated expenses. Expenses include the payment of recognized indebtedness as well as any outlay that the Legislature may deem proper to make during the year" (p. 478).

The case showed that

> "The Act of 1876-7 provides for the payment of the current expenses of the govern-

> ment and certain indebtedness matured or to mature. It is therefore clearly a general tax levied as such, entirely subject to the control of the legislature *provided* the purposes to which it is appropriated fall within the general class of 'ordinary expenses' " (p. 471).

The mandamus was prayed for among other things to secure the payment of interest falling due Jan. 1, 1879. McIver, Judge, who dissented upon one point held that the relator was entitled to a mandamus for the interest for that year.

This case was cited with approval in *State* v. *Derham,* 61 S. C. 258, 262. The plaintiff relies upon *In re Limitation Taxation,* 3 S. D. 456 where the Court said:

> "The 'ordinary expenses' of the state are practically defined in Section 2, Art. 12 of the Constitution and are the 'ordinary expenses of the executive, legislative and judicial departments of the state, the current expenses of the state institutions, interest on the public debt and for common schools' " (p. 460).

An examination of the Constitutional provision thus referred to discloses the fact that it does not purport to define "ordinary expenses" but simply provides that

> "The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the State, the current expenses of the state institutions, interest on the public debt, and for common schools" (Con. Art. 12, Sec. 2).

So far as this case has any weight, it tends to negative the contention of the plaintiff. Properly

considered it gives no definition and incorrectly states the effect of the constitutional provision. It is contended upon the part of the plaintiff that the term "ordinary expense" is flexible in its character and is to receive a construction in harmony with the circumstances and conditions under which it is used. It was urged in argument upon the part of the defendant that it was in a sense analogous to the term "necessaries," the analogy used by the Court in the case of *Wilson* v. *Charlotte* (*supra*). If it be true that the analogy exists, it would clearly establish the flexible or varying character of the meaning of the term, as it is too clear for the citation of authorities that necessaries may include articles in connection with one individual that would be clearly excluded when applied to another individual. Ordinary expenses involves the payment of at least current indebtedness. There may be some parallel between an expense and a debt. It has been frequently held that the word debt "has no fixed legal signification, as has the word 'contract,' but is used in different statutes and constitutions in senses varying from a very restricted to a very general one."

McNeill v. Waco, 33 S. W. R., 323 (*supra*).

Swanson v. Ottumwa, 118 Ia., 161-171 (*supra*).

The case of *Union Pac. R. R. v. U. S.,* 99 U. S., 402, was relied upon by the defendant, so far as applicable. The Court were there discussing the question as to what would be the net earnings as distinguished from the gross earnings of a railroad company, and they said:

"As a general proposition net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction, and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses in keeping up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent *enlargement and improvement* thereof. With regard to the last mentioned class of expenditures, however, namely, those which are incurred in enlarging and improving the works, a difference of practice prevails amongst railroad companies. Some charge to construction account every item of expense, and every part and portion of every item, which goes to make the road, or any of its appurtenances or equipments better than they were before; whilst others charge to ordinary expense account, and against earnings, whatever is taken for these purposes from the earnings, and is not raised upon bonds or issues of stock. The latter method is deemed the most conservative and beneficial for the company, and operates as a restraint against injudicious dividends and the accumulation of a heavy indebtedness" (pp. 420-1).

So far as this case has any significance it seems to establish the proposition that the term ordinary expense has no fixed and arbitrary significa-

tion; that it may include at one time what would be excluded at another time. The Court in that case adopted the broad construction, on the ground that it was the "wisest and most prudent method," and was what they called "a liberal application of the earnings to the improvement of the works."

If the case of *City* v. *Leaphart* (*supra*) is to be treated as an authority, the interest would clearly be an ordinary expense.

If current or ordinary expenses are the converse of current or ordinary revenue, then interest in this case would be an ordinary expense, as it was expressly provided for in the current or ordinary revenues, and made mandatory by the constitution.

In the classification adopted by the United States Treasury Department (Rep. Sec. Treas., 1874, pp. IV and V, do. 1904, House Doc., 58th Cong., Vol. 31, p. 5), and by the United States Census Office (11th Census, Vol. 50, pt. II, pp. 418-19, 464-77, 516-553, 556-7), and the State of Ohio, Rep. Bureau Insp. and Sup. of Pub. Off. of 1906, pp. 72-79, interest is classified as an "ordinary expense." It is so held by Bastable on Public Expenditures, pp. 130-3.

There are several important considerations to be taken into account in determining this question:

First.—The cases of judgment creditors seeking to secure payment out of the ordinary or current revenues of a municipality are certainly not directly in point. This is not a controversy between a judgment creditor and a municipality. It does not involve the question as to whether, if

a claim against the municipality were allowed, there would still remain sufficient current revenues for the payment of either the indispensable or the ordinary and current expenses of the state. It is a question between two parties who were jointly interested in the incurring of a joint liability and the question to be determined is what proportion of this joint liability is to be assumed by each. This is the question whether it be reached under the Wheeling Ordinance or under the general principles of International Law. There is therefore no warrant for applying the strict construction that would be applicable in the case of an action by a judgment creditor.

Second.—The Constitution of Virginia makes the interest upon the public debt a specific annual charge upon the revenues:

> "There shall be set apart annually from the accruing revenues a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The sum thus set apart shall be called the Sinking Fund and shall be applied to the payment of the interest of said debt and the principal of such part as may be redeemable."
>
> (Con. of Va., Art. IV, Sec. 29, Code Va., 1860, p. 47.)

With this specific Constitutional provision requiring "the interest of said debt" to "be set apart annually from the accruing revenues," it may well be doubted whether if this were an action by a judgment creditor against the state, the Courts would not be required by the constitu-

tion to postpone such creditor to the payment of interest on the ground that it was not only an ordinary expense, but was a specific constitutional security, annually to be set apart for the benefit of the state's creditors, which would be preserved inviolate for the benefit of the holders of the interest on its public debt.

Third.—Under the provisions of the Ordinance, the defendants are to be charged with the amounts expended within the limits of West Virginia. In order to make these expenditures Virginia hired the money and has paid the interest thereon. If interest is not an ordinary expense, West Virginia would be charged with the principal sum thus hired and expended, but would not be charged with the sums thus paid by Virginia for the use of the money thus hired and expended. If the money thus hired and expended is a proper charge it is upon the theory that Virginia should be reimbursed therefor, and no reason is perceived why she is not on general principles, as much entitled to be reimbursed the sums, that she has paid for the use of the principal sum, as she is to be reimbursed for the principal sum itself. No good reason has been suggested why, as a matter of equity, if liable for the principal sum, West Virginia is not also liable for interest thereon. Unless allowed as an ordinary expense, she will not pay any part of the interest, and the whole burden of the payment of interest, will be assumed by the State of Virginia, a result which would be clearly inequitable.

It is not an adequate answer to say that the Commonwealth has had the use of the improvements, because these improvements are local in

their character, and so far as the public use of them is concerned, that use has been confined to the limits of West Virginia. If allowed as an ordinary expense, the portion of the Commonwealth that has derived the local benefit from the use, would also assume the burden of paying its proportion, for the use of the money thus expended, otherwise, the remainder of the Commonwealth which has had no benefit from the use, would be paying for the use of all the money thus expended. If tolls were received by the Commonwealth from any of the public improvements, on account of which expenditures are charged, each portion of the Commonwealth has received its pro rata benefit therefrom. The disbursements made by the Commonwealth during this period came from three sources, loans, income and taxation. As the income increased or decreased, the sums raised by taxation necessarily decreased or increased, each section receiving in accordance with the proportion of the burden it was assuming, its proportional benefit of the income, thus received. Just how a "just proportion" of the ordinary expenses is to be ascertained does not appear, but in reaching the conclusion as to what an ordinary expense is, I must assume that it will be ascertained upon a proper basis, and that every legitimate consideration tending to determine the "just proportion" will be given due weight.

That the term "ordinary expense" is not fixed and definite, but is more or less flexible and varying in its meaning, is, I think, reasonably well settled by the authorities.

If, as used in the decree, it is of doubtful meaning, and is open to two constructions, one of

which would produce an equitable result, the reading, with the decree, of the constitutional provision requiring the assumption by the State of an equitable proportion of the debt, would require the doubt to be resolved in favor of the equitable result.

It seems to me upon reason and authority that the interest upon the public debt of the State of Virginia is "one of the ordinary expenses of the Government of Virginia" within the meaning of the language of the Wheeling ordinance and the decree predicated thereon.

Extraordinary Expenses.

The question as to what is an "extraordinary expense" seems to be well settled.

In *Supervisors* v. *U. S.*, 18 Wall, 71, 79, the Court referred to aid in the erection of buildings as "an extraordinary expenditure."

In *Union Pac. R. R.* v. *U. S.*, 99 U. S., 402, the Court referred to expenses for the "enlargement and improvement" as capital expenses.

In *South Bend* v. *Reynolds*, 155 Ind., 70, 73, the Court held that

> "While the rent for suitable offices for city officers is an ordinary and necessary expense, the erection of a city hall or a building for the use of the city officers is not in any sense an ordinary expense, but is an extraordinary one."

In *Voss* v. *Waterloo Water Co.*, 163 Ind., 69, 85, the Court held that the construction of water works or an electric light plant

> "is not in any sense an ordinary and necessary expense, but an extraordinary one."

because such an expense involved

> "municipal ownership of the water and light plant, the means of furnishing said water and light, and is an extraordinary expense."

In *Brown* v. *Corry,* 175 Pa. St., 528, 532, the Court said:

> "I can see a very clear distinction between 'a contract for the supply of water and one for the means of furnishing the supply.' The one may pertain to an ordinary expense, and the other, if it involves municipal purchase and ownership of the means of furnishing the supply, can only pertain to an extraordinary expense."

See also *Grant* v. *Davenport,* 36 *Ia.,* 396, 403.

In *Book* v. *Earl,* 87 Mo., 246, 256,

> "Remodelling and building three new additions to the Court House"

was held not to be an ordinary expense but an extraordinary expenditure.

In *Mills* v. *Richland,* 72 Mich., 100-6-7, the expenses of "establishing lost section corners" and "building a town hall" were held not to be included within the term "ordinary expenses."

In *Helena Water Co.* v. *Helena,* 31 Mont., 243, the Court held that the installation of a water plant was not a "current expense" as it was an expense that partakes of the nature of an investment, or such as are to be incurred in a substantial or permanent improvement.

It seems to be well established that the construction, "enlargement and improvement" of a plant are a capital investment, an extraordinary expense, and that its maintenance and operation is an ordinary expense. It is not perceived that there is any substantial distinction between the increase of the size of the plant and amount of the investment and the original construction or the original investment. If it is construction, addition to plant, "enlargement and improvement;" an investment, and not maintenance or operation, then it is an extraordinary expense.

The parties agree upon items making up an aggregate of the ordinary expense of government of $18,207,684.29 (Rec., p. 515). They reach this amount by deducting from an aggregate of receipts, of $18,761,154.51, the sum of $553,470.22. This sum is the result of eight items. Deft. original Ex. D-1 p. 4.

Inspectors of Tobacco		$389,694.91
Less Expense of Commissioners	$33,698.36	
Refunds	203.46	
Paid for burnt Tobacco	2,669.13	
		36,570.95
Leaving a balance of..		$353,123.96
Inspection of vessels		2,621.26
Land office Registration fees		177,115.05
Tax on private seal		2,090.60
Tax on Express Companies		2,199.71
Tax on Insurance Companies		6,533.99
Weighmaster of Live Stock	$8,493.32	
Less cost of scales	3,019.78	
		5,473.54

Miscellaneous	4,312.11
	$553,470.22

No. 1. Tobacco Receipts.

The seven items following the tobacco item are evidently of the same character and should be treated in the same manner, but for an admission of the plaintiff. The plaintiff admits them as credits, not because they are proper items of credit, but only for the purpose of reaching an agreement as to the amount of that schedule, and the propriety of treating the tobacco item as a credit, is not to be affected by that admission. If the tobacco item is not a proper credit, it is to be added as an ordinary expense to the sum of $18,207,684.29, agreed upon, as in reaching that sum it has already been deducted, and the charge will offset the credit. Virginia made elaborate provision for the inspection of tobacco. It contemplated first adequate protection to its great industry, and second, revenue. The law specifically provides that the salaries of the inspectors "are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expense of such warehouse" (App. 157). The state in fact paid nothing on this account. The whole amount collected, $389,694.91, was reduced by the sum of $36,570.95 for expense of commissioners, refund, and paid for burnt tobacco and the balance, $353,123.96, was paid into the treasury. This sum was not an expense of any kind. It was a receipt, and was not predicated upon an expense. I have authority to state disbursements only, not

receipts. For the reasons above given I treat it as an ordinary expense, and add to the agreed sum, $353,123.96.

ALTERNATIVE FINDING.

At the request of the defendant, I find that the Commonwealth received during the period prescribed from tobacco receipts the sum of $353,-123.96.

Item 2—Constitutional Conventions, $258,906.-28.

The fact that the decree requires a finding of the "ordinary expenses of the Government of Virginia" raises the necessary inference that there are expenses other than ordinary. Such expenses are both legitimate and proper but do not come within the definition of ordinary. Ordinary is defined by the Century Dictionary as "of the usual order, usual, customary, common", and by Webster as "2. Common, customary, usual." Anderson's Law Dict.: "common, usual, reasonable." These definitions come fairly within such definitions as the Courts have given and to them may be added such as recur with regularity and certainty. The only question to be determined is whether the various items claimed by the plaintiff are usual, customary, common, recurrent, annual or regular in their character.

There have been two Constitutional Conventions during the period covered—one in 1829 and one in 1850 (App., pp. 159-160). That these conventions were a legitimate and proper exercise of a governmental function and that the expenses at-

tendant thereon are both legitimate and proper is unquestionably true. It certainly cannot be considered as a usual, customary, regular or common expense. It does not come within the scope of an ordinary expense within the meaning of the decree and the item is disallowed.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that there was actually expended by the Commonwealth for expenses attendant upon two Constitutional Conventions, held in 1829 and in 1850, the sum of $258,906.28.

Item 3.—Slaves transported and executed, $311,168.35.

This item is admitted by the defendant.

Item 4—Boundary lines $16,704.78.

These boundary lines were run under the authority of specific acts of the legislature passed in 1822, 1833, 1847, 1858 and 1860 (App., pp. 166-171). Nothing appears in the record to indicate that this expenditure was one that could be called usual, customary, common, regular, or annual. On general principles the expense incurred in settling a boundary line could hardly be expected to recur so as to be in any proper sense, usual or customary. I disallow the item.

ALTERNATIVE FINDING.

I make an alternative finding at the request of the plaintiff that under the acts of the legislature

above referred to, the Commonwealth actually expended in running boundary lines, $16,704.78 within the time prescribed.

Item 5—Maps (Commonwealth)....	$16,628.04
" (Board of Public Works)	11,446.48
	$28,074.52

The maps of the Commonwealth appear to have been made by virtue of the provisions of the statutes enacted in 1825, 1828, 1836, 1848 and 1853 (App. pp. 172-175). These acts all relate to specific maps for specific purposes, and none of them indicate that the work is to be one of a continuing character, usual, customary or common. The maps provided for once prepared, the office of the legislation was apparently accomplished.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended under and by virtue of the various acts of the legislature above referred to for maps, within the time prescribed, the sum of $16,628.04.

As to the item of $11,446.48, for maps for the Board of Public Works, I think a different rule applies.

It is conceded that the salaries and expenses of the Board of Public Works are an ordinary expense. It was a great and important branch of the government exercising control over its expenditures and discharging responsible duties involv-

ing a great many details. It is hardly to be expected that each item of expense incurred by this Board in the discharge of its duties would be duplicated or repeated so as to become as to that item usual, customary or continuing in its character.

Yet all the expense incurred by the Board in the proper discharge of its duty would be properly incurred and within the contemplation of the legislation creating the Board as a continuing body and investing it with its duties and responsibilities. Its expenses should be treated as a whole. All expenses that were reasonably necessary to the proper discharge of its duty are proper expenses, and should be included as a part of its aggregate of expenses and are, I think, fairly within the scope of the ordinary expenses of the Board. Maps for their use in the development of public improvements were such an expense, and I therefore allow the sum of $11,446.48 as a part of the ordinary expenses of the Board of Public Works, and therefore a part of the "ordinary expenses."

ALTERNATIVE FINDING.

I find at the request of the defendant that the sum of $11,446.48 was expended by the Board of Public Works within the time prescribed for maps for its use.

Item 6—Deaf, Dumb and Blind Institution, $80,661.94.

The details making up this item are found on pages 521-522, 523, Joint Ex. D-1, pp. 5, 6 and 7.

All of these items were expended either for original construction or "enlargement and improvement" of plant, each of them increasing the investment of the Commonwealth in the Institution. None of them were involved in its maintenance and operation, and under the authorities they were all extraordinary expenses and are therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the aggregate sum of $80,661.94 was expended within the time prescribed by the Commonwealth in original construction and additions and "enlargement and improvement" of the plant of the Deaf, Dumb and Blind Institution, the details of which are specifically mentioned on pages 5, 6 and 7 of Joint Exhibit D. 1 (Rec., pp. 521-2-3).

Item 7—International Exchanges, $2,836.19.

This money was expended under the provisions of a statute of 1848 (App., pp. 185-6), which authorized an exchange between the United States and the French Government of various public documents. The act contemplates a continuation of such exchanges. It requires "a report annually to the joint committee of Library" indicating that a permanent annual exchange was contemplated by the Legislature.

I allow it as an ordinary expense, $2,836.19.

Item 8—Overpayment of Treasury notes, $50.

Nothing appears to show that this was a usual or customary expense or that it occurred more than once, or as to the circumstances under which it did occur. I infer that it was paid on the error of some officer, and it could hardly be assumed that such errors would become usual and customary.

I disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth overpaid on Treasury notes within the time prescribed the sum of Fifty Dollars ($50).

Item 9—Printing Treasury Notes, $375.74.

This expense was incurred under the provisions of an Act passed in 1856 authorizing the issue of Treasury notes (App., pp. 186-187). The Act contemplated a permanent method of borrowing money by Treasury notes "issued from time to time." While an appropriation is made for only three years, there is nothing in the Act that indicates that its operation was to be confined to any limited period of time. It contemplates an indefinite continuation of the work provided for.

I allow the item as an ordinary expense, $375.74.

ALTERNATIVE FINDING.

I find at the request of the defendant that the Commonwealth paid within the time prescribed for printing Treasury notes under an Act passed in 1856, $375.74.

Item 10—Loss on account of counterfeit money, $190.

There is nothing in the record that discloses the circumstances under which the loss occurred, and I can only infer that it was one of the sporadic instances that might or might not occur in connection with a currency issued by the State. I cannot assume that such loss would be continuing, usual, or customary.

I disallow the item.

ALTERNATIVE FINDING.

I find at the request of the plaintiff that the Commonwealth lost within the time prescribed on account of counterfeit money $190.00.

Item 11—Virginia Military Institute, new buildings, etc., $151,000.00

The items making up this aggregate (found on pp. 524 and 525 Joint Ex. D-1, pp. 8 and 9) are all for the erection of and additions to, enlargements and improvements of, buildings connected with the Institute, and installing of heating and lighting plants and are within the rules laid down extraordinary expenses, and therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiffs that the Commonwealth expended in the erection of buildings and additions thereto and enlargements and improvements, and in-

stallation of heating and lighting plants, connected with the Virginia Military Institute the sum of $151,000, the details of which appear on Joint Ex. D 1, pp. 8 and 9 within the time prescribed.

Item 12—University of Virginia, Repairs and Improvements to Buildings and Water Supply, $25,000.00.

This sum was expended for "repairing and improving the buildings thereof and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the said Institution" (p. 526 Joint Ex. D-1, p. 10).

Repairing the buildings would undoubtedly be an ordinary expense. The burden is upon the plaintiff to establish the ordinary expenses. Nothing is contained in the record that will enable me to ascertain what part of the $25,000 was expended for repairs, and in the absence of that information, no other course is open than to disallow the item, inasmuch as a portion of it at least is for an extraordinary expense. The analogy is very close between an item of this character and a case where a non-lien and a lien claim have been joined, in which case it is well settled that the introduction of the non-lien claim, reduces the whole claim to the character of a non-lien claim.

I therefore disallow the item.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,-

000 in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation of said buildings and other valuable property of the University of Virginia" within the time prescribed.

Item 13—Improvements Public Square, $1,456.91.

This item is admitted by the defendant.

Improvements Capitol Square, $12,278.47 (Rec. 528 Joint Ex. D-1, p. 12).

All of the items making up this aggregate appear to have been either for construction of additions to buildings, "enlargements or improvements," or installation of water and light plants, and the item is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended, within the time prescribed for additions to buildings, "enlargements or improvements" and installation of water and light plants, $12,278.47, the items of which appear on page 528 Joint Ex. D-1, p. 12.

Item 14—Fugitive Slave Expense and reward additional, $2,201.00.

This item is agreed to.

Item 15—Penitentiary Lot, New Hospital Building, etc., $13,947.48.

This item is made up of items for the erection of buildings, completing improvements, "enlargements and improvements," and installation of a water supply, and is disallowed.

ALTERNATIVE FINDING.

I find in the alternative, at the request of the plaintiff, that the Commonwealth expended, within the time prescribed, the sum of $13,947.48 for the erection of buildings, completing improvements, and installation of water supply, the items of which appear on Rec. 529 Joint Ex. D-1, p. 13.

Item 16—Calling out militia at Wheeling in 1836, $1,099.

The militia appear to have been called out under the provisions of the Militia Law, and an Act was passed in 1838 (App., p. 222) giving them the "usual pay of the militia when in actual service." For the reasons hereafter given in connection with the Harpers Ferry Item, this item is allowed as an ordinary expense.

Item 17—Medical College of Virginia, additions and improvements to buildings, $25,000.

This was expended for enlarging the hospital and infirmary and extending the college buildings and for improvement and extension of the college museum, and was an "enlargement and improvement" (Rec., p. 530, Joint Ex. D-1, p. 14), and is an extraordinary expense and is therefore disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended $25,000 for "enlarging the hospital or infirmary, for extending the college buildings and for improvement and extension of the college museum" within the time prescribed.

Item 18—Attorney General's fees, prosecuting Selden Withers & Company, $500.

This item stands with an item "Selden Withers & Co. from Miscellaneous, $9,351.45," which with other items make the aggregate of item "23 Sundry B. P. W. expenses $36,728.50" (Sup. Ex. 10). It is conceded that the Selden Withers & Co. $9,351.45 was "a part of the expense of selling the bonds of the state." This item of $500 being of the same character, an advance fee for collecting the Selden Withers & Co. item, for the reasons given under item 5 as to maps for the Board of Public Works, is allowed.

Item 19—Eastern & Western Asylums, $344,295.57.

All of the items making up this aggregate (found on pp. 531, 532, 533, 534, 535, 536, 537 and 538 of Rec. Joint Ex. D-1, pp. 15, 16, 17, 18, 19, 20, 21 and 22) are for additional buildings and completing buildings and installing water plants with the exception of an item of $5,000 (Rec., p. 532; Ex. D-1, p. 16), and $7,450.01 (Rec., p. 538, Ex. D-1, p. 22) and are therefore in the nature of construction, additions to plant and increase of the investment of the state in the plants

and are extraordinary expenses and therefore disallowed.

The item of $5,000 was expended under the Act of Feb. 14, 1844 (page 16, Chap. 11) which authorized an expenditure of $5,000 "for the purpose of remodelling and repairing the body of the old building."

Repairing is clearly an ordinary expense. Whether remodelling would be or not would depend upon the character of the work contemplated The second section of the Act provides:

> "that before the repairs mentioned in the preceding section shall be contracted for, &c."

apparently treating "remodelling and repairing" as repairs. As to this item, I think it is reasonable to conclude that the remodelling was in the nature of repairs and that the item is an ordinary expense, and I therefore allow it as such $5,000.00
The item "support" is admitted 7,450.01

With these exceptions the aggregate is disallowed.

The items of $7,000 on page 532, and $17,750 on page 533, include repairing among other items. It is impossible to separate the items of repair from the other items and they are disallowed for that reason.

Alternative Finding.

I find in the alternative at the request of the plaintiff under this item, that the Commonwealth expended within the time prescribed the aggregate of $331,845.56, for additional buildings, completing buildings and installing water plants.

Item 20—Gun House at Alexandria.... $900.00

Item 21—Cannon House, Surrey Co.... 110.00

Item 22—Cannon House for Richmond Artillery 1,079.09

These items are all for construction of buildings, the last two by virtue of special acts therefor (App., p. 246) are extraordinary expenses and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth expended within the time prescribed for the purposes above indicated in the items 20, 21 and 22, the sum of $900, $110 and $1,079.09, respectively.

Item 23—Sundry Board of Public Works expenses $36,728.50

"Supplemental Ex. 10."

All of the items making up this sum appear to have been legitimate expenses of the Board of Public Works, reasonably and necessarily involved in the discharge of their duties and are therefore, for the reasons above given under Item 5 as to maps for the Board of Public Works, reasonably within the scope of the ordinary expenses of the Board of Public Works, and are to be treated as an ordinary expense of the State and are allowed.

Item 24—Aggregate, $18,574,747.84.

For the reasons heretofore given this item is allowed as an ordinary expense.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the Commonwealth expended within the time prescribed for interest on its public debt the sum of $18,574,747.84.

HARPERS FERRY RAID.

The full amount of the expenditure for the Harpers Ferry Raid by the State of Virginia was the sum of $255,745.77. $3,982.12 should be credited to the expenditure for sundry returns, leaving the actual expenditure, $251,763.65. The question now to be determined is whether that is fairly within the scope of the term "ordinary expenses," as that term is used in the decree.

The Constitution of the United States recognizes the essential character of the militia (Con. Art. 1, sec. 8, part 15 and 16, Code of Va., 1860, p. 17). The Virginia Bill of Rights declares that a "well regulated militia * * * is the proper natural and safe defense of a free state." (Code Va., 1860, p. 34, sec. 13.) Virginia has had an active and expensive militia establishment since 1705 (do. 134 note). The Governor is authorized to "call forth the militia" when any

> "combination whether for dismembering the State or establishing in any part of it a separate government, or for any other purpose shall become so powerful as to obstruct in any part of this state the due execution of the laws thereof."
>
> (Code Va., 1860, page 118, sec. 2.)

Under the title head of "Public Defense" is found most extensive, detailed, and comprehensive statutory provisions providing for its organization, maintenance and control, occupying 45 pages of the statutes. (Code Va., 1860, page 134).

It provides for salaried officers (do. 142, sec. 27). For pay of certain officers (do. 148, sec. 8). For annual muster (do. 147, sec. 4); two trainings annually for "the officers of each County" (do. 147, sec. 4). For cavalry and artillery (do. page 151, sec. 11). "In case of any invasion or insurrection within the limits of any division * * * the commandant of such division" has power "to order out for the defense of the State the militia or any part thereof" (do. 161, sec. 1). "The officers and soldiers when called into the actual service of the State shall be entitled to the same camp equipage, pay, subsistence, forage and other emoluments to which similar officers and soldiers are entitled in the service of the United States." (do. page 164, sec. 14.)

The expense of this establishment was large, and the amount $1,030,594.11 is admitted to be an "ordinary expense."

It is clear that the militia is organized and maintained not for continuous active service but only that from time to time as occasion may require it may be called into "actual service." It is maintained for the express purpose of meeting exigencies the nature of which cannot be specifically foreseen. The possibility of the occurrence of the exigency is all that can justify the existence of the militia establishment. If the expense of maintaining the militia in order that a State may be prepared to meet the exigency when the occasion arises is an "ordinary expense," it is diffi-

cult to see why the expense involved in meeting the exigency itself, thus provided for, the accomplishing of the sole purpose of the militia, is not also within the fair scope of an "ordinary expense." It is a legitimate part of the whole expense of the militia establishment. Its expenses should be treated as a whole. That the appropriations were made "for the defense of the Commonwealth" has no significance as showing that they were unusual or extraordinary. This language was no doubt used, not for the purpose of indicating that the Harpers Ferry Raid was unusual or extraordinary and beyond the scope of the militia's duties, but for the purpose of referring the appropriation to that branch of the public service which the legislature had technically designated the "Public Defense." That the Harpers Ferry Raid was signalized by important and far reaching consequences without precedent in the history of the State, and impossible of duplication, does not differentiate it from other, and less significant exigencies, that may have occurred or that might be expected to occur. It is not the cause, but the result of the exigency, which obstructs "in any part of this State the due execution of the laws thereof," and that "renders it necessary to invoke the militia." The Harpers Ferry Raid, was then, an exigency which might ordinarily occur, which was clearly within the contemplation of the legislature when it created and maintained the militia, one of the specific things for which the annual expenditures were made, and I think it is for these reasons, within the fair meaning of the decree an "ordinary expense," and the sum of $251,763.65 is therefore allowed as such.

Primary Schools.

The amount expended on account of primary schools was $3,056,239.84 (Rec. p. 538-H). Of this amount thus expended, the defendant admits that the sum of $655,908.73 stated by them as "paid from capitation tax" is an ordinary expense and should be so charged. They deny that the balance of $2,400,331.11 is so chargeable for the reason that it was derived from other sources than the capitation tax or "on account of the source from which it was derived" (Rec. p. 515-D-1, p. 1; 538 H. Deft.'s Ex. D-2, p. 7).

The "Literary Fund" from which these expenditures were made came from three sources; First,

> "all money, stocks or other property which now or hereafter may belong to the Literary Fund" (App., p. 207);

Second,

> "Whatever shall accrue to the State from escheats, forfeitures or fines (except militia fines) from the estate of a decedent of which there is no other distributee or from any other property as derelict and having no other owner" (Code Va. 1849—App., p. 207).

Third, The auditor of public accounts was required by law to

> "set apart and pay into the Treasury to the credit of the Literary Fund for the purposes of education in primary and free schools, the *amount* of the capitation tax for the preceding year" (Act, March 25, 1853, App., p. 208).

From the fund thus created there was expended, $45,000.; $70,000., $75,000 and $80,000 annually (Code Va. 1860, pp. 416-7 note).

I have already held, under a preceding paragraph, that an expenditure for this purpose was an ordinary expense, and not an "expenditure." It is conceded that as to $655,908.73, that conclusion is correct, because it was "paid from the capitation tax."

I find nothing in the legislation or in the decree that sustains this distinction. The sum of $655,908.73 was not "paid from the capitation tax." Under the express provision of the Statute, the capitation tax was paid "into the Treasury to the credit of the Literary Fund", and when it arrived in the Treasury it was mingled with all the other funds that were the property of the "Literary Fund." It is only the *amount* of the capitation tax that is paid out of the Treasury for the purposes of education. There are no earmarks upon the capitation tax by which it can be traced into the Treasury, and then out of the Treasury, as a disbursement for educational purposes. The provision as to the capitation tax is not an appropriation of the tax *per se*, but is simply a provision on the part of the state determining the minimum amount that shall be contributed annually from the revenues raised by taxation to the Literary Fund, to supplement the first and second sources of income. The amount to be spent "for the purpose of education" was by no means limited to the "amount of the capitation tax." It exceeded it by the amount of $2,400,331.11. These three sources of income when they reached the Treasury constituted a common fund known as the "Literary Fund." Out of

that common fund all of the disbursements were made for the purposes of education. The decree does not authorize me to inquire into the source from which the money reached the Treasury, and determine the amount of the ordinary expenses expended from this fund, by the amount of any particular source from which the fund derived its revenue. If one dollar expended for primary schools from the "Literary Fund" made up from these various contributions, is an ordinary expense, I can see no reason why every dollar coming from the same fund, and expended for the same purpose, is not also an "ordinary expense."

I therefore find that the sum of $3,056,239.84 is an ordinary expense. Inasmuch as the sum of $655,908.73 has already been included among the items which make up $18,207,684.29, there is to be added to it in order to charge $3,056,239.84 as an ordinary expense the difference between that sum and $655,908.73 or $2,400,331.11.

Alternative Finding.

I find, at the request of the defendant, as an alternative finding, that the amount of the capitation tax during the period in which the sum of $3,056,239.84 was expended for schools was $655,908.73.

Surveys.

I have already held under Paragraph III, that the sum of $106,983.67 expended for surveys by the Board of Public Works was general in its character, and should be charged as an ordinary expense and the item is here so charged $106,983.67.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts.....	$353,123.96
3.	Slaves transported and executed.....	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvements in public square	$1,456.91
14.	Fugitive slave expense; reward additional.....	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Genl.'s fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum.....	$5,000.00
	Support Western Asylum..	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid.....	$251,763.65
	Expended for primary schools.....	$2,400,331.11
	General expenses connected with surveys	$106,983.67
		$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that the Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1....	$80,661.94
8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
At the request of the plaintiff that the Commonwealth lost on account of counterfeit money.	$190.00

11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute..... $151,000.00

12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia..... $25,000.00

13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square, the sum of..... $12,278.47

15. At the request of the plaintiff that the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings etc. $13,947.48

17. At the request of the plaintiff, that the Commonwealth expended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the College museum" of the Medical College of Virginia... $25,000.

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl.—Joint Ex. D-1, pp. 15 to 22 incl.....	$331,845.56
20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria	$900.00
21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County	$110.00
22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery	$1,079.09
23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W.	$36,728.50
24. At the request of the defendant, that the Commonwealth expended for interest on its public debt	$18,574,747.84

I find in the alternative at the request of the plaintiff, that the amount of the ordinary expenses and the apportionment thereof, according to the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

Division of Ordinary Expenses of Government by Decades.

	Total.	1st decade ending Sept. 30th, 1830.	2d decade ending Sept. 30th, 1840.	3d decade ending Sept. 30th, 1850.	4th decade ending Dec. 31st, 1860.
Agreed Amount	$18,207,684.29	$2,902,808.21	$3,975,260.33	$4,514,861.97	$6,158,845.05 655,908.73
Schools	2,400,331.11	330,054.08	568,328.36	715,190.24	786,758.43
Tobacco Receipts	353,123.96	71,950.84	50,246.78	62,703.07	168,223.27
Slaves Transported and Executed	311,168.35	41,491.54	53,488.95	49,497.28	166,690.58
Maps (Board of Public Works)	11,446.48	4,428.79	.....	1,500.	5,517.69
International Exchanges	2,836.19	.....	.....	550.	2,286.19
Printing Treasury Notes	375.74	.....	.....	.....	375.74
Improvements to Public Square	1,456.91	1,456.91	.....	.....	.....
Fugitive Slave Expense	2,201.	.....	.....	.....	2,201.
Militia—Wheeling, 1838	1,099.	.....	1,099.	.....	.....
Attorney General's Fees	500.	.....	.....	.....	500.
Eastern Lunatic Asylum—Repairs	5,000.	.....	.....	5,000.	.....
Western Lunatic Asylum—Support	7,450.01	.....	7,450.01	.....	.....
Board of Public Works—Expense	36,728.50	64.50	1,579.87	1,698.92	33,385.21
Interest on the Public Debt	18,574,747.84	274,278.17	1,146,146.43	3,682,978.86	13,471,344.38
Harpers Ferry Raid	251,763.65	.....	.....	.....	251,763.65
Surveys	106,983.67	42,046.76	49,450.09	14,818.09	668.73
	$40,274,896.70	$3,668,579.80	$5,853,049.82	$9,048,798.43	$21,704,468.65

Division of Ordinary Expenses of Government by Plaintiff's Method as Shown in Joint Exhibit D-1, Pages 2-3.

ORDINARY EXPENSES DIVIDED BY DECADES.

Mar. 19, 1823, to Sept. 30, 1830	$3,668,579.80
Oct. 1, 1830, to Sept. 30, 1840	5,853,049.82
Oct. 1, 1840, to Sept. 30, 1850	9,048,798.43
Oct. 1, 1850, to Dec. 31, 1860	21,704,468.65
	$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *INCLUDING* SLAVES.

1st Decade—Virginia	85.9789%	$3,154,204.56	
West Virginia	14.0211%		$514,375.24
2d Decade—Virginia	83.6218%	4,894,425.61	
West Virginia	16.3782%		958,624.21
3d Decade—Virginia	80.2045%	7,257,543.54	
West Virginia	19.7955%		1,791,254.89
4th Decade—Virginia	77.5014%	16,821,267.07	
West Virginia	22.4986%		4,883,201.58
Total Virginia		$32,127,440.78	
Total West Virginia			8,147,455.92
Grand Total as above			$40,274,896.70

DIVIDED ON BASIS OF AVERAGE TOTAL POPULATION *EXCLUDING* SLAVES.

1st Decade—Virginia	79.3334%	$2,910,409.09	
West Virginia	20.6666%		758,170.71
2d Decade—Virginia	76.1625%	4,457,829.07	
West Virginia	23.8375%		1,395,220.75
3d Decade—Virginia	71.9611%	6,511,614.89	
West Virginia	28.0389%		2,537,183.54
4th Decade—Virginia	68.8438%	14,942,180.99	
West Virginia	31.1562%		6,762,287.66
Total Virginia		28,822,034.04	
Total West Virginia			11,452,862.66
Grand Total as above			$40,274,896.70

Division of Ordinary Expenses of Government by Defendant's Method as Shown in Joint Exhibit D-1, Page 4.

Total Ordinary Expenses to be divided	$40,274,896.70

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITH* SLAVES.

Virginia	81.3718%	$32,772,408.39
West Virginia.....	18.6282%	7,502,488.31

DIVIDED ON BASIS OF TOTAL AVERAGE POPULATION *WITHOUT* SLAVES.

Virginia	73.3369%	$29,536,360.72
West Virginia.....	26.6631%	10,738,535.98

I find that the method adopted by the plaintiff of, ascertaining "the average total population", is the closest and most accurate approximation upon which the ordinary expenses can be apportioned to "the average total population", as the object to be ascertained, is the population in existence, at the time the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method.

PARAGRAPH V OF DECREE.

5. "AND ALSO ON THE BASIS OF THE FAIR ESTIMATED VALUATION OF THE PROPERTY, REAL AND PERSONAL, BY COUNTIES, OF THE STATE OF VIRGINIA."

This paragraph is clearly in the alternative with the last clause of Paragraph IV. That paragraph requires "such proportion of the ordinary expenses * * * on the basis of the total average population," and Paragraph V. "*also* on the basis of the fair estimated valuation," two alternatives, each predicated upon the same "ordinary expenses." How any proportion of the ordinary expenses can be predicated upon a valuation that is not coterminous with the "ordinary expenses", but taken two and a half years later under a profound change in conditions, affecting the amount of that valuation, can serve any useful purpose in apportioning such "ordinary expenses" it is difficult to see. If an ordinary expense is a charge upon valuation, it can only be a charge upon the valuation in existence at the time the "ordinary expense" is incurred, and not upon another and entirely different valuation at a later period. The case has, however, been tried upon the hypothesis that the "fair estimated valuation," is as of June 20, 1863, and while I think January 1, 1861 is the true date, I will first find the fair estimated valuation on June 20, 1863. Both parties start with the assessed valuation of real estate made in 1856, and which it was provided by Acts passed March 27, 1862 and March 28, 1863 "shall be permanent and not be changed" for those years respectively (App. p. 133). The taxes were assessed as of February 1

(Code of Va. 1860, p. 197, sec. 48) (Acts Genl. Assembly, 1863, Chap. 1, p. 1). The rate of assessment in '61 (See Plff. Ex. H-1) was at the rate of forty cents on a hundred. The Act of 1863 increased the rate of taxation to 100 cents on a hundred and generally, one hundred and fifty per cent. The Act of 1862 contained no provisions as to changing the assessment of real estate. The Act of 1863, sec. 91, provided that

> "as many tracts of land and lots with improvements thereon situate in counties invaded by the public enemy have been permanently diminished in value by said invasion and despoiled and reduced in value by military occupation and by the waste and violence incident to war, it shall be the duty of the Commissioners of the Revenue for such counties upon the requisition of the owner of any real property situate in such counties or of his agent to make a new assessment of such real property upon the following basis and mode of valuation, viz.: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment such sum as is equal to a fair estimate of the permanent diminution in the value thereof caused by the invasion of such county and of the permanent injury and damage inflicted upon such property by military occupation thereof and the waste and violence incident to war" (App. pp. 133-4).

and then follows a provision that the

> "permanent diminution, injury and damage"

should be measured by the "standard and rate of valuation" as if it had "been estimated during the year 1856," the remainder to be the valua-

tion to be assessed. The change of valuation could be made only "upon the requisition of the owner." The defendant claims that it is to be presumed that the owner made the application where there was any diminution in value for that cause and that as to the counties actually subjected to "military occupation" the presumption is that the assessors valuation for 1863 represents the actual value after these proceedings had been had. The law provided also for adding to or taking from the assessment on the addition or loss of buildings (Code of Va. 1860, chap. 35, secs. 31, 32, 33 & 34, pp. 193-4). Nothing appeared in the case to indicate that any requsitions had been made by owners for a reduction in value under the provisions of Sec. 91. If there is a presumption that the requisitions were made and the values were correspondingly reduced under the provisions of this section, that presumption is overcome by the fact that the valuation of real estate for 1863, was $378,534,712.35 (Rec. p. 639—Ex. E-1, p. 1) as against a valuation for 1861 $317,330,219.26 (Plffs. Ex. H-1, p. 647), and valuation for 1860 of, $377,947,112 (do.).

It will be seen that the valuations for 1863 and 1860 are substantially the same. While the valuation for '63 exceeds that given for 1861, it should be noted that quite a number of counties were omitted in 1861 which were valued in 1863 at about $36,000,000, which added to $317,330,229.26 would make an aggregate of $353,330,229.36, so that the valuation of real estate in 1863 instead of being reduced as it inevitably would have been if there had been any diminution on the requisition of the owners, shows substantially the same value as in 1860 and an increase over 1861.

The assessments as stated in the schedules for Virginia and West Virginia stand therefore unaffected by any of the considerations growing out of the war conditions on June 20, 1863, and are practically the assessments of 1856.

The plaintiff claims that because of the fact that the real estate was within the limits of the Confederacy, whose territory was to a large extent the theatre of active war, occupied by contending armies, had been ravaged and in part destroyed, with agriculture and manufactures practically paralyzed, there was a depreciation of its value by at least fifty per cent in all of Virginia and the same in the counties of Berkeley, Greenbrier, Hampshire, Hardy, Jefferson, Mercer, Monroe, Morgan, Pendleton and Pocahontas in West Virginia (Rec., p. 640, Ex. E-1, p. 2).

If this contention is sustained the "fair estimated valuation of the real property of Virginia" would be $148,042,730.15; and in West Virginia, $67,676,127.44. To establish this, they rely upon the general presumption that a marked decrease in value would result from the war conditions, the opinions of witnesses and the sale of different parcels of real estate.

My attention has been called to cases tending to show that the assessments are admissible as tending to show the value of real and personal property at the time of the assessment. Inasmuch as each party relies upon the assessment as the basis of their respective valuations, and there is no other evidence in the case, and no other is probably obtainable, that tends to show the value of the real and personal property as a whole at the time in question, I shall treat the assessments

as one of the competent elements for the purpose of determining the fair estimated valuation.

The defendant contends that Virginia is estopped from denying that the assessed valuation in 1863 is the "fair estimated valuation" and rely upon *State* v. *Turpike Co.*, 22 Tenn. (3 Humphrey), 305, and *State* v. *Hamilton*, 30 Tenn. (11 Humphrey), 47, which hold that the analogy between the agent of the state employed to "transact its ordinary business and operations" is complete between that of an agent of an individual person, acting through his agent, and the state is equally bound thereby. *State* v. *Crutcher*, 32 Tenn., 504, 515, is to the same effect except as an additional reason for holding that the settlement involved in that case bound the state, it appeared that it had "received the approval of the legislature."

As to these cases it is to be said that the assessors assessing property are not acting as agents of that character. As is said in *Stanley* v. *Board of Supervisors*, 121 U. S., 535, also cited by the defendant, "their action is judicial in its character."

11 Amer. & Eng. Ency. of Law, 2nd Ed., 396, and cases cited, is relied upon as establishing the doctrine that a state may be estopped by its covenants in a deed.

The cases all proceed upon the theory that as to the deed or grant, the state acts in its private capacity, and is therefore governed by the same rules that apply under the same circumstances to private individuals, a state of facts that does not obtain at bar, as there is no deed or grant here, and there is no action by the

state in its private character and no ground for an estoppel. Cases like *Stanley* v. *Board of Supervisors,* 121 U. S. 535, are cited for the purpose of showing that the assessment cannot be attacked collaterally by a tax payer, but this is not a case of a tax payer contesting either the validity or the amount of the tax assessed, and those cases proceed upon the ground that remedies are provided by statute for the tax payers. Moreover, in that case the Court held that the valuation fixed, was not conclusive even as against the tax payer, as while they hold that the tax could not be attacked collaterally, they also hold that

> "when the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a Court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due" (pp. 550-1).

While insisting upon the position that the assessed valuation is conclusive upon Virginia, defendant calls my attention to cases, which it is contended, require me to take judicial notice that these valuations "are far below the market value of the property assessed".

In *State* v. *Savage,* 91 N. W. 716, 720, acting upon an assessment, the Court took judicial notice that it was "notorious" that the assessment was at only twenty to ten per cent of the value of the property.

In *Railroad & Tel. Cos.* v. *Board of Equalizers*, 85 F. R. 302, the Court said, if it "may judicially know an established custom" real property was assessed "at a rate not exceeding 75 per cent. of actual value" (p. 310). And the Court also said:

> "It is a matter of familiar and common knowledge with every citizen of the State [Tennessee] that ordinary real property is assessed for general taxation at a percentage ranging from 50 to 75 per cent. of actual value" (p. 308).

The Court cited *Railway* v. *Guenther*, 19 F. R. 395 where in speaking on the same subject, the Court said:

> "But from the other proof in the cause and from what the Court may judicially know"

the assessments were

> "one-fourth below their real value " (p. 399).

The Court in that case also cited *Board of Supervisors of Bureau County* v. *Chicago B. & Q. R. Co.*, 44 Ill. 229 where the Court said:

> "It is an admitted fact on both sides of this controversy that the property of no one owner in the County of Bureau has been taxed on its real value" (p. 239).

In that case it appeared that

> "property of individuals ranged from one-fifth to one-third of its cash value" (p. 237).

These facts appeared by proof and were not a matter of judicial notice.

In *Cummings* v. *National Bank*, 101 U. S. 153, also cited in the opinion, the Court said:

> "But it is a matter of common observation that in the valuation of real estate this rule is habitually disregarded" (p. 162).

The Court had already decided the case and it appeared "by the testimony of four or five assessors" that they had established a rule by which real and personal property was assessed at one-third of its actual value. The remark made by the Court was unnecessary to the decision, general in its character and expressly declared to be in "extenuation" of the practice thus disclosed to obtain in Ohio. The Court further said for the same purpose,

> "it is believed that the valuation of real estate for the purposes of taxation rarely exceeds half of its current salable value" (p. 163).

It is not believed that the Court in using this general language by way of illustration, as a dictum, were laying down a legal rule for determining the value of real estate, and authorizing the Court by judicial notice to make a reduction from its assessed value.

These cases may perhaps be sustained upon the theory that

> "Courts may properly take judicial notice of facts that may be regarded as forming part of the common knowledge of every person of ordinary understanding and intelligence" (Cyc., Vol. 16, p. 852),

and the fact that the judicial notice is confined to the particular states under discussion.

I am not advised whether it is ten, twenty, thirty-three and a third, fifty or seventy-five per cent. of the valuation that I am expected to assume as a matter of judicial knowledge. If I am asked to hold that there is a universal custom, prevailing everywhere, to undervalue real estate for the purpose of taxation, I should not feel at liberty to so hold, for I know the contrary to be true. I know localities where the full value is intended to be assessed. There is no evidence in this case by which it could be inferred that any custom to undervalue prevailed in Virginia in 1856 or in 1863. If an undervaluation was a part of the common knowledge of every person of ordinary understanding at that time, nothing appeared in the record to indicate it, and I do not feel at liberty to assume it. The Act under which the assessment was made required the assessors to "examine all the lands and the lots with the improvements thereon * * * ascertain and assess the actual value thereof" (Sec. 4, Act Mar. 10, 1856, p. 17). By Section 5, the Courts had the power to

> "reduce the same to what is in their opinion the true value of such lands or lots,"

and if too low, "they shall increase it in like manner".

The defendant contends in connection with these assessments that

> "It is a well settled principle that the law contemplates or presumes that all public officers in the discharge of their duties have acted according to the requirements of the law and have done all things which the law requires they shall do,"

and cites authorities which amply sustain that proposition. Such being the rule, when applied to this assessment it follows that in fixing the value of the real estate in 1856 the assessors fixed the "cash value thereof".

The defendants were requested to submit authorities upon the competency of the opinions of witnesses and actual sales upon the question of values on June 20, 1863. Having submitted none, I assume that they do not contend that upon the authorities evidence of that character is inadmissible. The evidence is objected to on the ground that its effect is to impeach the judgment of the revenue officers, and it is claimed that their judgment is thus being collaterally attacked. No question of taxation is involved here. The only question is what is a "fair valuation", and an assessment made in 1856 is the starting point in ascertaining that valuation on June 20, 1863.

The theory of the plaintiff involves the assumption that the assessment in 1856 was the true value at that time. It is their basis. That pronounced changes in value, especially in view of war conditions, may have occurred up to June 20, 1863, is too obvious for discussion.

The opinions of witnesses, sales, and conditions in 1863, and the use sought to be made of such evidence on the part of the plaintiff does not only fail to contradict, impeach or collaterally attack, but proceeds upon the assumption, that the action of the assessors is to stand, as the basis of the valuation.

It seems inevitable, that the existence of the war and its continuance from 1861 to June 20, 1863, the presence of the contending armies and the condi-

tion of destruction and devastation necessarily incident thereto, produced a marked diminution in the value of the real estate within the limits of the Confederacy.

The difficult question is, how much was the depreciation. Upon this point the evidence is very fragmentary, indefinite and unsatisfactory, but it is all there is in the case from which that can be ascertained. The plaintiff shows thirty sales of real estate in the territory in question during the months of April, June, July and August, 1863 (Rec. 654-5-6-7-8). These sales were all undoubtedly in Confederate money, as it does not appear to be seriously controverted that all transactions in the Confederacy at that time were in Confederate money. Reduced to a gold basis they show an average depreciation from the assessed value of 62.90 per cent.

J. M. McWhorter, a witness for the defendant says that "there was depreciation. People were ready to dispose of their property and turn it into money" (Rec., p. 715). It was on account of the raids of Confederate armies (Rec., pp. 715-716). He testifies only as to Roane and Jackson Counties (Rec., p. 717) and makes no estimate as to the amount of the depreciation in those Counties.

Ex-Governor Atkinson, also a witness for defendant, was in Kanawha, Fayette, Nicholas, Greenbrier, Jackson, Roane, Putnam and Mason counties, more or less of which, were overrun at times by both armies (Rec., p. 787). He says

> "It necessarily materially reduced the values of all kinds of property all through this region of the country" (Rec., p. 788).

From shortly after September, 1862, until the close of the war the Federal forces occupied the great Kanawha valley (Rec., pp. 787 and 790). The counties above referred to were largely situated in this valley. He had no doubt but that

> "property values did increase in the upper part of the State to some extent during the period of the War, which part was not burdened by soldiers of either side; but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all" (Rec., pp. 794-5).

He says "that in the whole Southern tier of counties" real estate "did materially depreciate" (Rec., p. 795). He expresses no opinion as to the percentage of increase on the one hand or decrease on the other.

The counties that plaintiff concedes should have their values reduced are the whole Southern tier of Counties (Rec., p. 640, Ex. E-1, p. 2) and the counties as to which Mr. McWhorter and Mr. Atkinson testify are such as were substantially in the great Kanawha Valley that was under Federal control shortly after September, 1862, until the close of the War.

This is in substance the evidence upon the part of the defendant bearing directly upon the question of value.

The plaintiff relies upon a number of witnesses who appear to have had some opportunity to know of the conditions in a great deal of the territory in Virginia that was the subject of military occupation. They all agree that great damage was done and that there was great deterioration in value. (Hunter, 741; Scott, 748; Branch, 754;

Wellford, 761; Taylor, 769; Hawes, 772; Williams, 778; McCabe, 783-4).

Hunter says that it:

> "is almost entirely a matter of conjecture, but I should suppose it would be fair —of course I just hazard this—to state that the values were destroyed one-half at least, taking the whole State at large" (Rec., p. 742).

He says it was "impossible to base any satisfactory judgment as to values" (Rec., p. 742). In answer to the question as to whether real estate was worth "less than one-half," Scott says, "Undoubtedly in gold values" (Rec., p. 748).

Branch says:

> "I don't consider that I know enough to express an opinion in regard to real estate. It was very much depreciated * * * I am satisfied (though I am not speaking of any sale I now remember) that it depreciated fully one-half" (Rec., pp. 756-7).

Wellford—reducing Confederate money to gold, says the value was not "over one-half" as before the War (Rec., p. 763).

Taylor—Fifty to Sixty per cent. depreciation (Rec., p. 770).

Hawes—Depreciation, fifty per cent. (Rec., p. p. 779).

Williams—Average lands in Virginia were not worth 25 per cent. in 1863 in good money (Rec., 779).

McCabe expresses no opinion as to the amount of depreciation.

Indefinite, uncertain and unsatisfactory as these statements are, the defendants though examining its witnesses upon the same general subject after this testimony was taken, made no effort to contradict their statements or opinions. This, with the sales, is all the evidence there is, and it is perhaps true that at this late day, nothing more satisfactory could be obtained. Taking it with the presumption of the great decrease in value resulting from the War conditions, I think the estimate made by the plaintiff is as close and approximate as can be reasonably made of the fair estimated value of the real estate on the 20th day of June, 1863, and I therefore find that the fair estimated valuation of the real estate in the counties in Virginia on that day was, $148,042,730.15. The plaintiff concedes that the same reduction should be made in the Southern tier of ten counties of West Virginia. I find the value of the real estate in said counties to be $14,773,124.60.

There is no evidence that taking West Virginia as a whole there was any decrease in its value. While Ex-Governor Atkinson says, that in the upper part of the State "values had increased to some extent," and that

> "but for the Southern portion of the State, I cannot believe, taking the whole period of the War, that the valuation of personal property and real estate increased at all. On the contrary, I am quite confident that it did not do so" (Rec., p. 795),

he afterwards said that in the southern tier of counties it materially depreciated. He expresses no opinion upon the question of depreciation of the state as a whole. His statement as to the in-

crease of value of the upper part of the State has some corroboration in the fact that agriculture was carried on in that section at a handsome profit in 1863 and 1864 (Rec., p. 798).

The same reduction having been made in the Southern tier of ten counties on account of the War conditions that has been made upon the real estate in Virginia, I think it reasonable to take the assessed valuation in West Virginia for the remaining counties without making any addition for any increase in value "in the upper part of the State" as the fair estimated value of the real estate in those counties on June 20, 1863.

And I therefore find that the fair estimated value of that portion of West Virginia was $52,903,002.84, which added to the valuations fixed upon the Southern tier of counties makes the aggregate of the fair estimated value of the real estate in the Counties of West Virginia the sum of, $67,676,127.44.

Alternative Finding.

I find in the alternative at the request of the defendant that the assessed valuation of the real estate in the counties constituting the State of Virginia on June 20, 1863, was $296,085,460.31 and that the assessed valuation of the real estate in the counties constituting West Virginia was $82,449,252.04.

Personal Property.

The total valuation of personal property including slaves and not including income in the counties of Virginia, was, according to the last obtainable assessment prior to June 20, 1863

(Rec., p. 639, Ex. E-1, p. 1), $403,696,228.59. The same valuation for the counties in West Virginia was $30,394,487.21 (do.).

The witnesses all agree that there was a great diminution in quantity of stock of all kinds and provisions as compared with 1860 and 1861.

Hunter says: "Very largely; very largely" (Rec., p. 743).

> Scott says: "Personal property of all sorts had become so scarce that by reason of its scarcity it had a fictitious value, almost in Confederate money. There were not any horses to spare left, very few cows, very little furniture, very few farming utensils and very little live stock."
>
> "There was ten times as much personal property in 1861 as there was in 1863" (Rec., p. 749).

The value of horses was much more in 1863 (Rec., p. 750).

Branch says: other personal property had depreciated fifty per cent. (Rec., p. 757).

Wellford: "Immense diminution in the quantity" of personal property (Rec., p. 763). Hogs made into bacon, and horses, were worth more. He says that Lincoln's Proclamation had "very little effect" upon the value of slaves "until the surrender of Vicksburg and Gettysburg. It was laughed at and ridiculed by most people" (do., p. 763). Leaving out cotton and tobacco, personal property depreciated 75 per cent. Carriages and wagons and farming utensils were pretty well worn out (do., p. 764). Nearly one-half of the horses and cattle were gone (do., p. 765).

Taylor—Depreciation 50 to 75 per cent. (do., p. 769) "except such things as were absolutely in

demand like horses, provisions and things that you would have to have'' (do., p. 769).

Hawes—Live stock and poultry were swept off. (do., p. 772). Amount carried off large (do., p. 774).

Williams—Depreciation was less than fifty per cent. (do., p. 779).

McCabe—Live stock was swept away (do., p. 785).

While these statements as to the amount of personal property destroyed are probably somewhat exaggerated I have no doubt there was a marked reduction in quantity, and an abnormal increase in demand, caused by the presence of the contending armies in large numbers for such personal property as horses, cattle, sheep and hogs which would necessarily tend to largely increase their value. All fowl and animals of every description (except horses, mules, asses, cattle, sheep and hogs), all farming implements actually used for farming purposes and all mechanics' tools used on any farm or by any person actually engaged in any other occupation or profession were exempt from taxation, and are not included in the aggregate of personal property above given.

The plaintiff claims that the assessment upon which the valuation of personal property is based was made in Confederate money on February 1, 1863, which at that date was at the rate of 4 to 1, and that therefore in order to get the valuation in gold the assessment should be reduced seventy-

five per cent. An analysis and comparison of the assessments of 1861 and 1863 does not sustain this contention. For the purpose of making this analysis and comparison I have had prepared an abstract of the personal property assessment for 1863, so far as obtainable from the records, marked "Supplemental Ex. 4", and a comparison of average assessed valuations marked "Supplemental Ex. 5." If the assessment of 1863 was made upon the same basis as the assessment of 1861 and there was an increase in the value of horses &c., cattle, sheep and hogs, we should expect to find in the assessment of 1863, a larger average sum assessed on account of such property than was assessed in 1861. If a basis of valuation four times as great as that of 1863 was adopted, we should expect to find a general increase in the value as to all the items included in the assessments, approximating at least, the basis used. In the case of pleasure carriages and other vehicles, the assessment of 1863 compared with 1861 in six instances at least is less than the assessment of 1861. In case of watches, it was less in two counties, and in case of clocks in ten counties. In the case of pianos and harps, in 19 counties.

In making these comparisons it is to be noted that the valuations in 1861 as a rule are somewhat less than the valuations in 1860. I have not made computations in connection with all of the items in all of the counties, but I have made computations enough to satisfy me that there has been no horizontal increase of the rate of assessment on the basis of four to one.

The largest increase was in connection with the items as to which the greater increase in value was to be expected. In the case of sheep, the

greatest increase that I find is 450 per cent. and I find that in only twenty-four counties was there an increase of 300 per cent. or over. In cattle, the largest increase I find is 321 per cent, and I find only three counties in which there was an increase of 300 per cent. or over. The largest increase in the case of hogs was 461 per cent. and I find only nine counties in which there was an increase of 300 per cent. or over. I find that in one county there was an increase in the valuation of clocks of 332 per cent.

The assessment of the various articles of personal property in a number of counties will show that nothing approximating a horizontal increase could have been made in 1863. I have selected for comparison the following counties, as they show some of the largest increases in valuation and are more favorable to the plaintiff's contention. In Amherst County the increase on horses &c. was 136 per cent.; pleasure carriages, 46 per cent.; cattle, 221 per cent.; sheep 400 per cent.; hogs, 347 per cent.; watches, 99 per cent.; clocks, 16 per cent.; pianos and harps, 43 per cent. Fluvanna County, horses 122 per cent.; pleasure carriages, 54 per cent. cattle 257 per cent. sheep 300 per cent. hogs, 300 per cent. watches 55 per cent. clocks 29 per cent. pianos and harps 55 per cent.

Henrico County—Horses, 79 per cent.; pleasure carriages, 51 per cent.; cattle, 316 per cent.; sheep, 358 per cent.; hogs, 479 per cent.; watches, 58 per cent.; clocks, 63 per cent.; pianos and harps, 40 per cent.;

Goochland County—Horses, etc., 105 per cent.; pleasure carriages, 7 per cent.; cattle, 266 per cent.; sheep, 335 per cent.; hogs, 304 per cent.;

watches, 56 per cent.; clocks, 7 per cent.; pianos and harps, 10 per cent.;

Powhatan County—Horses, etc., 83 per cent.; pleasure carriages, 28 per cent.; cattle, 257 per cent.; sheep, 440 per cent.; hogs, 338 per cent.; watches, 37 per cent.; clocks, 86 per cent.; pianos and harps, 17 per cent.

The average increase per head of these various items of personal property in 1863, compared with 1861, is: Horses, 93 per cent.; pleasure carriages, 30 per cent.; cattle, 140 per cent.; sheep, 228 per cent.; hogs, 164 per cent.; watches, 58 per cent.; clocks, 34 per cent.; pianos and harps, 25 per cent.

Plaintiff says that the counties of Accomac, Alexandria, Northampton, Norfolk City, Norfolk, and Portsmouth "are included in the comparison" and that the assessment in those counties was made "at its full value in lawful money of the United States, and not in Confederate currency." Inasmuch as the schedule shows no assessment in Alexandia in 1861, none in Norfolk for 1863, none in Norfolk City for 1861 and 1863, and none in Portsmouth for 1863, those counties, standing alone, would not appear to have much value. Alexandria comes nearest to the other counties in amounts assessed and a comparison with its values will show that there could have been no general increase of assessments on the basis of 4 to 1. There are sixteen counties where the value of horses was less than $100 and three less than $81.01, the value in Alexandria; viz., Carroll, $72.43; Highland, $45.62, and Northumberland, $79.82. Horses—Alexandria, $81.01; average for State, $125.25; Amherst, $152.49; Fluvanna, $155.67; Goochland, $171.69; Henrico, $146; Powhatan, $139.06. Carriages—Alexandria, $103.28;

average in State, $90.28; Amherst, $116.68; Fluvanna, $110.31; Goochland, $91.60; Henrico, $114.12; Powhatan, $88.93. Cattle—Alexandria, $29.50; average in State, $24.28; Amherst, $34.89; Fluvanna, $41.72; Goochland, $44.16; Henrico, $71.67; Powhatan, $33.03. Hogs—Alexandria, $5.00; average in State, $5.26; Amherst, $8.77; Fluvanna, $8.47; Goochland, $9.62; Henrico, $23.16. Watches—Alexandria, $27.85; average in State, 51.41; Amherst, $85.07; Fluvanna, $53.67; Goochland, $59.08; Henrico, $62.81. Clocks—Alexandria, $3.87; average in State, $5.64; Amherst, $6.97; Fluvanna, $5.76; Goochland, $6.59; Henrico, $6.35. Pianos—Alexandria, $111.41; average in State, $182.46; Amherst, $215.59; Fluvanna, $237.20; Goochland, $205.96; Henrico, $181.05.

The marked increases that appear are clearly in connection with the articles that must have necessarily increased in value and very few of those show an increase of 300 per cent.

It is a fair inference from all the testimony that there was an actual increase in value upon the gold basis of horses, etc., cattle, sheep and hogs. The differences in value are what would naturally be expected from the difference in location and the fact that the values were fixed by different Commissioners. The analysis of the assessments distinctly negatives the idea that there was any change in basis of valuation. If Hawes, who says (Rec., p. 774) that horses would sell for $400, $1,000 and $1,500, and Williams: "A mighty poor horse you could get for $500" (do., p. 781) are correct, inasmuch as the average assessed value in 1863 for horses was $125.25, it is impossible that the assessment could have been made in Con-

federate money on the basis of their actual value. No one having any personal knowledge testified to the assessment having been made in Confederate money.

Plaintiff claims that Taylor and Williams testified that taxes "were assessed in Confederate money." Taylor testified:

> "Q. 11. In what kind of money were taxes assessed and paid at that time—in 1863? A. Confederate money" (Rec., p. 768).

Williams testified:

> "Q. 1. In 1863 what was the currency of the country here, the currency in which taxes were assessed and paid and transaction of all kinds had? A. The only currency in use was Confederate Treasury notes and State Bank notes."

and the rest of the answer makes no reference to the assessment.

> "Q. 2. What currency was the measure of value in 1863? A. Confederate currency. The bank notes were for a long time at a premium but they became finally as worthless as Confederate money" (Rec., p. 781).

He does not state when they were at a premium or when they became worthless. Neither of these witnesses were assessors and it does not appear that they had any personal knowledge, or how they derived such information as they have. It is not contended that real estate was assessed in Confederate money. The testimony of these witnesses covers all taxes and must be incorrect as to real estate. It may be it was intended to ask them as to personal property, but the question

was not so asked or answered. Is it true that all taxes were "paid" in Confederate money when the law in force shortly after the time of the assessment, Feb. 1, 1863 did not authorize the payment of taxes of less than five dollars in Confederate money?

I do not question the honesty or sincerity of the witnesses, but the judicial action of the assessors at the time would seem to be the better criterion of value.

The inference of assessment in Confederate money is sought to be drawn from the fact that the taxes were payable in Confederate money, and that business transactions were in Confederate money.

The Act of March 22, 1862 (Acts 1862, p. 32: App. p. 132), made Confederate notes receivable for taxes without any limit. The Act of March 28, 1863 (Acts of 1863, Chap. 1, Sec. 109: App. p. 132), made Confederate notes of the denomination of or over five dollars receivable for taxes, and the Act of Sept. 14, 1863 (Acts of 1863, Chap. 1, Sec. 1), made them receivable generally. An assessment in Confederate money (Feb. 1, 1863) as to those whose tax was less than $5.00 and could not be discharged in Confederate money would operate somewhat oppressively.

The act of March 28, 1863 raised the rate of taxation as compared with 1861 on the average, approximately, 150 per cent. The purposes for which the public expenditures were made were not increased; if anything, the purposes for which revenue was expended were less in 1863, than in 1861, as it is conceded that the discharge of many of the public functions which involved

expenditure by the Government at that time, were to quite a degree suspended. 150 per cent. more money was collected and disbursed to accomplish the same results that were accomplished in 1861.

The war expenses of Virginia it is conceded were met by loan. In the matter of taxation and the money collected therefor, the element of Confederate money was apparently reflected in the increase of 150 per cent. in the rate of taxation, rather than in the assessment.

The fact that personal property throughout the country generally very largely appreciated in value between 1861 and 1863 is of some significance. It seems clear that the basis of assessment was not Confederate money. Horses as an illustration were apparently assessed upon the same basis as in 1861 and at their fair value. If one item was assessed uon that basis, and upon its cash value, no reason is perceived why all of the other items of personal property, involved in the same assessment, were not made upon the same basis, and I see no reason why the rule does not apply to slaves, as well as to other personal property. While there are inconsistencies and incongruities in connection with these assessments which it is difficult to explain, I have to take this branch of the case upon the elements that I find, and I do not think the plaintiffs have sustained the burden of showing the horizontal decrease from the assessed value of 75 per cent. The only other alternative is the value fixed by the assessors on the basis of the assessment in 1861, and I therefore find that the assessed value of the personal property is the fair estimated valuation of the personal property on the 20th day of June, 1863, namely:

In Virginia $403,696,228.59
In West Virginia 30,394,487.21

(Rec., 639, Ex. E-1, p. 1.)

It appears that the amount of income upon which an income tax was assessed in Virginia, as per the latest obtainable assessment rolls, prior to June 20, 1863, was in Virginia. $11,108,300.13
and in West Virginia 299,257.45

The defendant claims that these sums are a part of the personal property and should be so returned. These sums represent "the value of his income during the next year preceding" the date upon which the assessment was made (Code Va. 1860, Sec. 151, p. 198), where it exceeds $250. It is gross, not net income. The fact that that amount was received in income during the preceding year, by no means indicates that it was on hand at the end of the year, especially where the tax was upon incomes as small as $250 a year. The inference is that it was not so on hand. So far as it was on hand unspent, it would necessarily be represented by "money on hand or securities or other personal property," which items have already been included in the aggregate of personal property above given. If the gross income was to be treated as personal property on hand, it would result in duplicating it in the aggregate of value so far as it was on hand. I disallow the "income" as part of the personal property June 20, 1863.

ALTERNATIVE FINDING.

I find at the request of the defendant that the amount of the income assessed for the year 1863 was for Virginia counties	$11,108,300.13
West Virginia counties.....	299,257.45

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:

The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time	$162,537,936
The fair estimated value of the other personal property in Virginia counties was.....	$102,114,863.

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), $100,201,850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), $1,077,368, and Goochland (Plff. Ex. H1., p. 395), $835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30

And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624
Other personal property in West Virginia (Supplemental Ex. 6)	$23,469,172.
Real estate in West Virginia.....	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

SUMMARY.

June 20, 1863.	
Fair estimated value of real estate in Virginia counties....	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties...	$403,696,228.59
Total real and personal in counties in Virginia including slaves..	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves	$98,070,614.65

Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15
Fair estimated valuation personal property in counties in Virginia without slaves	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was	$296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was . .	$82,449,252.04
Amount of income assessed in Virginia counties, 1863	$11,108,300.13
In West Virginia counties in 1863 .	299,257.45

Jan. 1, 1861.	
The fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia	$162,537,936.
Of the other personal property in Virginia counties was.....	$102,114,863.
Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
The fair estimated valuation of slaves in the counties now constituting the State of West Virginia was	$6,319,624.
Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172.
Real estate in West Virginia.....	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia, ...	$28,278,857.62
West Virginia, ...	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$ 9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Exh. E-1, p. 3-a.

Fair Estimated Valuation—Virginia,
June 20, 1863:

Personal Property, *Including* Slaves.	$403,696,228.59	
Real Estate	148,042,730.15	
Total	$551,738,958.74	=84.9078%

Fair Estimated Valuation—West Virginia,
June 20, 1863:

Personal Property, *Including* Slaves.	$30,394,487.21	
Real Estate	67,676,127.44	
Total	$98,070,614.65	=15.0922%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	84.9078%	=$34,196,528.74
West Virginia	15.0922%	= 6,078,367.96

Fair Estimated Valuation—Virginia,
June 20, 1863:

Personal Property, *without* Slaves..	$152,844,637.59	
Real Estate	148,042,730.15	
Total	$300,887,367.74	=76.5026%

Fair Estimated Valuation—West Virginia,
June 20, 1863:

Personal Property, *without* Slaves..	$24,739,894.21	
Real Estate	67,676,127.44	
Total	$92,416,021.65	=23.4974%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	76.5026%	=$30,811,343.12
West Virginia	23.4974%	= 9,463,553.58

Fair Estimated Valuation—Virginia,
Jan. 1, 1861:

Slaves	$162,537,936.	
Other Personal Property	102,114,463.	
Real Estate	293,018,031.30	
Total	$557,670,430.30	=83.1029%

Fair Estimated Valuation—West Virginia,
Jan. 1, 1861:

Slaves	$6,319,624.	
Other Personal Property	23,469,172.	
Real Estate	83,600,730.55	
Total	$113,389,526.55	=16.8971%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	83.1029%	=$33,469,607.13
West Virginia	16.8971%	= 6,805,289.57

Fair Estimated Valuation—Virginia,
Jan. 1, 1861:

Personal Property, *without* Slaves.	$102,114,463.	
Real Estate	293,018,031.30	
	$395,132,494.30	=78.6799%

Fair Estimated Valuation—West Virginia,
Jan. 1, 1861:

Personal Property *without* Slaves.	$23,469,172.	
Real Estate	83,600,730.55	
	$107,069,902.55	=21.3201%

Ordinary Expenses of Government.. $40,274,896.70

Divided on above basis:

Virginia	78.6799%	=$31,688,248.45
West Virginia	21.3201%	= 8,586,648.25

Paragraph VI of Decree.

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

I think the moneys paid into the Treasury of the Commonwealth from the Counties included within the State of West Virginia are intended to be the converse or complement of the expenditures made by the Commonwealth of Virginia in the same territory. These were public expenditures for public purposes. The amounts paid in are also to be public payments in discharge of some tax or public burden, or sums paid by the public, for the use of a public utility owned by the state.

The parties agree upon the sum of $5,954,395.66 (Rec., p. 805; Ex. F-1, p. 1).

The following items are in controversy:

1. Bonus received from Banks.....$96,253.62
The details which are essential to the determination of this item do not appear in the Record. They are in "Supplemental Ex. 3," certified by both accountants. The first payment of $5,000 was paid in 1838. The Act of 1837, Chap. 82, p. 66, relative to Banks, provided as follows:

> "Sec. 7. That in consideration of the privileges hereby granted, there shall be paid to the Commonwealth, by every bank hereafter chartered, out of each semi-annual dividend, a sum equal to one fourth of one per centum upon the then capital stock, which shall be paid by creating additional stock to that

amount in the name of the Commonwealth, for the benefit of the fund for internal improvement."

This Act provided for a payment of a franchise or excise tax in stock. The item of $5,000 paid in 1838 appears to be in cash. There is nothing in the Record to indicate that it was stock paid under this statute. It is entered upon the books as a cash payment by the Bank. As no other explanation is given of the item, I will assume as a fair inference from the entry, that it was a tax paid in stock, and afterwards converted into cash to the amount of $5,000 and allow it upon that assumption as a payment.....$5,000

All of the other payments were made under an Act passed March 25, 1842 (Acts of Va., 1841-2, p. 61, Chap. 105, Sec. 14) which provided that in consideration of the privileges hereby granted that a sum equal to one-fourth of one per centum upon the capital stock "shall be paid semi-annually by the said banks into the Treasury of this commonwealth."

This was a general statute and the tax imposed was a franchise or excise tax of the same kind as those referred to in the Code of Virginia, Chap. 40, Sec. 41, p. 249, the chapter defining the "Amount or rate of tax." It is included among other subjects of taxation and is clearly treated in the general statutes as a tax and I hold that it is a franchise, or excise tax, and therefore properly to be credited under that paragraph $96,253.62

ALTERNATIVE FINDING.

At the request of the plaintiff, I find that the banks located in West Virginia paid into the

Treasury of the Commonwealth for the privilege of exercising their franchises during the period above mentioned and in the manner above indicated ..... $ 96,253.62

7. Dividends from Banks in West Virginia counties $786,666.98

These are not in any sense public payments. They are dividends which the State received on its own stock held in its private capacity, and are of the same character as the dividends paid to other stockholders. They are no more a public payment, or the discharge of a public burden, than are the dividends that are paid to the other stockholders. West Virginia is not charged with the investment, and no reason is perceived why she should receive a return upon a private investment which she refuses to assume.

The item is disallowed.

8. Dividends and interest from Turnpike Companies in West Virginia counties $13,595.48
9. Dividends from Bridge Companies in West Virginia $6,028.51
10. Dividends from Interstate Turnpike Companies (proportion).... $1,355.92

are of the same character and are disallowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that the aggregate of the last four mentioned items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth, in said companies, whose

banks and roads were located in West Virginia, with the exception of the dividends from Interstate Turnpike Companies (in which case the amount paid was in proportion to the portion of the road located in West Virginia), namely: $807,646.89.

11. Dividends from James River and Kanawha Company $352.21
14. Interest from the City of Wheeling $571.81

These items have both been withdrawn.

20. Merchants & Mechanics Bank Stock sold (bonus stock)..... $43,103.35

The Act incorporating the Merchants and Mechanics Bank (Acts of Virginia, 1833-4, Chap. 72, p. 84, Sec. 20), provided:

> "20. *And be it further enacted,* That in consideration of the privileges hereby granted to the said bank, there shall be paid to the commonwealth by the said bank, the sum of twenty-five thousand dollars, to be paid in twenty semi-annual instalments; which instalments when paid in shall be converted into stock, and a dividend thereon shall be declared from time to time, in the same manner as on shares held by individuals; the first instalment shall be paid one year after the first dividend be declared; *Provided,* That should the capital stock of said bank, at any time hereafter, be increased beyond the sum of three hundred thousand dollars, a similar bonus shall be paid on such increase, proportioned to the time for which this charter shall remain in force" (do. p. 92).

The Commonwealth received, under this section, from this bank 400 shares of stock which were

sold for $43,103.35 (Rec. p. 809). This was clearly a franchise or excise tax payable in stock instead of cash and is allowed.

ALTERNATIVE FINDING.

I find in the alternative at the request of the plaintiff that the Commonwealth received from the Merchants and Mechanics' Bank "in consideration of the privileges" granted to it as a franchise tax 400 shares of stock which was sold for $43,103.35.

21. Northwestern Bank—Profit on 1,082 shares sold, $5,471.42.

This item has been withdrawn by the defendant.

22. Northwestern Turnpike Road tolls, $126,339.89.

The defendant is charged with the expenditure on this road, which was a public work, and the money that was paid into the Treasury in tolls by the public for the use of the road is the converse of the public expenditure made by the State and comes fairly within the meaning of the decree and is allowed so far as it exceeds the amount of tolls expended for repairs.

23. Staunton & Parkersburg Road tolls, $17,090.71 is also allowed for the same reason.

These tolls were used for making repairs on the respective roads, $109,587.74 in the case of the Northwestern Turnpike and $21,700.74 in the case of the Staunton and Parkersburg Turnpike, in all repairs, $131,288.48. (Rec., 373, Ex. C. 1, p. 2.) The aggregate of tolls received on both roads is $143,420.60, making, taking both roads together, a

net receipt of tolls, $12,132.12. The excess of tolls all occurs in the case of the Northwestern Turnpike and strictly speaking, the account should be stated, showing the excess of receipts in connection with that item, with an excess of charge for repairs in connection with the Staunton and Parkersburg Turnpike. Both roads in the discussion, however, have been taken together and the net result is precisely the same, and I therefore take the two items together and allow as a credit the net excess as above stated.....$12,132.12

ALTERNATIVE FINDING.

At the request of the plaintiff, I find that in the case of the last two items, the aggregate of $143,420.60 was paid into the Treasury of the Commonwealth as tolls upon roads owned wholly by the Commonwealth as the result of public expenditure the roads being public in their character and the tolls being paid by the public for the use thereof.

SUMMARY.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

	Amount agreed upon	$5,954,395.66
1.	Bonus received from Banks....	$96,253.62
20.	Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. 23.	Northwestern Turnpike Road / Staunton & Parkersburg Road net tolls	$12,132.12
		$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff; that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted ..... $ 96,253.62

Under items 7, 8, 9 and 10:

At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies $807,646.89

20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for..... $43,103.35

Under items 22 and 23:

At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the Commonwealth by the public as tolls upon roads owned wholly by the State $143,420.60

PARAGRAPH VII OF DECREE.

"7. THE AMOUNT AND VALUE OF ALL MONEY, PROPERTY, STOCKS AND CREDITS WHICH WEST VIRGINIA RECEIVED FROM THE COMMONWEALTH OF VIRGINIA, NOT EMBRACED IN ANY OF THE PRECEDING ITEMS AND NOT INCLUDING ANY PROPERTY, STOCKS OR CREDITS WHICH WERE OBTAINED OR ACQUIRED BY THE COMMONWEALTH AFTER THE DATE OF THE ORGANIZATION OF THE RESTORED GOVERNMENT OF VIRGINIA, TOGETHER WITH THE NATURE AND DESCRIPTION THEREOF."

Under this Paragraph I find that the State of West Virginia received nothing in money from the Commonwealth of Virginia prior to the date of the organization of the Restored Government of Virginia or subsequent thereto.

ALTERNATIVE FINDING.

I find as an alternative finding, at the request of the plaintiff, that the State of West Virginia received from the Restored Government of Virginia sums of money as follows:

July 2, 1863.....	$92,866.17	
July 2, 1863.....	$47,734.03	$140,600.20
July 9, 1863.....		$9,399.80
Feb. 1, 1864.....		$20,771.46
		$170,771.46

Under the provisions of the Act passed February 3, 1863 (App. p. 128), there was transferred

to the State of West Virginia, among other things,

> "the interest of this state or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries, standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state" (do. p. 129).

While there is nothing in the record to show where the principal offices or places of business of the various turnpike companies, navigation companies and bridge companies are (Rec., 820 B, C, D, E, F, G, J, K), it is conceded upon the part of the defendants that the companies mentioned in said schedules had their "principal office or place of business" "located within the said boundaries," that is, the State of West Virginia, and such stock was transferred to West Virginia by the operation of said Act of February 3, 1863.

And it is conceded upon the part of West Virginia under Paragraph VII, that the stock in the various corporations above referred to, except the interstate companies, is included within the provisions of this Paragraph of the decree.

The only evidence in the Record bearing on the value of these various stocks are the facts that appear by these schedules showing the amounts paid by the State for its subscription to the stock of the various companies, and so far as dividends have been paid by said companies, the

amount of the dividends that have been paid, certain admissions relating thereto, and the testimony of a number of witnesses as to the physical condition of the property of some of the companies, and the statement of the condition of the banks. In the case of many of the turnpike companies, no dividends were paid and the only fact that I have is the amount that the State paid upon its subscription. In such cases the evidence does not seem to me sufficiently definite to enable me to find that the stock at the time of its transfer to West Virginia had any value, as the inference to be drawn from the fact that no dividends have been paid is, that the property was not able to earn any return upon the investment, and an investment that can pay no return could hardly be considered to have any market value. In the cases where dividends have been paid during a number of years, I have the amount of the investment made by the State with the rate of the dividends, and in such cases I have capitalized the dividend upon the basis of the stock being worth par with a six per cent. dividend, and have determined the value accordingly, except in cases where it appears that the property of the company may have been destroyed prior to June 20, 1863. The method that I have adopted is, I appreciate, arbitrary but it is the only method that seems to be feasible on the facts presented.

As to the Turnpike Companies intended to be covered by the stipulation (Rec., p. 864) the stipulation is too indefinite and uncertain to be of any assistance in determining the value of any particular road. The defendant contends that it covers some sixty-five roads and the plaintiff concedes only four. Only three of the roads claimed

by the defendant were paying dividends in 1860, viz.: Grave Creek and Pennsylvania Line Co.; Holiday Cove Co. and the Martinsburg & Potomac. As to these in order to eliminate any controversy, as to the construction and effect of the stipulation, the plaintiff concedes that for the purposes of this report, the interest of the Commonwealth in the stock of those companies was of no value, June 20, 1863.

As to the 18 Turnpike Companies mentioned on page 820-B Rec., only the last—Grave Creek and Pennsylvania Line Co., admitted to be of no value—appears to have ever paid any dividend. The earliest was incorporated in 1837; the latest in 1853. Under these circumstances, I find that the stock that the Commonwealth owned in those companies had no value.

None of the sixteen turnpike companies mentioned on Page 820-C, Rec., (eliminating Holiday Cove and Martinsburg & Potomac as of no value) declared any dividends, they having been organized between the dates of 1847 and 1854 and there is nothing to indicate that the stock had any market value on June 20, 1863 and I therefore find that these stocks were of no value.

The first fifteen turnpike companies mentioned on page 820-D, Rec., with the exception of the New Creek and Hardy Turnpike Company do not appear to have paid any dividends from the date of their incorporation up to 1860, the earliest being incorporated in 1830. The New Creek and Hardy Turnpike Company appears to have paid one dividend of $271.25 upon an investment on the part of the Commonwealth of $5,431.24 in 1850.

Under these circumstances, it does not appear that there are sufficient facts in the record to jus-

tify me in finding that there was any market value to the stock the Commonwealth held in any of these companies on the 20th day of June, 1863, and I therefore find that the stocks had no market value.

The Sheperdstown and Smithfield Turnpike Company, incorporated in 1816, in which the Commonwealth had invested in the stock $18,575, appears to have paid eight dividends during the period of 23 years ending in 1839 with no dividends since that date. The first dividend was paid in 1832, $399.38, and the last in 1839 of $40, showing a marked decrease in the dividend during the dividend paying period, with no dividends for the 22 years intervening between 1839 and 1861, and upon this state of facts I find that the stock in that company had no value on June 20, 1863.

Of the four remaining companies on page 820-D, Rec., only one appears to have paid any dividends. As to the other three, I find that their stock had no value on June 20, 1863.

The Sweet and Salt Sulphur Springs Turnpike Company, organized in 1849, in the stock of which the Commonwealth had an investment of $10,104. (820-D, Rec.) began to pay dividends in 1855 and paid continuously until 1859, the dividend in 1859 being $459. The average dividend paid during the five years of the dividend paying period was $491.-92. No dividend appears to have been paid in 1860, but the inference from the payment of dividends of a substantial amount, for the preceding five years, makes it reasonably certain that the property was of value and had a dividend paying capacity. Why a dividend in 1860 was not paid, does not appear, but in the absence of any evidence showing any injury to the physical value of the prop-

erty, or any unusual loss or the occurrence of any fact tending to destroy its value, I think it is a reasonable inference that the failure to pay the dividend must have been for a cause other than one affecting the real value of the stock, and on the basis of the last dividend of 4½ per cent. the investment of the Commonwealth would be worth $7,578. on the 20th day of June, 1863, and I value it at $7,578.

The first five turnpike companies mentioned on page 820-E, Rec., organized from 1847 to 1851 do not appear to have paid any dividends, and I therefore find that the stock that the Commonwealth held therein was of no value on June 20, 1863.

The White and Salt Sulphur Springs Turnpike Company, organized in 1834, in the stock of which the Commonwealth had invested $4,000, paid dividends continuously with the exception of two years from 1838 to 1860, the last dividend being $400, with an average dividend of $240 a year or 6%, I therefore value the interest that the Commonwealth held in the stock of this company at par, $4,000.

The other six turnpike companies mentioned on page 820-E, Rec., with the exception of Wellsburg and Washington Turnpike Company do not appear to have paid any dividends, and I therefore find that the interest that the Commonwealth held in the stock of these companies was of no value on June 20, 1863.

The Wellsburg and Washington Turnpike Company organized in 1808, in which the Commonwealth had an investment of $7,071.01, paid two dividends in 1837 and 1838, the last being $212.13, and has declared no dividends since, and

I find that under those circumstances the stock of that company on June 20, 1863 had no value.

The four navigation companies mentioned on page 820-F, Rec., organized between 1817 and 1853 do not appear to have ever declared any dividends and I find that the stock of the Commonwealth in these companies had no value June 20, 1863.

It is admitted that the bridge of the Buchannon Bridge Company was destroyed April 1863, and that the bridge of the Cheat River Toll Bridge Company, was destroyed in the same month, and that the bridge of the Elk River Bridge Company, was destroyed in 1862. The bridge of the North Branch Bridge Company was destroyed in 1862, and the bridge of South Branch Bridge Company was destroyed in 1862, and that the bridge of the Virginia and Maryland Bridge Company was destroyed in 1861 (Rec., p. 863).

I find that the stock in these companies was of no value on June 20, 1863.

The Fairmont and Palatine Bridge Company, in the stock of which the Commonwealth had invested $12,000 it is admitted paid a six per cent. "dividend for several years after the end of the war on the par value of the stock of $12,000 assigned to the State of West Virginia therein," and for that reason I find that that stock was of the value on June 20, 1863 of $12,000 (Rec., p. 863).

The Guyandotte Bridge Company and the Morgantown Bridge Company, incorporated respectively in 1848 and 1850, have never paid any dividends and for the reasons given above, I find that the stock that the Commonwealth held in those companies was of no value on June 20, 1863.

The four turnpike companies referred to on page 820-G, Rec., organized respectively in 1832,

1837 and 1851 do not appear to have ever paid any dividends and for that reason, I hold that the stock in those companies on June 20, 1863 was of no value.

The five turnpike companies referred to on page 820-H, Rec., with the exception of the Hillsborough and Harpers Ferry Turnpike Company and the Martinsburg and Winchester Turnpike company, while organized in 1846, 1851 and 1856, respectively, do not appear to have ever paid any dividends, and for that reason I hold that the stock was of no value on June 20, 1863.

The Hillsborough and Harper's Ferry Turnpike Company, incorporated in 1849, in the stock of which the Commonwealth invested $6,000 declared only one dividend of $240 in 1856, and upon that state of facts I am not able to find that the stock had any value on the 20th day of June, 1863.

The Martinsburg and Winchester Turnpike Company, organized in 1838, in the stock of which the Commonwealth had invested $27,000 declared two dividends one in 1859 and one in 1860 of $803.27 and $405 respectively. Taking the last dividend as the basis of valuation which was at the rate of one and ½ per cent. or ¼ of 6 per cent., I find that the stock in that company was on June 20, 1863 of the value of $6,750.

There is nothing in the record to show where "the principal office or place of business" of this road is located and I do not understand that the admission of the defendant applies to interstate roads. I am not able to find that this stock was ever transferred to West Virginia. This is an interstate road 59.09% being within the counties included within the State of West Virginia.

Of the two corporations mentioned on page 820-J, Rec., one the North Frederick Turnpike

Company in which the Commonwealth invested in its stock $11,325 in 1851, paid only one dividend and that in 1857, and upon these facts I do not feel authorized to find that the stock had any value on the 20th of June, 1863.

The Raleigh and Wythe Line Turnpike Company, organized in 1860, in which the Commonwealth paid on an authorized stock subscription of $4,800, $400 only, does not appear to have paid any dividend that year and apparently could hardly have been fully constructed. There is not sufficient data in the record to enable me to form any opinion as to its value, and therefore, I do not find that the stock had any value on June 20, 1863.

On the 20th of June, 1863, the Commonwealth held 3,418 shares of the capital stock of the Northwestern Bank of Virginia of a par value of $100, which if worth par would be worth $341,800. This par value was at first conceded by the defendant to be chargeable to West Virginia (Rec., p. 280-A, Deft.'s Ex. G-1, p. 1). Since filing the schedule making this admission, West Virginia withdrew the admission and changed it to $136,630., and that sum was reached as follows:

It appears from the testimony of Mr. Dering (Rec., p. 892) and the certificate of J. S. Darst, the auditor of West Virginia (do., p. 851) and supplemental brief filed by defendant, that West Virginia received on account of the original stock in the Northwestern Bank of Virginia at Wheeling, 300 shares of stock in the National Bank of West Virginia in the City of Wheeling, 400 shares of stock in the Parkersburg National Bank of Parkersburg, West Virginia, and 351 shares of stock, in the first National Bank of Wellsburg,

at Wellsburg, West Virginia, these being the banks that were the successors of the Northwestern Bank of Virginia, known as the parent bank and of its branches at Parkersburg and Wellsburg, respectively. The par value of the shares was $100. At their par value they would be worth $105,100. The record contains nothing as to the assets of these banks, upon which an estimate of the value of this stock can be made. It further appears that dividends from the remaining assets of the Northwestern Bank of Virginia were received by West Virginia as follows:

July 9, 1867	$10,510.00
August 12, 1868	$10,510.00
Sept. 1, 1871 (in deft.'s brief)	$10,510.00
	$31,530.00

which added to the $105,100 makes the total amount now admitted by West Virginia as the value of the 3,418 shares of the stock of the Northwestern Bank. There is nothing in the record to show when this bank was reorganized or the circumstances under which the reorganization took place. The auditor's report of West Virginia shows the stock was delivered July 1, 1866. The reorganization and the distribution of the stock in the various banks, and of the cash dividends, appear to have taken place three years and more after June 20, 1863. Upon the other hand, as indicating the value of the stock, there is a joint "Supplemental Ex. 8" certified by the accountants for both parties, showing that the dividend for 1860 upon the stock of the Northwestern Bank was eight per cent. and the average dividend from

1844 to 1860 inclusive was 7½%, or 1-4 more than 6%. The statement of the condition of the Bank in a return made February 27, 1861, showing the condition on Jan. 1, 1861, and one of the Fairmont bank dated Apr. 27, 1861, showing its condition Apr. 1, 1861, are marked "Supplemental Ex. 9."

The defendant concedes that the Fairmont bank that was paying only a 4% dividend was worth par June 20, 1863 (Rec., p. 820-A).

There is nothing to indicate any change of any kind in the condition of the Northwestern Bank, either by way of assets or business or capacity to declare dividends between Jan. 1, 1861 and June 20, 1863. That it met with some serious financial difficulties between January 1, 1861, and July 1, 1866, would seem to be a necessary conclusion from the condition of the bank at the time of its reorganization, but as to what they were, or when they occurred, the record is silent.

A comparison between the Fairmont Bank and the Northwestern will be instructive on the question of value. The notes due from other banks in Virginia to the Northwestern increased from 1860 to 1861 approximately 100%, and there was substantially the same percentage of increase of similar notes due to the Fairmont Bank. The surplus and profits of the Northwestern decreased from 1860 to 1861, 10%. In the Fairmont Bank there was an increase of 11%. If the Fairmont Bank had paid a dividend of 6% instead of 4% the decrease would have been substantially the same. The surplus of the Northwestern was nearly 12% of its capital, of the Fairmont about 5¾%. In the Northwestern the deposits decreased 4% and in the Fairmont 20%. The Fairmont Bank appears to have paid but one dividend

of 4%. The Northwestern had an established business and had been paying dividends regularly since 1843 at an average rate of 7½% (for four years 10%), and was paying 8% in 1860. If under these circumstances the Fairmont Bank stock was worth par, it seems that the Northwestern stock should be worth at least ¼ more than par, and I would be justified in applying the same rule as to value, that I have applied to the public service corporations, and I therefore add ¼ to the par value and find the value of the stock June 20, 1863, to be $427,250.00.

I think it clear that this is a conservative value Jan. 1st, 1861, two years and five months prior to the time when the valuation is made. There is a presumption of continuance. There was great expectation of success in the Confederacy, until Gettysburg in July, 1863, which had some tendency to maintain credit conditions, and while my conclusion is largely arbitrary, taking everything into account, I think the valuation reached reasonable.

ALTERNATIVE FINDING.

I find in the alternative at the request of the defendant that West Virginia received on account of the reorganization of the Northwestern Bank in stock and cash $136,630. between July 1, 1866, and Sept. 1, 1871, and it does not appear that at that time the Northwestern had any other assets.

I find pursuant to the admission of the defendant (Rec. 820-A) that the stock of the Fairmont bank was of the value of $50,000.

A detailed statement of the investment of the Commonwealth in the capital stock of the James

River and Kanawha Company appears on pages 820-L and 820-M, Rec. By this it appears that 3.49 per cent. of the improvement was located in West Virginia (p. 820-M). The only dividend that the company appears to have ever paid is $10,092. in 1836 (p. 820-L).

Under these circumstances I find that the stock of this Company had no value on June 20, 1863.

Summary.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7,578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock	$427,250.
Fairmont Bank stock	$50,000.
Total	**$500,828.**

Alternative Findings.

Received by West Virginia from the Restored Government	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash	$136,630.

GENERAL SUMMARY.

PARAGRAPH I.

Amount of the Public Debt of the Commonwealth of Virginia January 1, 1861, $33,897,073.82.

Stated as a Special Circumstance:

Amount of bonds of Commonwealth held by Sinking Fund, $1,369,243.92.

Amount of bonds of Commonwealth held by Literary Fund $1,116,843.35.

Amount of Bonds Chesapeake & Ohio Canal Co. guaranteed by Virginia in 1847 $300,000.

PARAGRAPH II.

1. EXTENT:

Land Area:			
Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	do. =	37.3686%
Total	64,284	do. =	100%
Total Area:			
Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	do. =	36.1843%
Total	66,797	do. =	100%

2. ASSESSED VALUATION:

Real Estate:		
Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

With Slaves:		
Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%
Without Slaves:		
Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

Alternative Finding.

At the request of defendants, I make an alternative finding that the population of the counties now forming the State of Virginia, as shown by the census of the United States for 1860, is as follows:

Without slaves,	747,136=67.5864%
With slaves,	1,219,630=76.4027%

And for the counties now forming the State of West Virginia:

Without slaves,	358,317=32.4136%
With slaves,	376,688=23.5973%

The assessed valuation of the territory of Virginia for 1860 was: $293,105,895.55

The assessed valuation of the territory of West Virginia for 1860 was: $83,814,355.61

Paragraph III.

Expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia are as follows:

1.	Amount agreed upon by both parties	$1,251,288.92
2.	Covington & Ohio R. R.....	$1,146,460.42
10.	Kanawha Turnpike	$ 152,130.54
11.	" "	$ 2,593.92
12.	" "	$ 7,189.65
13.	" "	$ 80,955.28
14.	Kanawha River Improvements.	$ 59,572.36

25. Brandonville, Kingwood & Evansville Road	$ 10,595.73
28. Clarksburg & Buchannon Turnpike (Macadamizing)	$ 19,259.36
35. Kingwood & West Union Turnpike	$ 18,140.61
55. Surveys—expended directly within the territory	$ 60,873.19
150. Road from Bath to St. Johns River	$ 2,500.00
Total	$2,811,559.98

ALTERNATIVE FINDINGS:

At the request of defendant.

The Commonwealth received on account of the Blue Ridge Railroad in bonds and interest....	$625,348.08
and was relieved from a contingent liability upon a guarantee of...	$100,000.00

3. At the request of the plaintiff, the Commonwealth subscribed and paid for capital stock of the Winchester & Potomac Railroad Company, to the extent of. $120,000.00

The Commonwealth loaned to the said company $150,000.00

Upon the basis of mileage, the proportion of these sums that would be chargeable to West Virginia, is $170,532.00

I state as a special circumstance important to be taken into account that as a result of legislation predicated upon both the

stock and loan that the Commonwealth had in this Road, there was paid into the Commonwealth in 1886, the sum of.. $118,518.12

6. At the request of the plaintiff, that the Commonwealth subscribed and paid for stock in the Berryville and Charlestown Turnpike Co. and upon the mileage basis of 58 1/3 per cent. the amount chargeable to West Virginia would be..... $11,932.52

15. At the request of the plaintiff, that the Commonwealth loaned to the Kanawha Board of its bonds ..... $60,000.

56. At the request of the plaintiff, that ..... $27,000 was in the hands of the Treasurer of the Trans-Allegheny Lunatic Asylum, deposited in the Weston Branch of the Exchange Bank of Virginia, unexpended, January 1, 1861, which was afterwards taken from the Bank by the Restored Government of Virginia and subsequently returned to the Asylum.

At the request of the plaintiff, that in the various bridge companies, located in West Virginia. Items 57 to 65, inclusive, the Commonwealth subscribed and paid for stock $78,412.50

That in the various navigation companies located in West Virginia Items 66 to 69, inclusive, the Commonwealth subscribed and paid for stock..... $210,500.00

That in the various Turnpike companies, Items 70 to 147, inclusive, all of which were in the territory now constituting West Virginia, the Commonwealth subscribed and paid for stock..... $803,555.83
700,103.49 of which was wholly in Virginia and $103,452.34 was West Virginia's portion in case of companies partly within her limits.

That in the two banks mentioned in Items 148 and 149, within the territory now constituting the State of West Virginia the State subscribed and paid for stock $391,800.00

At the request of the defendant, I find that the sum of $2,500 was invested under circumstances where the trustees of the Town of Bath assumed a contingent liability, only, of paying the interest upon the sum expended by the State, after the tolls remaining from the operation of the road after the payment of 'necessary expenses and repairs" and profits received from the operation of a spring,

were applied thereto, and that this was the only liability that the trustees of the Town of Bath assumed in connection with this expenditure of..... $2,500.

PARAGRAPH IV.

SUMMARY ORDINARY EXPENSES.

	The amount agreed upon between the parties, is.....	$18,207,684.29
1.	Tobacco receipts	$353,123.96
3.	Slaves transported and executed	$311,168.35
5.	Maps, Board of Public Works	$11,446.48
7.	International Exchanges....	$2,836.19
9.	Printing Treasury Notes....	$375.74
13.	Improvement in public squares	$1,456.91
14.	Fugitive slave expense; reward additional	$2,201.00
16.	Calling out militia at Wheeling, in 1836.....	$1,099.00
18.	Atty.-Gen.'l fees prosecuting Selden, Withers & Co. claim	$500.00
19.	Remodelling and repairing old building of Eastern Asylum	$5,000.00
	Support Western Asylum...	$7,450.01
23.	Sundry Board of Public Works expenses.....	$36,728.50
24.	Interest on public debt.....	$18,574,747.84
	Expenses of Harper's Ferry Raid	$251,763.65
	Expended for primary schools	$2,400,331.11

General expenses connected with surveys	$106,983.67
	$40,274,896.70

SUMMARY ALTERNATIVE FINDINGS.

1. At the request of the defendant, that the Commonwealth received from Tobacco Receipts.....	$353,123.96
2. At the request of the plaintiff, that the Commonwealth expended for two Constitutional Conventions, held in 1829 and 1850	$258,906.28
4. At the request of the plaintiff, that under the acts of the legislature above referred to, the Commonwealth expended in running boundary lines.....	$16,704.78
5. At the request of the plaintiff, that the Commonwealth expended under acts of the legislature for maps	$16,628.04
6. At the request of the plaintiff, that The Commonwealth expended in original construction and other additions to or increase of the plant of the Deaf, Dumb and Blind Institution, the details of which are on pp. 5, 6 and 7 of Joint Ex. D-1.....	$80,661.94

8. At the request of the plaintiff, that the Commonwealth overpaid on Treasury notes.....	$50.00
10. At the request of the plaintiff, that the Commonwealth lost on account of counterfeit money	$190.00
11. At the request of the plaintiff, that the Commonwealth expended in the erection of buildings and additions thereto and installation of heating and lighting plants connected with the Va. Military Institute....	$151,000.00
12. At the request of the plaintiff, that the Commonwealth expended in "repairing and improving the buildings and furnishing a supply of water for the protection and preservation" of buildings &c. of the University of Virginia.....	$25,000.00
13. At the request of the plaintiff, that the Commonwealth expended for Improvements to Capitol Square the sum of....	$12,278.47
15. That the Commonwealth expended on additions to Penitentiary lot, New Hospital, Buildings, etc.....	$13,947.48
17. At the request of the plaintiff, that the Commonwealth ex-	

pended for "enlarging the hospital and infirmary and extending the college buildings, and for improvement and extension of the college museum" of the Medical College of Virginia..... $25,000.00

19. At the request of the plaintiff, that the Commonwealth expended on the Eastern & Western Asylums for items appearing on pages 531 to 538 incl. —Joint Ex. D-1, pp. 15 to 22 incl. $331,845.56

20. At the request of the plaintiff, that the Commonwealth expended for Gun House at Alexandria $900.00

21. At the request of the plaintiff, that the Commonwealth expended for Cannon House, Surrey County $110.00

22. At the request of the plaintiff, that the Commonwealth expended for Cannon House for Richmond Artillery..... $1,079.09

23. At the request of defendant, that the Commonwealth expended for expenses of the B. P. W... $36,728.00

24. At the request of the defendant, that the Commonwealth ex-

pended for interest on its public debt	$18,574,747.84

I find in the alternative at the request of the plaintiff, that the amount of the ordinary expenses and the apportionment thereof, according to the claims of the plaintiff, are correctly stated on pages 515 and 516 of the Record.

PARAGRAPH V.

June 20, 1863.	
Fair estimated value of real estate in Virginia counties	$148,042,730.15
Fair estimated valuation of personal property including slaves in Virginia counties	$403,696,228.59
Total real and personal in counties in Virginia including slaves	$551,738,958.74
Fair estimated value of real estate in West Virginia counties	$67,676,127.44
Fair estimated valuation of personal property including slaves in West Virginia counties	$30,394,487.21
Total real and personal in counties in West Virginia, including slaves	$98,070,614.65
Fair estimated valuation of real estate in counties in Virginia	$148,042,730.15

Fair estimated valuation personal property in counties in Virginia without slaves.....	$152,844,637.59
Total real and personal in counties in Virginia without slaves	$300,887,367.74
Fair estimated valuation of real estate in counties in West Virginia	$67,676,127.44
Fair estimated valuation personal property in counties in West Virginia without slaves.....	$24,739,894.21
Total real and personal in counties in West Virginia without slaves	$92,416,021.65

ALTERNATIVE FINDING.

AT THE REQUEST OF DEFENDANT.

The assessed valuation of real estate in the counties of Virginia June 20, 1863 was.....	296,085,460.31
The assessed valuation of real estate in the counties of West Virginia June 20, 1863 was..	$82,449,252.04
Amount of income assessed in Virginia counties, 1863.....	$11,108,300.13
In West Virginia counties in 1863	299,257,45

Jan. 1, 1861.

A fair estimated valuation of the property, real and personal, in Virginia counties, on January 1, 1861, I find to be as follows:

The parties agree that on that date, the fair estimated valuation of the slaves within the territory of the present Commonwealth of Virginia was at that time	$162,537,936
The assessed value of the other personal property in Virginia counties was	$102,114,863

This sum is reached by taking the amount of the assessment for 1861 (Rec., p. 645), 100,201,-850, and adding thereto the assessment for Chesterfield for 1861 (Plff. Ex. H1., p. 355), 1,077,368, and Goochland (Plff. Ex. H1., p. 395), 835,645, these two counties not being included in the Schedule (Rec., p. 645), as no original books were found showing those assessments.

Real estate in Virginia	$293,018,031.30
Total real and personal in counties in Virginia including slaves	$557,670,830.30
And that the fair estimated valuation of such slaves at that time in the counties now constituting the State of West Virginia was	$6,319,624

Other personal property in West Virginia (Supplemental Exh. 6)	$23,469,172
Real estate in West Virginia	$83,600,730.55
Total real and personal in counties in West Virginia including slaves	$113,389,526.55

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses as found by me on the basis of values as claimed by plaintiff as shown in Joint Exhibit E-1, p. 2-a, excluding slaves is

Virginia, ...	$28,278,857.62
West Virginia, ...	$11,996,039.08

and on the same basis as shown in Joint Exhibit E-1, p. 3-a, including slaves,

Virginia, ...	$30,441,418.20
West Virginia, ...	$9,833,478.50

I find in the alternative at the request of the plaintiff that the apportionment of the ordinary expenses of the government as claimed by the plaintiff, on the basis of the values as claimed by the plaintiff, excluding slaves is as appears upon Joint Exhibit E-1, p. 2-a, and including slaves as appears upon Joint Ex. E-1, p. 3-a.

PARAGRAPH VI.

Money paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia:

Amount agreed upon.....	$5,954,395.66
1. Bonus received from Banks.....	$96,253.62
20. Merchants & Mechanics Bank Stock sold (bonus stock).....	$43,103.35
22. Northwestern Turnpike Road 23. Staunton & Parkersburg Road net tolls	$12,132.12
	$6,105,884.75

ALTERNATIVE FINDINGS.

1. At the request of the plaintiff, that the banks located in West Virginia paid into the Treasury of the Commonwealth of Virginia "in consideration of the privileges" granted	$ 96,253.62
Under items 7, 8, 9 and 10: At the request of the defendant, that the aggregate of these items was all paid in dividends into the Treasury of the Commonwealth upon stock held by the Commonwealth in said companies	$807,646.89
20. At the request of the plaintiff, that the State received from the Merchants and Mechanics Bank, as a franchise tax 400 shares of stock which was sold for.....	$43,103.35
Under items 22 and 23: At the request of the plaintiff, that the aggregate of these two items was paid into the Treasury of the State	

by the public as tolls upon public roads owned wholly by the State... $143,420.60

PARAGRAPH VII.

I find the values set against the respective companies as follows:

Sweet & Salt Sulphur Spring Co. stock	$7.578.
White & Salt Sulphur Spring Co. stock	$4,000.
Fairmont & Palatine Bridge Co. stock	$12,000.
Northwestern Bank of Va. stock..	$427,250.
Fairmont Bank stock	$50,000.
Total	$500,828.

ALTERNATIVE FINDINGS.

Received by West Virginia from the Restored Government....	$170,771.46
Received by West Virginia between July 1, 1866 and Sept. 1, 1871, from the reorganization of the Northwestern Bank in stock and cash.....	$136,630.

Dated, New York, March 17th, 1910.

CHARLES E. LITTLEFIELD,
Special Master.

INDEX.

	PAGE
PARAGRAPH I OF DECREE (Public debt of Virginia, Jan. 1, 1861)	1
Exhibit 1	31
Literary Fund	6
Sinking Fund	3
Summary	29
PARAGRAPH II OF DECREE (Valuation of Va. & W. Va., June 20, 1863)	37
PARAGRAPH III OF DECREE (Expenditures made by Va. within W. Va.)	39
Banks, Items 148, 149	79
Berryville & Charlestown Turnpike Co., Item 6	64
Brandonville, Kingwood & Evansville Road, Item 25	72
Bridge Companies, Items 57-65	78
Clarksburg & Buchanan Turnpike, Item 28	72
Covington & Ohio Railroad, Item 2	44
Harpers' Ferry Raid, Item 53	73
Kanawha Board Bonds, Item 15	71
Kanawha Turnpike & River Improvements, Items 10-14	65
Kingwood & West Union Turnpike, Item 35	72
Loan to Town of Bath, Item 150	80
Navigation Companies, Items 66-69	78
Northwestern Turnpike, Maryland, Item 17	72
School Commissioners, Item 54	74

PAGE

Summary 83
Surveys, Item 55 75
Trans-Allegheny Lunatic Asylum, Item 56 76
Turnpike Companies, Items 70-147..... 79
Winchester & Potomac Railroad, Item 3... 47

PARAGRAPH IV OF DECREE (ordinary expenses) 87
Aggregate, Item 24 128
Alexandria, Gun House, Item 20..... 128
Atty. General's fees, Selden Withers & Co., Item 18 126
Board of Public Works, expenses, Item 23. 128
Boundary Lines, Item 4..... 117
Cannon House, Items 21-22..... 128
Constitutional Conventions, Item 2 116
Counterfeit money loss, Item 10..... 122
Deaf, Dumb & Blind, Item 6..... 119
Eastern & Western Asylums, Item 19..... 126
Extraordinary expenses 112
Fugitive slave expense, Item 14..... 124
Gun House, Alexandria, Item 20..... 128
Harpers Ferry Raid 129
International Exchanges, Item 7 120
Maps, Item 5 118
Medical College, Virginia, Item 17..... 125
Militia at Wheeling, Item 16..... 125
Penitentiary Lot, Item 15..... 124
Primary Schools 132
Public Square improvements, Item 13.... 124
Richmond County Cannon House, Item 22. 128
Selden Withers & Co., Item 18..... 126
Slaves, Item 3 117
Summary, Alternative Findings 136
Summary, ordinary expenses..... 135

PAGE

Surrey County Cannon House, Item 21.... 128
Surveys 134
Tobacco Receipts, No. 1 115
Treasury Notes, overpayment, Item 8..... 120
Treasury Notes, printing, Item 9..... 121
University of Virginia, Item 12..... 123
Virginia Medical College, Item 17..... 125
Virginia Military Institute, Item 11..... 122

PARAGRAPH V OF DECREE (Fair valuation, property of Va.) 142
Alternative Finding 167, 169
Personal Property 156
Real Estate 151
Summary 168

PARAGRAPH VI OF DECREE..... 174
Alternative Findings 180
Banks, Bonus rec'd. from, 1 174
" Dividends in W. V., 7..... 176
Bridge Cos., Dividends from, 9..... 176
Dividends, Banks in W. Va., 7..... 176
" Bridge Cos., 9 176
" Interstate Turnpikes, 10..... 176
" James River & Kanawha Co., 11 177
" Turnpikes in W. Va., 8 176
Interest from City of Wheeling, 14..... 177
Interstate Turnpikes, dividends from, 10.. 176
James River & Kanawha Co., dividends from, 11 177
Merchants & Mechanics' Bank stock, 20... 177
Northwestern Bank profit, 21..... 178
Northwestern Turnpike Road Tolls, 22.... 178
Staunton & Parkersburg Road, 23 178
Summary 179
Turnpikes in W. Va., dividends from, 8... 176

PAGE.

PARAGRAPH VII OF DECREE..... 181
Alternative Findings 193
Summary 193

General Summary i
Alternative Finding, Paragraph II.....ii
" " " III iii
" " " IV vii
" " " V xi
" " " VI xiii
" " " VII xiv

Paragraph I, II i
" III iii
" IV vi
" V x
" VI xi
" VII xiv

APPENDIX

TABLE OF CONTENTS.

(The Acts are Arranged in Chronological Order Under the Several Classifications.)

ACTS RELATING TO:—

The Fund for Internal Improvement and the Board of Public Works

Page.

(Va.) Chap. 17.—An Act to create a fund for Internal Improvement. Passed Feb. 5, 1816 3

(Va.) Chap. 8.—An Act to amend an Act, entitled "An Act to create a fund for Internal Improvement." Passed Feb. 21, 1818..... 7

(Va.) Chap. 4.—An Act to amend an Act, entitled, "An Act creating a fund for Internal Improvement." Passed Mar. 4, 1819..... 8

(Va.) Chap. 45.—An Act making more effectual provision to carry into effect, the act, entitled "An Act to amend the Act entitled 'An Act, for clearing and improving the navigation of James River, and for uniting the eastern and western waters, by the James and Kanawha Rivers, and for other purposes." Passed Feb. 24, 1823..... 9

(Va.) Chap. 21.—An Act to amend the Act entitled an Act to create a fund for Internal Improvement. Passed Feb. 20, 1828..... 10

(Va.) Chap. 14.—An Act prescribing the ex-officio duties of the officers of government, and for other purposes. Passed Mar. 5, 1833..... 10

(Va.) No. 5.—Resolution providing that the Register of the Land Office shall be ex-officio a member of the Board of Public Works. Adopted Feb. 28, 1846 11

Acts Relative to State Expenditures in Internal Improvements owned partly by the State, and the organization of Companies for the Construction thereof.

(See also in connection with this heading, Secs. 11 and 12 of Act of Feb. 5, 1816, pp. 5 and 6.)

(Va.) Chap. 38.—An Act prescribing certain general regulations for the incorporation of turnpike companies. Passed Feb. 7, 1817..... 12

(Va.) Chap. 81.—An Act prescribing certain general conditions on which future subscriptions to the capital of Joint Stock Companies shall be made on behalf of the Commonwealth. Passed Feb. 11, 1832.... 17

(Va.) Chap. 94.—An Act to explain the act authorizing subscriptions on part of the Commonwealth to the Capital of Joint Stock Companies. Passed Mar. 18, 1836 19

Acts Relative to the Repair of Roads and Bridges; Acts authorizing the Transfer of Roads and Bridges to the Counties in which they lie; and Acts Effecting such Transfers.

Code of Va. 1860. Chap. 61. Of Works of Internal Improvement..... 20
(Va.) Chap. 230.—An Act to transfer the Moorefield and Alleghany Turnpike to the County Court of Hardy County. Passed Jan. 20, 1858.. 21
(Va.) Chap. 129.—An Act releasing the State's interest in the Wheeling and Marshall County Turnpike Road. Passed Feb. 25, 1858.....21
(Va.) Chap. 128.—An Act releasing the Commonwealth's interest in the Williamsport Turnpike Company to the County of Wood. Passed April 7, 1858 22
(Va. Restored Gov.) Chap. 35.—An Act transferring the State Stock in "The Marshall and Ohio Turnpike Company," to Marshall and Ohio Counties. Passed Jan. 24, 1862..... 22
(W. Va.) Chap. 30.—An Act to authorize the Heirs of David Albright to establish a Ferry across Cheat River. Passed Aug. 3, 1863.... 23
(W. Va.) Chap. 120.—An Act providing for the construction and repair of Roads and Bridges. Passed Dec. 4, 1863..... 24
(W. Va.) Chap. 71.—An Act to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State. Passed Feb. 28, 1865..... 24
(W. Va.) (No. 8) Joint Resolution requesting the members of Congress from this State to secure the aid of the United States in repairing roads and bridges injured durin g the war. Adopted Jan. 24, 1866. 25
(W. Va.) Chap. 117.—An Act to provide for the repair of the roads and bridges throughout the State. Passed Feb. 28, 1866..... 26

Acts Relating to the Winchester and Potomac Railroad Company.

(Va.) Chap. 122.—An Act to incorporate the Winchester and Potowmac Railroad Company. Passed April 8, 1831..... 27
(Va.) Chap. 102.—An Act to authorize a subscription on behalf of the Commonwealth to the Stock of the Winchester and Potowmac Railroad Company. Passed Mar. 14, 1832..... 28
(Va.) Chap. 107.—An Act to authorize a further subscription on behalf of the State to the stock of the Winchester and Potomac Railroad Company. Passed Jan. 31, 1833 29
(Va.) Chap. 158.—An Act authorizing a Loan on the part of the State to the Winchester and Potomac Railroad Company. Passed Feb. 13, 1838 29
(Va.) Chap. 116.—An Act to amend an act, entitled "An Act to incorporate the Winchester and Potomac Railroad Company." Passed Feb. 24, 1846 30
(Va.) Chap. 332.—An Act for the Relief of the Winchester and Potomac Railroad Company. Passed Feb. 22, 1866. 31
(Va.) Chap. 242.—An Act to authorize the Winchester and Potomac Railroad Company to increase its Capital Stock and to Borrow Money. Passed Feb. 25, 1867..... 31

(Va.) Chap. 98.—An Act to amend and re-enact an Act entitled An Act for the Relief of the Winchester and Potomac Railroad Company, passed February 22, 1866. Passed April 25, 1867..... 32

Acts Relating to the Covington & Ohio Railroad.

(Va.) Chap. 67.—An Act to authorize the Board of Public Works to construct a Railroad from Covington to the Ohio River on State account. Passed Feb. 15, 1853..... 33
(Va.) Chap. 99—An Act providing for the completion of the Covington and Ohio Railroad. Passed Mar. 13, 1856..... 34
(Va.) Chap. 105.—An Act providing for the further construction of the Covington and Ohio Railroad. Passed Mar. 20, 1858..... 34
(Va.) Chap. 14.—An Act to provide for the construction and equipment of the Covington and Ohio Railroad. Passed Feb. 29, 1860..... 34
(Va.) Chap. 200.—An Act to incorporate the Covington and Ohio Railroad Company. Passed Feb. 26, 1866..... 35
(W. Va.) Chap. 131.—An Act to incorporate the Covington and Ohio Railroad Company. Passed Mar. 1, 1866..... 37
(W. Va.) Chap. 93.—An Act to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio River. Passed Feb. 26, 1867..... 40
(Va.) Chap. 280.—An Act to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio River. Passed Mar. 1, 1867..... 43
(W. Va.) Chap 3.—An Act confirming and amending the Charter of the Chesapeake and Ohio Railroad Company. Passed Jan. 26, 1870. (This Act recites in full the contract between the Commissioners of Virginia and W. Va. and the Va. Central R. R. Co. for the completion of the Covington and Ohio R. R. and change of name to Chesapeake & Ohio R. R. Co.)..... 46

Acts Relating to State Expenditures on "Kanawha Improvements."

(Va.) Chap. 56.—An Act to amend the act, entitled "An Act for clearing and improving the Navigation of James River," and for uniting the eastern and western waters, by the James and Kanawha Rivers. Passed Feb. 17, 1820..... 50
(Va.) Chap. 46.—An Act to amend the act, entitled, "An Act to amend the act for clearing and improving the Navigation of James River, and for uniting the eastern and western waters, by the James and Kanawha Rivers." Passed Feb. 28, 1821..... 59
(Va.) Chap. 45.—An Act making more effectual provision to carry into effect, the act, entitled "An Act for clearing and improving the Navigation of James River, and for uniting the eastern and western waters, by the James and Kanawha Rivers, and for other purposes." Passed Feb. 24, 1823..... 64
(Va.) Chap. 9.—An Act authorizing a loan for the purposes of Internal Improvement. Passed Mar. 8, 1824..... 74
(Va.) Chap. 46.—An Act making further provision to carry into effect the act, entitled "An Act for clearing and improving the Navigation of James River, and for uniting the eastern and western waters, by the James and Kanawha Rivers, and for other purposes." Passed Feb. 16, 1825..... 75

(Va.) Chap. 25.—An Act authorizing a Loan for the purposes of Internal Improvement. Passed Mar. 1, 1826..... 77
(Va.) Chap. 26.—An Act to amend an act, entitled, "An Act authorizing a Loan for the purposes of Internal Improvement." Passed Mar. 8, 1826 78
(Va.) Chap. 47.—An Act providing for re-building Gauley Bridge, the payment of existing contracts, and for other purposes. Passed Mar. 7, 1827..... 79
(Va.) Chap. 71.—An Act providing for the extension of the Kanawha Turnpike Road to Big Sandy River. Passed Jan. 30, 1829..... 80
(Va.) Chap. 72.—An Act concerning the Kanawha Road and Bridges, and for other purposes. Passed Feb. 28, 1829..... 83
(Va.) Chap. 73.—An Act prescribing a Tariff of Tolls on the Kanawha River, and for other purposes. Passed Feb. 27, 1829 84
(Va.) Chap. 53.—An Act making further provision for the Extension of the Kanawha Turnpike to Big Sandy River. Passed Dec. 18, 1829 85
(Va.) Chap. 52.—An Act authorizing a change in the location of the Kanawha Turnpike Road. Passed Jan. 30, 1830..... 85
(Va.) Chap. 106.—An Act making further provision for the extension of the Kanawha Turnpike to Big Sandy River. Passed Mar. 31, 1831 86
(Va.) Chap. 82.—An Act incorporating the stockholders of the James River and Kanawha Company. Passed Mar. 16, 1832..... 86
(Va.) Chap. 95.—An Act to provide for the construction of a bridge and embankment over the ravine of Campbell's Creek. Passed Feb. 20, 1833 103
(Va.) Chap. 84.—An Act to provide for the repair of the Kanawha Road, and for other purposes. Passed March 11, 1834.....103

The Kanawha Board.

(Va.) Chap. 117.—An Act providing more effectual means for the improvement of the navigation of the Kanawha River. Passed Feb. 15, 1858.....105
(Va.) Chap. 21.—An Act to amend the Charter of the James River and Kanawha Company. Passed March 23, 1860.....108
(Va. Restored Gov.) Chap. 62.—An Act to re-organize the Kanawha Board. Passed Feb. 8, 1862.....112
(Va. Restored Gov.) Chap. 18.—An Act to amend and re-enact the act passed February 8, 1862, entitled "An Act to reorganize the Kanawha Board." Passed May 15, 1862.....113

Acts of the Restored Government of Virginia, Acts and Constitutional Provisions of West Virginia, and Acts of United States Congress in connection with the Formation of the State of West Virginia.

A Declaration of the People of Virginia, Represented in Convention, at the City of Wheeling, Thursday, June 13, 1861.....115
An Ordinance for the Reorganization of the State Government. Passed June 19, 1861.....116

An Ordinance declaring null and void the proceedings of the Richmond Convention of 1861. Passed Aug. 9, 1861.....118
An Ordinance to provide for the formation of a New State out of a portion of the territory of this State. Passed Aug. 20, 1861.....119

EXTRACTS from the Constitution of the State of West Virginia proposed by a Convention which assembled at Wheeling on the 26th day of November, 1861, being the Constitution referred to in the Act passed May 13, 1862, giving the consent of the Legislature of Virginia to the Formation and Erection of a New State within the Jurisdiction of Virginia.

Extracts from Constitution of West Virginia of 1863.
Art. 1. Secs. 1-7 123
Art. 8. Secs. 1-8 124
(Va. Restored Gov.) Chap. 1.—An Act giving the consent of the Legislature of Virginia to the formation and erection of a New State within the jurisdiction of this State. Passed May 13, 1862.....125
(12 U. S. Statutes at Large.) Chap. 6.—An Act for the Admission of the State of "West Virginia" into the Union and for other Purposes 126
(Va. Restored Gov.) No. 2.—Joint Resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last. Passed Dec. 9, 1862.....127

Acts Transfering Property and Money to the Proposed New State.

(Va. Restored Gov.) Chap. 15.—An Act making an appropriation to the proposed State of West Virginia. Passed May 14, 1862.....128
(Va. Restored Gov.) Chap. 68.—An Act transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid. Passed Feb. 3, 1863.....128
(Va. Restored Gov.) Chap. 72.—An Act making an appropriation to the proposed New State of West Virginia when the same shall become one of the United States. Passed Feb. 4, 1863.....131

Acts Authorizing Receipt of Confederate Money for Taxes.

(Va. Richmond Gov.) Chap 11.—An Act authorizing the receipt of Confederate States Treasury notes in Payment of Taxes and other Public Dues. Passed Mar. 22, 1862.....132
(Va. Richmond Gov.) Chap. 1.—An Act imposing Taxes for the Support of Government. Passed Mar. 28, 1863.....132

Acts Relating to Assessed Valuation of Lands and Lots 1862 and 1863.

(Va. Richmond Gov.) Chap. 1.—An Act imposing Taxes for the Support of Government. Passed Mar. 27, 1862 133
(Va. Richmond Gov.) Chap. 1.—An Act imposing Taxes for the Support of Government. Passed Mar. 28, 1863.....133

Acts Relating to Items in Joint Exhibit C-1 (Paragraph III of the Decree) claimed by Plaintiff and Excluded by Defendant.

Trans-Alleghany Lunatic Asylum.

(Va. Restored Gov.) No. 5.—Resolution concerning the money received from the Branch of the Exchange Bank of Virginia at Weston, (Acts of Extra Session of July 1, 1861, p. 24).....135
(Va. Restored Gov.) Chap. 22.—An Act appropriating Twenty-one Thousand Six Hundred and Eighty-four Dollars to the Northwestern Lunatic Asylum. Passed Jan. 14, 1862.....135

Brandonville, Kingwood and Evansville Road.

(Va.) Chap. 142.—An Act to provide for the construction of a road from Brandonville to the Northwestern Turnpike. Passed April 7, 1838 136
(Va.) Chap. 104.—An Act to provide additional capital for the Brandonville, Kingwood and Evansville Road. Passed Feb. 16, 1847.....137
(Va.) Chap. 172.—An Act to increase the capital stock of the Brandonville, Kingwood and Evansville Turnpike Company. Passed Mar. 21, 1851.....138

Clarksburg and Buchanan Turnpike Company.

(Va.) Chap. 196.—An Act to incorporate the Clarksburg and Buchanan Turnpike Company. Passed Mar. 9, 1848.....138
(Va.) Chap. 177.—An Act to increase the capital stock of the Clarksburg and Buchanan Turnpike Company. Passed Mar. 5, 1851.....139
(Va.) Chap. 79.—An Act to provide for macadamizing or planking certain parts of the Clarksburg and Buchanan Turnpike Road. Passed Mar. 18, 1853 140

Kingwood and West Union Turnpike Company.

(Va.) Chap. 193.—An Act to incorporate the Kingwood and West Union Turnpike Company. Passed Mar. 25, 1848.....140
(Va.) Chap. 182.—An Act to amend the act passed March 25th, 1848, "incorporating the Kingwood and West Union Turnpike Company." Passed Mar. 8, 1849.....142
(Va.) Chap. 171.—An Act to increase the capital stock of the Kingwood and West Union Turnpike Company. Passed Mar. 24, 1851.....142
(Va.) Chap. 84.—An Act to macadamize the Morgantown, Kingwood and West Union Turnpike. Passed Feb. 28, 1853.....143

Berryville and Charlestown Turnpike.

(Va.) Chap. 172.—An Act concerning the Berryville and Charlestown Turnpike Company. Passed Mar. 12, 1849.....143
(Va.) Chap. 123.—An Act to increase the capital stock of the Berryville and Charlestown Turnpike Company. Passed Mar. 18, 1850.....144
(Va.) No. 2.—Resolution in relation to the sale of Works of Internal Improvement in which the State is interested. Adopted Feb. 26, 1856 144
(Va.) Chap. 124.—An Act to provide for the payment for the purchase money of the Berryville and Charlestown Turnpike by the Board of Public Works. Passed April 2, 1858.....145

Payments to School Commissioners in West Virginia.

Code Va. 1849. Chap. 79.—Of What the Literary Fund Consists, and How it is Appropriated 146
Code Va. 1860. Chap. 79.—Of What the Literary Fund Consists, and How it is Appropriated.....147

Harper's Ferry Raid.

(Va.) Chap. 27.—An Act appointing Commissioners to audit and pay the Expenses incurred by the Executive for the purchase of Arms and Munitions, and for the Defense of the Commonwealth. Passed Jan. 23, 1860 148
(Va.) Chap. 28.—An Act making an additional Appropriation to defray the Expenses incurred for the Defense of the Commonwealth. Passed Mar. 6, 1860 149
(Va.) Chap. 29.—An Act making further Appropriations to pay Expenses for the Defense of the Commonwealth. Passed Mar. 28, 1860....150

Surveys.

(Va.) Chap. 114.—An Act directing a Survey of the Shenandoah River, and the country adjacent, and the South Branch of the Potowmac. Passed Mar. 30, 1831 151
(Va.) Chap. 75.—An Act to authorize a geological reconnoisance of the State, with a view to the chemical composition of its soils, minerals and mineral waters. Passed Mar. 6, 1835.....151
(Va.) Chap. 89.—An Act directing a survey of Elk River. Passed Feb. 21, 1835 152
(Va.) No. 13.—Resolution authorizing a survey and location of a route for a Branch of the Northwestern Turnpike Road from Sistersville, by way of Middlebourne, to some point of intersection with said Turnpike west of Clarksburg. Adopted Feb. 20, 1834.....152
(Va.) No. 16.—Resolution for a survey of a road from Lewisburg to the Blue Sulphur Springs in Greenbrier. Adopted Mar. 13, 1834.....153
(Va.) Chap. 105.—An Act directing the survey of a route for a road from Moorefield to the Northwestern Turnpike. Passed Mar. 16, 1836..153
(Va.) Chap. 106.—An Act directing the survey of a route for a road

from the Northwestern road to some point on Leading Creek, in the County of Randolph. Passed Jan. 12, 1836.....153
(Va.) Chap. 107.—An Act directing the survey and location of routes for certain roads therein mentioned. Passed Jan. 12, 1836.....154
(Va.) Chap. 119.—An Act directing a survey of the Little Kanawha River. Passed Feb. 20, 1838.....154

Loan to the Trustees of the Town of Bath.

(Va.) Chap. 106.—An Act to provide for the construction of a road from Bath in Morgan County, to the mouth of St. John's run on the Potomac. Passed Mar. 8, 1847.....155

Acts Relating to Items in Joint Exhibit D-1 (Paragraph IV of Decree) Claimed by Plaintiff and Excluded by Defendant.

Tobacco Receipts.

Code Va. 1849. Chap. 87.—Of the Inspection of Tobacco.....157

Constitutional Conventions.

(Va.) Chap. 15.—An Act to organize a Convention. Passed Feb. 10, 1829 159
(Va.) Chap. 8.—An Act to take the sense of the people upon the call of a Convention, and providing for organizing the same. Passed Mar. 4, 1850 160

Slaves Transported and Executed.

Rev. Code Va. 1819. Chap. 111.—An Act reducing into one, the several acts concerning Slaves, Free Negroes and Mulattoes. Passed Mar. 2, 1819 161
Code Va. 1849. Chap. 17.—Concerning the Governor's Powers and Duties 163
Code Va. 1849. Chap. 200.—Offences by Negroes 163
Code Va. 1849. Chap. 212.—Of Proceedings against Negroes.....164
Code Va. 1860. Chap. 17.—Concerning the Governor's Powers and Duties 165
Code Va. 1860. Chap. 200—Offences by Negroes.....165
Code Va. 1860. Chap. 212.—Of Proceedings against Negroes.....166

Boundary Lines.

(Va.) Chap. 14.—An Act to settle the western limits of this State, and the dividing and boundary line between this State and the Commonwealth of Maryland. Passed Feb. 28, 1822.....166
(Va.) Chap. 32.—An Act to settle the western limits of this State, and the dividing and boundary line between this State and the Commonwealth of Maryland. Passed Mar. 5, 1833.....167

(Va.) No. 4.—Preamble and resolutions relative to the boundary between Virginia and Ohio. Adopted Mar. 23, 1847.....169
(Va.) Chap. 4.—An Act for running and marking the boundary line between North Carolina and Virginia. Passed April 2, 1858.....169
(Va.) No. 14.—Resolutions concerning the Boundary Lines between Tennessee and Virginia. Adopted Mar. 9, 1860 170
(Va.) No. 15.—Resolutions concerning the Boundary Line between Maryland and Virginia. Adopted Mar. 10, 1860 171

Maps.

(Va.) Chap. 17.—An Act to provide for engraving the Map of Virginia. Passed Feb. 14, 1825 172
(Va.) Chap. 15.—An Act making provision for furnishing the Public Offices with the new Map of Virginia, and for other purposes. Passed Feb. 11, 1828. 172
(Va.) Chap. 93.—An Act providing for a geological survey of the State, and for other purposes. Passed Feb. 29, 1836 173
(Va.) No. 3.—Resolution providing for the preparation of a Map of the Internal Improvements of the State. Adopted Mar. 15, 1848.....175
(Va.) No. 5.—Resolution for completion of State Map. Adopted Feb. 18, 1853 175

Deaf, Dumb and Blind Institute.

(Va.) Chap. 19.—An Act to provide for the establishment of the Virginia Asylum for the education of the deaf and dumb and of the blind. Passed Mar. 31, 1838 176
(Va.) Chap. 14.—An Act directing the payment of a sum of money to the visitors of the Virginia Institution for the education of the deaf and dumb and of the blind. Passed Mar. 20, 1841.....178
(Va.) Chap. 9.—An Act making appropriation for the completion of the buildings of the deaf and dumb and blind institution. Passed Jan. 23, 1845 179
(Va.) Chap. 18.—An Act appropriating a sum of money to provide furniture for the institution of the deaf and dumb and of the blind. Passed Feb. 24, 1846 179
(Va.) Chap. 272.—An Act authorizing the payment of a certain sum of money to William C. Adams. Passed Mar. 20, 1847.....180
(Va.) Chap. 15.—An Act to increase the annuity to the Virginia Institution for the education of the deaf and dumb and of the blind, and for other purposes. Passed Mar. 16, 1847 180
(Va.) Chap. 12.—An Act to provide additional accommodations for the deaf and dumb and blind institution. Passed Jan. 25, 1849.....182
(Va.) Chap. 1.—An Act appropriating the Public Revenue. Passed Mar. 14, 1850 182
(Va.) Chap. 2.—An Act appropriating the Public Revenue, and for other purposes. Passed Mar. 7, 1851.....183
(Va.) Chap. 35.—An Act appropriating two thousand dollars to purchase

a library and philosophical apparatus and organ for the institution of the deaf and dumb and of the blind. Passed June 5, 1852..183
(Va.) Chap. 145.—An Act increasing the annuity of the institution for the education of the deaf and dumb and the blind, by the addition thereto of five thousand dollars, and appropriating twenty thousand dollars to erect a building at said institution, and to warm and light the same with steam and gas. Passed Feb. 24, 1853 183
(Va.) Chap. 41.—An Act appropriating ten thousand dollars for the purpose of supplying the Institution for the deaf and dumb and the blind with water. Passed Mar. 4, 1854.....184
(Va.) Chap. 93.—An Act making an appropriation to the deaf and dumb and the blind institution at Staunton. Passed Mar. 13, 1856 184
(Va.) Chap. 12.—An Act making an Appropriation to the Deaf and Dumb and Blind Institution. Passed Jan. 10, 1860.....185

International Exchanges.

(Va.) No. 1.—Preamble and resolutions relative to a National Interchange of Productions of Art, Science, Industry and Natural History. Adopted Mar. 23, 1848 185

Printing Treasury Notes.

(Va.) Chap. 11.—An Act to authorize the issue of Treasury Notes. Passed Mar. 18, 1856 186

Interest on Public Debt.

Code Va. 1849. Chap. 44.—Public Debt.....188
(Va.) Chap. 97.—An Act authorizing a subscription by the State of Virginia to the stock of the Chesapeake and Ohio Canal Company. Passed Feb. 20, 1833 189
(Va.) Chap. 97.—An Act to provide for the appointment of a proxy to represent the State in the Chesapeake and Ohio Canal Company, and for other purposes. Passed Mar. 8, 1834 190
(Va.) Chap. 12.—An Act providing for the negotiation of Loans for purposes of Internal Improvement. Passed April 9, 1838.....191
(Va.) Chap. 86.—An Act to provide for further subscriptions on the part of the State to the Exchange Bank and Northwestern Bank of Virginia. Passed Mar. 19, 1839 195
Code of Va. 1860. Chap. 44.—Public Debt 196

Constitution of Va. of 1851. Art. 4, Sec. 29 200

(Va.) Chap. 17.—An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt. Passed Mar. 26, 1853 200

Sinking Fund.

(See Sec. 29, Art. 4, of Constitution of Va., 1851, printed under head of Interest on Public Debt on page 200).....205
(See also Chap. 17, Act of March 26, 1853, printed under title of Interest on Public Debt on page 200).....205

Literary Fund.

(Va.) Chap. 8.—An Act to Provide for the Education of the Poor. Passed Feb. 12, 1811 205
Code Va. 1849. Chap. 79.—Of What the Literary Fund Consists, and How it is Appropriated 207
(Va.) Chap. 26.—An Act appropriating the entire capitation tax to the purposes of education in primary and free schools. Passed Mar. 25, 1853 208

Virginia Military Institute.

(Va.) Chap. 20.—An Act amending and reducing into one the several acts concerning the re-organization of the Lexington arsenal and the establishment therewith of a military school at Washington College. Passed Mar. 29, 1839.....209
(Va.) Chap. 15.—An Act providing for the erection of a steward's house and for furnishing a supply of water for the Virginia Military Institute. Passed Mar. 6, 1840 212
(Va.) Chap. 27.—An Act providing for the erection of a magazine and shelter for artillery at the Virginia Military Institute. Passed Feb. 14, 1844 212
(Va.) Chap. 17.—An Act concerning the Virginia Military Institute, the University, and the colleges of the commonwealth. Passed Mar. 7, 1848 213
(Va.) Chap. 19.—An Act making an appropriation for the erection of a new barracks at the Virginia Military Institute. Passed Mar. 8, 1850 213
(Va.) Chap. 20.—An Act appropriating the Public Revenue for the fiscal year 1851 and 1852. Passed June 5, 1852 214
(Va.) Chap. 34.—An Act making provision for additional accommodations for the cadets of the Virginia Military Institute. Passed May 29, 1852 214
(Va.) Chap. 42.—An Act providing for the completion of the barracks and the erection of a mess hall at the Virginia Military Institute. Passed Mar. 1, 1854 215
(Va.) Chap. 162.—An Act making an appropriation to the Virginia Military Institute for the purpose of completing its buildings, enclosing its grounds and procuring a supply of water for said institute. Passed Mar. 31, 1858 215
(Va.) Chap. 7.—An Act making an additional appropriation to the Virginia Military Institute. Passed Mar. 28, 1860 216

University of Virginia Water Supply.

(Va.) Chap. 36.—An Act making an appropriation to the University of Virginia for certain purposes. Passed Feb. 28, 1854 217

Improvements Capitol Square.

(Va.) Chap. 4.—An Act providing for repairs to the Capitol. Passed March 19, 1832 218
(Va.) Chap. 11.—An Act authorizing the purchase of certain vacant lots adjoining the public square, and the sale of a strip of land near the law building of B. B. Minor. Passed April 3, 1848.....219

Fugitive Slave Expense, and Rewards (Additional).

(Va.) Chap. 48.—An Act to amend the 24th, 25th, 26th, 27th and 28th sections of chapter 192 of the Code of Virginia, so as more effectually to prevent the escape of slaves. Passed Mar. 17, 1856.....220
(Va.) Chap. 49.—An Act to amend the 4th section of chapter 105 of the Code so as to increase the rewards for the arrest of runaway slaves. Passed Mar. 17, 1856 220

Penitentiary.

(Va.) Chap. 19.—An Act concerning the penitentiary institution. Passed Mar. 9, 1833 221

Calling Out Militia at Wheeling in 1838 (1836).

(Va.) Chap. 34.—An Act concerning certain volunteer companies of the fourth regiment of Virginia militia. Passed April 7, 1838.....222

Medical College of Virginia.

(Va.) Chap. 8.—An Act appropriating $30,000 to the Medical College of Virginia, for enlarging its Hospital or Infirmary; for extending the College Buildings, and for the improvement and extension of the College Museum. Passed Mar. 1, 1860 223

Lunatic Hospitals.

(Va.) Chap. 90.—An Act to provide for the enlargement of the Lunatic Hospital in the City of Williamsburg. Passed Mar. 5, 1824.....224
(Va.) Chap. 29.—An Act to provide for extending and enlarging the lunatic hospitals. Passed Mar. 1, 1833.....224
(Va.) Chap. 19.—An Act to amend an act, entitled, "An Act to provide for extending and enlarging the lunatic hospitals," passed March 1st, 1833. Passed March 12, 1834 225
(Va.) Chap. 17.—An Act providing for a further appropriation to complete the improvements at the lunatic hospitals at Williamsburg and Staunton. Passed Mar. 12, 1835 226

(Va.) Chap. 19.—An Act concerning the Western Lunatic Hospital and the Lunatic Hospital at Williamsburg. Passed Mar. 31, 1837.....227
(Va.) Chap. 21.—An Act providing for the enlargement of the Lunatic Hospitals of the Commonwealth, and for other purposes. Passed April 3, 1838 227
(Va.) Chap. 19.—An Act providing for the enlargement of the Lunatic Asylums of the Commonwealth. Passed March 25, 1842.....229
(Va.) Chap. 12.—An Act appropriating a sum of money therein mentioned to John B. Hart and Martin Tutwiler, securities of John K. Sheperson for the erection of an additional building to the Eastern lunatic asylum at Williamsburg. Passed Feb. 12, 1844...230
(Va.) Chap. 11.—An Act making an appropriation for the Eastern Lunatic Asylum. Passed Feb. 14, 1844 230
(Va.) Chap. 12.—An Act to authorize the enlargement of the lunatic asylums of the Commonwealth. Passed Jan. 17, 1848.....231
(Va.) Chap. 13.—An Act providing for the purchase of furniture for the Eastern and Western asylums, and for other purposes. Passed Jan. 13, 1849 232
(Va.) Chap. 17.—An Act providing for the payment of arrears on buildings, and furnishing water and additional accommodations for free colored insane persons at the Eastern lunatic asylum. Passed Jan. 22, 1850 233
(Va.) Chap. 144.—An Act appropriating seven thousand dollars for repairing and erecting buildings at the Eastern lunatic asylum. Passed Jan. 21, 1853 234
(Va.) Chap. 39.—An Act appropriating seventeen thousand seven hundred and fifty dollars for erecting and repairing buildings and enclosures at the Eastern lunatic asylum; for purchasing a lot of land for the use of the asylum, for improving its grounds, for providing furniture and other conveniences for the same, and for lighting the institution with gas. Passed Mar. 1, 1854 234

Western Asylum at Staunton.

(Va.) Chap. 35.—An Act to authorize the establishment of a Western Lunatic Hospital. Passed Jan. 22, 1825 235
(Va.) Chap. 4.—An Act making farther appropriation for the completion of the Western Lunatic Hospital. Passed Feb. 24, 1827.....238
(Va.) Chap. 7.—An Act concerning the Western Lunatic Hospital. Passed Feb. 28, 1828 239
(Va.) Chap. 6.—An Act amending the acts concerning idiots and lunatics, to provide for clothing the public guard, and for other purposes. Passed Feb. 17, 1830.....240
(Va.) Chap. 8.—An Act appropriating a further sum of money for completing the improvements of the Western lunatic hospital. Passed Mar. 22, 1836 241
(Va.) Chap. 17.—An Act concerning the lunatic asylums of this Commonwealth. Passed April 10, 1839 241
(Va.) Chap. 18.—An Act providing for paying the workmen for completing the additional building to the Western Lunatic Asylum. Passed Mar. 8, 1842.....242

(Va.) Chap. 17.—An Act concerning the Western Lunatic Asylum at Staunton. Passed Mar. 4, 1846 242
(Va.) Chap. 16.—An Act for providing for the erection of necessary outbuildings at the Western asylum, and requiring that the funds of said asylum shall be kept in the Valley Bank at Staunton. Passed Jan. 19, 1850 244
(Va.) Chap. 36.—An Act appropriating the sum of five thousand dollars to construct fixtures and apparatus for lighting the Western Lunatic asylum with gas. Passed Feb. 25, 1852 244
(Va.) Chap. 40.—An Act appropriating thirty-four thousand one hundred and eighty-eight dollars to heat the buildings of the Western lunatic asylum by steam, to erect covered connections and verandahs, and to enclose the grounds of said asylum. Passed Mar. 1, 1854 245
(Va.) Chap. 166.—An Act appropriating the sum of ten thousand dollars to procure a supply of water for the Western lunatic asylum. Passed Mar. 19, 1858 245
(See also references to other Acts on pages 240, 241, 242, and 243.)

Cannon House in Surry County.

(Va.) Chap. 98.—An Act concerning John Peter. Passed Feb. 20, 1824..246

Gun House, Richmond Artillery.

(Va.) Chap. 21.—An Act to amend the several laws concerning the militia of this Commonwealth, and for other purposes. Passed Mar. 11, 1835 246

Joint Resolutions of the West Virginia Legislature Relating to the Virginia Debt Question.

Joint Resolutions of 1895, 1897, 1899, 1901, 1903, 1905.....247

List of Acts Chronologically Arranged

Year	Month and Day	Chapter	Page
1811	February 12	8	205
1816	February 5	17	3
1817	February 7	38	12
1818	February 21	8	7
1819	March 4	4	8
1820	February 17	56	50
1821	February 28	46	59
1822	February 28	14	166
1823	February 24	45	9
			64
1824	February 20	98	246
	March 5	90	224
	March 8	9	74
1825	January 22	35	235
	February 14	17	172
	February 16	46	75
1826	March 1	25	77
	March 8	26	78
1827	February 24	4	238
	March 7	47	79
1828	February 11	15	172
	February 20	21	10
	February 28	7	239
1829	January 30	71	80
	February 10	15	159
	February 27	73	84
	February 28	72	83
	December 18	53	85
1830	January 30	52	83
	February 17	6	240

Year	Month and Day	Chapter	Page
1831	March 30	114	151
	March 31	106	86
	April 8	122	27
1832	February 11	81	17
	March 14	102	28
	March 16	82	86
	March 19	4	218
1833	January 31	107	29
	February 20	95	103
	February 20	97	189
	March 1	29	224
	March 5	32	167
	March 5	14	10
	March 9	19	221
1834	February 20	Res. 13	152
	March 8	97	190
	March 11	84	103
	March 12	19	225
	March 13	Res. 16	153
1835	February 21	89	152
	March 6	75	151
	March 11	21	246
	March 12	17	226
1836	January 12	106	153
	January 12	107	154
	February 29	93	173
	March 16	105	153
	March 18	94	19
	March 22	8	241
1837	March 31	19	227
1838	February 13	158	29
	February 20	119	154
	March 31	19	176
	April 3	21	227
	April 7	142	136
	April 7	34	222
	April 9	12	191
1839	March 19	86	195
	March 29	20	209
	April 10	17	241

Year	Month and Day	Chapter	Page
1840..	March 6	15	212
1841..	March 20	14	178
1842..	March 8	18	242
	March 25	19	229
1844..	February 12	12	230
	February 14	27	212
	February 14	11	230
1845..	January 23	9	179
1846..	February 24	116	30
	February 24	15	179
	February 28	Res. 5	11
	March 4	17	242
1847..	February 16	104	137
	March 8	106	155
	March 16	15	180
	March 20	272	180
	March 23	Res. 4	169
1848..	January 17	12	231
	March 25	193	140
	March 7	17	213
	March 9	196	138
	March 15	Res. 3	175
	March 23	Res. 1	135
	April 3	11	219
1849..	January 13	13	232
	January 25	12	182
	March 8	182	142
	March 12	172	143
1850..	January 19	16	244
	January 22	17	233
	March 4	8	160
	March 8	19	213
	March 14	1	182
	March 18	123	144
1851..	March 5	177	139
	March 7	2	183
	March 21	172	138
	March 24	171	142

Year	Month and Day	Chapter	Page
1852..	February 25	36	244
	May 29	34	214
	June 5	20	214
	June 5	35	183
1853..	January 21	144	234
	February 15	67	33
	February 18	Res. 5	175
	February 24	145	183
	February 28	84	143
	March 18	79	140
	March 25	26	208
	March 26	17	200
1854..	February 28	36	217
	March 1	42	215
	March 1	39	234
	March 1	40	245
	March 4	41	184
1856..	February 26	Res. 2	144
	March 13	99	34
	March 13	93	184
	March 17	48	220
	March 17	49	220
	March 18	11	186
1858..	January 20	230	21
	February 15	117	105
	February 25	129	21
	March 19	166	245
	March 20	105	34
	March 31	162	215
	April 2	124	145
	April 2	4	169
	April 7	128	22
1860..	January 10	13	185
	January 23	27	148
	February 29	14	34
	March 1	8	223
	March 6	28	149
	March 9	Res. 14	170
	March 10	Res. 15	171
	March 23	21	108

Year	Month and Day		Chapter	Page
	March 28		7	216
	March 28		29	150
1861	June 13	Declaration Rest'd. Gov't. Ordinance		115
	June 19	Rest'd. Gov't. Ordinance		116
	August 9	Rest'd. Gov't. Ordinance		118
	August 20	Rest'd. Gov't.		119
		Rest'd Gov't Res. 5		135
1862	January 14	Rest'd. Gov't.	22	135
	January 24	Rest'd. Gov't.	35	22
	February 8	Rest'd. Gov't.	62	112
	March 25	Rich'd. Gov't.	11	132
	March 27	Rich'd. Gov't.	1	133
	May 13	Rest'd. Gov't.	1	125
	May 14	Rest'd. Gov't.	15	128
	May 15	Rest'd. Gov't.	18	113
	December 9	Rest'd. Gov't. Res. 2		127
	December 31	U. S.	6	126
1863	February 3	Rest'd. Gov't.	68	128
	February 4	Rest'd Gov't.	72	131
	March 28	Rich'd. Gov't.	1	132
				133
	August 3	W. Va.	30	23
	December 4	W. Va.	120	24
1865	February 28	W. Va.	71	24
1866	January 24	W. Va. Res. 8		25
	February 22	Va.	332	31
	February 26	Va.	200	35
	February 28	W. Va.	117	26
	March 1	W. Va.	131	37
1867	February 25	Va.	242	31
	February 26	W. Va.	93	40
	March 1	Va.	280	43
	April 25	Va.	98	32
1870	January 26	W. Va.	3	46

Year Month and Day	Chapter	Page
1895..February 7	W. Va. Res. 10	247
1897..January 21	W. Va. Res. 3	247
1899..January 21	W. Va. Res. 3	247
1901..January 16	W. Va. Res. 21	248
1903..January 21	W. Va. Res. 3	248
1905..January 20	W. Va. Res. 3	248
Code of Virginia		
1819	3	161
1849	17	163
	44	188
	79	146, 207
	87	157
	200	163
	212	164
1860	17	165
	44	196
	61	20
	79	147
	200	165
	212	166
Constitution W. Va.		
	Article I Article VIII	123
Constitution Va.		
1851	Article 4	200

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

APPENDIX TO THE RECORD.

BEING CERTAIN PUBLIC ACTS OF
THE LEGISLATURE OF VIRGINIA AND WEST VIRGINIA
AND OF THE CONGRESS OF THE UNITED STATES
AND
EXTRACTS FROM
THE CONSTITUTIONS AND CODES OF THE TWO STATES
PERTAINING TO THIS CAUSE.

Acts Relating to the Fund for Internal Improvment and the Board of Public Works.

CHAP. XVII.

An Act to create a fund for Internal Improvement.

[Passed February 5th, 1816.] 35

1. *Be it enacted by the General Assembly,* That a fund shall be, and the same is hereby created, to be denominated "The Fund for Internal Improvement," and to be applied, exclusively, to the purpose of rendering navigable, and uniting by canals, the principal rivers, and of more intimately connecting, by public highways, the different parts of this Commonwealth.

2. *And be it further enacted,* That this fund shall consist of the shares held by the Commonwealth, in the stock of the little River Turnpike Company, of the Dismal Swamp, Appomattox, Potowmac, and James River Canal Companies, of the Bank of Virginia and Farmers' Bank of Virginia, together with such dividends as may, from time to time, accrue to such shares of stock, and such bonus, or premiums, as may be hereafter received, for the incorporation of new Banks, or for the augmentation of the capitals, or the extension of the charters of the existing Banks.

3. *And be it further enacted,* That, for the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct to be applied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled, "The President and Directors of the Board of Public Works," in which name they shall have a common seal, and perpetual succession, subject to the limitation hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation.

4. *And be it further enacted,* That the Governor of the Commonwealth shall be, ex officio, President of the Board of Public Works; that the Directors, a majority of whom shall constitute a Board for the transaction of any business devolving on the corporation, shall consist of the Treasurer and the Attorney General of the Commonwealth, for the time being, and of ten citizens thereof; of whom three shall reside westward of the Allegany mountain; two between

the Allegany and the Blue Ridge; three between the Blue Ridge and the great post road, which, passing through the territory of the Commonwealth, crosses the principal rivers thereof at, or about the head of tide water; and the residue, between that road and the sea coast.

5. *And be it further enacted*, That the Directors of the Board of Public Works, except the Treasurer and Attorney General, shall be chosen annually, by joint ballot of the two houses of the General Assembly, and receive such compensation for their services, as may be allowed by law, which, until otherwise provided, shall be the same mileage for travelling to and from the place of sitting, and the same pay per diem during the continuance of their session, as is now by law allowed to a member of the General Assembly.

6. *And be it further enacted*, That in the absence of the Governor, the board may elect a president pro tempore, from their own body, who shall preside over the deliberations of the board, until the Governor is enabled to attend.

7. *And be it further enacted*, That the President and Directors of the Board of Public Works shall have power to appoint a principal Engineer, or Surveyor of the Public Works, and a Secretary to the board; together with such other officers and assistants, as they shall deem necessary; each of whom shall receive for his services such compensation, as the President and Directors of the Board of Public Works may allow, to be paid out of the revenue of the fund for internal improvement, and to be reimbursed that fund, by an allowance to the Commonwealth of so much of the stock of any canal, or turnpike company, as shall constitute a reasonable compensation for the services rendered such company by the surveyor and his assistants.

8. *And be is further enacted*, That the President and Directors of the Board of Public Works shall hold an annual meeting in the city of Richmond, or at such other place as may be designated by law, to begin on the first Monday in November of every year, and to continue until the business of the board is transacted—But, that the President of the board may, at his own pleasure, or shall, at the request of any three Directors thereof, convene an extra meeting of the board, for the transaction of any extraordinary business which may devolve on the corporation.

9. *And be it further enacted*, That the President and Directors of the Board of Public Works may, at their annual meetings, enact, alter, or amend, such rules as to them may seem proper, for the purpose of regulating the order of their proceedings; that they may have power to adjourn the board for any period not exceeding six months, or, when occasion shall require it, to have an extra meeting at any other place than that designated by law, and shall have power to make and establish such bye-laws, rules and regulations, for the better ordering of the conduct of their officers, agents and ser-

vants, as to them may seem expedient, provided the same be not inconsistent with the constitution and laws of this Commonwealth, or of the United States of America. They shall also have power, at any time during the recess of the Legislature to fill any vacancy which may occur in their own body, either from death, resignation, removal, inability, or any other cause.

10. *And be it further enacted*, That the fund for internal improvement, subject to the order of the President and Directors of the board, shall be deposited in the Treasury of the Commonwealth, and kept distinct and apart from all other public money: It shall be paid out or delivered by the Treasurer of the Commonwealth to the order of the board, certified and subscribed by the Secretary, and countersigned by the President; that the Treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates upon which the same shall have been made, and shall render an account thereof to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue: that once in every year the Board of Public Works shall depute a committee of their body to examine the accounts of all disbursements made by order of the board, during the year next preceding the annual meeting of the board, and to compare these accounts with the Treasurer's books, and the certificates giving authority for the payment of the several sums of money, or stock, entered therein; that their reports shall certify to the board, that the same have been fully accounted for, or otherwise, as the case may be.

11. *And be it further enacted*, That the President and Directors of the Board of Public Works, shall be, and they are hereby authorized to subscribe in behalf of the Commonwealth, to such Public Works, as the General Assembly may, from time to time, agree to patronize, such portions of the revenue of the fund for internal improvement, as may be directed by law but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike, or other Company, until three fifths at least of the whole stock, necessary to complete such canal, turnpike, or other public work of such company, shall have been otherwise subscribed; nor until, of the stock so subscribed, one fifth thereof shall have been actually paid in by the respective subscribers, or the payment thereof effectually secured by bond with approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such fifth part; such bond to be taken payable to the President, Directors and Company authorized to complete such public work, and to be recoverable against the obligor or his securities, on motion, after ten days' notice, in any court of record within the Commonwealth having jurisdiction thereof; and such deed of trust to be proceeded upon whenever the trustee therein named shall be required to do so by such President, Directors and Company.

12. *And be it further enacted,* That the dividends on the stock which may be subscribed by the President and Directors of the Board of Public Works shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have netted to them six per cent. per annum, from the specified time of such payment; that any increase of profit, after that nett income shall have been assured to the subscribers, shall belong exclusively to the fund for Internal Improvement, until the nett annual income of the whole stock, actually expended by any company, shall reach six per cent per annum; after which, the Commonwealth and the other subscribers to the stock of the company shall divide the nett profits on such stock in proportion to their respective interests. That, whenever the nett income of any company, to which any part of the fund hereby created shall have been subscribed, shall be found, for two succeeding years, or upon an average of five succeeding years, to surpass fifteen per cent. per annum, the General Assembly may reduce the tolls, from which such income is derived, so as to limit the nett revenue of the company to that amount; *provided,* that should the tolls for any two succeeding years fail to yield a nett income to the company of ten per cent. per annum, the President and Directors of the Board of Public Works, on satisfactory evidence being adduced thereof, may authorise the tolls to be augmented, so as to assure to the company such nett income; *And provided, also,* that after the lapse of sixty days from the period at which such tolls shall have first netted ten per cent. per annum, the maximum profit of the company may be reduced to twelve per cent.; and after the lapse of one hundred years from the same period to ten per cent per annum.

13. *And be it further enacted,* That the President and Directors of the Board of Public Works shall vest in some productive fund the unappropriated dividends accruing upon any of the stock committed to their charge, until the same shall be specially applied by law to some object of internal improvement: and shall have power, subject to the control of the General Assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the Commonwealth, in the stock of any canal, turnpike or other company subscribed for under the provisions of this Act, for the purpose of investing the proceeds of sale in the stock of some other similar company, subject to the like conditions as have been before expressed in this Act.

14. *Be it further enacted,* That the President and Directors of the Board of Public Works shall have power to appoint, in behalf of the Commonwealth, so many directors of every Public Work, as shall bear to the whole number of the directors of such work the proportion of the Commonwealth's shares of stock in such work, which may be subscribed in pursuance of this Act, to the whole number of

shares subscribed thereto: *provided, however,* that whenever it shall be found expedient by the Legislature to authorise the subscription of any part of the fund hereby created to any company already incorporated, the provisions of this section shall not be construed as applying to such company, unless it be otherwise directed by the Act authorising the subscription.

15. *Be it further enacted,* That it shall be the duty of the President and Directors of the Board of Public Works, to keep a fair and accurate record of all their proceedings, which shall be at all times open to the inspection of the members of the General Assembly, and of the President, Directors and other officers of any company interested therein; that they shall report to the General Assembly, at or near the commencement of every annual session thereof, the exact state of the fund for internal improvement; the progress and condition, noting especially the nett income, of all the public works within the Commonwealth; the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information, as they may have it in their power to collect, in relation to the objects committed to their trust.

16. *And be it further enacted,* That the public faith shall be and the same is hereby solemnly pledged to fulfill the appropriation made by this Act; and that the said appropriation shall continue in force until the first day of January, of the year one thousand eight hundred and sixty six, except at such times as the United States of America may be involved in war, or the safety of this Commonwealth may, in the opinion of the General Assembly require; when the General Assembly may withdraw (during the period of actual hostilities, or of such imminent danger,) the whole or any part of the said fund for the purpose of defence; provided such withdrawal can be made without a violation of any engagement entered into under this Act.

17. This Act shall commence and be in force from and after the passage thereof.

CHAPTER VIII.

An Act to amend an Act, entitled "An Act to create a fund for Internal Improvement."

[Passed February 21st, 1818.]

1. *BE it enacted by the General Assembly,* That the orders of the Board of Public Works, drawn and authenticated in the manner prescribed by the Act, entitled "An Act to create a fund for

Internal Improvement," which passed the fifth day of February, one thousand eight hundred and sixteen, instead of being payable at the Treasury, as is provided by the tenth section of the said Act, shall henceforth be presented to the Auditor of Public Accounts, who is hereby authorised and required to issue his warrant on the Treasury, for the amount specified in such orders.

2. *And be it further enacted,* That so much of the section aforesaid, as requires that the Treasurer shall preserve the certificates upon which disbursements of the fund for Internal Improvement have been or may be made, shall be and the same is hereby repealed; and all such certificates and vouchers shall be delivered, as soon as may be convenient after the passage of this law, to the Auditor of Public Accounts, together with a correct statement of all disbursements heretofore made, to be preserved by him in his office.

3. This Act shall commence and be in force from and after the passing thereof.

CHAPTER IV.—An act to amend an act, entitled, "an act creating a fund for internal improvement."—[Passed March 4th, 1819.]

1. *Be it enacted by the General Assembly,* That hereafter the annual meeting of the Board of Public Works shall take place on the first Monday after the meeting of the General Assembly in every year, instead of the time now prescribed by law.

2. *And be it further enacted,* That it shall be the duty of every such company, to the stock of which the Board of Public Works shall subscribe, as aforesaid, annually, on or before the seventh day of December in every year, to furnish to the Secretary of the Board of Public Works a report of the income and expenditure of every such company for the next preceding year, including payments made by the stockholders as well as tolls, together with a statement of the condition and progress of their works, and shall pay into the public treasury to the credit of the fund for internal improvement, within sixty days after any dividend may be declared, any such dividend, to which the Board of Public Works may be entitled; and in case of failure, either in furnishing such report, or paying such dividends as aforesaid, such company so failing shall forfeit and pay to the Board of Public Works a penalty not exceeding five hundred dollars, which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice.

3. *Be it enacted,* That hereafter, it shall not be lawful for the President and Directors of the Board of Public Works, to subscribe for any part of the stock of any company, unless otherwise specially authorized by law, until they shall have received satisfactory evidence, not only that one-fifth part of the subscriptions of indivi-

duals has been secured according to law, but that the whole of such private subscriptions have either been secured as aforesaid, or are made by solvent persons, fully able to pay.

4. *Be it further enacted*, That when the said board, having made any subscription for the stock of any such company, shall have good reason to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions, until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. *And be it further enacted*, That the pay and allowance for travelling and attendance, to the members of the Board of Public Works hereafter, and to those who have attended during the present session of the Legislature, shall be the same as that allowed by law to the members of the General Assembly—But, no member of the General Assembly who may be a member of the Board of Public Works shall have any allowance for his attendance, or mileage, as a member of the board, when coming to, or during the sitting of the Legislature.

6. *And be it further enacted*, That all acts and parts of acts coming within the purview of this act, be, and the same are hereby repealed.

7. This act shall commence and be in force from and after the passing thereof.

CHAPTER 45.—An act making more effectual provision to carry into effect, the act, entitled "an act to amend the act entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

[Passed February 24th, 1823.]

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2. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund constituted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the funds before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the

persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors 51
thereof, and as secretary of the Board of Public Works: and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to appoint a clerk, should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

CHAPTER 21.—An Act to amend the Act entitled an Act to create a fund for Internal Improvement.

(Passed February 20th, 1828.) 15

1. *Be it enacted by the General Assembly*, That so much of the twelfth section of the act, entitled "an act to create a fund for Internal Improvement," as provides that the dividends on the stock which may be subscribed by the president and directors of the Board of Public Works, shall go exclusively to other subscribers than the Commonwealth, until such portion of the stock of those subscribers, as shall have been actually paid in, shall have netted to them, six per cent. per annum from the specified time of such payment, shall be, and the same is hereby repealed; and all dividends upon subscriptions hereafter authorised, or required to be made by the General Assembly, to any canal, road, bridge company, or other corporation, shall be made, and stand upon the same footing with subscriptions made by individuals.

2. This act shall be in force from the passing thereof.

CHAP. 14.—An ACT prescribing the ex-officio duties of the officers of government, and for other purposes.

(Passed March 5th, 1833.) 16

1. *Be it enacted by the general assembly of the commonwealth of Virginia*, That hereafter the governor, treasurer, auditor and second

auditor, *ex-officio,* shall constitute the board of public works, the James river company, the literary fund, and North-western turnpike road company; with full power to transact all the business of these various boards; to assemble when and where they choose and may deem expedient; and a majority being present, to proceed to the discharge of all or any business.

2. *Be it further enacted,* That whensoever either of these boards may think it necessary for the public good to assemble or meet at any other place than at the seat of government, or at any time to send one or more members of their body to examine the condition of any of the public works, or to transact any business connected with the discharge of the duties required in these various boards, all reasonable expenses incurred thereby shall be paid out of the fund, the business of which it may be intended to transact; the accounts to be allowed by the respective boards, and certified and paid in the usual manner.

3. *Be it further enacted,* That each of the boards shall adjourn its sessions from time to time; but any intermediate meeting may take place at the pleasure of a majority of said board, notice thereof being given to all the members of the time and place of meeting, to each individually, if may be, and if not, by publication in some newspaper.

4. Should the governor from any cause fail to attend at any session of any of these boards, the treasurer shall in his absence, act as president thereof.

5. All acts and parts of acts coming within the purview of this act shall be and the same are hereby repealed.

6. This act shall commence and be in force from the passing thereof.

No. 5.—Resolution providing that the register of the land office shall be ex-officio a member of the Board of Public Works.

[Adopted February 28, 1846.] 162

Resolved by the senate and house of delegates, That hereafter the register of the land office shall be *ex officio* a member of the Board of public works.

ACTS RELATIVE TO STATE EXPENDITURES IN INTERNAL IMPROVEMENTS OWNED PARTLY BY THE STATE, AND THE ORGANIZATION OF COMPANIES FOR THE CONSTRUCTION THEREOF.

Secs. 11 and 12 of the Act of Feb. 5, 1816.
(See Internal Imp. Fund & B. P. W.)

CHAP. XXXVIII.

An Act prescribing certain general regulations for the incorporation of turnpike companies.

[Passed February 7th, 1817.] 41

1. *Be it enacted by the General Assembly,* That, whenever it may be deemed expedient by the General Assembly, to grant a charter for the incorporation of a company to make a turnpike road, and an act shall actually pass the General Assembly for such purpose, the following general provisions shall be deemed and taken to be part of the said charter or act of incorporation, to the same effect as if the same were expressly re-enacted in reference to any such charter or act, except so far as such special grant, charter or act may otherwise expressly provide; viz: the commissioners named in any special act of incorporation, or a majority of them, shall have power to open books for subscriptions to the stock of the company, at such places as shall be named in the said special act, and to divide the capital stock authorized to be subscribed by the said act, into as many shares, not exceeding one hundred dollars each, in amount as they may deem proper, and to appoint any number of deputy commissioners to open books for a subscription to the stock of such company; and the subscriptions may be made by the subscribers to the said stock, either in person or by power of attorney in Virginia currency, or such medium as the commissioners or a majority of them may agree to receive. It shall be the duty of such commissioners, and deputy commissioners, to receive all monies which may be due upon the shares subscribed in their books, at any time before the first election of the president and directors of the company, as herein provided for; but all monies which may

be payable on such shares, after such election, shall be paid to the said president and directors, or to their order. The said commissioners and deputy commissioners shall, forthwith, after such election, pay over to the president and directors all monies received by them; and in failure thereof, the said president and directors may recover the amount due from them, or from any one or more of them, by motion, on ten days previous notice, in the superior or inferior court of any county or corporation wherein such commissioner or commissioners may reside; the clerk shall endorse, upon the execution, which shall issue upon such recovery, that no security shall be taken, and the sheriff or other officer shall govern himself accordingly.

2. The subscription books shall remain open until at least one half of the capital stock of the company shall have been subscribed; public notice of which event shall be given by any three of the said commissioners, who shall have power, at the same time, to call a general meeting of the subscribers, at such convenient place and time, as they shall name in the said notice: to constitute any such meeting, a number of persons entitled to a majority of all the votes which could be given upon all the shares subscribed, shall be present, either in person or by proxy; and if a sufficient number 42
to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed.

3. If it shall appear to this meeting on examination of the books, that one half of the said capital sum shall have been subscribed, then the said subscribers, their executors, administrators and assigns, from the time of said meeting, shall be and they are hereby declared incorporated into a company, with all the rights, privileges and immunities of a corporation or body politic in law, and may make such bye-laws and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

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16. In consideration of the expenses the proprietors will incur in opening, improving and repairing the said road, the said road, with all the tolls and profits, shall be and the same is hereby vested in the respective proprietors forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever.

17. *Be it further enacted*, That, so soon as any section of five miles of the said road shall be completed, it shall be lawful for the president and directors to apply to the court of that county in which such section, or the greater part thereof, may lie, for the appointment of three discreet and disinterested freeholders to examine the same, who, or any two of whom, being sworn for that purpose, shall examine such section, and make a written report of the condition thereof

to the court; and if, after such report and such other evidence as shall be offered, the said court shall be satisfied, that such section is completed in the manner prescribed by this act, they shall make an order of record declaring that it is so completed, and it 48
shall thereupon be lawful for the president and directors, and they are hereby authorized to erect thereon a toll gate or gates, and they shall be entitled to demand and receive the following tolls upon the said section, to wit: for every score of sheep or hogs, six and one quarter cents; for every score of cattle, twelve and one-half cents, and so in proportion for any greater or lesser number; for every horse, mare, mule or gelding, three cents; for every two wheeled riding carriage, ten cents; for every four wheeled riding carriage, twenty cents; for every cart or waggon the wheels whereof do not exceed four inches in width, six and a quarter cents, for every four footed animal drawing the same; and for every cart or waggon the wheels of which exceed four inches in width, and roll less than seven inches, three cents for every four footed animal drawing the same; and for every cart or waggon the wheels of which are seven inches or more in width, one cent, for every four footed animal drawing the same: *Provided always,* that return waggons or carts shall pay one-half of the said tolls only: and the like rules and proceedings shall be had for every other section of five miles of the said road, when the same shall be completed, and the like tolls shall be paid for passing the same; and if, after all the full sections of said road shall be completed, there shall remain any fractional part of a section, a toll gate may be erected thereon after it shall be completed, in the same manner as is provided in relation to the full sections; and tolls may be demanded thereat, bearing the same proportion to the tolls allowed on a full section as the said fractional part bears to such full section.

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24. *Be it further enacted,* That if the said president and directors shall fail to keep the said road in repair for the space of 51
eighteen months, then shall the interest of the said company in the road and tolls aforesaid be forfeited and cease forever.

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28. *Be it further enacted,* If the said president and directors 52
not begin the said work within two years, after the passage of the act for incorporating the company, or shall not complete the same within ten years thereafter, in the manner hereinbefore directed, then the interest of the said company, in the road and tolls aforesaid, shall be forfeited and cease.

29. At the end of one year from the completion of the road, the president and directors shall report, to the baord of public works, a statement, shewing the whole amount of the capital stock expended in the construction of the road, the amount of tolls received during each preceding year, the expenses and charges incurred during each year, and the nett annual profit or loss, on the capital expended. If, from this statement and such other evidence as shall be offered,

the president and directors of the board of public works shall be satisfied, that the nett average profits of the three succeeding years, on the capital stock expended, will not equal ten per centum per annum, then the said president and directors of the board of public works shall so augment the tolls hereby allowed so as to make them sufficient, in their estimation, to yield such nett annual profit for the three succeeding years; and if the said board of public works shall be satisfied, from the evidence aforesaid, that the average nett profits of the said three succeeding years will exceed fifteen per centum per annum, on the capital stock expended, then they shall so diminish the tolls hereby allowed as to make them only sufficient, in their estimation, to yield an annual nett profit of fifteen per centum per annum, for the said period of three years. The president and directors of the turnpike company shall in like manner, at the expiration of every period of three years, after the said one year from the completion of the road, return to the board of public works a 53
similar statement shewing the amount of expenditures, receipts and nett profits of each year, of such period; and upon each return so made, it shall be the duty of the president and directors of the board of public works to regulate the tolls by increasing them when below the minimum, and diminishing them when above the maximum, upon the principle above laid down, so as to attain as nearly as practicable the following result, that is to say: that for each period of three years during the first twenty-one years, the average nett profits upon the capital stock expended shall not exceed fifteen per centum per annum, nor be less than ten per centum per annum; that, for each period of three years, for the next thirty years, the average nett profits upon the capital stock expended shall not exceed twelve per centum per annum, nor be less than eight per centum per annum; and that, for each period of three years thereafter, the average nett profits upon the capital stock expended shall not exceed ten per centum per annum, nor be less than six per centum per annum.

The president and directors of the board of public works may from time to time prescribe the form, in which the returns aforesaid shall be made, and the evidence by which they shall be verified; and if the president and directors of the turnpike company shall fail to make the return accordingly, and to produce the evidence required for its verification, without good cause for such failure to be shewn to the board of public works, it shall be the duty of the president and directors of the board of public works to make an entry upon their journal declaring such failure, and forthwith to reduce the tolls of said turnpike company, to an amount not exceeding one half the tolls hereby allowed, and calculated to yield a nett profit not exceeding in their estimation five per centum per annum. Such reduction shall be continued until the proper return shall have been made, verified by the proper evidence, or until good cause shall have been shown for the failure.

30. And the president and directors of the said company are hereby required, when they make their first report to the board of public works as herein required, to accompany the same, with a complete plat or map of their road.

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32. The president and directors shall cause to be written or printed certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the president, and counter-signed by the treasurer, to each person for every share subscribed by him, which certificate shall be transferable by him, subject however to all payments due or to become due thereupon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of the said company, and shall be liable to pay all sums due, or which shall become due upon the stock assigned to him: *Provided, however*, That such assignment shall in no wise exempt the assignor, or his representatives, from their liability to the said company, for the payment of all such sums, if the assignor or his representatives shall be unable, or shall fail to pay the same; *And provided, moreover*, That if the commonwealth shall desire to purchase the stock of such company, and shall vest authority to make such purchase in any person, body politic or corporate, it shall not be lawful for any proprietor of such stock to sell or transfer the same to any other person whatever, until he shall actually and with good faith have offered the same for sale, for the price which he is willing to take therefor, to the person, body politic or corporate so authorized to purchase by the Commonwealth; and after such person, body politic or corporate shall have been so authorized to purchase on behalf of the commonwealth, no transfer or assignment to any other person shall be registered, or entered in the books of the company, nor shall any such transfer or assignment vest any right whatever, unless it shall be proved to the satisfaction of said president and directors, that the stock so assigned, or transferred, had been, with good faith, previously offered to the person, body politic or corporate, so authorized, at a price at least as low as that at which it had been sold to such assignee, or transferree.

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35. *Be it further enacted*, That the powers hereby given to the president and directors of the board of public works, may be at any time transferred by the legislature to any other corporate or natural body, and all returns hereby directed to be made to the said board of public works may be hereafter in like manner directed to be made to any other body.

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36. This act shall commence and be in force from the passing thereof.

CHAP. LXXXI.—An act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

[Passed February 11th, 1832.] 71

1. *Be it enacted by the general assembly,* That all subscriptions which are now authorized by law, and have not been made by the board of public works, or which may hereafter be so authorized shall be subject to the following conditions previous to subscription, to wit: In every case the board of public works shall be furnished with a certificate, under the seal of the company, signed by their treasurer, and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock, has been actually paid up into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay; and these facts shall be shewn to the satisfaction of the board of public works. They shall also be furnished with a list of the stockholders, shewing the number of shares standing in each name. If any private improvement shall have been commenced previously to the subscription thereto being authorized or made, the board of public works shall be furnished with a statement, shewing the amount of money received up to the date of such statement, and on what account received, and of the amount expended in the work, together with the balance of money on hand the contracts entered into for the construction of the improvement, the exact progress made therein, as near as may be, its dimensions, its mode of construction, and a correct map of its location.

2. The instalments on the future subscriptions of the board of public works, shall be payable in the manner, and on the conditions herein-after mentioned, when not otherwise specially provided by law; that is to say, one-fourth of such subscriptions shall be paid on the production of the draft of the treasurer, or other authorized agent of the company, for the same, in such form as the board of public works may prescribe and the remaining three-fourths on similar drafts, in six equal semi-annual instalments, or in instalments of the same proportions with future payments of private subscriptions, at the discretion of the board of public works: *Provided,* That before payment of the instalments aforesaid, the said board of public works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, shewing the amount actually paid up by the private stockholders, which amount must be at least equal in proportion to the amount payable by the board of public works. But should the fund for internal improvement be inadequate, in the opinion of the said board, to the pay-

ment of the full amount of the instalments aforesaid, after providing for the subscriptions previously made, then their subscriptions shall be payable in such proportions, and at such periods, as the said board may deem expedient.

3. Whenever it shall happen in any year that the funds of the board, applicable to the purpose, shall prove insufficient to discharge when due the full amount of the instalments of subscriptions actually made, then and in that case, it shall be the duty of the said board to expend the funds so applicable, as far as they will go, in the payment of the instalments of such subscriptions as shall stand first in point of order, according to the date of resolutions of the board of public works making the said subscriptions: and 72 the fund for internal improvement shall not be chargeable with any interest, in consequence of such suspension in the payment of the whole, or any part of said instalments.

4. When the board of public works, having made any subscriptions to the stock of any company, shall have good cause to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied, or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscriptions until proper legal measures can be taken to secure the faithful payment of private subscriptions, and the faithful application of the funds of the company.

5. The board of public works shall have the right to appoint such a number of the directors in all companies hereafter incorporated, to whose stock the board of public works may subscribe, as will be in proportion to the stock so subscribed; and the fund for internal improvement shall participate in all dividends declared by said companies, in the proportion which the amount actually paid on behalf of the state, bears to the amount of private subscriptions actually paid up at the time of declaring such dividends: and in all general meetings of the stockholders of such company, the proxy or proxies representing the interest of the fund for internal improvement, shall have the right to vote on all questions, and in the election of all officers except directors, in the manner, and under the limitations contained in the twentieth section of the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed the seventh day of February, eighteen hundred and seventeen.

6. It shall be the duty of the president and directors of every such company, to the stock of which the board of public works shall subscribe as aforesaid, annually, on or before the seventh day of December, to furnish to the secretary of the board of public works a report of the income and expenditure of every such company, for the next preceding year, including payments made by the stockholders, as well as tolls, together with a statement of the progress and condition

of their works a list of the stockholders at the time of making said report, with the number of shares standing in each name, and such other information respecting the affairs of said company, as the board of public works may require. It shall also be the duty of the president and directors of such company, within sixty days after any dividend shall have been declared by them, to give information thereof to the second auditor, and to pay into the public treasury, to the credit of the fund for internal improvement, within the said period, any such dividend to which the board of public works may be entitled: and in case of failure, either on the part of the president and directors of such company, in furnishing such report and information, or of the treasurer of such company, in paying such dividends as aforesaid, the president and directors, or the treasurer, as the case may be, of each company so failing, shall individually forfeit and pay to the board of public works, a penalty not exceeding fifty dollars; which said dividends and penalty may be recovered by motion in the general court, on ten days previous notice. 73

7. All acts and parts of acts coming within the purview of this act, shall be, and the same are hereby repealed.

8. This act shall be in force from and after the passing thereof.

CHAP. 94.—AN ACT to explain the act authorizing subscriptions on part of the commonwealth to the capital of joint stock companies.

(Passed March 18, 1836.) 69

Whereas the limited income of the fund for internal improvement will not justify subscriptions on the part of the state to all the canal, rail-road, turnpike, navigation, or other joint stock companies, which have been, or may be incorporated, for carrying on works of internal improvement, and it is expedient, until such income shall be adequately increased, that it shall be applied to the aid of such works, as by their character or position are best calculated to promote the prosperity of the state at large: Therefore,

1. *Be it enacted by the general assembly*, That nothing contained, or to be contained, in any acts incorporating companies for the purpose of executing and carrying on works of internal improvement, shall be considered as a pledge or assurance on the part of the general assembly, to subscribe on behalf of the state for any portion of the stock of such companies, unless the legislature expressly direct such subscription to be made in the act of incorporation, or by subsequent enactment.

2. This act shall be in force from its passage.

See Act April 9th, 1838, Chap. 12, under head "Interest on Public Debt."

ACTS RELATIVE TO THE REPAIR OF ROADS AND BRIDGES; ACTS AUTHORIZING THE TRANSFER OF ROADS AND BRIDGES TO THE COUNTIES IN WHICH THEY LIE; AND ACTS EFFECTING SUCH TRANSFERS.

[Code of Virginia, 1860.] 351

CHAPTER LXI.

Of works of Internal Improvement.

* * * * * * * * * * * * *

Transfer of state's interest in roads to county courts. 365

52. It shall be the duty of the board of public works with the consent of the county court of *such counties*,† all the justices having been summoned for that purpose, a majority of the justices being present when such consent is given, when in their opinion the public interest will be promoted thereby, to transfer and convey the state's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road may lie. The transfer shall be made by formal resolution, to be entered on the records of the board of public works, and a copy to be transmitted by the secretary of the board to the clerk of the county court, for record in the clerk's office in each county or counties where such road may lie. 1853-4

Transfer of interest of private stockholders.

53. The private stockholders in any turnpike or plank road in which the state's interest has been transferred in accordance with the preceding section, with the like consent of such county court, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the stockholders other than the state to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed. 366

† The title of the act from which sections 52, 53 and 54 are taken, authorizes "the transfer of certain turnpikes and plank roads to the counties in which they lie." The words "such counties," therefore, refer to the counties mentioned in the title.

Power of courts over roads when transferred.

54. The said county courts respectively, to which the interest of the state, or the entire joint stock interest in said roads shall be so conveyed, are hereby invested with all the rights, duties and powers in respect of said roads, now held and exercised by said board of public works, and may in their discretion change the mode and manner of keeping up said roads: provided the board of public works shall not transfer any turnpike or plank road that can in their opinion be made productive or self-sustaining: and provided this act shall not take effect until the stockholders other than the state shall have transferred their interest to said county.

CHAP. 230.—An ACT to transfer the Moorefield and Alleghany turnpike to the county court of Hardy county.

Passed January 20, 1858. 147

Whereas it is represented to the general assembly of the state of Virginia, that the travel upon the road known as the Moorefield and Alleghany turnpike in the county of Hardy, is insufficient to furnish the amount of toll necessary to keep the road in proper repair: therefore,

1. Be it enacted by the general assembly, that the main line of the Moorefield and Alleghany turnpike is hereby transferred to and vested in the county court of Hardy, to be held and kept in repair for public use, and to be in all respects subject to the authority of said county court, as other public roads in said county: provided, however, that the assent of the stockholders other than the commonwealth in said turnpike shall have been first obtained to the transfer: and provided further, that this act shall not apply to the Petersburg stem of said road.

2. This act shall be in force from the date of its passage.

CHAP. 129.—An ACT releasing the state's interest in the Wheeling and Marshall county turnpike road.

Passed February 25, 1858. 97

1. Be it enacted by the general assembly, of the state in the Wheeling and Marshall county turnpike road company in the counties of

Ohio and Marshall, is hereby released to the said counties of Ohio and Marshall: provided, however, that this act shall not take effect until the stockholders in the above named company shall relinquish their stock in the said road to the counties of Ohio and Marshall; and the said counties are authorized and required to keep said roads in order as other county roads.

2. This act shall be in force from its passage.

CHAP. 128.—An ACT releasing the commonwealth's interest in the Williamsport turnpike company to the county of Wood.

Passed April 7, 1858. 97

1. Be it enacted by the general assembly, that the interest of the commonwealth in the Williamsport turnpike company, and the road and toll houses and the grounds on which they are situate, in the county of Wood, be and the same is hereby released to the said county of Wood; to be subject to the control and disposal of the court of said county: provided, however, that before this act shall take effect, the individual stockholders in said company shall release to said county their interest.

2. This act shall be in force from its passage.

[Wheeling Acts Dec. 2, 1861.]

CHAP. 35.—An ACT transferring the State Stock in "The Marshall and Ohio Turnpike Company," to Marshall and Ohio counties.

Passed January 24, 1862. 20

Whereas, It is represented to the General Assembly, That the president and directors of "The Marshall and Ohio Turnpike Company" have failed to open and keep their road in repair, as required by the acts of assembly authorizing the construction of the same: Therefore,

1. Be it enacted by the General Assembly of Virginia, That all the stock now owned by this commonwealth in "The Marshall and Ohio Turnpike Company," be and the same is hereby transferred to, and vested in the counties of Marshall and Ohio, in the following proportions, that is to say nine-tenths of said stock to the county of Marshall, and one-tenth to the county of Ohio, to be under the control of the county courts of said counties, respectively.

2. Be it further enacted, That it shall be lawful for the said county

courts of Marshall and Ohio counties severally, to transfer the proportions, or either of them, or any part or parts of the said stock, vested by this act in the said counties of Marshall and Ohio, to any company that shall hereafter be lawfully organized, empowered and bound to open and keep in good repair said road. But until such transfer is made, the county court of Marshall county shall have entire control over all that portion of said road lying in the county of Marshall, and the county court of Ohio county shall 21
have control over all that portion of said road lying in the county of Ohio; and it shall be the duties of said courts to have their respective portions of said road worked and repaired, either by tolls to be collected therefrom, or by the mode prescribed, or that may hereafter be prescribed by law for the opening and keeping in repair of other county roads in said counties of Marshall and Ohio, respectively, or otherwise, in such manner and upon such terms as they may severally determine.

3. This act shall be in force from its passage.

[W. Va.]

CHAP. 30.—An ACT to authorize the Heirs of David Albright to establish a Ferry across Cheat River.

Passed August 3, 1863. 31

Be it enacted by the Legislature of West Virginia:

1. It shall be lawful for the heirs of David Albright, deceased, their heirs and assigns, to establish and keep a ferry from their lands at or near the town of Albright, in Preston county, across Cheat river to some convenient point on the opposite shore, where a former ferry, known as "Snider's ferry," crossed said river, and immediately below the site of the recent wire suspension bridge, known as the "Cheat River Toll Bridge," until the first meeting of the board of supervisors of the said county. And said board of supervisors shall at their first meeting, or as soon thereafter as may be practicable, (if any other person or persons shall have title to said ferry landings, or either of them,) award such damages as they may deem just to such adverse claimants, for the use and occupancy of said real estate for the period said Albright's heirs may have used the same for said ferry.

* * * * *

[W. Va.]

CHAP. 120.—An ACT providing for the construction and repair of Roads and Bridges.

Passed December 4, 1863. 178

Be it enacted by the Legislature of West Virginia:

1. The board of public works shall have power, by obtaining the consent of the board of supervisors, to transfer any road, bridge or turnpike to the county in which such road, turnpike or bridge may be. Such transfer shall be made by formal resolution to be entered on the record of the board of public works, and a copy of the same transmitted by the secretary of the board, to the clerk of the board of supervisors, for record in each county or counties where such road, turnpike or bridge may be; provided, the board of public works shall not transfer any road, turnpike or bridge which can in their opinion be made self-sustaining.

2. The private stockholders in any turnpike, road or bridge 179
in which the state's interest has been transferred in accordance with the preceding section, with the consent of the board of supervisors of such county, may likewise, in lawful meeting of said stockholders, transfer and convey the interests of the said stockholders to the county or counties as aforesaid, by a process similar to that by which the state's interest is conveyed.

3. The board of supervisors of each county shall provide for establishing, keeping in repair, changing the location of, or vacating any road, and keeping a record of all the county and township roads in their respective counties, subject to the provisions of this act.

* * * * *

44. The fifty-second chapter, and the fifty-second and fifty- 185
third sections of the sixty-first chapter of the Code of Virginia, second edition, and all other acts inconsistent with this act, are hereby repealed.

[W. Va.]

CHAP. 71.—An ACT to relinquish to the Elk River Bridge Company the Stock in said Company belonging to the State.

Passed February 28, 1865. 61

Be it enacted by the Legislature of West Virginia:

The interest or stock of this State in the Elk River Bridge Com-

pany is hereby relinquished to the said bridge company for the benefit of the stockholders thereof other than the state; provided, that this act shall be of no effect until the said bridge company shall cause to be erected across the said river a bridge suitable for passengers and wagons: Provided, however, that if the state, by her legislature, shall at any time within one year from the passage of this act, or at any time before the said bridge company shall have completed a bridge upon the piers and abutments owned by them, appropriate on the part of the state an amount toward the erection of the said bridge, proportionate to her interest in the same, then the interest so relinquished shall revert to and become the property of the 62
state as though this act had not been passed: Provided, further, that the state does not by this act relinquish her interest in any claim that she may have in common with the other stockholders in the bridge company against the government of the United States for the bridge destroyed by the army on the thirteenth day of September, eighteen hundred and sixty-two.

[W. Va.] 133

[No. 8.] Joint Resolution requesting the members of Congress from this State to secure the aid of the United States in repairing roads and bridges injured during the war.

Whereas, during the recent rebellion, our state, lying on the border, has been peculiarly exposed to the raids of the enemy and the ravages and desolations resulting from the oft repeated tread of advancing and retreating armies; and whereas, during this painful process, our citizens have endured suffering beyond weight or measure, in the loss of life in every form, at the hand of every variety of enemy—in captivity—in exile—in perils night and day; and in many parts of our state the general disruption of all organized legal and social order, and the embarrassment of even the ordinary pursuits indispensable to their comfort and existence. In this broad sweep of contending armies, and foes of lesser note, many of their churches, court houses—not to mention private property—have been injured or destroyed; but the roads and bridges, the most important of which, were in part owned by the state, and were used and many of them destroyed, by the Union armies—and the bridges burnt by order of the Union commanders as means of safety, leaving our principal roads impassable. Therefore,

Resolved by the Legislature of West Virginia, That our senators in congress be hereby instructed, and our representatives 134
requested, to respectfully, yet earnestly, present our grievances

to the attention of congress, and to adopt such measures as may best secure adequate relief in the premises; and that the governor transmit a copy hereof to each of our senators and representatives in congress.

ADOPTED, January 24, 1866.

[W. Va.]

CHAP. 117.—An ACT to provide for the repair of the Roads and Bridges throughout the State.

Passed February 28, 1866. 115

Be it enacted by the Legislature of West Virginia:

The interest of this state in all the turnpike roads and bridges within this state, is hereby transferred to the several counties in which the same or a part thereof may lie, and the boards of supervisors of the several counties in which such road or part thereof, or bridge, may lie, are hereby vested with all the rights, powers and duties heretofore vested in the state, as a stockholder in such road or bridge, among which shall be the power to establish gates and collect lawful tolls, and do and transact all other lawful business. The suspension bridges across the Monongahela river at Fairmont and Morgantown, and any other such bridge in this state, and the Kanawha turnpike, are not intended to be included in this act.

Provided, that this act shall not apply to the Maryland and Virginia Bridge Company.

ACTS RELATING TO THE WINCHESTER AND POTOMAC RAILROAD COMPANY.

CHAP. CXXII.—AN ACT to incorporate the Winchester and Potowmac railroad company.

(Passed April 8, 1831.) 187

1. *Be it enacted by the general assembly*, That it shall be lawful to open books in the town of Winchester, and at such other place or places, as a majority of the commissioners herein after named shall think fit, under the direction of John R. Cooke, Alfred H. Powell, Alexander S. Tidball, John Gilkison, Henry W. Baker, Joseph H. Sherrard, Henry M. Brent, John M. Brome and John Heiskill, or any five of them, for the purpose of receiving subscriptions to the amount of three hundred thousand dollars, in twelve thousand shares of twenty-five dollars each to constitute a joint capital stock, for the purpose of making a rail-road from the town of Winchester, to some convenient point on the Potowmac river, at or near Harper's ferry. The time and place of receiving subscriptions aforesaid, shall be advertised in such newspapers as the commissioners may direct and the books for receiving the same, shall not be closed in less than sixty days, and if it shall appear that more than twelve thousand shares of the capital stock aforesaid, shall have been subscribed for within the said sixty days, it shall be the duty of the said commissioners, or any five of them, to reduce the number of shares subscribed for among the subscribers, in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to twelve thousand; but if the whole number of shares shall not be subscribed for within sixty days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, as a majority of the above named commissioners may judge to be most beneficial, until the whole number of shares shall be subscribed for.

2. When four thousand shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators and assigns, shall be, and they are hereby declared to be incorporated into a company by the name and style of "The Winchester and Potowmac Rail-Road Company," and in that name may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, privileges and immunities of a corporation or body politic, in law, and may make all

such by-laws, rules and regulations, not inconsistent with the constitution and laws of this state, or of the United States, as shall be necessary for well ordering and conducting the affairs of the company. 195

* * * * *

33. This act shall be in force from its passage.

CHAP. CII.—An act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potowmac rail-road company.

(Passed March 14th, 1832.) 161

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby authorized, to subscribe on behalf of the commonwealth for so much of the capital stock of the Winchester and Potowmac rail-road company, not exceeding one-fourth or seventy-five thousand dollars, as shall not be taken and subscribed for by individuals before the first day of April next; the said subscription to be made according to the provisions of the act, entitled, "an act prescribing certain general conditions on which future subscriptions to the capital of joint stock com- 162 panies," shall be made on behalf of the commonwealth, passed at the present session of the general assembly.

2. *Be it further enacted,* That the subscriptions hereby authorized, shall be made upon condition, that if any company heretofore incorporated, or which may be hereafter incorporated, for the purpose of constructing a rail-road within, or chiefly within, the valley between the Alleghany and Blue Ridge of mountains, and shall choose so to do, the said Winchester and Potowmac rail-road company shall permit such other company to connect and unite their rail-road with that between the said town and the Potowmac river, so as to enable the cars of each company to proceed along the rail-road of the other. And each of the said companies shall be, and they are hereby required, to permit the cars or other vehicles of the other company to proceed on and along their said road, to the termination, or to any intermediate point thereof, upon payment of the tolls allowed by law for the use of the said rail-road: *Provided,* That nothing in this act contained shall be so construed as to abridge or impair the right of the Shenandoah company to construct a canal, or other works authorized by their charter, along the margin of the Shenandoah river.

3. This act shall be in force from the passing thereof.

CHAP. 107.—An ACT to authorize a further subscription on behalf of the state to the stock of the Winchester and Potomac rail-road company.

[Passed January 31st, 1833.] 72

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby authorized to increase the subscription on behalf of the commonwealth, heretofore authorized by law, to the stock of the Winchester and Potomac rail-road company, to two-fifths of the whole capital of the said company. And any subscription made by virtue of this act, shall be upon the same terms and conditions on which the subscription was authorized by the act, entitled, "an act to authorize a subscription on behalf of the commonwealth, to the stock of the Winchester and Potomac rail-road company," passed March the fourteenth, eighteen hundred and thirty-two.

2. This act shall be in force from its passage.

CHAP. 158.—An ACT authorizing a loan on the part of the state to the Winchester and Potomac rail-road company.

(Passed February 13, 1838.) 112

1. *Be it enacted by the general assembly,* That the board of public works be and they are hereby authorized and directed to loan on behalf of the commonwealth, out of the unappropriated income of the fund for internal improvement, to the Winchester and Potomac rail-road company, the sum of one hundred and fifty thousand dollars, upon condition that the salaries of the officers and servants of the said company shall not be directly or indirectly increased during the existence of this debt, and that the said Winchester and Potomac rail-road company, previous to the payment of any portion of the said loan, do execute to the president and directors of the said board of public works, a mortgage upon their whole property, real and personal, and upon the nett income of all their tolls and receipts, and cause the same to be recorded in the county court of Frederick county, to secure the payment of the interest on said loans semi-annually, and the repayment of the principal thereof in ten equal semi-annual instalments, beginning with the sixth payment of the semi-annual interest, into the treasury to the credit of the fund for internal improvement.

2. *Be it further enacted,* That if the income of the fund for internal improvement shall be inadequate to pay the said loan, the

said board of public works are hereby empowered to borrow such sum or sums as may be necessary therefor, agreeably to such terms and conditions as may be provided for loans for purposes of internal improvement, in any general act passed at the present session of the general assembly. But should no such act be passed, then the said board are hereby authorized to effect the said loan or loans upon the terms and conditions prescribed by the act passed February the sixth, eighteen hundred and thirty-four, entitled, "an act to amend the act, entitled, 'an act to authorize a subscription on behalf of the commonwealth to the stock of the Winchester and Potomac rail-road company, and for other purposes."

3. *Be it further enacted,* That if the said company accept the benefit of this act, it shall be upon condition that the legislature have the right to tax the stock, property and profits of said company, and that said company shall be subject to the thirty-sixth section of "an act prescribing certain general regulations for the incorporation of rail-road companies," passed March eleventh, eighteen hundred and thirty-seven.

4. *And be it further enacted,* That the loan granted by this act shall be first applied to the payment of so much of the debt due from said company, as is secured by lien upon the property of said company, and the remainder to any other portion of the debt of said company, and to no other purpose; and the board of public works are hereby required and authorized to make such arrangements as may be considered by that board necessary and proper to insure the faithful performance of the requirements of this act.

5. This act shall be in force from its passage.

CHAP. 116.—An ACT to amend an act, entitled "an act to incorporate the Winchester and Potomac railroad company," passed April 8th, 1831.

[Passed February 24, 1846.] 89

1. *Be it enacted by the general assembly,* That the Board of public works shall be and it is hereby authorized to receive from the Winchester and Potomac railroad company, annually, from and after the first day of August eighteen hundred and forty-seven, the sum of five thousand dollars, in lieu of interest upon the debt due by said company to the commonwealth, and of dividends upon the stock of the commonwealth in said company.

2. *Be it further enacted,* That so long as said company shall, according to the provisions of this act, pay on the first day of August of each and every year as aforesaid, into the public treasury, the sum

of five thousand dollars, the same shall be received in lieu of interest and dividends as aforesaid, and the payment of the principal of said debt shall be so long postponed.

3. *Be it further enacted,* That if default shall be made in the payment of said annuity, the Board of public works shall have power to proceed to collect the whole of said debt and interest due, in the same manner as if this act had not been passed.

4. *Be it further enacted,* That the lien of the commonwealth upon said road now existing, be retained in full force, for the whole debt and interest, the object of this act being only to postpone the collection of the same as long as the conditions of this act are complied with.

5. *Be it further enacted,* That this act shall not affect the right of the said company to dispose of their road to the Baltimore and Ohio railroad company, under the act of the last session.

6. This act shall be in force from its passage.

[Va.]

CHAP. 332.—An ACT for the relief of the Winchester and Potomac Railroad Company.

Passed February 22, 1866. 439

Whereas the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock, and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon. Such payment to be made in any bonds of the state, at their par value: and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

2. This act shall be in force from its passage.

[Va.]

CHAP. 242.—An ACT to authorize the Winchester and Potomac Railroad Company to increase its Capital Stock and to Borrow Money.

Passed February 25, 1867. 674

1. Be it enacted, That the Winchester and Potomac railroad company is authorized to increase its capital stock by an amount not ex-

ceeding seventy-five thousand dollars, in shares of twenty-five dollars each, in order to have the debts due from the said company converted into stock, or such of the debts as the creditors may agree to convert; and that such new stockholders shall be subject to the same terms and conditions, and be entitled to the same rights and privileges, as the present holders of stock.

2. That the said company is hereby authorized to borrow a sum of money not exceeding fifty thousand dollars, on such time and for such rate of interest as may be agreed upon, and to secure the payment thereof by a lien upon the road and its real and personal property and franchise.

3. This act shall be in force from the passage thereof.

[Va.]

CHAP. 98.—An ACT to amend and re-enact an act entitled an act for the relief of the Winchester and Potomac Railroad Company, passed February 22d, 1866.

Passed April 25, 1867. 900

1. Be it enacted by the general assembly, That the act passed February twenty-second, eighteen hundred and sixty-six, entitled an act for the relief of the Winchester and Potomac railroad company, be amended and re-enacted to read as follows:

"Whereas, the Winchester and Potomac railroad company have, by reason of the late war, sustained the loss of all its buildings, rolling stock and other property, and a portion of the roadway itself, besides the use of the road from the commencement of the war: Therefore,

"§ 1. Be it enacted by the general assembly, That it shall be lawful for said company to pay into the treasury of the commonwealth, on or before the first day of January, eighteen hundred and sixty-eight, the sum of eighty-three thousand three hundred and thirty-three and one-third dollars (the principal sum owing), together with all interest due thereon, such payment to be made in any bonds of the state, at their par value; and upon such payment being made, the claim of the state against said company shall be lifted and discharged.

"§ 2. In case the said company find it necessary to borrow money for the purpose aforesaid, upon the terms of securing such loan by a subrogation of the lender to the lien of the state for the amount advanced, then the treasurer of this commonwealth is hereby authorized and required, upon the request of the president of 901
said company, to assign and transfer the lien now held by the commonwealth to such lender, for so much as he may advance and interest, and release the residue of the debt, but without any recourse to the state."

2. This act shall be in force from its passage.

ACTS RELATING TO THE COVINGTON & OHIO RAILROAD.

CHAP. 67.—An ACT to authorize the Board of public works to construct a railroad from Covington to the Ohio river on state account.

Passed February 15, 1853. 66

1. Be it enacted by the general assembly, that for the purpose hereinafter named, the Board of public works be and they are hereby incorporated and made a body politic, under the name of "The Covington and Ohio Railroad Company," with all the powers conferred by the Code of Virginia upon the Board of public works when they are required to cause works of internal improvement to be constructed on state account, and with such additional powers and privileges, and subject to such restrictions as are set forth in said Code in respect to companies incorporated to construct railroads.

2. That said company shall cause to be constructed and equipped a railroad with a heavy rail from some point at or near Covington or Clifton Forge in the county of Alleghany, by the best practicable route, to some point on the Ohio river not below the mouth of Big Sandy river nor above the town of Point Pleasant.

3. That in the construction of this railroad the Board of public works shall commence and continue the construction of said road from its western terminus east at the same time they are extending the said road from its eastern terminus west.

4. That the Board of public works are hereby authorized to borrow on the credit of the commonwealth, in the mode prescribed by existing laws, the money necessary to construct and equip said road, but not more than one million of dollars are hereby appropriated for the purposes of this act.

5. That in constructing said road said company shall not interfere with the route or track for its canal which the James river and Kanawha company may within six months after the passage of this act designate by location, but said Covington and Ohio company may, before the expiration of said six months, proceed to locate and construct said road, with the consent of the stockholders of the James river and Kanawha company first had and obtained: provided, 67
that six months notice shall be given to the James river and Kanawha company before proceeding to locate each successive section of fifty miles.

6. This act shall be in force from its passage.

CHAP. 99.—An ACT providing for the completion of the Covington and Ohio railroad.

Passed March 13, 1856. 83

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws or that may hereafter be prescribed, the sum of five hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio railroad; to be expended within the present and succeeding year; and the sum hereby appropriated to be expended in the tunneling, grading, masonry and bridging of said road.

2. This act shall be in force from its passage.

CHAP. 105.—An ACT providing for the further construction of the Covington and Ohio rail road.

Passed March 20, 1858. 87

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed for making loans by existing laws, or that may hereafter be prescribed, the sum of eight hundred thousand dollars, to be appropriated to the construction of the Covington and Ohio rail road; to be expended within the years eighteen hundred and fifty-eight and eighteen hundred and fifty-nine.

2. Be it further enacted, that the third section of an act passed February fifteen, eighteen hundred and fifty-three, entitled an act to authorize the Board of public works to construct a rail road from Covington to the Ohio river on state account, be and the same is hereby repealed.

3. This act shall be in force from its passage.

699

CHAP. 14.—An ACT to provide for the construction and equipment of the Covington and Ohio rail road.

Passed February 29, 1860. 107

1. Be it enacted by the general assembly, that the Board of public works be and are hereby authorized and directed to borrow from time to time, upon the terms now prescribed by law for making loans, or that may hereafter be pre[illegible]ribed, the sum of two and one-half millions

of dollars, to be appropriated to the construction and equipment of the Covington and Ohio rail road: provided, that not more than one million thereof shall be expended in any one year.

2. This act shall be in force from its passage.

[Va.]

CHAP. 200.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed February 26, 1866. 317

1. Be it enacted by the general assembly of Virginia, That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of The Covington and Ohio Railroad Company, according to the provisions of the Code of Virginia (edition eighteen hundred and sixty), for the government of incorporated companies, and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall have all the rights, interests and privileges, of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the state of Virginia, upon condition that it shall, within six months after its incorporation, as provided in the tenth section of this act, commence, and, within six years, complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White sulphur springs and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scarey creek, and thence to the Ohio river. The said road to be constructed in a style at least equal to that of the Virginia Central railroad, and with grades not higher than those adopted by C. B. Fisk, Esquire, the former engineer of the Covington and Ohio railroad. But this grant is not intended to include the unexpended amount heretofore appropriated by the state of Virginia to this work.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line, to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient; and the said company is hereby empowered to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one

hundred dollars each; but if necessary to augment the capacity of said road, the capital may, from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars; and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders, at their first meeting, shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body), and shall appoint all other officers and agents, make by-laws, and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness, in the manner prescribed by the by-laws, for the purchase of materials, the construction and equipment of said railroad, and for all other necessary purposes.

7. The rates of charge by said company, for passengers and freight transported on the main line and branches of said railroad, shall never exceed the highest allowed by law to other railroads in the state of Virginia; and no discrimination shall be made in such charges against any connecting railroad or canal company in which the state has an interest; and the right is reserved to the state of Virginia to connect, at any point within its limits, with said railroad, or any of its branches, any canal or railroad in which the state has an interest; and no taxation upon the property of said company shall be imposed by the state until the profits of the company shall amount to ten per centum a year on its capital.

8. If said company shall fail to commence work or to put the road in operation within the times specified in the charter, then the franchise hereby granted shall revert to the state of Virginia, and the commissioners hereinafter named shall take possession of the said road, after serving due notice, in writing, on the president of said company, that the said reversion and repossession is claimed.

9. John B. Baldwin, George W. Bolling, Thomas S. Flournoy, R. H. Maury and William J. Robertson are hereby appointed commissioners, to act on the part of the state of Virginia; but should a like number be appointed by the state of West Virginia, then (in that case) to act in conjunction with the same, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end, they are hereby empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state and in furtherance of the purposes herein declared, and not inconsistent with this act; which said contract shall be, to all intents and purposes, as much a part of this charter as if the same had been herein included at the time of the passage of this act: provided, that no act of the said commissioners, whether acting by themselves,

or in conjunction with commissioners to be appointed by the state of West Virginia, shall be valid or effectual, unless approved and voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the general provisions of the Code of Virginia for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties, as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly, receive any emolument from, or have any interest in any company created by this charter.

13. The governor of the commonwealth shall, upon the passage of this act, immediately communicate the same to the governor of West Virginia, and respectfully request that it be submitted to the legislature of that state for such action as it may deem necessary to carry out the objects and purposes of this act.

14. This act shall be in force from the day of its passage, and that the act passed February thirteenth, eighteen hundred and sixty-two, at Wheeling, entitled an act to incorporate the Charleston and Winchester railroad company, be and the same is hereby repealed.

[W. Va.]

CHAP. 131.—An ACT to incorporate the Covington and Ohio Railroad Company.

Passed March 1, 1866.

Be it enacted by the Legislature of West Virginia:

1. That the persons upon whom the benefits of this charter may be hereafter conferred, and who may be organized as hereinafter provided, shall thereupon be constituted a corporation, under the name and style of "The Covington and Ohio Railroad Company," according to the provisions of the code of Virginia, second edition, for the government of incorporated companies and not inconsistent herewith.

2. The said Covington and Ohio railroad company, when fully constituted and certified as hereinafter provided, shall have all the rights, interests and privileges of whatsoever kind, in and to the Covington and Ohio railroad, and appurtenances thereto belonging, now the property of the State of West Virginia.

upon condition that it shall, within six months after its incorporation as provided in the tenth section of this act, commence and within six years complete, equip and operate a railroad from some point at or near Covington, Alleghany county, Virginia, and connecting with the Virginia Central railroad, by the way of the White Sulphur Springs, and the valleys of Greenbrier river, New river and Kanawha river, to a point at or near the mouth of Scary creek, and thence to the Ohio river, with the right to adopt the line of the West Virginia Central railway from Charleston to the Ohio river, upon such terms as may be agreed upon with the said West Virginia railway company. The said road to be constructed in a style at least equal to that of the Virginia Central railway, and with grades not higher than those adopted by C. B. Fisk, esquire, the former engineer of the Covington and Ohio railroad.

3. The said Covington and Ohio railroad company shall have the right to construct a branch from its main line to connect with the Virginia and Tennessee railroad at such points as it may deem most expedient, and the said company is hereby empowerd to acquire real property necessary for the construction of the said railroad and of the said branch.

4. The capital stock of the company shall not be less than three millions of dollars nor more than twelve millions, in shares of one hundred dollars each, but if necessary to augment the capacity of said road, the capital may from time to time, by a vote of two-thirds of the stockholders, be increased to an amount not exceeding twenty millions of dollars, and each stockholder shall be entitled to one vote for each share of his stock.

5. The stockholders at their first meeting shall elect directors, who, a majority thereof being necessary for a quorum, shall elect a president (from their own body) and shall appoint all other officers and agents, make by-laws and transact all business necessary to promote the purposes of the corporation.

6. The president and directors may create indebtedness in the manner prescribed by the by-laws for the purchase of materials, the construction and equipment of said railroad and for all other necessary purposes.

7. The rate of charge by said company for passengers and freight transported on the main line and branches of said railroad shall never exceed the highest allowed by law to other railroads in the state, and no discrimination shall be made in such charges against any connecting railroad or canal company chartered by the state, and no taxation upon the property of the said company shall be imposed by the state until the profits of said company shall amount to ten per cent on the capital of the company.

8. If said company shall fail to commence work or put the road in operation within the time specified in the second section, then the franchise hereby granted shall revert to the state, and the commis-

sioners hereinafter named shall take possession of the said road after serving due notice in writing to the president of said company, that said reversion and repossession is claimed.

9. George W. Summers, James Burley, Burton Despard, Joel McPherson and James O. Watson are hereby appointed commissioners to act on the part of the state of West Virginia, who shall act in conjunction with the commissioners appointed by the state of Virginia, whose duty it shall be to offer the benefits of this charter for the acceptance of capitalists, so as to secure the speediest and best construction, equipment and operation of said railroad. To this end they are empowered to make a contract with any parties who shall give the best terms and the most satisfactory assurances of capacity and responsibility, and to introduce into said contract any additional stipulations for the benefit of the state, and in furtherance of the purposes herein declared and not inconsistent with this act; which said contract shall be to all intents and purposes as much a part of this charter as if the same had been herein included at the time of the passage of this act. Provided, That no act of the said commissioners, whether acting by themselves or in conjunction with the commissioners appointed by the state of Virginia, shall be valid or effectual unless approved of or voted for by at least three of the commissioners appointed by this act.

10. The certificate of the said commissioners of the due execution of the said contract, and the organization of the said company, shall operate to confer upon said company all the benefits of this charter, subject only to the provisions of the code of Virginia, second edition, for the government of internal improvement companies, so far as the same may not be inconsistent herewith.

11. Should the forfeiture provided for in the eighth section occur, the said commissioners may make a new contract with any other parties as though no former contract had been made.

12. The said commissioners may receive from the treasury of the state their necessary expenses incurred in the execution of the duty herein imposed upon them, and shall not directly or indirectly receive any emolument from, or have any interest in any company created by this charter.

13. The governor shall, upon the passage of this act, immediately communicate the same to the governor of Virginia.

[W. Va.]

CHAPTER 93.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio River.

Passed February 26, 1867.

102

Be it enacted by the Legislature of West Virginia:

1. That it shall be lawful for the Covington and Ohio Railroad Company, which may be organized under the act passed by the General Assembly of Virginia, on the twenty-sixth day of February, eighteen hundred and sixty-six, and the act passed by the Legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled "An Act to incorporate the Covington and Ohio Railroad Company," to consolidate with the Virginia Central Railroad Company, with the West Virginia Central Railway Company, with the Southside Railroad Company, with the Norfolk and Petersburg Railroad Company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate, in general meeting.

2 The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as the Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake 103
and Ohio Railroad Company, when formed by two or more companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy river or the mouth of the Great Kanawha river as the Ohio terminus of their road, or may construct a branch of their road to both points and may occupy the line of the West Virginia Central Railway Company, with its consent, from Charleston to the Ohio river, and upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio Railroad Company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central Railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside Railroad Company and the Norfolk and Petersburg Railroad Company, or either of them, become consolidated

with the Covington and Ohio Railroad Company, it shall be the duty of the consolidated company within the time agreed upon in the terms of consolidation, to construct a railroad from the terminus of the Southside Railroad at Lynchburg to Covington, or a suitable point of connection on the Virginia Central Railroad; and said company shall be vested with all the powers conferred by the code of Virginia to enable it to construct said railroad.

6. The state reserves the right to connect with the works of this company any other work of internal improvement, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

7. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money, at a rate of interest not exceeding eight per centum per annum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

8. It shall be lawful for said company to acquire not exceeding five millions of acres of land in payment for subscriptions of stock or by purchase; provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

9. Said company may elect such number of directors and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

10. Each stockholder shall have one vote in the meetings of the stockholders, for every share of stock held by him. 104

11. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio Railroad from the death, resignation or disability to act, of any of its members, it shall be the duty of the governor of the state in which such member resided to fill the vacancy by a new appointment.

12. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio Railroad Company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio Railroad, and construct said railroad.

13. The said Chesapeake and Ohio Railroad Company shall have the right, at any time within two years after its organization, to purchase the stock held by the State of Virginia at the date of the purchase in said company, by transferring to the board of public works of Virginia, bonds of the State of Virginia, for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe to the State of Virginia at the date of payment, on account of loans made to any of the companies which may have con-

solidated, by surrendering to the board of public works of Virginia, State bonds for an amount equal to the debts proposed to be paid, and may also purchase the right of the State of Virginia in and to the Blue Ridge Railroad by the surrender of State bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central Railroad Company; said amount to be ascertained by the commissioners of the Covington and Ohio Railroad. It shall also be lawful for any stockholder in the Chesapeake and Ohio Railroad Company to purchase a part or the whole of the stock held by the State of Virginia at the time of purchase, in the company of which he is a stockholder, by transferring to the board of public works of Virginia, State bonds equal in amount to the stock proposed to be purchased. But nothing in this act contained shall be held to bind the State of West Virginia for any part of the debts of Virginia.

14. The Virginia Central Railroad Company and the West Virginia Central Railway Company, or either of them may contract with the Covington and Ohio Railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central Railroad Company or West Virginia Central Railway Company, shall be known as the Chesapeake and Ohio Railroad Company and shall be entitled to all the benefits of the charter of the Covington and Ohio Railroad and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio Railroad Company when organized.

15. It shall be lawful for the board of supervisors of any county to take the sense of the qualified voters of their county upon the question of subscription of the stock of any company which may be authorized to construct the railroad from Covington, in the 105
State of Virginia, to the Ohio river; and, should three-fifths of the persons who may vote on such question, vote in favor of the proposed subscription, the said board of supervisors shall appoint an agent to subscribe for the amount of stock which may have been authorized by the vote of the county, and also an agent to negotiate a loan or loans in the name of the county, at a rate of interest not exceeding ten per cent per annum, for the purpose of paying such subscription of stock, and said board of supervisors shall be authorized to issue the bonds, coupon or registered, of the county for the amount of such loans; and said board of supervisors shall from time to time, assess and collect taxes upon the taxable subjects of their county sufficient to pay the interest upon such loans and the final extinction of the principal thereof.

16. James Burley, Z. D. Ramsdell, Harrison Hagans, Joel McPherson and John S. Cunningham are hereby appointed commissioners on behalf of West Virginia, in lieu of the commissioners appointed by the act passed March first, eighteen hundred and sixty-six, entitled

"An act to incorporate the Covington and Ohio Railroad Company," with all the powers vested in the former commissioners by said act, and said commissioners may act conjointly with the commissioners of Virginia or may act separately, but no act of the said commissioners whether acting by themselves or in conjunction with the commissioners appointed by the State of Virginia shall be valid or effectual unless approved or voted for by at least three of the commissioners appointed by this act.

17. It shall be the duty of the company which may be formed under this act to file, within thirty days after their organization, with the board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

[Va.]

CHAP. 280.—An ACT to provide for the completion of a line or lines of Railroad from the waters of the Chesapeake to the Ohio river.

Passed March 1, 1867. 705

1. Be it enacted by the general assembly, That it shall be lawful for the Covington and Ohio railroad company, which may be organized under the act passed by the general assembly of Virginia, on the twenty-sixth February, eighteen hundred and sixty-six, and the act passed by the legislature of West Virginia, on the first day of March, eighteen hundred and sixty-six, entitled an act to incorporate the Covington and Ohio railroad company, to consolidate with the Virginia Central railroad company, with the Southside railroad company, with the Norfolk and Petersburg railroad company, or with one or more of said companies, upon such terms as may be agreed upon by the stockholders of the companies proposing to consolidate in general meeting.

2. The companies which may consolidate under the provisions of this act shall constitute one corporation, which shall be vested with all the rights, privileges, franchises and property which may have been vested in either company prior to the act of consolidation, and shall be known as The Chesapeake and Ohio Railroad Company.

3. Should the consolidation of all the companies not be effected at the same time, it shall be lawful for the Chesapeake and Ohio railroad company, when formed by two or more of said companies, afterwards to consolidate with the remaining company or companies.

4. It shall be the duty of said company, within six years after its organization, to complete the railroad from Covington to the Ohio river, in a style and with grades and curves not inferior to those adopted by C. B. Fisk, Esq., late chief engineer, in his report and plans of said work; and they may select the mouth of Big Sandy

river, or the mouth of the Great Kanawha river, as the Ohio terminus of their road, or may construct a branch of their road to both points; and may occupy the line of the West Virginia Central railroad company, from Charleston to the Ohio river, upon terms to be agreed upon by said companies; and the said Chesapeake and Ohio railroad company shall have the right to construct an air line railroad from Richmond to Charlottesville, or to make such changes in that part of the Central railroad which lies between said points as will shorten the same, and shall have all the powers conferred by the Code and laws of Virginia which may be necessary for this purpose.

5. Should the Southside railroad company and the Norfolk and Petersburg railroad company, or either of them, become consolidated with the Covington and Ohio railroad company, it shall be the duty of the consolidated company, within the time agreed upon 706
in the terms of consolidation, to construct a railroad from the terminus of the Southside railroad, at Lynchburg, to Covington, or a suitable point of connection on the Virginia Central railroad; and said company shall be vested with all the powers conferred by the Code of Virginia to enable it to construct said railroad.

6. Should the Chesapeake and Ohio railroad company refuse to consolidate with the Norfolk and Petersburg railroad company and the Southside railroad company, on application, it shall be lawful for the Norfolk and Petersburg railroad company and the Southside railroad company to consolidate upon such terms as may be agreed upon by the stockholders of said companies, and the consolidated company shall be known by the name of The Norfolk, Petersburg and Covington Railroad Company; and shall be vested with all the rights, interests, franchises and property which belonged to either company prior to the act of consolidation, and shall be authorized to extend their road from Lynchburg to Covington, or a suitable point of connection on the Virginia Central railroad, and shall have all the powers conferred by the Code and the laws of Virginia to enable it to construct said railroad; and said company may have a capital stock not exceeding fifteen millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock, and may borrow such sums of money as may be necessary, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same; and it shall be the duty of said company, within six years after its organization, to complete said railroad. The Chesapeake and Ohio railroad company, and the Norfolk, Petersburg and Covington railroad company, shall mutually furnish every facility for the transportation over their roads of tonnage and passengers coming from the road of one company to the road of the other company, and there shall be no manner of discrimination against trade and travel passing from the road of one of said companies to the road of the other company.

7. The state reserves the right to connect with the works of this

company any other work of internal improvements, and no discrimination shall be made in the charges of said company against the trade and travel of any connecting work.

8. Said company may have a capital stock not exceeding thirty millions of dollars, to be divided into shares of one hundred dollars each, and may make a part thereof preferred stock; and may borrow such sums of money, at a rate of interest not exceeding eight per centum, as may be necessary for the construction and proper equipment of its road, and execute liens upon its property and revenues to secure the payment of the interest and principal of the same.

9. It shall be lawful for said company to acquire not exceeding five millions of acres of land, in payment for subscriptions of stock or by purchase: provided, however, it shall not be lawful for said company, at the expiration of ten years after the completion of their road, to hold more land than shall be necessary for the use of the road.

10. Said company may elect such number of directors, and provide for the election or appointment of such officers and agents as it may decide to be necessary for the management of its affairs.

11. Each stockholder shall have one vote in the meetings of the stockholders for every share of stock held by him.

12. Should a vacancy at any time occur in the board of commissioners of the Covington and Ohio railroad from the death, resignation, or disability to act of any of its members, it shall be the duty of the governor of the state in which such member resided, to fill the vacancy by a new appointment.

13. It shall be lawful for the commissioners to cause books of subscription to the stock of the Covington and Ohio railroad company to be opened at such places and under the direction of such agents as they may appoint, with the view of organizing a company to accept the charter of the Covington and Ohio railroad and construct said railroad.

14. The said Chesapeake and Ohio railroad company shall have the right, at any time within two years after its organization, to purchase the stock held by the state in said company, at the date of the purchase, by transferring to the Board of public works bonds of the state for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe the state at the date of the payment, on account of loans made to any of the companies which may have consolidated, by surrendering to the Board of public works state bonds for an amount equal to the debt proposed to be paid, and may also purchase the right of the state in and to the Blue ridge railroad by the surrender of state bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central railroad company, said amount to be ascertained by the commissioners of the Covington and Ohio railroad; and should the Norfolk, Petersburg and Covington railroad company be orga-

nized, it may, within two years after its organization, purchase any stock held by the state therein at the date of purchase, by the surrender of state bonds for an amount equal to the stock proposed to be purchased, and may pay any debt due the state on account of loans made to the companies comprising it, by a surrender of state bonds for an amount equal to the debt proposed to be paid. The stock which may be purchased from the state by either of said companies shall be cancelled. It shall also be lawful for any stockholder in either the Chesapeake and Ohio railroad company, or the Norfolk, Petersburg and Covington railroad company, to purchase a part or the whole of the stock held by the state, at the time of the purchase, in the company of which he is a stockholder, by transferring to the Board of public works, state bonds equal in amount to the stock proposed to be purchased. 708

15. The Virginia Central railroad company may contract with the Covington and Ohio railroad commissioners for the construction of the railroad from Covington to the Ohio river, and in the event such contract be made, the said Virginia Central railroad company shall be known as the Chesapeake and Ohio railroad company, and shall be entitled to all the benefits of the charter of the Covington and Ohio railroad, and to all the rights, interests and privileges which by this act are conferred upon the Chesapeake and Ohio railroad company when organized.

16. It shall be the duty of the company or companies which may be formed under this act, to file within thirty days from their organization, with the Board of public works of Virginia and West Virginia, a duly certified and correct copy of the terms of consolidation.

17. It shall be the duty of the governor to communicate a copy of this act to the governor of West Virginia, with the request that it be laid before the legislature of said state, in order that such concurrent legislation may be had on the part of that state as may be necessary.

18. This act shall be in force from its passage.

[W. Va.]

CHAPTER 3.—An ACT confirming and amending the charter of the Chesapeake and Ohio Railroad Company.

Passed January 26, 1870. 5

Be it enacted by the Legislature of West Virginia:

1. That the contract, dated August thirty-first, eighteen hundred and sixty-eight, made by commissioners of Virginia and West Virginia, with the Virginia Central Railroad Company, by which the Chesapeake and Ohio Railroad Company was formed, and under which it has been organized, be and the same is hereby approved, ratified, and confirmed as follows:

Contract with Commissioners for completing the Covington and Ohio Railroad.

The parties to the contract are:

First. The commissioners of the state of Virginia, under the following acts of the General Assembly, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed February twenty-sixth, eighteen hundred and sixty-six. 2nd, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed March first, eighteen hundred and sixty-seven.

Second. The commissioners of the state of West Virginia, under the following acts of the Legislature, viz: 1st, "An act to incorporate the Covington and Ohio Railroad Company," passed March first, eighteen hundred and sixty-six. 2d, "An act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed February twenty-sixth, eighteen hundred and sixty-seven. 3rd, "An act to amend and re-enact the fifteenth section of an act providing for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio river, passed February twenty-sixth, eighteen hundred and sixty-seven," passed February sixth, eighteen hundred and sixty-eight.

Third. The Virginia Central Railroad Company:

The said commissioners of Virginia and West Virginia, by virtue of the authority given them by the statutes already referred to, and in order to secure the speediest and best construction, equipment, and operation of the said railroad from Covington to the Ohio river, according to the true intent and meaning of the said statutes, have contracted therefor with the said Virginia Central Railroad Company as the party giving the best terms and the most satisfactory assurances of having the capital, capacity and responsibility contemplated and required by the said statutes, and have introduced into the said contract the following additional stipulation, proposed by the stockholders of the said Virginia Central Railroad Company in general meeting on the twenty-ninth day of November, eighteen hundred and sixty-seven, and accepted by the said commissioners as being for the benefit of their respective states and in furtherance of the purposes declared by the legislature aforesaid, viz: 6

I. The work to be commenced and completed in the time and manner provided in the charter.

II. The company to guarantee four per cent semi-annual dividends upon any stock which may be subscribed for the construction of said road, after the completion of the road to the Ohio river, and in the meantime said stock shall be preferred in any dividends which shall be declared by the company, to an extent not exceeding four per cent semi-annually.

III. The company to borrow such sums of money at a rate of in-

terest not exceeding eight per cent per annum, as may be necessary, in addition to the funds arising from stock subscriptions for the completion of said road, and to execute a lien on its property and resources to secure the payment of the principal and interest of such loans: Provided, that subscriptions may be received to be applied to the construction of the work continuously from either end of the line.

IV. The company may guarantee the payment of principal and interest of bonds of cities and counties, receivable in payment of subscription to stock.

V. That bonds of cities and counties at ninety cents on the dollar, and bearing eight per cent per annum interest, convertible into preferred stock, be received in payment of subscription to stock.

VI. Nothing contained in any contract made by this company shall have the effect to deprive the present creditors of the company of their claims for satisfaction out of the present property of the company, and it shall be the duty of the president and directors, before executing any further lien on the present property of the company, to secure by mortgage any portion of the funded or floating debt, not heretofore so received, that cannot be promptly paid off in the ordinary administration of the affairs of the company.

And the said Virginia Central Railroad Company having undertaken and contracted to construct the said railroad, on the terms and conditions aforesaid, it is hereby declared and certified that the said company shall hereafter be known as "The Chesapeake and Ohio Railroad Company," and is entitled to all the benefits of the charter of the Covington and Ohio Railroad, and to all the rights, interests, and privileges which, by the statutes aforesaid, are conferred upon the Chesapeake and Ohio Railroad Company, when organized.

In testimony whereof, the commissioners of Virginia and West Virginia have set their hands and seals; and the said Virginia Central Railroad Company has caused the corporate seal of the company to be affixed, with the signature of Edward Fontaine, president of said company, this thirty-first day of August, eighteen hundred and sixty-eight.

JOHN B. BALDWIN, [L. S.]
GEORGE W. BOLLING, [L. S.]
THOMAS S. FLOURNOY, [L. S.]
WM. J. ROBERTSON, [L. S.]

Commissioners of Virginia.

JAMES BURLEY, [L. S.]
Z. D. RAMSDELL, [L. S.]
JOEL MCPHERSON, [L. S.]
JOHN S. CUNNINGHAM, [L. S.]

Commissioners of West Virginia.

E. FONTAINE,
President of the Va. Central Railroad Company.

2. That the Chesapeake and Ohio Railroad Company, formed and organized under said contract, shall have all the rights, benefits and privileges, and be subject to all the duties and responsibilities provided and declared in the said contract, and in the legislation of the states of Virginia and West Virginia, therein referred to; except only that the said company shall be allowed for the completion of the road from Charleston, in the county of Kanawha, to the mouth of Sandy, in the county of Wayne, the same time that is given by the charter for completing the other portions of the work within this state.

3. That the general meetings of the said company may be held at any station upon the line of the road, and meetings of the directory at such places as the by-laws may prescribe.

4. That upon the completion of the road, if the said company shall not deem it expedient to establish its principal office within this state, its place of business at or nearest Charleston, in the county of Kanawha, shall, for all purposes required by law, be deemed to be such principal office within this state. And, until such completion, all notices and legal process shall be sufficiently served upon the company if delivered in person to the president, vice-president, or any director of the company, whether in this state or elsewhere.

ACTS RELATING TO STATE'S EXPENDITURES ON "KANAWHA IMPROVEMENTS."

39

CHAPTER LVI.—An act to amend the act, entitled "an act for clearing and improving the navigation of James river," and for uniting the eastern and western waters, by the James and Kanawha rivers.

[Passed February 17th, 1820.] 39

Whereas it will be greatly beneficial to the good peopple of this Commonwealth to improve the navigation of the James and Jackson's rivers, from tide water to the mouth of Dunlap's creek, by navigable canals and locks, where necessary; to make a convenient road from thence to the great falls of the Kanawha river; and to make the last mentioned river conveniently navigable from the great falls thereof to the river Ohio. And, whereas there is reason to believe that the James River Company is willing to consent to such modifications of their charters as will enable the said company, as an agent acting and holding in trust for the benefit of this Commonwealth, to undertake and carry the said improvements into effect, in such manner as the General Assembly shall, from time to time, direct and require; and, under the direction and superintendence of such agent or agents as may from time to time be appointed for that purpose; by appropriating to these objects such sums of money as they may borrow, under the authority and by the direction of the General Assembly, and upon such terms as may be prescribed by law from time to time; and that the said company will moreover consent to apply all their surplus tolls and income of every kind which may accrue after the first day of January, eighteen hundred and twenty, from the works and property now belonging to them, or which they may hereafter acquire, to the payment of the interest on the money which they may so borrow, except only so much thereof, as may be necessary to defray the expenses of keeping their works now existing, or hereafter to be made, in complete repair, and all reasonable expenses necessary for collecting tolls, and managing all other affairs of the company; and, moreover, excepting so much of the said tolls and income as may be necessary to pay, in semi-annual instalments, a dividend upon the present stock of the said company, of twelve per centum per annum, for and during the term of twelve years from said first day of January, eighteen hundred and twenty, and fifteen per centum per annum from and after the expiration of the said term of twelve years, forever

thereafter; and that the said company will account for the said surplus tolls and income of every kind, to the General Assembly, and pay the same, at the time or times, and in the manner which the General Assembly shall direct; but upon the further condition that the General Assembly shall provide for making good any deficiency in the payment of the interest on any money so borrowed, which may remain to be provided for, after applying the surplus tolls and other income of the said company, with the exceptions aforesaid, to the payment of interest, as aforesaid:

1. *Be it therefore enacted*, That, if the James River Company shall, on or before the fifteenth day of March next, assent to the provisions of this act, by a resolution to that effect, entered on their journals, and certify the same to the Governor of this Commonwealth, who shall forthwith make proclamation thereof, then this act shall immediately commence and be in force; and shall thereafter be considered a compact between this Commonwealth and the said company; subject, however, at all times, to such change and modification, as the legislature may think proper to make; *Provided*, That no such change or modification shall be made as will take from the James River Company their right to the dividends, or any part of the dividends upon their stock, allowed to them by this act; and that no such change or modification shall be made as will take from those who may have loaned money to the said company, under the faith of this act, the security hereby pledged to them for the payment of the interest thereon.

2. *And be it further enacted*, That, in the event of the assent of said company, as aforesaid, the said company shall, during the present year, so far as their funds, hereinafter provided for, will enable them, and without delay, proceed to the execution, and steadily persevere to the completion, of the following works, and in the following order, that is to say: First, to render the Great Kanawha, from the great falls thereof to the Ohio river, navigable at all seasons of the year for boats drawing three feet water, according to the plan of the principal engineer, in his report to the Board of Public Works, made in January, eighteen hundred and twenty. Secondly, to improve the navigation of James river, from tide water to Pleasant's Island, by locks and navagable canals, affording at all seasons of the year at least three feet depth of water from tide water to said island, and so as to navigate conveniently boats carrying one thousand bushels of coal at all points below the highest point at which coal lands on James river are now known; and above such coal lands, by a canal, not less than thirty feet wide at top, and twenty feet wide at bottom, having, at all seasons of the year, not less than three feet depth of water, in every part thereof, according to the said report of the principal engineer, and make safe and convenient communications from the river, at such point or points as will afford ample accommodation to the coal trade. Thirdly to make the best road practicable, at an expense of one hundred

thousand dollars, from the mouth of Dunlap's creek, to the great falls of the Great Kanawha river, and to expend in the making of said road, in each of the two successive years, immediately following the completion of the aforesaid works, the sum of fifty thousand dollars; the said road to be made in the most direct practicable route, not to exceed in any part five degrees of declivity or acclivity, and to be made according to the suggestions of the said report of the principal engineer. Fourthly, to make navigable canals and locks from Pleasant's island to the mouth of Dunlap's creek, according to the suggestions of the 41
said report of the principal engineer, as nearly as may be. And fifthly, to make safe and convenient communications from the river, at such points as will afford ample accommodation to the trade on the river: the road aforesaid to be completed according to the provisions of the act, entitled, "An act prescribing certain general regulations for the incorporation of turnpike companies," dispensing, however, with the summer roads required by the said act, except clearing the same of timber; and the winter road shall be improved, as required by the said act, at least twenty-two feet wide, except in difficult places, but in no place less than eighteen feet wide; and the said company shall constantly keep said road in good repair: *Provided, however,* That, if the sum of one hundred thousand dollars should be insufficient to improve the road in the manner described in this section, then such further sums shall from time to time be appropriated as will be adequate to that purpose. The improvements aforesaid, and all others, which may be prescribed by the legislature, shall, from time to time, be made under the superintendence of such commissioner or commissioners, agent or agents, as the General Assembly shall from time to time appoint.

2. *And be it enacted,* That, to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions in favor of turnpike companies, which are to be found in the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," as well for the condemnation of lands as for other purposes.

3. *And be it further enacted,* That, to enable the said company to acquire sufficient lands for the abutments of dams and bridges, or canal, locks, toll-houses, houses for keepers of locks, and other necessary purposes, it shall be lawful for them to purchase in fee simple, of the proprietors of such lands, a quantity thereof not exceeding two acres, for each abutment of a dam or bridge; not exceeding two acres where any lock or locks may be necessary; not exceeding two acres where any toll-house may be necessary; and not exceeding one hundred and fifty feet wide the whole length of any canal which may be necessary; and, in case of such purchase or purchases, to contract for and acquire the right of establishing any machinery and working the

same with the water from any canal or dam, so as not to impair the navigation by such use of water, and of again selling or leasing the same. And, in case the lands so necessary cannot be acquired by contract, that then the said company may proceed to have such necessary lands, according to the quantities aforesaid, or less at their discretion, condemned in the manner prescribed by the act, entitled, "An act prescribing certain general regulations for incorporating turnpike companies," for condemning land for the use of any turnpike road, changing the forms of proceedings as the nature of the case may require. And when damage may arise from the overflowing of the waters, occasioned by the works of said company, the same shall be assessed and paid in the same manner, varying the forms of the proceedings as the nature of the case may require. But, in case of such condemnation, the company shall only have the right of us- 42
ing the lands so acquired for the purpose of improving and for the convenient use of the navigation aforesaid, and the other purposes aforesaid, but may at any time thereafter acquire, by purchase, the right to use the same for machinery as aforesaid, or may at any time dispose of water power to the proprietor of the adjoining lands on such terms as they may agree upon, not endangering the navigation as aforesaid. And the said company shall have the right to enter on lands for laying out their canals, dams and other works, and in making examinations as to the best mode of improvement, in like manner as is allowed to turnpike companies by the act aforesaid. And if the said company should have occasion to carry materials for their works through the lands of others, or to deposit such materials on the lands of others, or to carry on any of their said works on such lands, and cannot contract with the proprietors of such lands for the privileges aforesaid, on reasonable terms, they may proceed to assess the value of such privileges, and acquire them as lands may be acquired as aforesaid, changing the forms of the proceedings as occasion may require. And in case any controversy shall arise in any county or other inferior court, in relation to the matters aforesaid, between the said company, their servants or agents, and others, the same shall be decided as soon as may be, having a due regard to justice, without regard to priority of other matters or suits upon the docket; and, in case of unreasonable delay herein in such court, such suit or controversy shall be removed by certiorari, in to the superior court having jurisdiction thereof, and there be speedily decided as aforesaid.

4. *And be it enacted*, That, so soon as the said works shall be completed in parts or sections, so as to be useful, the same shall forever thereafter be esteemed and taken as public highways for the transportation of all goods, commodities and produce whatsoever, upon the payment of such tolls as shall be prescribed by law; and the road, canals, locks, dams and other works, when perfected, with all tolls and other profits and emoluments arising therefrom, shall be, and the same are hereby vested in the said company as agents in trust for this

Commonwealth, and shall be deemed real estate, transferable only on the books of the said company, by the proprietor or proprietors, his, her or their agent or agents, duly authorised, and shall be forever exempt from the payment of any tax, assessment or imposition whatsoever.

5. *And be it enacted*, That, so soon as the improvements for the navigation of the Kanawha river shall be completed as aforesaid, from Slaughter's creek to the Ohio river, the said company shall be entitled to demand and receive, upon boats and commodities passing the said river, tolls at the following rates, that is to say: On salt, two cents per bushel; on bacon, twelve and a half cents per hundred weight; on every barrel of cider or beer, twenty cents; on every cask of linseed or other oil, ten cents; on every bushel of wheat, peas, beans, flax or hemp seed, one cent and a half; on every bushel of indian corn, oats, potatoes or apples, one cent; on every barrel of pork or beef, ten cents; on every barrel of flour, six and a fourth cents; on every bushel of indian meal, one cent; on every bushel of dried fruit, two cents; on every ton of hemp, potash, bar or manufactured iron, one dollar; every ton of pig iron or castings, forty-five cents; every hundred bushels of lime, one dollar; every chaldron of 43
coal, twenty-five cents; every hundred barrel staves or heading, one cent; every hundred hoop poles, one cent; every hundred cubic feet of plank or scantling, three cents; every hundred cubic feet of other timber, six cents; every hundred hogshead or pipe staves, two cents; every empty barrel, one quarter of a cent; on whiskey, apple and peach brandy, or other domestic spirits, fifty cents per barrel; on rum, wine, gin and french brandy, or other foreign liquors, three cents per gallon; every hundred weight of all other commodities or packages whatsoever, thirty cents; on every boat or vessel other than canoes, not having commodities on board, yielding a toll of at least one dollar and fifty cents, one dollar and fifty cents; and every canoe, having commodities on board, the rate of toll herein-before prescribed: *Provided*, That an empty boat, canoe or other vessel, returning, whose load has already paid tolls, shall return toll-free. Which said tolls shall be paid at or near the Tyler shoals, as the tolls of the James River Company are now payable and collectable by law; and the said company shall have all the remedies for recovering said tolls, as they now have by law for collecting and recovering their present tolls.

6. And, so soon as the said company shall have opened and improved the road aforesaid in sections, such as are specified in the act aforesaid, by the gradual expenditure of the said sum of one hundred thousand dollars, they shall be authorised to collect and receive, in the manner prescribed by the said act, tolls on the said road, in sections, to the amount of one half the tolls authorised by the said act, in relation to turnpike roads: and so soon as the said road shall be completed, according to the provisions of the said act, with the ex-

ceptions aforesaid, in sections, the said company shall be entitled to receive and collect thereon, the full tolls authorised by the said act.

7. And, so soon as the said canals and other works shall be completed, from tide water, to the highest point on James river, where coal is now raised, the said company shall be entitled to receive a toll of two cents per bushel, on all coal passing the same, or any part thereof, in lieu of the toll which they are now entitled to receive on coal.

8. And the General Assembly hereby pledge themselves, that, as the works aforesaid on the James and Jackson's rivers, and in the vallies of these rivers, shall progress, and shall contribute to reduce the expense of transportation, up or down the said rivers or canals, below the average price of transportation upon the said rivers, as they have been for the three years last past, they will authorise the said company to receive tolls thereon, in convenient sections, to the amount necessary, (with their other resources specified in this act, as applicable to the payment of interest on money to be borrowed by them,) for the payment of the interest on the money expended in such work; *provided*, that such additional tolls shall not exceed one third of the saving in transportation up and down the said rivers, which will accrue thereby to those who use the said improvements, taking the average price of transportation for three years last past, as the basis of the estimates.

9. *And be it enacted*, That fourteen commissioners be ap- 44
pointed, residing in the counties bordering on the James river and Jackson's river, for the purpose of ascertaining the average price of transportation of the various commodities liable to toll, according to the terms of the charter of the James River Company, and all other commodities up and down the rivers aforesaid, for three years last past; that is to say, Daniel Warwick of the city of Richmond, William Trabue of Chesterfield, Tarlton Woodson of Goochland, Jacob Michaux of Powhatan, Francis B. Deane of Cumberland, John H. Cocke of Fluvanna, William J. Freeland of Buckingham, Robert Rives of Nelson, William Moon of Albemarle, John Horsley of Amherst, Richard Pollard of Campbell, Isaac Otey of Bedford, Robert White of Rockbridge, and James Cartmill of Botetourt. It shall be the duty of each commissioner, to enquire diligently and impartially, upon the oaths of such person or persons as may be well informed upon the subject, in their respective counties aforesaid, what has been the average price as aforesaid, of the transportation of all commodities up and down the said rivers, or otherwise, from and to Richmond, and from and to the principal landings and places of deposit on the said rivers, in the said counties respectively. And the said commissioner, in each of the said counties, shall forthwith return an account of such average prices ascertained as aforesaid, to the courts of the said counties respectively, to be there recorded, and shall moreover, return duplicates of said accounts to the president and directors of the James River Company,

to be recorded and preserved. To each of which accounts and duplicates, the said commissioner shall make affidavit that has justly, diligently and impartially discharged the duties prescribed by this act, and that such account, or duplicate, is the result of these inquiries. The said commissioner shall proceed to the execution of the duties aforesaid, as soon as he shall be required by the James River Company; and, in case of a vacancy occurring from any cause, it shall be supplied by the court of the county in which it shall happen.

10. *And be it further enacted*, That, from and after the period at which the said company holding, as an agent, in trust for the benefit of the Commonwealth, shall give their assent as aforesaid to this act, they shall not be obliged to work on the bed of James river as heretofore, except so far as may be necessary to render the navigation from the upper locks to Lynchburg as easy and equal in every part as may be practicable; and the said company shall, at all times hereafter, keep the bed of the river, above the point to which any new improvement contemplated by this act shall be completed for use and connected with the river and below Crow's ferry, as good and convenient for navigation as it now is, and as it will be after the repairs aforesaid shall be made: all which repairs are to be contracted for and made by the company, from time to time, under the control, direction and superintendence of the commissioners, on the part of the Commonwealth, for superintending the works aforesaid on the James and Jackson's rivers hereafter mentioned, or of such other commissioner or commissioners, superintendent or superintendents, as the legislature may appoint; except so far as the said company shall undertake said repairs before they shall have received directions from the commissioners aforesaid. And, so soon as the said company shall have assented to the provisions of this act, the writ of *quo warranto* depending against them at the instance of the General Assembly shall be dismissed.

11. *And be it enacted*, That nine commissioners shall be annually appointed by joint ballot of the General Assembly, for superintending the works aforesaid on the Kanawha river, and the road aforesaid; who shall be denominated "the commissioners for the Kanawha river and road;" the acts of a majority of whom shall be in all cases obligatory. And nine commissioners shall be annually appointed, by joint ballot of the General Assembly on behalf of this Commonwealth, for superintending the works aforesaid, on the James and Jackson's rivers; the acts of a majority of whom shall be in all cases obligatory. No contract or contracts made by the James River Company for improving the navigation of the Kanawha river and road, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by the commissioners named to superintend the works on said river and road: and no contract or contracts made by the said company for making any of the improvements on the James or Jackson's rivers, shall be obligatory or carried into effect until

the same shall be submitted to and approved, in writing, by the commissioners named to superintend the works on the last mentioned rivers, who shall be denominated "The Commissioners for the James and Jackson's Rivers." And the said company shall semi-annually lay before the last mentioned commissioners an account of their receipts and disbursements, to be by them examined, stated and settled, after comparing the same with the books and vouchers of the company, and be reported by them to the General Assembly and to the Board of Public Works: *Provided, however,* That the boards of commissioners, hereby appointed to superintend the Kanawha river and the road, and the James and Jackson's rivers, may from time to time, adopt such rules and regulations for the distribution of the powers and duties hereby assigned them, amongst the members thereof, as they may think proper.

12. *And be it further enacted,* That the treasurer of the state shall be ex-officio treasurer of the company, shall be liable, as such, to the same penalties and conditions, as he is, as treasurer of the Commonwealth, and shall give additional security, in the sum of two hundred thousand dollars, for his faithful discharge of the duties hereby imposed.

13. And, to the end that adequate funds may be provided for the purpose of completing the works aforesaid: *Be it enacted,* That it shall be lawful for the James River Company, and they are hereby required to borrow, annually, after the fifteenth day of March next, from such individuals or corporate bodies, as may be disposed to lend, at an interest not exceeding six per centum per annum, payable semi-annually, two hundred thousand dollars, or such greater or less sum as may be hereafter directed and authorised by law; and in such proportions, and at such periods of the year as the said company shall deem expedient, to be applied to the execution of the works and improvements aforesaid, or such other works and improvements as the General Assembly shall hereafter direct: which authority and obligation shall continue until it shall be otherwise directed by law. The said Company shall issue certificates, under their common seal, (which, for this and all other purposes they are hereby authorised to have and use,) for the money so borrowed, and register the 46
same; which certificate shall specify the sum borrowed, of whom borrowed, and to whom payable; the interest payable thereon; that the stipulated interest shall be paid semi-annually on the fifteenth day of July and the fifteenth day of January in each year; and that the principal sum so borrowed, shall be irredeemable for twenty years from and after the fifteenth day of March next, and, from and after the expiration of the said period of twenty years, to be redeemed only at the pleasure of the General Assembly. Each payment of interest shall made upon the production of the said certificates and not otherwise; and such payments shall be noted on the back of such certificate. Said certificates shall be transferable only on the books

of the said company by the person or persons, or corporate bodies entitled thereto, or by their agents legally qualified for that purpose. The tolls and all other income of the said company, (after setting apart so much thereof as may be necessary to discharge all expenses of repairs, of the collection of tolls, and other necessary expenses of conducting the affairs of the said company; and also so much thereof as may be necessary to pay to the stockholders of said company, for twelve years next after the first day of January, eighteen hundred and twenty, a dividend of twelve per centum per annum on their stock, in semi-annual payments, and for ever thereafter a dividend in like manner of fifteen per centum per annum,) shall be applied to the payment of the interest on money so borrowed; and the surplus of such tolls and other income, after the payment of the expenses, dividends and interest, as aforesaid, shall from time to time be paid into the treasury of this Commonwealth, to the credit of the fund for internal improvement, to be disposed of as may, from time to time, be directed by law. And, if, at any time, the said company shall fail or refuse, or the tolls and other income aforesaid, after making the deductions aforesaid, shall be insufficient to pay the interest due upon said certificates, upon demand, the holder of such certificate shall cause a protest to be made, by a notary public, stating such demand and refusal, and thereupon the president of the Board of Public Works shall, immediately upon the production of such certificate and protest, issue his order, countersigned by the secretary of said board, authorising the payment of such interest out of the income of the fund for internal improvement; and the auditor of public accounts shall thereupon issue his warrant upon the treasurer therefor, and endorse such payment upon the back of such certificate. And so much of the income of the fund for internal improvement as may be necessary for the payment of such interest, unpaid by the said company from time to time, is hereby pledged for that purpose in preference to any other object: *Provided, nevertheless,* that such pledge shall not exceed twelve thousand dollars per annum, to be taken from the income of said fund.

14. *And be it further enacted,* That, for all such payments made out of the income of the fund for internal improvement, before the works on the James river shall be completed from tide water to Lynchburg, the said company shall deliver to the president and directors of the Board of Public Works certificates of debt, as aforesaid, carrying interest at six per centum per annum, payable semi-annually: but the interest not to commence thereon until the works shall have been completed as aforesaid to Lynchburg. And for all 47
such payments made, after the works aforesaid shall have been completed to Lynchburg, like certificates shall be issued, and the interest thereon shall commence from and after the date when the whole of the works aforesaid, or such other as the General Assembly shall hereafter direct in lieu of any part of them, shall be completed.

15. *And be it further enacted,* That the surplus of the tolls and income of the company aforesaid, remaining after the payment of interest due upon the certificates of debt so issued from time to time by the said company, and paid into the treasury of this Commonwealth, as herein-before directed, shall, from time to time, be applied by the president and directors of the Board of Public Works, to the purchase of such of the certificates aforesaid of debt as can be purchased. And the interest accruing on the said certificates of debt, so purchased, shall also, from time to time, be invested as aforesaid; and the whole so purchased shall be held subject to be disposed of as the General Assembly shall from time to time direct.

CHAPTER 46.—An act to amend the act, entitled, "an act to amend the act for clearing and improving the navigation of James River, and for uniting the Eastern and Western Waters, by the James and Kanawha Rivers."

48

[Passed February 28th, 1821.]

Whereas it is the opinion of this General Assembly, that the coal trade on the James river, and the salt trade on the Great Kanawha river, ought to be fostered and encouraged; and it being represented that the tolls to be received by the James River Company on those articles, when certain improvements in the navigation of those rivers shall have been made as provided for by the act, entitled, "an act to amend the act, entitled, an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers," may be found to be burthensome on both or one of those articles; and whereas it is expedient at this time to provide a remedy for such evil, should it, on experience, be found to arise;

1. *Be it therefore enacted,* That, until improvements contemplated by the above recited act, shall be completed, and the stock issued by the company for loans of money, shall be purchased in, as provided for by said act, or otherwise redeemed, the tolls on those 49
articles respectively, shall not be less than one cent per bushel; but that it shall be lawful for the said company, from time to time, as to them it may seem meet and expedient, and until it shall otherwise be regulated by law, to graduate the same respectively, by raising or lowering the said tolls, so that the same be not less than one, nor more than two cents per bushel.

2. The tolls on coal shall be receivable by the said company so soon as the trade in that article shall be facilitated, agreeably to the provisions of said act, should that happen before the improvements contemplated thereby shall have proceeded as high up the river as Pleasant's island.

And whereas it is represented, that many of the commissioners in and by the ninth section of the act above recited, have failed to perform the duties assigned to them in and by the said section; and whereas it is highly necessary that those duties should be promptly performed;

3. *Be it further enacted*, That the James River Company shall forthwith again require and notify the commissioners so failing, to proceed to execute the duties assigned to them as aforesaid; and that in case of the death, refusal, or inability to act, or continued failure of the said commissioners, or any of them, or of any commissioner or commissioners appointed in pursuance of this act, to perform the said duties, the said company are hereby empowered to appoint some other fit person or persons for that purpose, in the place of such commissioner or commissioners, so dead, refusing, unable, or failing to act, and who, being notified of his appointment, and not thereupon refusing to act, shall immediately proceed to perform the duties assigned to the commissioner, in and by the section above recited, whom he or they shall respectively be appointed to substitute as aforesaid.

4. *Be it further enacted*, That, instead of nine commissioners for superintending the works on Kanawha river and the road, as is provided by the eleventh section of the act above recited, there shall be five commissioners annually appointed, by joint ballot of both Houses of the General Assembly, for superintending the works contemplated by the said act, on the Kanawha; and that, in like manner there shall be appointed annually five commissioners for superintending the works on the road contemplated by said act; the acts of a majority of whom respectively, shall, in all cases, be binding; and no contract or contracts, made by the James River Company, for improving the navigation of the Kanawha river, or for making the road aforesaid, shall be binding, or carried into effect, until the same shall be submitted to and approved in writing by a majority of the commissioners appointed to superintend the works on the said river and road respectively.

5. *Be it further enacted*, That hereafter the James River Company shall semi-annually, to-wit; on the tenth day of July and tenth day of January in each year, lay an account of their receipts and disbursements before the treasurer of the state, the auditor of public accounts, and the clerk of the board of public works, instead of laying the same before the commissioners for the James and Jackson's rivers, as directed by the above recited act, to be by them, or a majority of them, examined, stated and settled, after comparing the same with the books and vouchers of the company, to be reported by them to the General Assembly, and to the board of public works.

6. And whereas it has been found inexpedient for the treasurer of the state to be treasurer of the said company: *Be it further enacted*, That the president and directors of the James River Company, shall, from time to time, appoint some fit person to act as their

clerk and treasurer, who shall hold his said officers at the will and pleasure of the said president and directors, and receive such compensation for his services, so long as he continues in their employment, as they shall from time to time ordain and appoint. He shall take an oath before some justice of the peace, that he will truly and faithfully execute the said offices; and shall moreover enter into bond, with one or more good sureties, payable to the company, and conditioned for the faithful discharge of the duties of said offices, and the payment of all monies according to law, which may come to his hands as treasurer, so long as he continues in said offices; which bond shall be in the penalty of thirty thousand dollars. It shall be the duty of the said treasurer to make weekly settlements and payments into such bank or banks in the city of Richmond, as the president and directors shall direct, to the credit of the James River Company, of all tolls receivable at the city of Richmond, and shall in like manner pay into bank all other profits and revenue of the said company, so soon as the same shall be received by him, there to remain, subject only to such order or check as the president and directors, by a resolution or resolutions entered on their journals, shall, from time to time, make and direct.

7. *And be it further enacted*, That all monies borrowed by the company, by virtue of the above recited act, of this or any other act of Assembly, shall be paid by the lender or lenders thereof into such bank or banks within the United States, to the credit of the James River Company, as the president and directors may agree upon with the lender or lenders thereof; and, when such payment is made into a bank or banks, not within the city of Richmond, it shall be the duty of the president and directors, from time to time, to adopt such measures as to them shall seem most proper, by a resolution or resolutions for that purpose entered on their journals, to have the same drawn and deposited to the credit of the company, in such bank or banks in the city of Richmond, as they may direct, there to remain for the use of the company, and only to be drawn for that purpose by a resolution or resolutions of the president and directors, entered on their journals, authorising one or more of their body to check therefor, and which check or checks shall be accompanied by a copy of such resolution or resolutions, certified by their clerk to the cashier of the bank on which such checks shall be drawn.

8. And the more effectually to enable the James River Company to borrow money as directed by the thirteenth section of the act above recited, or as may be directed by this or any future act of Assembly; *Be it further enacted*, That, hereafter, the company shall borrow no money agreeably to the section above recited, except so far as they shall be expressly authorised by act of Assembly fixing the amount so to be borrowed; and that each lender shall have a prior lien on the funds provided, or which may be provided, for the pay-

ment of interest on loans, in conformity with the date and number of his certificate of stock: and that the evidence of such 51
lien may be fixed and preserved, it shall be the duty of the James River Company to number, and register the number, as well as the date, of each certificate of stock; and that no two certificates shall bear the same number; and the date and number shall be preserved on any duplicate of any certificate, which, by reason of a sale and transfer, or otherwise, it may be proper for them to give: and it shall moreover be their duty so to provide that the funds aforesaid shall be applied to the payment of the interest, as the same shall become payable on each certificate of stock, agreeably to its date and number; and that the certificate issued to the president and directors of the literary fund, be number one. And, for the further security and satisfaction of lenders, and as evidence to them of the ability of the company to pay the interest on loans which may be authorised by law, the faith of the state is hereby pledged, that no loan will be authorised by law unless it shall appear to the satisfaction of the legislature, from the annual reports of the accounts and proceedings of the company, that their revenue, applicable to the payment of interest, together with the appropriation made for that purpose out of the fund for internal improvement, is sufficient, not only to pay the interest on loans theretofore authorised, but on each loan as the same shall be authorised; and, in case of any deficiency of funds for that purpose, it shall be the duty of the company to pay such deficiency out of any money in hand, or to borrow money for that purpose.

9. *Be it further enacted*, That, instead of limiting the sum to be drawn from the fund for internal improvement to twelve thousand dollars per annum, as is provided by the thirteenth section of the act aforesaid, that fund shall stand pledged, as is provided in and by the said section, for the payment of any interest which the surplus fund of the company, applicable to the payment of interest, shall be insufficient to pay; *provided*, the same shall not exceed the sum of eighteen thousand dollars per annum. And, to avoid expense and embarrassment to lenders by the protest made necessary in and by the said section before they can receive the interest due and payable out of the fund aforesaid, the president and directors of the company are hereby authorised to draw an order or orders on the auditor, for a warrant or warrants on the treasury, for any interest payable out of that fund, after the proper funds of the company for that purpose shall be exhausted.

10. *And be it further enacted*, That, if that part of the fund for internal improvement appropriated to the payment of interest, or any part of it, has not been, or shall not be drawn for the payment of interest in any one year, that the same shall be set apart, from time to time, in like manner with the other surpluses of the company, to be applied to the purchasing the certificates of loan of the company as is directed in and by the said act.

11. *And be it further enacted,* That the said company be authorised, as they are hereby authorised, to proceed to borrow, agreeably to the provisions of this and the above recited act, at such times and in such proportions as they may deem expedient, a sum, not exceeding in the whole three hundred thousand dollars, exclusive of the fifty thousand dollars already borrowed from the literary fund; and that the bank of Virginia and Farmers' bank of Virginia, be authorised 52 to loan money to the company, or to deal in the certificates of loan of the company, as far as the president and directors of those banks, respectively, may think proper.

12. And, whereas the urgent necessities of the country require as prompt an execution of the improvements contemplated by the act above recited, as is practicable, whilst at the same time their economical prosecution will be greatly advanced by contracts amounting in the aggregate to a large sum; which contracts, however, cannot be made, with a proper regard to punctuality and good faith on the part of the company, unless they have the certain command of money to the amount of such contracts: *Be it further enacted,* That it shall be lawful for the president and directors to employ such agents for negotiating loans, and to give them such compensation therefor, as they may from time to time deem most economical and expedient; and should large sums be borrowed, which would necessarily lie idle until wanted for the payment of contracts, whereby great loss of interest would accrue, the president and directors are furthermore empowered to invest said funds, until wanted, in such secure and productive stock as they may think proper and expedient, and again to sell the same when their necessities may require, and carry the whole proceeds of the interest on, and the amount of sales of, such stock, to the account of monies loaned, to be placed in bank as aforesaid, and applied to the improvements aforesaid.

13. *And be it further enacted,* That the commissioners for superintending the works on the James and Jackson's rivers, on the Kanawha river and the road, shall receive three dollars per day, for every day they shall severally be employed in the discharge of the duties assigned them by said act; to be paid by the James River Company, on a certificate from a board of said commissioners, respectively.

14. This act shall commence and be in force from the passage thereof.

CHAPTER 45.— An act making more effectual provision to carry into effect, the act, entitled "an act, to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

50

[Passed February 24th, 1823.]

Whereas, by an act passed on the 17th day of February one thousand eight hundred and twenty, entitled "an act to amend the act, entitled 'an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers," the James river company were directed to effect a canal navigation from the tide water of James river, to the mouth of Dunlap's creek; to make a road from thence to the great falls of the great Kanawha river, and to render the latter river navigable from the great falls to the river Ohio; and the present General Assembly, being fully sensible of the great interest which the good people of this commonwealth have in the success of the said objects, deem it necessary to adopt a more effectual mode to give them effect, than that heretofore provided,

1. *Be it therefore enacted*, That from and after the commencement of this act all the powers and duties of the existing president and directors of the James river company, except as hereinafter provided, shall be superseded and annulled, and thereafter no other election of president and directors shall be made in the manner now provided by law; but the governor, lieutenant governor, treasurer and auditor of commonwealth for the time being, and the second auditor, whose office is created by this act, and their successors in office, shall be ex-officio the president and directors of the said company; of whom the governor shall be president; and the said governor, lieutenant governor, treasurer, auditor and second auditor, from the time aforesaid, as president and directors of the said company, shall succeed to and possess all the rights, powers, duties and privileges of the existing president and directors, except so far as may be otherwise provided by this act. A board for the transaction of the business of the said company shall be constituted by any three, or more of the said officers. In the absence of the governor from the board, the lieutenant governor shall be president pro tempore; and in the absence of both, the treasurer shall preside.

2. *And be it further enacted*, That there be appointed annually, by joint ballot of both houses of the General Assembly, an officer to be denominated the second auditor, whose duty it shall be to keep distinct accounts of the receipts and disbursements of the Literary Fund, of the fund for internal improvement, and of the fund consti-

tuted to effect the purposes of the act, the title of which is recited in the preamble to this act. He shall draw all warrants authorising the treasurer to receive monies on account of any of the fund before mentioned, after the amount shall have been adjusted by the other auditor, when by law, he is authorised to adjust the same, and audit all claims properly chargeable on them, and issue warrants to the persons entitled thereto. He shall act, ex-officio, as accountant of the Literary Fund, as clerk of the president and directors thereof, and as secretary of the Board of Public Works; and the powers and duties of the persons holding those offices, respectively, shall thenceforth cease. And the said second auditor is hereby authorised to 51 appoint a clerk should the board of directors hereby established deem one necessary, to aid him in the discharge of his duties. All books and papers in any manner connected with the constitution, administration or regulation of the funds herein before mentioned, shall be deposited with the said second auditor, who shall carefully preserve them.

3. All monies belonging to any of the funds herein before mentioned, shall be kept in the public treasury, separate from other public monies; and regular and distinct accounts shall be kept of the receipts and disbursements, and a report thereof annually made by the treasurer to the General Assembly, on or before the fifth day of its session.

4. It shall be the duty of the James river company, forthwith, to pay into the public treasury any money which may remain in their hands, whether the same has been received from loans, tolls, rents, or otherwise; and they shall file with the second auditor, an account of their receipts and disbursements since the commencement of the act herein-before mentioned, which he shall carefully preserve: And all monies hereafter accruing to the said company, whether for tolls, rents, loans, or otherwise, shall be accounted for, by the several collectors and other agents, with the second auditor, and paid upon his warrant into the treasury: *Provided, however,* That if existing engagements with any toll gatherer, collector, or other agent, shall require the money falling into his hands to be otherwise accounted for and paid, it shall accordingly be accounted for and paid pursuant to such engagement; and the person receiving it shall, without delay, account for it with the second auditor, and pay it into the treasury, as above prescribed.

5. *Be it further enacted,* That the president and directors of the James river company shall, without delay, proceed to borrow, from time to time, as they may deem it prudent, at an interest not exceeding six per centum per annum, so much of the three hundred and fifty thousand dollars, which they have been heretofore authorised by law to borrow, as has not yet been borrowed; and if the president and directors should find it necessary to the completion of the three first sections of the work described in the second section of the act recited

in the preamble to this act, that is to say, to render the Great Kanawha navigable from the falls to the Ohio; to improve the navigation of James river from tide water to Pleasant's island; and to make the road from the mouth of Dunlap's creek to the Great Falls of Kanawha, together with the bridges provided for by this act; then, and in that case only, they are hereby authorised and required to borrow an additional sum not exceeding eighty thousand dollars. And to enable them the more readily to procure the said loans, they are hereby authorised and required, to cause all the monies, which shall be so loaned to them, to be paid into the public treasury, by the lender, on the warrant of the second auditor; and, upon the payment of each sum so loaned, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the commonwealth owes to such lender, his executors, administrators or assigns, the sum loaned, together with interest thereon, at the rate agreed upon, not exceeding six per centum as aforesaid, and payable semi-annually, at the treasury of the commonwealth, computing the time from the date of the certifi- 52
cate. Such certificate shall also shew, on its face, that the loan was made by authority of this act; that the principal sum loaned is irredeemable for twenty years; and afterwards to be redeemed at the pleasure of the General Assembly. It shall be signed by the treasurer, countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and shall then be delivered to the lender, or his agent. Every such certificate of stock shall be transferrable on the books of the second auditor; and the semi-annual interest thereon shall be paid upon his warrant. The certificates of stock for monies heretofore borrowed by the James river company, may be produced by the owners to the second auditor; and shall thereupon be registered by him in a book to be kept for that purpose; and at all times afterwards, they shall be transferable on the books of the said auditor. The interest falling due on such certificates, after they shall have been so registered, shall be paid at the treasury, on the warrant of the second auditor, without the re-production of the certificate; and the interest, falling due on them before such registry, shall be paid at the treasury, on the warrant of the second auditor, to be granted on the production of the certificate. The tolls collected on James river since the fifteenth day of March, eighteen hundred and twenty, and those which may hereafter be collected, the nett proceeds of the tolls to be collected on the Great Kanawha river, and from the road and bridges, all water rents, and rents of land, to which the James river company is or shall be entitled, together with the annual sum of eighteen thousand dollars to be paid out of the revenue of the fund for internal improvement, are hereby pledged as a fund for the payment of the dividends to the stockholders of the James river company, and the payment of the interest on the loans heretofore made to said company pursuant to law, and hereafter to be made pursuant to this act; and no part of the said fund shall be diverted to any other pur-

pose: And the General Assembly, moreover, pledge themselves, that they will from time to time, provide such other revenues as shall be necessary, to pay the interest on any loan authorised by law, to carry into effect the improvements mentioned in this act.

6. Nothing in this act shall be in any wise construed, so as to take away, or in any manner impair, the security or preference pledged to those who have heretofore loaned money, by authority of law, to the James river company.

7. *Be it further enacted,* That deeds for the transfer of any share or shares of the stock of the James river company, held by any person, body politic or corporate, executed in the manner prescribed by law for the conveyance of real estate, attested and proved by two witnesses, or certified by justices of the peace, in the manner prescribed for the authentication of deeds for real estate, and registered in the office of the second auditor, in a book to be kept by him for that purpose; also, devises of such share or shares, duly executed, proved and recorded, in some court within this commonwealth, certified and registered in the second auditor's office, in the manner aforesaid, shall be sufficient to entitle the transferree or devisee, to the dividends on such shares.

8. The dividends due, or to fall due, to the owners of the shares of the stock of said company, shall be paid at the treas- 53
ury, on the warrant of the second auditor.

9. *Be it enacted,* That an officer be appointed annually by joint ballot of both houses of the General Assembly, to be denominated the commissioner of the James and Jackson's river canal, whose duty it shall be to execute the provisions of the said act, so far as respects the construction of locks, navigable canals, and other necessary works, from tide-water to the mouth of Dunlap's creek, in the manner directed by the said act, and according to its true intent and meaning: and all the powers and rights heretofore vested by law in the James river company for the purposes aforesaid, and within the limits aforesaid, are hereby vested in such commissioner; and it shall, moreover, be the duty of the said commissioner to keep the bed of the river in a good and convenient state for navigation, between Crow's ferry and the point to which any new improvement shall be completed for use, and connected with the river.

10. Before the said commissioner shall proceed to the execution of his office, he shall enter into bond with one or more good and sufficient securities, in the penal sum of forty thousand dollars payable to the James River company, conditioned that he will, faithfully and honestly and to the best of his abilities, perform the duties of his said office, according to the laws now in force, and such as may be passed by the General Assembly, from time to time; and he shall, moreover, take an oath or make affirmation, that he will faithfully and honestly, and to the best of his abilities, perform the duties required of him by law; that he will not directly or indirectly be concerned or interested

in any contract, which may be made with him or any person on his behalf, for any labor, material or other thing necessary for the prosecution of the said works; and every contract, made in violation of such oath, shall be utterly void. If said commissioner shall either directly or indirectly be concerned or interested in any contract, in violation of this act, it shall be deemed and taken to be a breach of the condition of the bond herein required to be executed by him, and judgment shall be entered against such commissioner and his securities, for a sum, not less than the amount of said contract, nor more than twice the amount of said contract, at the discretion of the jury.

11. *Be it further enacted*, That there be appointed, in manner before-mentioned, another officer, to be denominated the commissioner of the Kanawha road and navigation; whose duty it shall be to carry into effect such of the provisions of the act herein-before-mentioned, as direct the constructing and completing a road from the mouth of Dunlap's creek, to the great falls of the great Kanawha river, and that the latter river shall be rendered navigable from thence to the river Ohio, according to the true intent and meaning of said act; and all the powers and rights heretofore vested by law in the James river company, for the purposes aforesaid, and within the limits aforesaid, are hereby vested in the said commissioner.

12. Before the last mentioned commissioner shall be authorised to execute the duties of his office, he shall enter into like bond, and take like oath or affirmation, with that directed above, in relation to the commissioner of the James and Jackson's river canal; and the said commissioner of the Kanawha road and navigation, with his securities, and the contracts made by him, shall be subject to the like rules and regulations, liabilities and recoveries, as are prescribed above in relation to the commissioner of the James and Jackson's river canal, his securities and contracts. The bonds executed by the commissioners aforesaid, and the certificate of their oath of office, which may be administered by any justice of the peace, shall be filed with the second auditor, before they shall, respectively, be authorised to enter upon the duties of their office.

13. *Be it further enacted*, That the said commissioners shall 54
give their constant attendance in directing and superintending the respective improvements necessary for the promotion and final accomplishment of the objects contemplated by the act herein-before-mentioned, and respectively confided to them. Each commissioner shall appoint such engineers, managers or agents, as he may think necessary, who shall be under his control, and removable at his pleasure: *Provided*, That the engineer appointed by the Board of Public Works, shall, whenever, upon the application of said commissioners, he shall be directed by the ex-officio members of said board, attend the commissioners of the James and Jackson's river canal, and of the Kanawha road and navigation, when previous engagements of the engineer on subjects of greater importance, do not interfere. The said com-

missioners shall, each respectively, on behalf and in the name of the James river company, make such contracts for labor, materials, and other thing necessary in the prosecution of the work in their several precincts, as each of them may deem expedient. And a copy of every contract shall be immediately transmitted by the commissioner making the same, to the second auditor, to be carefully filed and preserved; and all reports of engineers, or estimates of work, shall in like manner be transmitted by the commissioners, and filed and preserved.

14. All monies which may become due to any person or persons, by virtue of any contract, made with either of the said commissioners, by virtue of this act, shall be paid by the treasurer out of the fund provided for the improvement of James river, on a warrant from the second auditor, which shall be issued on the order of the commissioner who authorised the contract; in which order, the consideration on which it is founded, shall be expressly stated: *Provided, however,* That no warrant shall be drawn by the second auditor, on any such order of the commissioner, unless the contract on which it is founded shall be filed with the said auditor, and shall appear to justify it. And, in order to prevent, as far as possible, any failure in the payment of any such sum of money, the said commissioners, respectively, shall, from time to time, ascertain the state of the disposable funds in the hands of the treasurer, and regulate themselves accordingly in making contracts.

15. Every contract made by the James river company, with any person or persons, relating to, or connected with, the purposes of the act herein-before-mentioned, shall be as valid as if the powers of the said company had continued. And the said commissioners, respectively, shall carry the same into effect as the said company could, or ought to have done; and all claims for money which have heretofore accrued, for services, labour, materials, or other 55
thing, shall be settled and audited by the second auditor, and he shall grant warrants for such sums as may appear to be justly due. As to all monies falling due on or before the first day of May next, upon contracts now existing, made by the James river company, or under their authority, they shall be adjusted and settled under the authority of the president and directors of said company, now in office; and warrants shall be granted by the second auditor for the amount due, upon the certificate of said president and directors: *Provided,* Such settlement be made *or* or before the first day of May. But, if such settlement be not made on or before that time, then the claims shall be settled and adjusted, by the respective commissioners aforesaid, and the warrants granted upon their certificates. All superintendents, agents, and other officers appointed by the James river company, shall continue in office, pursuant to their appointments, till they shall be superseded, by appointments under this act, or their offices annulled by the provisions thereof.

16. The said commissioners shall, each, respectively, before the fifteenth day of every session, make full and detailed reports of their transactions, to the General Assembly, stating at length the expenses incurred by their contracts, or otherwise, and the progress of the work, and any other material matter that they may deem proper.

And whereas, it is represented, that it may be necessary to erect bridges over the Greenbrier river, and also over New river or Gauley river:

17. *Be it therefore enacted,* That the commissioners of the Kanawha road and navigation, shall have power to erect such bridges, if the same shall be found to be practicable at a reasonable expense; and, when completed, that he cause to be collected such tolls as may be reasonable, to be revised or altered by the legislature, as they may think necessary. And it shall be the duty of the said commissioner to transmit a list of the tolls to the General Assembly, at its next succeeding session; and likewise cause a list of said tolls to be recorded in the county where the bridge or bridges may be situate.

18. *And be it further enacted,* That the said last mentioned commissioner shall be, and he is hereby invested with full power and authority to collect the tolls directed to be collected by the act aforesaid, on the river Kanawha, and the road between the mouth of Dunlap's creek and the great falls of the Great Kanawha river; and, to this end, all the rights and powers vested by the law in the James river company, are hereby vested in the said commissioner; and payment for tolls to be imposed for passing the bridges, may be enforced in the same manner, and under the same regulations, as tolls on turnpike roads are collected and enforced.

19. Before the said commissioner shall have power to proceed to the collection of any of the said tolls, he shall execute a separate bond, with good and sufficient security, in the penalty of forty thousand dollars, payable to the James river company; conditioned, that he will make due returns of all tolls; well and truly account for all monies which may come into his hands by virtue of this act, and regularly pay the same into the treasury, at the end of ev- 56
ery six months, commencing from the date of the bond; and if he shall fail to make such returns regularly at the end of every six months, or within twenty days thereafter, it shall and may be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to enter up judgment against the said commissioner, and his securities, for a sum not exceeding five hundred dollars, and costs; and such motion and judgment may be repeated until a compliance with the provisions of this act shall be enforced: *Provided, nevertheless,* That the general court, at their succeeding term, shall have power to open such judgment, if it shall appear to them that the failure complained of was owing to circumstances which justified or extenuated it, and that the commissioner had not a fair opportunity to make them known, at the term when

the judgment was rendered against him; and the court may thereupon give such judgment as to the penalty, as the very right of the case may require.

20. *Be it further enacted*, That if from any semi-annual return herein-before directed, it shall appear that there is any sum of money in the hands of such commissioner, and he shall fail to pay the same within twenty days after the period, up to which such return has relation, it shall be lawful for the general court, on the motion of the second auditor, on behalf of the James river company, to render judgment for the amount so appearing to be due, with interest at the rate of ten per centum per annum, from the time such return closed, and costs: *Provided nevertheless*, that nothing in this act contained shall be so construed, as to prevent the said commissioner, from discharging any proper claim which ought to be paid according to the provisions of this act, out of any monies in his hands; but that, on furnishing proper vouchers, he shall be entitled to a credit for the sums so disbursed.

21. *Be it further enacted*, That so much of the act herein-before mentioned, or any other act, as provides for the appointment of ten commissioners, denominated, "the commissioners for the Kanawha river and road," and for the appointment of nine other commissioners, denominated, "the commissioners for the James and Jackson's rivers," be, and the same is hereby repealed: and all the power and authority of the said commissioners shall henceforth cease and determine.

22. *Be it further enacted*, That, whenever it shall become necessary to subject the lands of individuals to the purposes provided for in the said act, and the consent of the proprietor cannot be obtained, it shall and may be lawful for the said commissioners, within their respective precincts, to enter upon such lands, and proceed to the execution of such works as may be requisite; and that the pendency of any proceedings, in any suit of the nature of a writ of ad quod damnum, or any other proceedings, shall not hinder or delay the progress of the work: and no order shall be made, or injunction awarded, by any court, by which the progress of the work shall be arrested; it being the true intent and meaning of this act, that all lands shall be liable to condemnation, and that the proprietor shall be compensated, in damages. And it shall be the duty of every court to give precedence to controversies which are now pending, or which hereafter may arise, relative to the condemnation of land for any public purpose whatever, and to determine them in preference to all other causes; and no abatement or dismission of any 57
cause now depending, shall take place, by reason of any thing contained in this act.

23. *Be it further enacted*, That it shall and may be lawful for the commissioner of the James and Jackson's river canal, to subject to condemnation any land which may be necessary for the purpose of

erecting dams for feeders, or any land through which feeders may be conducted, and for the purpose of establishing reservoirs, in the same manner as lands are authorised to be subjected by law for the canal.

24. *And be it further enacted*, That, in any future assessment of damages, on behalf of any proprietor of land through which the canal or feeder may be conducted, no compensation for any fencing to separate the land condemned for the use of the James river company from his other lands, shall be allowed; nor shall any compensation be made to any such proprietor for any bridge or bridges over such canal or feeder, but such bridges, and such additional fencing, as shall have become necessary, by reason of such canal or feeder, shall be constructed by the commissioner of the James and Jackson's river canal, wherever he may deem them necessary; the expense of which shall be paid out of the fund provided to make the improvement on James river. If any proprietor of the lands through which the canal or any feeder may be conducted, shall believe a greater number of bridges, or bridges of a different kind, or other fencing, required for the use of his lands, than the said commissioner may deem necessary, or that they should be constructed at a different place or places from those fixed upon by the said commissioner, such proprietor, upon application to the clerk of the superior court of law for the county in which said lands lie, may obtain from said clerk a writ in nature of a writ of ad quod damnum, directed to the sheriff of said county, requiring him to summon a jury of twenty-four inhabitants of his county, being freeholders, not related to said proprietor, or commissioner, nor in any way interested, to meet on the lands through which the canal or feeder may be conducted, on a day to be expressed in the writ, not less than twenty, nor more than thirty days thereafter; and the sheriff, on receiving said writ, shall forthwith summon the jury; and, when met, shall administer to every juryman who shall appear, not being fewer than twelve in number, an oath or affirmation, that he will faithfully, justly, and impartially, determine the matters submitted to him, according to the true meaning and intent of this act, to the best of his skill and judgment; and, thereupon, the said jury shall proceed to determine how many bridges, of what description, and what fencing, may be reasonably necessary to the aforesaid proprietor, for the use of said lands, and at what places on said canal, or feeder, they should be constructed, and report, in writing, their finding on these subjects; which report shall be signed by the sheriff, and some twelve or more of the jury, and returned by the sheriff, within ten days after the execution of said writ, to the clerk of said superior court: *Provided, however*, That ten days previous notice be given to said commissioner of the time and place of executing said writ; and, at the next term after the return of said report, the said court, from the finding of the jury, as well as from other evidence, shall decide whether the number of bridges,

their description, and the fencing, fixed by the jury, or any greater or less number, or any other kind, or any other fencing, 58 be necessary to the proprietor, for the use of his lands; and whether the place or places fixed upon by the jury for the construction of such bridge, or bridges, or fencing, be proper; and may make such other order, touching the subject, as shall seem just and right; and the said commissioner shall cause a bridge, or bridges, and fencing, to be constructed, according to the judgment of the court; the expense of which shall be paid out of the funds provided for the improvement on James river. All bridges and fencing, to be constructed according to the provisions of this act, shall, at all times, be kept in good repair by the commissioner of the James and Jackson's river canal; and the expense thereof paid out of the tolls collected on James river.

25. *And be it further enacted,* That the second auditor shall receive annually the sum of fifteen hundred dollars, and the clerk he may employ, the sum of seven hundred dollars, to be paid quarterly; one third out of the revenues of the Literary Fund; one third out of the revenues of the fund for internal improvement; and one third out of the fund provided to make the improvements contemplated by this act.

26. The commissioner of the James and Jackson's river canal, shall receive two thousand five hundred dollars per annum; and the commissioner of the Kanawha road and navigation, fifteen hundred dollars per annum; to be paid quarterly out of the fund provided to effect the works which they are respectively to superintend; and the persons employed by them under the authority of this act, shall be paid such compensation for their services as the said commissioners, respectively, may certify them to be worth, according to the contract made with them, to be paid as other claims arising under this act are directed to be paid.

27. *Be it further enacted,* That, in case of the death, resignation or inability to act, of the second auditor, or of either of the commissioners appointed under this act, the executive shall have power to fill such vacancy; and the person or persons so appointed, shall continue in office till the end of the next session of the legislature.

28. *Be it further enacted,* That the second auditor shall, after his election, and before entering upon the discharge of the duties prescribed by this act, enter into bond with sufficient security, to be judged of by the executive of this commonwealth, payable to the governor thereof, in the penalty of twenty thousand dollars, conditioned for the faithful discharge of all the duties created by this act.

29. This act shall be in force from the passing thereof.

CHAPTER 9.—An act authorising a loan for the purposes of internal improvement.

12

[Passed March 8th, 1824.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of this State, a sum of money not exceeding four hundred thousand dollars, and at a rate of interest not exceeding six per cent. per annum. The monies so to be borrowed shall be paid into the treasury upon the warrant of the second auditor; and, upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act is hereby declared to be irredeemable for twenty years; but shall be afterwards redeemed, at the pleasure of the General Assembly, within a period not exceeding fifteen years.

2. *And be it further enacted*, That, for the payment of the interest and the final redemption of the principal of the sums to be borrowed under authority of this act, there shall be, and hereby are appropriated and pledged the sum of eighteen thousand dollars, out of the income of the fund for internal improvement, the surplus tolls and rents of water-rights belonging to the James River company, and the nett proceeds arising from the canal and the tolls on the Kanawha road and river, when completed; also, the surplus fund belonging to the said company arising from the unexpended balances 13
of the appropriation of eighteen thousand dollars of the revenue of the fund for internal improvement. And if the foreging appropriations should be inadequate to the payment of the interest authorised to be borrowed by this act, and for the final redemption of the principal, the General Assembly pledges itself to provide other and sufficient funds for that purpose. Until such other sufficient funds shall be provided by law, so much of the revenue of the fund for internal improvement, as may be necessary to supply the deficiency, is hereby pledged for that purpose.

3. *Be it further enacted*, That the monies directed to be borrowed by this act, shall be appropriated towards completing the works commenced on the Kanawha road and river, in the manner prescribed by law, and to completing the James and Jackson's River canal and the works thereon to Maiden's Adventure falls, and to the making and constructing of a canal, along the margin of James River, from the lower end of Irish falls in the county of Amherst, to the mouth of the North river in the county of Rockbridge; and, so soon as the commissioner of the Kanawha road and navigation can, consistently with his present duties, he shall proceed to construct the canal from the lower end of Irish falls along the margin of James River, through the Blue Ridge, to the mouth of the North river, in all respects as is now required by law, except, that the said canal shall not be more than thirty feet wide at the top, nor more than twenty feet wide at the bottom.

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CHAPTER 46.—An act making further provision to carry into effect the act, entitled "an act, for clearing and improving the navigation of James river, and for uniting the eastern and western waters, by the James and Kanawha rivers, and for other purposes."

38

[Passed February 16th, 1825.]

1. *Be it enacted by the General Assembly*, That the president and directors of the James River Company be, and they are hereby empowered, as soon as may be necessary for the purposes herein declared, to borrow, on the credit of the State, a sum of money not exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The monies so to be borrowed, shall be paid into the treasury upon the warrant of the second Auditor; and upon the receipt in the treasury of the sums so borrowed, the treasurer shall issue a certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators, or assigns, the sum loaned, together with the interest, at the rate of interest agreed on; and, that the interest is payable semi-annually, at the treasury of the Commonwealth. Such certificate shall shew, on the face thereof, that the loan was made under the authority of this act. I shall be signed by the treasurer, and counter-signed by the second Auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferrable on the books of the second Auditor; and the semi-annual interest thereon shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeem-

able for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted,* That, for the payment of the interest and final redemption of the principal of the sums to be borrowed under authority of this act, the same pledges and appropriations are hereby made and given, as are contained in the second section of the act entitled, "an act authorising a loan for the purpoess of internal improvement," passed the eighth day of March, eighteen hundred and twenty-four.

3. *Be it further enacted,* That the money directed to be borrowed by this act, and the unexpended balance of the loan authorised by the act of the eighth of March last, shall be appropriated towards completing the works commenced on the Kanawha river and road, and to the extending the same road in the manner prescribed by law, and to completing the James and Jackson's river canal, and the works thereon to Maiden's Adventure Falls, and to the completing the canal now constructing along the margin of James river, from the lower end of Irish falls in the county of Bedford, to the mouth of the North river, in the county of Rockbridge. 39

4. *Be it further enacted,* That, if the commissioner of the Kanawha road and navigation, can, without loss to this Commonwealth, and without paying any compensation to the contractor, beyond the value of the work which he may have executed, procure an abandonment of the contract now existing, for the improvement of so much of the Kanawha river as lies between the town of Charlestown and the Great Falls of the same river, he shall then have full power and authority, and he is hereby required to extend the turnpike road, now constructing under his superintendence, from the said Great Falls, to the lower end of the salt works in the county of Kanawha, and shall pretermit any further improvement in the navigation of the river, above the town of Charlestown.

5. *Be it further enacted,* That the said road shall be laid out and located by the said commissioner, upon the best ground, to be selected by him, between the two points in this act mentioned the road aforesaid, to be completed according to the provisions of the "act to amend the act entitled, 'an act for clearing and improving the navigation of James river, and for uniting the eastern and western waters by the James and Kanawha rivers;'" reducing, however, the width of the summer road to eleven feet, and in difficult places, dispensing entirely with such summer roads: *Provided,* That the county court of Kanawha shall finish the bridge contemplated, across Campbell's creek in said county, and shall keep the same in good repair at the county charge.

6. *Be it further enacted,* That so soon as the said road shall be completed, it shall and may be lawful for the president and directors of the James River Company, and they are hereby required, to erect a toll-gate, at such places on said rivers as to them may seem proper,

with such reasonable tolls as will pay to the said company, at least six per centum per annum, upon the sum of money which may be expended in constructing said road.

7. *Be it further enacted*, That to enable the James River Company to open and complete the aforesaid road, and to keep the same constantly in good repair, which they are hereby required to do, they shall be entitled to avail themselves of all the provisions which have been made by law for the opening and constructing the great road from Dunlap's creek to the falls of the Great Kanawha, as well for the condemnation of lands as for other purposes.

* * * * *

CHAPTER 25.—An act authorising a loan for the purposes of Internal Improvement.

[Passed March 1st, 1826.] 26

1. *Be it enacted by the General Assembly*, That the president and directors of the James river company be, and they are hereby empowered, as soon as may be necessary, for the purposes herein declared, to borrow on credit of the State, a sum of money not 27 exceeding two hundred thousand dollars, and at a rate of interest not exceeding six per centum per annum. The sum so to be borrowed, shall be paid into the treasury, upon the warrant of the second auditor; and upon the receipt into the treasury of the sum so borrowed, the treasurer shall issue his certificate of stock for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the sum loaned, together with the interest, at the rate of interest agreed on, and that the interest is payable semi-annually at the treasury of the Commonwealth. Such certificate shall shew on the face thereof, that the loan was made under the authority of this act. It shall be signed by the treasurer, and countersigned by the second auditor, and registered in a book to be kept by him for that purpose, and be then delivered to the lender or his agent. Every such certificate of stock shall be transferable on the books of the second auditor, and the semi-annual interest thereon, shall be paid on his warrant. The principal sum authorised to be borrowed by this act, is hereby declared to be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the General Assembly.

2. *Be it further enacted*, That for the payment of the interest, and the final redemption of the principal of the sums to be borrowed under the authority of this act, the surplus tolls, rents and water rights on the mountain section of the James river canal, and the works on the Kanawha river and road, are hereby pledged, and if these appropriations should be inadequate to the payment of interest, and the final

redemption of the principal of the sum now proposed to be borrowed, and that already expended on the said works, the General Assembly pledges itself to find other and sufficient funds, and until such other and sufficient funds be furnished, the revenues of the fund for internal improvement, are hereby pledged and appropriated. (*a*)

3. *And be it further enacted*, That the president and directors of the Literary Fund, shall invest the uninvested capital belonging to that fund, in the stock authorised by this act. And that each certificate of stock issued in pursuance of this act, shall have on its face a direct reference to the act which authorised it.

4. *Be it enacted*, That the commissioner of the Kanawha road and navigation, shall forthwith settle all the contracts for work on the mountain section of the James river canal, as far as the contractors have completed any jobs heretofore. He shall not contract for a farther extension of the Kanawha road, but is authorised to complete the improvements on the Kanawha river, up to the present termination of the turnpike road. The commissioner or commissioners, whose duty or duties it may be to carry into effect the third (*b*) section of this act, shall not do any act or make any contract which may subject the State to the payment of a sum of money exceeding in amount, the sum herein directed to be borrowed.

* * * * *

CHAPTER 26.—An act to amend an act, entitled, "an act authorising a loan for the purposes of Internal improvement."

[Passed March 8th, 1826.] 29

Whereas a mistake has occurred in an act, entitled, "an act authorising a loan for the purposes of internal improvement," passed the first day of March, eighteen hundred and twenty-six:

1. *Be it therefore enacted*, That the money directed to be borrowed by the said act, and the unexpended balance of the loan authorised to be borrowed by the act of the sixteenth of February, eighteen hundred and twenty-five, shall be appropriated toward completing the works commenced on the Kanawha river and road, and to extending the same in the manner prescribed by law; and to completing the James and Jackson's river canal, and the works thereon, to Maiden's Adventure falls; and to completing the canal now constructing along the margin of James river, from the lower end of Irish falls, in the county of Bedford, to the mouth of North river, in the county of Rockbridge.

2. *Be it further enacted*, That the reference in said act to the third section, shall be taken as referring to this act.

3. This act shall be in force from the passage thereof.

CHAPTER 47.—An act providing for re-building Gauley bridge, the payment of existing contracts, and for other purposes.

(Passed March 7th, 1827.)

1. *Be it enacted by the General Assembly*, That the president and directors of the James River Company, are hereby authorised and directed to dispose of so much of the James River surplus and appropriation fund belonging to the fund for Internal Improvement, as will produce the sum of forty thousand dollars; which said sum is hereby appropriated for the purposes hereinafter mentioned.

2. *Be it further enacted*, That so much of the said sum as shall be necessary, shall be and is hereby appropriated to re-building the bridge across Gauley river, to be expended for that purpose under the direction and superintendence of the commissioner of the Kanawha road and navigation, who shall cause the said bridge to be built upon such model, as in his opinion will combine economy with public utility.

3. *Be it further enacted*, That the sum of twenty-eight thousand dollars of the aforesaid sum, shall be and is hereby appropriated for the purpose of enabling the James River Company, and the commissioner of the Kanawha road and navigation, to complete the works already contracted for and remaining unfinished, and to pay what may be now due on existing contracts.

4. *Be it further enacted*, That hereafter the following tolls shall be demanded and received on the tow-path of the mountain section of the James River canal, to wit: for every person on foot, six and a quarter cents; for every person on horse-back, six and a quarter cents; for every horse, mare, mule or work ox, two cents; for every head of neat cattle, two cents; for every score of sheep, hogs or goats, twelve and a half cents; and so in proportion for any greater or less number: And it shall henceforth be the duty of the 38
receiver of the tolls of the mountain section of the James River canal, and the bridge and tow-path thereof, to make quarter yearly payments of tolls received by him, to the commissioner of the Kanawha road and navigation, who shall in like manner make quarter yearly settlements of the said tolls with the president and directors of the James River Company: And it shall be lawful for the said commissioner to change the location of the toll-gates on the Kanawha road, and to make contracts for keeping the said road in repair by sections for any period not exceeding three years, taking bond and security of the contractor or contractors in a reasonable penalty, and conditioned for the faithful performance of such contract or contracts: And he is also hereby authorised and empowered to erect such buoys and ring bolts on the Kanawha river, as may in his opinion be expedient for the safe and convenient navigation thereof, and if necessary, to cause a house to be erected in, or near the said river

for the collection of tolls and registering and numbering all boats navigating the said river, and to make all such other arrangements as may be necessary for collecting the tolls on the said river.

5. *Be it further enacted*, That the commissioner of the Kanawha road and navigation, shall hereafter receive an annual salary of eight hundred dollars, in lieu of the salary now allowed him by law.

6. This act shall be in force from the passing thereof.

CHAPTER 71.—An act providing for the extension of the Kanawha turnpike road to Big Sandy river.

(Passed January 30th, 1829.) 45

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised and required to cause the present Kanawha turnpike road to be extended from the western termination thereof, to the mouth of Big Sandy river, and for defraying the expense that may be incurred under this act, the said President and Directors 46 are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money not exceeding fifty thousand dollars, provided the same can be obtained at a rate of interest not exceeding six per centum per annum, payable half yearly, and to issue to the loaners of the said money, certificates in the same form, transferable in the same manner, and redeemable at the same periods, with those which have been heretofore authorised and employed in the negotiations of the last loans obtained by the State for the purposes of internal improvement: and that the tolls hereafter raised upon the Kanawha turnpike road heretofore finished, as well as the tolls which may arise from the road hereby authorised to be made, after keeping the said road in repair, shall be, and the same are hereby pledged for the payment of the interest which may accrue on the money to be borrowed under the authority of this act, and for the final redemption of the stock which may be created under the provisions herein contained; and if the tolls shall be found inadequate to the payment of the said semi-annual interest, then, such deficiency shall be paid out of any monies belonging to the fund of internal improvement.

2. *Be it further enacted*, That the Principal Engineer as soon as may be after the passage of this act, shall proceed to lay out and locate the said road from the western termination of the said Kanawha turnpike road, to the mouth of Big Sandy river, of the same width of location, and of construction with the best parts of the road heretofore made: In the performance of which duty, he is hereby required to graduate the same as near a horizontal line as the inequalities of the

ground may admit of, but so that the said road when formed shall in no instance diverge more than five degrees from a horizontal line: That in making such location he shall so mark his stations, and levels, and indicate the sites of the bridges and culverts which he may deem necessary, that the superintendents of the work with the aid of his field notes, may be readily enabled to execute the same, according to the designs and plans of the said Principal Engineer.

3. *Be it further enacted*, That the Principal Engineer shall, in locating the said road, and in his report thereof, carefully estimate and describe the quantity and kind of labour to be done on each mile thereof, and the reasonable cost of the same. He shall also describe the number, kind and situation of the bridges, culverts and drains which he may deem necessary, accompanying his descriptions with profiles or drawings when he may deem the same useful; so that such report may form the basis of contracts for the execution of the entire work. And it shall be the further duty of the said Engineer, to deliver to the clerks of the county courts of Kanawha and Cabell counties, plats or maps of so much of the said road as may be within their respective counties, to be by them respectively recorded, and thereupon the land over which the said road shall be located shall become, ipso facto, vested in the Commonwealth for the use of the said road.

4. *Be it further enacted*, That if any person shall conceive himself, herself, or themselves, aggrieved by the location of the said road, and the investment of the land in the Commonwealth, over which the same shall pass, or by the erection of any bridges, abutments or other necessary work or building, in the formation and construction of the said road, it shall be lawful for such person or persons, within one year from the recording of the maps or plats as herein provided for, to file a suggestion before the superior or county court of the county where such land may be situated, setting out the grounds of the injury complained of, and for which damages are claimed, of which suggestion the person complaining shall give to the President of the James River Company at least thirty days notice, by serving him with a copy thereof; whereupon, the court before whom the suggestion may be filed, shall cause an issue to be made up and tried at the bar of the said court, as other issues of fact are tried, for ascertaining what damages the complainant hath sustained by reason of the matters alleged in his suggestion, over and above the advantages and benefits accruing to the complainant, by the opening and constructing the said road. And upon the certificate of the court trying such issue, the President and Directors of the James River Company shall pay the amount of the damages which may be so found, to the party appearing by said verdict to be entitled to the same, out of any unexpended funds in their hands; but all persons failing to file suggestions as herein provided, for the space of one year from the time at which such maps or plats

shall be delivered for recording, shall be held and deemed to have relinquished to the Commonwealth all claim to damages arising or supposed to arise from the execution of this act.

5. *Be it further enacted,* That the President and Directors of the James River Company, by themselves, their agents and servants, and the Principal Engineer, with the surveyors and assistants, shall have full power and authority to enter upon all lands and tenements, through which they may think it necessary to make examinations, and to lay out the said road as the Principal Engineer may judge most for the public advantage and benefit. And in the opening and constructing the said road, the President and Directors of the James River Company, their agents and servants, shall have the same power and authority, and be subject to the same limitations and restrictions as are provided in the twelfth and thirteenth sections of the "act prescribing certain general regulations for the incorporation of turnpike companies," passed February the seventeenth, in the year eighteen hundred and seventeen.

6. *Be it further enacted,* That the President and Directors of the James River Company be, and they are hereby authorised to select and appoint an able, capable, discreet superintendent of the road hereby directed to be made, and to allow him such salary as they may judge reasonable, not exceeding seven hundred and fifty dollars per annum. It shall be the duty of the said superintendent to make all contracts for the opening and constructing the said road, erecting bridges, and whatever else may be necessary for the fully finishing and completing the same, under the direction of the said President and Directors, and subject to their approbation and ratification. It shall also be his duty strictly and constantly to superintend the execution of all the works upon the said road, and perform such other duties as the President and Directors of the James River Company may from time to time appoint and direct; and the said President and Directors shall have full power and authority to re- 48
move from office, for any cause by them deemed sufficient, any superintendent by them appointed, and to appoint another in his place.

7. *Be it further enacted,* That as soon as a section of fifteen miles of the said road shall be completed, and as often as sections of that length shall be finished, it shall be lawful for the President and Directors of the James River Company to cause a gate or gates to be erected across the said road; to appoint receivers of tolls at said gates, and to exact and receive for the use of the said road, the same rates of toll as are now paid for the use of an equal distance of the Kanawha turnpike. And all the laws and regulations heretofore enacted in relation to the Kanawha turnpike, shall be held and taken as equally applying to the extension hereby directed to be made, so far as the same remains unchanged by the provisions of this act.

8. *Be it further enacted,* That it shall be the duty of the owners and proprietors of the ferries over water-courses on the line which may

be selected for the road, to graduate the banks to the angle hereby prescribed, and by permanent and sufficient wharfing to secure the same from abrasions, of such width, and in such manner and time, as the Principal Engineer shall prescribe, and at all times shall keep the same so covered with stone or gravel when necessary, as to render the approach to the ferry boat firm and dry; and every keeper or owner of a ferry over which the said road may pass, who shall fail to comply with any of the requisitions of this act, shall be subject to a fine of not less than twenty dollars, nor more than one hundred dollars, to be recovered by indictment or information in any court having jurisdiction thereof, for the use of the President and Directors of the James River Company; but nothing in this section contained, shall be so construed as to prevent the President and Directors of the James River Company from erecting bridges at any time hereafter over such water courses, reserving to the owners or proprietors of such ferries, all the rights and remedies given to the owners and proprietors of the land over which the road may be made.

9. This act shall commence and be in force from and after the passing thereof.

CHAPTER 72.—An act concerning the Kanawha Road and Bridges, and for other purposes.

(Passed February 28th, 1829.)

4. *Be it further enacted,* That for the purpose of discharging the unsatisfied demands against the company, for the construction of the public improvements under their direction, it shall be lawful for the President and Directors of the James River Com- 49
pany, and they are hereby authorised and required, to borrow a sum not exceeding ten thousand dollars, on the same terms and conditions, and on the same pledges, as are specified for the loan authorised by the act passed on the first day of March, one thousand eight hundred and twenty-six, entitled, "an act authorising a loan for the purposes of internal improvements," which sum, or any part thereof which may be borrowed, is hereby appropriated to the discharge of the demands aforesaid.

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CHAPTER 73.—An act prescribing a tariff of tolls on the Kanawha river, and for other purposes.

(Passed February 27th 1829.) 50

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9. *Be it further enacted*, That it shall be the duty of the President and Directors of the James River Company to cause buoys to be placed in the Great Kanawha river, so as readily and 52 clearly to indicate and point out to navigators all the entrances and lines of the sluices, the wing-dams and the jetties and generally the course of the channels. The said President and Directors shall also cause beacons to be placed on the bars, rocks and other obstructions to the navigation, not within the sluices or channels, but which, from their positions, or from other causes, are likely to endanger the safety of vessels or boats navigating the said river; which buoys and beacons shall be so constructed as to be visible, until the water of the river shall rise five feet above its ordinary lowest level. For the greater safety and convenience of the ascending trade of the said river, it shall be the further duty of the said President and Directors to cause large rings to be attached by suitable bolts to rocks or other stable bodies, along the sluices and at the ends of the wing-dams and jetties, for the better enabling the ascending boats to overcome the force of the currents, by warps and cords.

10. *Be it further enacted*, That it shall be the duty of the said President and Directors, to cause all depositions of sand, gravel, timber or other obstructions in the channels, sluices or passages of the said river, to be removed therefrom, so as to restore to the said channels, sluices and passages, the width and depth of 53 water produced therein by the works recently constructed on the said river, and at all times to keep the said channels, sluices and passages, free from depositions or other obstructions which may impair or impede the navigation: *Provided*, That nothing in this act contained shall authorise the expenditure of a sum exceeding one thousand dollars.

11. *Be it further enacted*, That it shall be the duty of the Principal Engineer of this Commonwealth, and he is hereby required to attend during some dry season, to view the several improvements made on the said river and make report on their defects and the remedies necessary therefor, to the Board of Public Works at its next session.

12. This act shall be in force from and after the passing thereof.

CHAPTER 53.—An act making further provision for the extension of the Kanawha turnpike to Big Sandy river.

(Passed December 18th, 1829.) 45

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised and empowered to borrow on the credit of the Commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding eight thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorised by the act of the thirtieth of January, eighteen hundred and twenty nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 52.—An act authorising a change in the location of the Kanawha turnpike road.

(Passed January 30th, 1830.) 44

1. *Be it enacted by the General Assembly*, That the President and Directors of the James River Company be, and they are hereby authorised to vacate and annul the location made of the Kanawha turnpike road, by the Principal Engineer, between the land of John Shrewsbury, senior, and Campbell's creek, in the county of Kanawha, and to cause the same to be re-located along and near to the shore of the Great Kanawha river: *Provided*, they can procure a substitution of the one line for the other with the contractors for forming that part of the road, without increasing the expense of the execution thereof, or that the proprietors of the land shall defray the difference of the cost in the two lines; and if additional bridges or culverts should be rendered necessary by such re-location, the walls of the embankments, abutments and piers, shall be constructed of stone, under the direction of the Superintendent of said road, whose duty it shall be to have the same constructed of good materials, and in a workman-like manner: *And provided also*, That the pro- 45
prietors of the land over which the road shall pass near the river, shall release all damages or claims to remuneration for the land over which the said road may be conducted.

2. *Be it further enacted*, That on such re-location being made, the said President and Directors shall cause to be recorded in the office of the clerk of the county court of Kanawha, a map or drawing of the re-located section of road, which shall have the same legal effects,

and operate upon the land over which the road shall pass, in the same manner, and to the same extent, as if such location had been there made in the first instance, and the surveys and drawings thereof had been reported and recorded by the Principal Engineer.

3. This act shall commence and be in force from and after the passing thereof.

CHAP. CVI.—AN ACT making further provision for the extension of the Kanawha turnpike to Big Sandy river.

[Passed March 31, 1831.] 158

1. *Be it enacted by the general assembly*, That the president and directors of the James river company be, and they are hereby authorized and empowered to borrow, on the credit of the commonwealth, at such time or times as they may deem proper, any sum or sums of money, not exceeding fifteen thousand dollars, on the same terms, conditions and pledges, as are specified for the loan authorized by the act of the thirtieth of January, eighteen hundred and twenty-nine, providing for the extension of the Kanawha turnpike to the mouth of Big Sandy river, and to be applied to the same purposes.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. LXXXII.—An act incorporating the stockholders of the James river and Kanawha company.

(Passed March 16th, 1832.) 73

Whereas the measures hitherto adopted by the general assembly for the purpose of connecting the tide water of James river with the navigable waters of the Ohio, have been found inadequate to effect that object, by such line of transportation as the public interest requires; and it is now deemed expedient for that purpose to incorporate a joint stock company, to which the interest of the commonwealth in the James river company shall be transferred at a fair value: Therefore,

1. *Be it enacted by the general assembly*, That the president and directors of the James river company shall, without delay, cause books of subscription to be opened in the city of Richmond, in the towns of Lynchburg, Lexington, Pattonsburg, Covington, Staunton, Fincastle, Lewisburg, Union, Charlestown upon the Kanawha, and such other places as they may deem expedient and under the superintendence of such commissioners as they may think proper to appoint, for the purpose of raising a capital stock of five millions of dollars, in shares of one hundred dollars each. At least thirty

days previous notice in some newspaper published most convenient to each place of subscription, and in such other newspapers as may be deemed proper, shall be given of the time and places of opening the books. The books shall be kept open for twenty days; and if within that time three-fifths of the capital stock shall not have been subscribed by persons, bodies politic or corporate, other than the commonwealth, they shall be again opened and may be continued open, if necessary, until the second Monday in December next. All subscriptions must be for one or more whole shares; none being allowed for any part of a share.

2. When the books are opened the state shall be regarded as a subscriber for ten thousand shares of the stock; to be paid for by a transfer of her whole interest in the works and property of the present James river company, and when they are finally closed they shall be returned to the second auditor, verified by the signatures of the commissioners, or some of them, and be laid before the president and directors of the James river company, in order that the amount of valid subscriptions may be ascertained and proper measures taken thereupon.

3. The second auditor shall forthwith give public notice, in such newspapers as he may think proper, or as the president and directors of the James river company shall direct, of the return of the books and of the amount of subscriptions appearing upon them; and after the expiration of twenty days from the publication of such notice, the president and directors shall proceed to ascertain the amount of valid subscriptions, regarding no person, body politic or corporate, other than the commonwealth, as a subscriber for any share, unless he shall have paid thereupon, into the bank of Virginia, or Farmers' bank of Virginia at Richmond, at least five dollars, to the credit of the James river company, and have furnished a certificate of such payment to the second auditor. If it be ascertained that three-fifths of the capital stock have not been subscribed by persons, bodies politic or corporate, other than the commonwealth, then the president and directors of the James river company shall direct the certificates of payment aforesaid to be returned to the subscribers, with the second auditor's warrant on the back thereof, for the re-payment of the money; and they shall report to the next general assembly the failure of the subscription, suggesting the probable causes thereof, and the means, if any, of obviating them.

4. When three-fifths or more of the capital stock shall have been so subscribed by persons, bodies politic or corporate, other than the commonwealth, but the whole capital shall not have been subscribed, then the commonwealth shall be regarded as a subscriber for the residue of the five millions; and if, including the commonwealth's subscription, more than five millions of capital shall have been subscribed, the subscriptions shall be reduced to five millions, by tak-

ing off the surplus from the highest subscriptions, other than that of the commonwealth; and when it shall happen that two or more of the highest subscriptions are equal, and the desired reduction cannot be made by subtracting equally from each, then it shall be decided by lot, from which subscription or subscriptions the greater number shall be subtracted; and the president and directors of the James river company shall order it accordingly.

5. When three-fifths or more of the capital stock shall have been so subscribed, by persons, bodies politic or corporate, other than the commonwealth, having paid as aforesaid, five dollars upon each share, then the subscribers, their successors, heirs and assigns, shall be a body politic and corporate, by the name of "*The James River and Kanawha Company*," and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose in law, the successors of the present James river company: provided, however, that they shall hold no real estate, except that which by this act, or some other act of the general assembly, may be specially vested in them, or they may be expressly authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants, or in buying and selling any produce or commodities whatsoever, except such as it is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act: and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery and water for their use.

6. The president and directors of the James river company, as soon as they shall have ascertained that three-fifths of the capital stock have been subscribed as aforesaid, so that the subscribers have become a body corporate, shall make publication of the fact in such newspapers as may be best suited to give notice to the stockholders, and shall appoint a day not more distant than thirty days for a general meeting of the stockholders, at some fit place in the city of Richmond, to the end that the company may be organized by the appointment of proper officers and agents. If on the day appointed a sufficient number of stockholders do not attend to constitute a general meeting, those present may adjourn from time to time till a sufficient number shall attend. To this meeting the second auditor shall deliver the original books of subscription, together with the certificates of payment into the banks by the subscribers, endorsing thereon his warrants for their payment to the order of the new company.

7. To constitute a general meeting, there must be present, either in person or by proxy, a number of stockholders, having a right to

give a majority of all the votes which could be given at a meeting of all the stockholders.

8. Each stockholder shall be entitled to one vote for each share held by him, as far as ten shares, and to one vote for every five shares above ten.

9. There shall be a stated general meeting of the stockholders at some fit place in the city of Richmond, on the second Monday in December in each year, or at such other time as the by-laws of the company may prescribe; and there shall be extra general meetings of the stockholders, convened from time to time, as occasion may require, in such manner as may be ordered by the by-laws. If on the day appointed for any stated annual meeting, a sufficient number of stockholders shall not attend, to constitute such meeting, it shall stand adjourned from day to day until a sufficient number shall attend.

10. The stockholders, in general meeting, shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company, for the protection and preservation of their property, and for the maintenance of good order and good police among their officers, agents, servants and labourers, and among the boatmen and others who use their canal and other works.

11. At the first general meeting and at each stated annual meeting thereafter, the stockholders shall appoint a president and seven directors of the company, who shall hold their offices for one year and thereafter, until their successors shall be appointed, unless sooner removed by the stockholders in general meeting. Vacancies in the office of president or director shall be supplied by the stockholders in general meeting, or in such other manner as the by-laws may prescribe.

12. There shall be such other officers and agents of the company as they may think proper. Their duties, the tenure of their office and the mode of their appointment shall be prescribed by the by-laws; and bond with security for the performance of their duties may be required from any of them. The salary, pay and emoluments of the president, directors and all other officers and agents, shall be regulated by the by-laws.

13. Minutes of the proceedings of the stockholders at all general meetings, verified by the signature of the chairman or other presiding officer, shall be regularly kept and carefully preserved, in well bound books; and the names of all the stockholders present, whether in person or by proxy, shall be always entered on the minutes.

14. The president and directors of the company, subject to the control of the by-laws, shall be charged with the imme- 76
diate care and superintendence of the affairs of the company; with making and executing their contracts, either by themselves,

or by their lawful agents; with constructing and preserving their works; with the custody and preservation of all the property of the company; and with the control and direction of all their agents. A quorum for the transaction of business, shall consist of the president and a majority of the directors; or when the president is absent, of the directors, or any five of them, one of whom shall be appointed president, pro tempore.

15. They shall keep a regular journal of their proceedings, verified by the signature of the president, and preserved in well bound books, wherein the names of the members present shall be always entered, and the vote of each member recorded. They shall cause regular books of account to be kept of all the receipts and disbursements, and of all the dealings of the company; and shall cause their books to be regularly balanced, semi-annually, on such days as the stockholders in their by-laws shall appoint.

16. They shall keep a regular roll of their stockholders, and shall furnish to each one or more certificates of his stock as may be required, verified by the seal of the corporation, and the signature of the president. The stock shall be deemed personal estate, and as such, shall pass to purchasers, executors or administrators. Before the dividends on such stock shall be paid to any purchaser, executor or administrator, regular evidence of title shall be exhibited to the president and directors, and the original certificate of stock, or satisfactory proof of its loss, shall be produced; whereupon, the stock shall be transferred upon the books, and a new certificate or certificates granted. Until such evidence of title shall be produced to the president and directors, or they shall be restrained by legal process, they shall be justified in paying the dividends to the persons in whose name the stock stands upon their books; and the company shall not be chargeable therefor to any other claimant.

17. Within thirty days after the adjournment of the first general meeting of the stockholders, of which public notice shall be given in such newspapers as the president and directors may think proper, the stockholders other than the commonwealth, shall pay into one of the banks aforesaid, or into one of their offices of discount and deposit such as the president and directors may designate, the further sum of five dollars on each share of their stock; and they shall pay the residue of their subscriptions in such sums, at such times and in such manner, as the exigencies of the company may demand, and as the president and directors may from time to time require.

18. If any stockholder shall fail to pay the sum required of him by this act, within thirty days after the adjournment of the first general meeting, public notice having been given thereof in the manner above required, or shall fail to pay any other part of the subscription lawfully required of him by the president and directors, after such requisition shall have been advertised four weeks in some public newspaper printed in the city of Richmond, it shall be

lawful for the president and directors, after advertising the time and place of sale for four weeks, in some newspaper so published, to sell at public auction for cash, the share or shares of the delinquent stockholder, and to convey and transfer the same to the purchaser. And the said president and directors, after retaining from the purchase money the costs and charges of the sale, and the amount in arrear, and due to the company, shall pay over the surplus, if any, to the said stockholder, or his legal representative. If the purchase money shall be insufficient to pay the cost and charges of the sale, and the sum in arrear and due to the company, then the delinquent stockholder, as well as the original subscriber for the stock, and the heirs, executors and administrators of each of them shall be liable for the payment of the balance; and such balance may be recovered of the original subscriber and delinquent stockholder, jointly or severally, or from the heirs, executors or administrators of either, upon motion on ten days previous notice, in the inferior or superior court of the county or corporation in which the defendants, or either of them, may be found, or by warrant before a justice of the peace, where the sum to be recovered is within the jurisdiction of a single magistrate, or by any other proper action before any court having cognizance thereof. The purchaser at such sale shall be regarded as an original subscriber, and as such, he, his heirs, executors and administrators, shall be liable for all subsequent delinquencies.

19. When the other stockholders shall have paid such proportion of their subscriptions as will be equal to the proportion of the state's subscription paid by the transfer of their property as aforesaid, then the residue of the state's subscription shall be paid from to time, as nearly as may be, in the proportions in which the other stockholders shall be required to pay the residue of their subscriptions.

20. At the expiration of thirty days from the adjournment of the first general meeting of the stockholders as aforesaid, the whole interest of the commonwealth in the works and property of the present James river company, shall be, and the same is hereby transferred to the *James river and Kanawha company*, hereby incorporated, to be held by them forever, for the sole use and benefit of the stockholders; and from thenceforward, the company hereby incorporated shall be entitled to all the tolls, rents, and other emoluments, rights, privileges and immunities, which are now enjoyed by the James river company, subject however to the incumbrances, limitations and restrictions in this act declared. The president and directors of the new company, their officers and agents, at the expiration of the said thirty days, shall take possession of the property and works hereby transferred, and enter upon the receipt of the tolls, rents, and other emoluments thereof, for the benefit of the stockholders; but until the expiration of the said thirty days, the said property and works, the tolls, rents, and other emoluments

thereof, shall be and remain for the use of the commonwealth, in the same manner as if this act had never passed.

21. The *James river and Kanawha company* shall take the property hereby transferred to them, subject to the payment of the dividend of fifteen per centum per annum forever, to the stockholders of the old company, and subject moreover to the pledge of the surplus tolls of the company made by former laws, for the security of those public creditors, who on the faith of that pledge have lent money to the James river company, for the use of the commonwealth; but the general assembly hereby pledges the faith of the commonwealth to the new company, that they shall be 78
protected from the payment of any part of the principal or interest of the debt contracted by the loans aforesaid; and to this end the profits of the commonwealth's stock in the new company, and so much of the revenue of the fund for internal improvement, as now stands pledged for that purpose, shall be faithfully applied to the payment of the interest on the said loans; and if this should prove inadequate, other sufficient funds shall be provided.

22. The *James river and Kanawha company* are charged with the duty of connecting the tide water of James river with the navigable waters of the Ohio by one of three plans of improvement, at their election; that is to say, either by a continuation of the lower James river canal to some suitable point on the river not lower than Lynchburg, a continued rail-road from the western termination of that canal to some convenient point on the Great Kanawha river below the great falls thereof, and an improvement of the Kanawha river from thence to the Ohio, so as to make it suitable for steam boat navigation: or secondly, by a continuation of the James river canal as aforesaid, and a continued rail-road from its western termination to the Ohio river: or thirdly, by a continued rail-road from Richmond to the Ohio river. And whether they elect one or another of these plans of improvement, that which they elect shall be executed in a substantial, durable and workmanlike manner; their improvements shall be kept permanently in good repair, free and fit for public use, according to the provisions of this act; and the works which they shall construct, and the property which they shall acquire by purchase or condemnation, under the authority of this law, shall be vested in them and their successors forever, for their own use and benefit, exempt from all public taxes, burdens or charges, other than those which may be imposed or authorized by this act.

23. If the company elect to continue the lower James river canal to Lynchburg, or beyond it, as part of their improvement, then that canal in all its parts from Richmond to its western termination, shall be at least forty feet wide at top, and twenty-eight feet wide at bottom, with not less than four feet depth of water at all seasons of the year, shall be provided with a convenient tow-path,

and adapted throughout its whole extent to the navigation of boats of not less than thirty-five tons burden, propelled by horses. To avoid very great expense at difficult passes, and to furnish proper accommodation to the trade on both sides of the river, the bed of the river shall occasionally be used as part of the line of navigation, when the refluent water from the dams will admit the convenient application of horse power, and the safe and easy passage of the usual canal boats. The canal at its lower termination shall be connected with the tide-water, so as to enable the boats which usually navigate it with their cargoes, at all times conveniently to pass into tide water, and descend the river or return.

24. From the highest point on James or Jackson's river to which the navigation shall be carried as aforesaid, a rail-road shall be extended by the most convenient route, either to the Ohio river, or to some suitable point on the Kanawha river, below the great falls thereof, as the company may elect. Such rail-road shall be graduated, so as to be convenient for transportation both eastward and westward, and shall be furnished with two sets of tracks, and all other works and fixtures necessary for the accommodation of the trade thereon. 79

25. If the company should not choose to extend the lower James river canal, but should elect a continued rail-road from Richmond, then they shall construct a rail-road from the tide water at Richmond, following the course of James river beyond the Blue Ridge, and thence by the most convenient route to the Kanawha river, terminating either at the mouth of that river, or at some other convenient point below the great falls, or at some convenient point on the Ohio river. And for the accommodation of the trade on both sides of James river, they shall extend proper arms of the road across the river, to all towns, and other convenient places of deposit on the opposite shore thereof.

26. If the western termination of the rail-road should be at any point of the Kanawha above its mouth, then the navigation of the Kanawha river from thence to the Ohio, shall be improved by locks and dams, or otherwise, so that at all seasons of the year, it may be conveniently and safely navigated by steam-boats of not less than one hunderd tons burden.

27. The works hereby required of the James river and Kanawha company, shall be executed with diligence, and if they be not commenced within two years after the passing of this act, and finished within twelve years after the first general meeting of the stockholders, then their charter shall be forfeited, and all the works of the company, with the land on which they are situated, and all the rights, privileges and immunities hereby granted to them, shall be vested in the present James river company, for the benefit of the commonwealth; and in that event, the present James river company shall be regarded, to all intents and purposes, as the successors of

the company hereby incorporated, in no manner, however, liable for any debts which they may have contracted, or entitled to any part of their personal property.

28. If the capital of five millions of dollars shall be found insufficient to complete the works required of the company, they shall be at liberty to enlarge their capital to any amount which may be found necessary to that end. The commonwealth shall be at liberty to take two-fifths of the additional capital, or any portion thereof, and the other stockholders to take the residue. So much thereof as shall not be voluntarily taken by the commonwealth and the other stockholders, may be raised by opening new books, and receiving new subscriptions, under the superintendence and control of the president and directors. The additional capital shall be taken in whole shares of a hundred dollars each; and the subscribers, their successors, heirs and assigns, shall be thenceforth, to all intents and purposes, members of the company in like manner as if they had been subscribers to the original capital; and shall, in like manner, be compelled to pay the amount of their subscriptions, upon the requisition of the president and directors, be subject to all the burdens, and entitled to all the privileges of the original subscribers.

29. The president and directors, their officers, agents and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their road or canal, or any feeder of the canal, or against which they may desire to abut any dam; and to lay out their road, canal, feeders and abutments, according to their pleasure, so that neither the dwelling house, yard, garden, nor curtilage of any person 80 be invaded without his consent. They shall describe by certain limits the land which they desire to occupy for the purposes aforesaid, and such contiguous land as they may desire to occupy as sites for toll-houses, warehouses, stables and other buildings, for the necessary accommodation of their officers, agents and servants, their horses, mules, and other cattle, and for the protection of the property entrusted to their care: *Provided*, That the lands so laid out on the general line of the road, canal or its feeders, shall not exceed one hundred feet in width; that the adjoining land, for the sites of buildings, shall not exceed one acre in any one parcel, or one hundred acres in the whole, and that the land for an abutment shall not exceed one acre. It shall be lawful for the president and directors to purchase and hold the land so laid out, or any part thereof. And if they cannot agree with the owner on the terms of purchase, it shall be lawful for them to apply to the court of the county in which such land, or the greater part thereof, may lie, and upon such application, the court shall appoint five discreet, intelligent, disinterested and impartial freeholders, to assess the damages to the owner from the condemnation of his land for the purposes aforesaid. No such appointment, however, shall be made, unless ten

days previous notice of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant, or to the committee, the owner being *non compos mentis,* if such owner, guardian or committee, can be found within the county; or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding, in some newspaper printed as convenient as may be to the courthouse of the county, and shall have been posted at the door of the courthouse on the first day at least of the next preceding term of the said court. A day for the meeting of the said freeholders to perform the duty assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more of them may act after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof, for the use of the company, and that they will truly certify their proceedings thereupon to the court of the said county.

30. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same, and hearing such proper evidence as either party may offer, they shall ascertain, according to the best of their judgment, the damages which the proprietor of the land will sustain, by the condemnation thereof for the use of the company. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein: they shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard to the advantages which the owner of the land will derive from the construction of the road or 81 canal, for the use of which his land is condemned.

31. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals, in substance as followeth:

"*We, freeholders, appointed by an order of the county court of for the purpose of ascertaining the damages which would be sustained by , the proprietor of certain lands in the said county, which the president and directors of the James river and Kanawha company propose to condemn for their use, do hereby certify, that we met together on the land aforesaid, on the day of , the day appointed therefor by the said order, (or the day to which we were regularly adjourned, from the day appointed for*

our meeting by the said order.) and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing, which would probably be occasioned by its condemnation, and all other inconveniences which seemed to us likely to result therefrom to the proprietor of said land: that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of the said land, from the construction of the rail-road, (or canal,) for the use of which the said land is to be condemned: that under the influence of these considerations, we have estimated, and do hereby assess the damages aforesaid, at the sum of . Given under our hands and seals this day of ." At the foot of the report so made, the magistrate before whom the said freeholders were sworn, shall make a certificate, in substance as follows: "*County, set: I, a justice of the peace for said county, do hereby certify, that the above named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named . from the condemnation of the above mentioned land, for the use of the James river and Kanawha company, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand this day of .*"

32. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders, to the court of the county; and unless good cause be shewn against the report, it shall be confirmed by the court, and entered of record: but if the said report shall be disaffirmed, or if the said freeholders, being unable to agree, should report their disagreement, or if from any other cause, they should fail to make a report, within a reasonable time after their appointment, the court may at its discretion as often as may be necessary, supersede them, or any of them, appoint others in their stead, and direct another view and report to be made, in the manner above described.

33. On the confirmation of any such report, and on the payment or tender to the proprietor of the land, of the damages so assessed, or the payment of the said damages into court, when for good cause shewn, the court shall so have ordered it, the land viewed and assessed as aforesaid shall be vested in the *James river and Kanawha company*, in the same manner as if the proprietor had sold and conveyed it to them. 82

34. While these proceedings are depending for the purpose of ascertaining the damages to the proprietor for the condemnation of his land, and even before they shall been instituted, the president and directors, if they think that the interest of the company requires it, may by themselves, their officers, agents and servants

enter upon the lands laid out by them as aforesaid, and which they desire to condemn, and apply the same to the uses of the company. If when they so take possession, proceedings to ascertain the damages as aforesaid shall be pending, it shall be their duty diligently to prosecute them to a conclusion; or if none be then pending they shall without delay institute them, and diligently prosecute them to a conclusion. And when the report of the freeholders ascertaining the damages shall be returned and confirmed, the court shall render judgment in favour of the proprietor of the land for the amount thereof, and either compel its payment into court, or award process of execution for its recovery as to them shall seem right.

35. In the mean time no order shall be made and no injunction shall be awarded by any court or judge to stay the proceedings of the company in the prosecution of their works, unless it be manifest that they, their officers, agents or servants are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

36. If the president and directors shall take possession of any land before the same shall have been purchased by them or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said president and directors, or any one of them, ten days previous notice, to apply to the court of the county in which the land or the greater part thereof shall lie; and upon such application the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the use of the company, shall appoint a day for their meeting, to perform the duties assigned them, and shall dismiss at the costs of the company any proceedings then depending on their behalf for the condemnation of the said land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties in all respects in the same manner as if they had been appointed on the application of the president and directors of the company. And the court shall in like manner confirm or disaffirm their report, supersede them or any of them, and appoint others in their stead, or direct another view and report to be made as often as may be necessary. And when any such report ascertaining the damages shall be confirmed, the court shall render judgment in favour of the proprietor for the damages so assessed, and double costs, and shall thereupon either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor as to them shall seem right.

37. When the judgment rendered for the damages assessed and

costs, shall be satisfied by the payment of the money into court, or otherwise, the title of the land for which such damages were assessed, shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them.

38. The said president and directors, for the purpose of constructing their canals, feeders, dams and rail-road aforesaid, and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering or repairing their canals, and other works now in existence, shall be at liberty by themselves, their officers, agents or servants, at any time to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom, any wood, stone, gravel or earth, which they may deem necessary: *Provided, however,* That they shall not, without the consent of the owner, cut down any fruit tree, or any tree preserved in any field or lot for shade or for ornament, or take any timber, gravel, stone or earth, constituting any part of any fence or building. For all wood, stone, gravel or earth taken under authority of this act, and for all incidental injuries done to the enclosures, crops, woods or grounds, in taking or carrying the same away, the said president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent and disinterested freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn by him, and shall then ascertain the compensation upon their own view of the wood, stone, gravel or earth taken, and of the injury done as aforesaid in taking them.

39. If the said president and directors, in entering upon the land of any person under the authority of this act, for the purpose of laying out or constructing, enlarging, altering or repairing any of their said works, shall, by themselves, their officers, agents or servants, do any wanton or wilful injury to such land or its appurtenances, or to the crops growing or gathered, or to any other property thereon, the *James river and Kanawha company* shall pay to the person so injured, double the amount of the damages which shall be assessed by a jury in any proper action therefor.

40. When the works of the said company shall cross any public road, now established, or hereafter to be established, it shall be the duty of the *James river and Kanawha company* to provide, as far as possible, that no obstruction to the convenient transportation of persons or property along such road, shall be opposed by their works; and to this end, they shall always maintain, in good repair, proper bridges upon their canals, and proper passways across their rail-road, where the public roads cross them. Whensoever their works shall be conducted through the lands of any one without his consent, it shall be their duty to provide for him safe and convenient passways across their works, from one part of his land to the

other. And if, by the enlargement or alteration of the canals now in existence, any bridge thereon, which the present James river company is bound to maintain for the use of the owner of the adjoining lands, should be destroyed or injured, the new company shall, without delay, re-build or repair it, so that the owner of the adjoining lands may sustain no detriment.

41. The general assembly will be at full liberty, at any time hereafter, to authorize any other rail-road to be joined to the rail-road of the *James river and Kanawha company*, or be conducted across it, on such terms as may be just, and in such manner as not to injure the works of the James river company, or 84 obstruct the use of their road.

42. The present improvements on James river shall, as far as practicable, be kept in good repair by the company, and free for use, on the payment of the tolls now allowed, except so far as they may be substituted by the new works required by this act.

43. The *James river and Kanawha company* shall at all times keep open and in good repair, the present Kanawha turnpike, hereby to be transferred to said company, as well as the extension thereof to the mouth of Big Sandy river, from the time of the completion of the same, and shall be authorized to receive, for the use of the said road, and the extension thereof, such tolls as they may assess, provided they do not exceed those now imposed by law. In the mean time, the extension to the mouth of Big Sandy river shall be completed in the manner now required by law, under the direction of the James river company, or such other agent as the general assembly shall direct; and so soon as the same shall be completed, it shall be transferred to the possession and controul of the *James river and Kanawha company.*

44. When the improvements in the navigation of the rivers hereby authorized, shall have been made, their navigable waters shall be deemed public highways, free for the use of all persons whatsoever, paying the lawful tolls, and conforming to the lawful rules and regulations of the company; and the tolls shall be as follows: Upon James and Jackson's rivers, the company may demand and receive, on all articles transported by water on their line of improvement, such tolls as they may assess, provided they do not exceed an average of three cents per ton of two thousand two hundred and forty pounds, per mile, upon either the ascending or descending navigation, and that the tolls upon indian corn, wheat, rye, and other grains, and grass seeds; upon flour, corn meal and other meal; upon hemp, flax, cotton, tobacco, and all agricultural productions, shall not exceed two and a half cents per ton per mile; that the tolls upon salt, bar iron, pig iron, iron castings, and all other minerals and fossils, shall not exceed two cents per ton per mile; that the toll upon coal shall not exceed one cent per ton per mile; and that the tolls upon lime, lumber and gypsum, shall not exceed one half a

cent per ton per mile. These tolls shall be in lieu of the tolls now allowed by law.

45. When the improvements in the navigation hereby required shall be completed as far as Lynchburg, the tolls hereby allowed may be demanded and received upon the transportation between Lynchburg and Richmond, and shall be in lieu of the tolls now allowed on the lower canal: *Provided, however*, That until the improvements aforesaid shall be completed to the mouth of the North river in Rockbridge, the tolls from Lynchburg downward, on such articles as shall have passed the locks on the mountain canal, shall not exceed two cents per ton per mile. When the improvements shall be completed to the mouth of the North river in Rockbridge, the new tolls may be demanded and received upon the transportation below that point, in lieu of the tolls now allowed on the mountain canal: and if the aforesaid improvements shall be extended above the mouth of the North river, then the new tolls may be demanded and received upon the transportation on such parts of the extended line of improvement above that point, as may from time to time be completed and fit for use: *Provided*, That no such 85
tolls shall be received on parts of such extended line, until it shall be completed as far as Crow's ferry, and that none such shall be received on the transportation above Crow's ferry, on parts of such extended line, less than ten miles in extent.

46. Upon the Kanawha river, when the improvements on the same shall have been fully completed, as herein-before authorized and directed, from the point on said river where the rail-road may terminate, to the mouth thereof, the company may demand and receive, on all articles transported by water, on their line of improvements, in lieu of the tolls now allowed, such tolls as they may assess, provided they do not exceed one cent per ton per mile; but the tolls on salt, bar iron, pig iron and castings, shall not exceed one half of a cent per ton per mile; and upon lumber, lime, coal and gypsum, shall not exceed one-fourth of a cent per ton per mile: *Provided*, That all canoes and other small craft going to or returning from mill, shall be exempt from the payment of tolls. Until said river is rendered navigable in the manner above prescribed, from the termination of said rail-road to the mouth of the river, the *James river and Kanawha company* may demand and receive such tolls upon said river as they may assess, provided they do not exceed those now allowed by law.

47. Upon the rail-road hereby authorized, the company shall have the exclusive right of transportation. When it is completed, they shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times upon the payment or tender of the tolls hereby allowed, to transport to any convenient place of delivery on the road which the

owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported at some place on the road convenient for the reception thereof. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company, or any of its officers or agents, shall fail to receive, transport or deliver, in due time, any property so offered or delivered to them for transportation, they shall forfeit and pay to the party injured double the amount of the lawful tolls paid or tendered; and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered. The company shall be liable as common carriers for any loss or injury happening to goods in their possession, or in possession of their agents for transportation.

48. If the rail-road be not extended farther east than the western termination of the James river canal, at or above Lynchburg, then the company may demand and receive for transportation thereupon, such tolls as they may assess, provided they do not exceed an average of eight cents per ton per mile; and for the transportation of persons four cents each per mile. But if the rail-road should be continued from Richmond to the Kanawha, then they may demand and receive the same tolls per mile for carriage west of Crow's ferry, at the mouth of Looney's creek, and may demand and receive east of the said Crow's ferry at the mouth of Looney's creek for the carriage of all articles of property 86
from west to east, tolls not exceeding an average of four cents per ton per mile; for the carriage of all articles of property from east to west, tolls not exceeding an average of six cents per ton per mile; and for the carriage of persons, whether eastward or westward, they may demand and receive four cents each per mile: *Provided, however,* That the tolls upon lumber, salt and the other mineral and agricultural products above enumerated, shall not exceed the respective averages above declared; that the tolls on coal shall not exceed three-fourths of these averages; and the toll on gypsum shall not exceed one-half of these averages. The tolls hereby allowed are in full for all transportation on the rail-road; and no other compensation shall be demanded or received by the company.

49. Tolls on the rail-road may be demanded and received as soon as any part thereof shall have one set of tracks completed, and shall be prepared with the necessary carriages and other requisites for safe and convenient transportation. The company, if they deem it expedient, may defer laying down the second set of tracks until one set shall be completed throughout the whole extent of the road: but they shall thereafter lay down the second with all practicable dispatch.

50. While the works are in progress, and after they are com-

pleted, the president and directors of the company shall declare and make semi-annual dividends of so much of the surplus profits of the stock, after paying the dividends due to the old stockholders, as they may deem it prudent to divide. The dividends on the commonwealth's stock, or so much thereof as may be required, shall be applied towards the payment of the interest on the loans to the James river company, and the dividends on the stock of the other stockholders, shall be paid to their order in such manner as the by-laws may prescribe.

51. The annual nett profits of the company proceeding from tolls, rents, and all other emoluments, shall never exceed fifteen per centum upon their capital stock; and the tolls shall be regulated from time to time, so as to restrain the profits within that limit. All reductions of the tolls made for that purpose shall be made rateably, on the Kanawha river, on the line between that and Crow's ferry at the mouth of Looney's creek, and on the line from thence to Richmond. To the end, that this regulation may be enforced, and that the general assembly may always be informed of the condition of the company, it shall be the duty of the president and directors of the company, annually, to report to the board of public works, or to such other public authority as the law may prescribe, the true state and condition of the company, its income from tolls, rents and other emoluments, its expenditures, and its nett profits, to the end that the commonwealth and the other stockholders may enjoy the profits of the stock in proportion to the amount of their respective capitals; the dividends declared as aforesaid upon each share, shall always be in proportion to the amount actually paid thereupon by the stockholders; and the commonwealth shall be regarded as having paid the full amount of her original subscription, from the time when her interest in the property and works of the present James river company shall have been transferred to the new company.

52. If any person shall wilfully trespass on the possessions, or do injury to the works or other property of the company, he shall be deemed guilty of a misdemeanor, and be punished accordingly; except in those cases in which the offence is of a higher grade, or otherwise specifically punished by law. 87

53. In the event of the said company's constructing a road for the passage of carriages and heavy loaded waggons, and keeping the same in good repair, from a suitable point at or near the lower end of the existing canal at the mountain section, to a point on or near the North river, they shall be, and are hereby authorized to erect a gate thereon, and to demand and receive such tolls as are allowed by the act passed February the seventh, one thousand eight hundred and seventeen, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies."

54. This act shall commence and be in force from and after the passing thereof.

CHAPTER 14.—Act of March 15, 1833. (See title: Fund for Internal Improvement, and Board of Public Works, p. 10

CHAP. 95.—An ACT to provide for the construction of a bridge and embankment over the ravine of Campbell's creek.

[Passed February 20th, 1833.] 59

1. *Be it enacted by the general assembly*, That for the purpose of constructing a bridge and embankment over the ravine of Campbell's creek on the line of the Kanawha road, the president and directors of the James river company shall be, and they are hereby authorized and required, should the funds provided by law for the extension of the Kanawha turnpike to Big Sandy river be insufficient for the construction of the said bridge and embankment, to borrow a further sum of money not exceeding four thousand dollars, upon the same terms and conditions on which loans were authorized by the act, entitled, "an act providing for the extension of the Kanawha turnpike road to Big Sandy river," passed January the thirtieth, eighteen hundred and twenty-nine.

2. This act shall be in force from its passage.

CHAP. 84.—An ACT to provide for the repair of the Kanawha road, and for other purposes.

(Passed March 11, 1834.) 99

1. *Be it enacted by the general assembly*, That hereafter the Kanawha turnpike road and the extension thereof, shall constitute one improvement, and the number of toll-gates thereon shall be regulated accordingly. The president and directors of the James river company shall be authorized to adopt such a system for the repair and preservation of the said road, of the navigation of the Kanawha river, and of the Blue Ridge canal, and for the transaction of all business connected with those improvements, as they may deem most efficient and economical; and for the purpose of executing the same, they may appoint two agents or superintendents, assign their respective duties, and fix their salaries: *Provided*, That these salaries shall not exceed the total sum of fifteen hundred dollars.

2. *Be it further enacted*, That in order to enable the president and directors of the James river company to repair and improve the

said turnpike, and to re-build or repair the bridges belonging to the same, in a complete and effectual manner, they are hereby authorized and empowered to borrow on the credit of the state, a sum of money not exceeding ten thousand dollars, on the same terms, conditions and pledges as are prescribed for the loan authorized by the first and second sections of the act, entitled, "an act authorizing a loan for the purposes of internal improvement," passed on the first day of March, eighteen hundred and twenty-six, and so much of the said sum as shall be necessary, is hereby appropriated for the purposes above mentioned.

3. This act shall be in force from and after its passage.

KANAWHA BOARD.

CHAP. 117.—An ACT providing more effectual means for the improvement of the navigation of the Kanawha river.

Passed February 15, 1858. 91

1. Be it enacted by the general assembly, that the number of directors in the James river and Kanawha company shall be increased by the appointment of six additional directors, three of whom shall be appointed by the Board of public works, and three by the stockholders in general meeting. Two of said directors to be elected by the stockholders in general meeting, shall be elected by the stockholders other than the state, and the third by the stockholders, including the state. That the three additional directors to be appointed by the Board of public works, and two of those to be appointed by the holders, shall be residents of the Kanawha valley, and shall, with the president of the company, constitute a board to be known as The Kanawha Board; which shall be entrusted with the control, management and supervision of the Kanawha improvement; subject, however, to the instructions of the stockholders of said company. All the authority now vested in the present board of directors over the Kanawha river, shall be vested in the Kanawha board 92 of directors herein authorized to be appointed; but said Kanawha board of directors shall have no control over any of the other works or affairs of said company. The Kanawha board may elect one of their number to act as president pro tempore, who shall preside, and discharge the other duties of president of the company, relating to the Kanawha river, in the absence of the president. Three of said directors, with the president of the company, shall constitute a quorum, and in the absence of the president, four of said directors shall constitute a quorum. The said Kanawha board shall have power to adopt such by-laws and regulations and to appoint such officers and agents as they may deem necessary for the management of the Kanawha improvement: provided, that in case the president of the company shall differ with the Kanawha directors in any matter involving in his opinion the general interests of the company, he shall have authority to call a meeting of the two boards of directors together, and submit such matter to them as one board: and their decision shall be carried into effect. The third director to be elected

by the stockholders, including the state as aforesaid, shall be a member of the board of directors of the James river and Kanawha company as at present constituted, and invested with full powers as such.

2. The James river and Kanawha company are hereby authorized to borrow on the credit of their works on the Kanawha river, now existing and hereafter to be constructed under this act, and the net revenues now on hand or due and unpaid, and that may hereafter accrue therefrom, a sum or sums of money sufficient to improve the navigation of the Kanawha river, from the mouth thereof to Loup creek shoals, and are hereby authorized to issue their bonds or certificates of debt, payable at a period of not less than twelve years from the issuing and date thereof, unless the company shall think proper to pay them at an earlier time. Such bonds or certificates of debt shall bear interest at a rate not exceeding the rate of interest allowed by an act of the general assembly passed March fifteenth, eighteen hundred and fifty-six, entitled an act for the relief of rail road and other companies, and to regulate the terms on which they may borrow money; and the company shall not sell the said bonds or certificates at a less rate than that allowed in the said act. The company are also authorized to apply the net revenues derived from their works on the Kanawha river from its mouth to Loup creek shoals, directly to the improvement of said river.

3. The James river and Kanawha company are authorized and empowered to give a mortgage upon their said works on and rights in the said Kanawha river from Loup creek shoals to its mouth, as well as the works hereafter to be constructed under this act, and upon their net revenues now due or in hand, and which may hereafter accrue from the said works, for the purpose of securing the payment of the interest and the ultimate redemption of the principal of said bonds or certificates of debt; but the said mortgage shall give the power to sell the said property thereby conveyed, only in case of default in the payment of the principal of the said bonds or certificates of debt, when they shall become due, and provide for the payment of the accruing interest thereon only from the accruing net revenue from said work, except such arrears of interest as may be unpaid, if any, when the company may make default in the payment of the principal; which arrears may be provided to be then paid, together with the principal, from the proceeds of the sale of the property conveyed by the said mortgage. And a sale of the property shall not then be made, unless it shall appear that the payment of the principal of said bonds cannot be made within five years out of the revenues to be derived from said improvement. Neither the said bonds nor any other contract of the Kanawha board shall be a charge upon or in any manner enforced against the other property, resources or credit of the company. Any liens or prior claims that the state may hold

on said works, rights and revenues, are hereby suspended in favor of such parties as may loan money to said company for the purposes of this act, or become the holders of said bonds, until such loan or loans, with the accruing interest thereon, have been fully paid and discharged: provided, however, when the debt with its accruing interest, which is herein authorized to be contracted for the improvement of the Kanawha river, shall have been fully paid and discharged, the state shall be reinstated to all the rights, privileges and priorities to which she was entitled previous to the passage of this act.

4. The James river and Kanawha company are hereby authorized, when the improvement of the Kanawha river has been commenced, to collect on all articles transported on the Kanawha river, in lieu of the tolls now authorized by law, such tolls as they may assess: provided they do not exceed four cents per ton per mile, but the toll on timber, lumber and coal shall not exceed one-fourth of one cent per ton per mile; upon salt, one-half of one cent per ton per mile; and upon bar iron, pig iron, grain and flour, one cent per ton per mile; and said company are also authorized to collect a rate of toll not exceeding one cent per passenger per mile for each person traveling on steam boats on said river.

5. The James river and Kanawha company shall not be liable for injury to boats, cargoes or other property at the points undergoing improvement, unless such injury be caused by a want 93
of ordinary care by the company or its agents in constructing the work.

6. The act of assembly passed February fifth, eighteen hundred and fifty-six, entitled an act authorizing the James river and Kanawha company to borrow money to improve the Kanawha river, and to pledge the tolls on said river for that purpose, so far as its provisions are inconsistent with or are changed by the provisions of this act, is hereby repealed: provided, however, that such repeal shall not affect the validity of the pledge heretofore made by the company, in pursuance of said act, of the tolls from the Kanawha river for the improvement of the said river.

7. The stockholders of the James river and Kanawha company shall have the power in general meeting to dispense with and terminate the powers of the said Kanawha board, composed of five directors as aforesaid, at any time they may deem it expedient to do so, after the improvement of the Kanawha river from its mouth to Loup creek shoals, as provided for by this act, shall have been completed. And this act shall expire by its own limitation, if the improvement of the Kanawha river, contemplated by it, shall not be commenced in good faith on or before the first day of July eighteen hundred and fifty-nine, and be completed within four years there-

after, unless the stockholders shall determine in general meeting, before the expiration of such period, to extend the said period for completing the work: provided, however, that if this act should be permitted to expire under the foregoing limitations, the rights and liens of the holders of bonds that shall have been issued and sold in pursuance thereof, shall not be affected thereby.

8. This act shall be in force from and after the time that the stockholders of the company shall accept the same in general meeting: provided, that the legislature hereby reserves the right at any time hereafter to modify, amend or repeal the powers and privileges hereby conferred, but the right of parties who may loan money under the provisions of this act for the improvement of the Kanawha river, shall not be affected or impaired by any such amendment, modification of repeal.

CHAP. 21.—An ACT to amend the Charter of the James River and Kanawha Company.

Passed March 23, 1860. 113

1. Be it enacted by the general assembly, that the capital stock of the James river and Kanawha company be and the same is hereby increased to twelve million four hundred thousand dollars, in shares of one hundred dollars each.

2. That in addition to the shares now owned by the state in said company, the Board of public works be and is hereby directed to subscribe, on behalf of the commonwealth, for seventy-four thousand shares of said capital stock, which shall be declared by said company a six per cent. preferred stock, on which six dollars per share shall be paid to the holders thereof before any dividend shall be paid on other stock of said company; whereof seventy-two thousand shares shall be taken in full satisfaction of the debt now due from the said company to the state, and for the assumption by the state of the debt for which the state is bound as the surety for said company, and the annuity to the old James river company; and for the residue of two thousand shares, the bonds of the state for the aggregate amount of two 114 hundred thousand dollars are to be delivered to the company, to be applied to the extinguishment of the floating debt of the company: provided, that an amount of said debt equal to the amount of said bonds, shall be extinguished thereby.

3. Upon the receipt of the certificates for the said seventy-two thousand shares of stock, the Board of public works shall give to the James river and Kanawha company a receipt in full for the said several debts due to the state, and for any claims against the company

on account of the debts for which the state is responsible as security of the company, or on account of the annuity to the old James river company; and shall, by proper deeds, release to said company all liens, whether by deeds of trust, mortgages or otherwise, held by the state upon the works and property of the company, to secure any debt due to the state, or which may be guaranteed by the state.

4. Upon the receipt of the certificates for the said seventy-two thousand shares of the stock, the Board of public works is hereby directed, upon the surrender by the holders thereof, of any of the bonds of the James river and Kanawha company, for the payment of which the state is responsible, to issue to said holders a corresponding amount of the bonds of the state, made in the manner prescribed by law, payable thirty-four years after their date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the board shall thereupon cancel and file the bonds so surrendered, and deliver to the James river and Kanawha company a statement thereof, with the number, amount and date of each bond.

5. And upon the receipt of the certificates of the residue of two thousand shares of said stock, the Board of public works is directed to issue and deliver to the company the bonds of the state for the aggregate amount of two hundred thousand dollars, to be applied to the extinguishment of the floating debt of the company.

6. The James river and Kanawha company shall have authority to borrow money, at a rate of interest not exceeding 115
seven per centum per annum, payable semi-annually, and not exceeding two million five hundred thousand dollars, for the purpose of completing the canal to Covington, carrying on their other works and paying the residue of their floating debt, and to execute bonds for the amount borrowed, and deeds of trust or mortgages, pledging their works, property and net revenues for the payment of the same: provided, that they shall not borrow in any one year a greater amount than five hundred thousand dollars. The said interest shall be paid semi-annually into the treasury of the commonwealth, for the benefit of the holders of said bonds, on or before the first day of January and July in each year; and the same shall be paid to the holders thereof, upon the warrant of the second auditor, out of said funds so paid into the treasury by said company.

7. The said company, after they may have issued such bonds, shall set apart, on the first day of January and July in each year, a fund not less than the rate of one per centum per annum for a sinking fund for the payment of the principal of such bonds, or such larger rate as may be necessary to provide a fund sufficient for such redemption, at the maturity of such bonds. And the amount to be set apart annually as a sinking fund, shall be paid by the company, one-half thereof on or before the first day of January and July in each year, to the commissioners of the Sinking fund, and invested by them in stocks, as required by the general law regulating the action of said commissioners;

and the said commissioners shall keep an account of, and hold and apply the same to the redemption of said bonds, in pursuance of this act: and shall make report to the general assembly, at each session, of their proceedings under this act.

8. Nothing in this act contained shall be so construed as to render the state liable, in any manner whatever, otherwise than as a stockholder of the company, to the holders of any bonds executed for money borrowed under this act.

9. Be it further enacted, that there shall be issued to, and placed under the exclusive control of the Kanawha board of 116
directors of said company, or their successors, as constituted under the act of the general assembly entitled an act providing more effectual means for the improvement of the navigation of the Kanawha river, passed fifteenth of February one thousand eight hundred and fifty-eight, three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be issued in the mode now provided by law, and the said stock so issued shall be used by said Kanawha board of directors for the improvement of the navigation of said river, from the mouth thereof to Loup creek shoals: provided, however, said Kanawha board shall not dispose of said registered stock at less than par. And said registered stock shall not be issued for an amount exceeding one hundred and fifty thousand dollars in any one year, nor exceeding twenty thousand dollars in any one month: But before any of said stock shall be issued, the said James river and Kanawha company, by the president thereof, shall execute a deed of trust or mortgage upon the works, property and net revenue of said Kanawha line of improvement, from the mouth thereof to said Loup creek shoals, to the commonwealth, for the payment of the principal and interest of said three hundred thousand dollars: or upon the failure or refusal of said company to execute such deed of trust or mortgage, when required by the Kanawha board, then the said Kanawha board, by their president pro tempore, or other agent, may execute such deed of trust or mortgage: and the same shall be deemed to have the same effect as though it had been executed by said company: and such lien shall take precedence over any lien created by said company, to secure their bonds authorized to be issued by this act. The said Kanawha board shall pay into the treasury of the commonwealth three and one-half per centum on or before the fifteenth day of June and December of each year, on such amount of said registered stock as may be issued under this section, for interest and to provide a sinking fund. The said Kanawha board are hereby authorized and directed to prosecute the construction of said Kanawha line of improvement, free from the control or direction of the president and directors of said James river and Kanawha company, and which is known as 117
the "Eastern board," and shall have the entire control and management of the same, free from such control and direction.

10. The debts of said company, which may not be paid as authorized by this act, or if the holders thereof shall refuse to receive in payment thereof the seven per centum bonds of said company, authorized to be issued by this act, shall not, by reason of the passage of this act, be in any better condition for enforcing the payment theerof; but the liens of the commonwealth existing before the passage of this act, on the works, property and revenue of said improvement, shall, as to them, be deemed to be in full force.

11. The Board of public works shall appoint three proxies to represent the state at the meetings of the stockholders; and the proxies so appointed shall have power to cast three-fifths of all the votes cast in the appointment of the president and other officers elected by the company, except directors of said company, and in fixing the salaries of officers, and in all other questions arising in a meeting of stockholders, and shall allow to said proxies a reasonable compensation for their services. And authority is hereby given to the Board of public works to revise and alter the rates of toll charged by said company, and are directed so to do, so as to adapt them to a remunerative standard. If the location proposed for the line of the canal between the present terminus of the Virginia Central rail road at Jackson's river and the town of Covington, will interfere at any point with any proposed location of the extension of said railroad, and the engineers representing respectively the canal and the rail road cannot agree upon an independent location for each work at such points, then the Board of public works shall determine such location, having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.

12. In addition to the rights and powers heretofore granted to and conferred upon the James river company 118 and the James river and Kanawha company, for the collection of tolls on the Kanawha river, the said James river and Kanawha company, their collectors and agents, are hereby authorized and empowered to sue out an attachment before any justice of the peace, against boats and cargoes upon the Kanawha river, for tolls due and unpaid by said boats and cargoes, their owners, masters or shippers.

13. That in case the said James river and Kanawha canal company shall not complete the canal to Covington or the western terminus of the Virginia Central rail road, within six years from the passage of this act, without any further application to the general assembly for aid, either by loan from the state, subscription, or otherwise, all the property, rights, franchises, and privileges of every kind and description of the said company, shall be transferred to and become the property of the state: and provided further, that the said company shall have no authority to contract any greater amount of debts, or in any other manner than is authorized by the provisions of this bill without the consent of the general assembly: and before this

act shall take effect or the Board of public works shall make the subscription to the stock of said company, authorized by it, or release or discharge the liens which the commonwealth holds on the property of the said company, the private stockholders of said company shall, in general meeting assembled, accept the provisions of this act, and duly certify their acceptance thereof to the Board of public works.

14. Be it further enacted, that before the provisions of this act shall take effect, the said James river and Kanawha company shall, in general meeting of the stockholders, accept the same, and such acceptance shall be deemed an acceptance of all the provisions of this act, and as a complete acquiescence in and recognition of all the authority and independent and other powers conferred upon the said Kanawha board by this act.

[Wheeling Acts, Dec. 2nd, 1861, p. 37.]

CHAP. 62.—An ACT to re-organize the Kanawha Board.

Passed February 8, 1862. 37

1. Be it enacted by the General Assembly, That until the individuals holding stock in the Kanawha River improvement shall hold a meeting within the jurisdiction of this assembly for the election of directors, the board of public works shall annually appoint five directors for the Kanawha board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha River and Road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, and until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The said Kanawha Board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty; or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; and to this end shall proceed to collect all arrears of tolls or other dues; Provided, that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money, or the issuing of bonds to supply any deficiency, not heretofore issued under the provisions of the aforesaid act passed March twenty-third, eighteen hundrd and sixty.

3. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and Kanawha road, whose duty it shall be to collect from the gate keepers quarterly, the net proceeds of the tolls collected by said gate keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the said board all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services, annually, a sum not exceeding twelve hundred dollars.

4. The said collectors shall account quarterly to the board, and pay over to them all the monies collected by them.

5. The said board shall annually make full report to the board of public works of all their acts and doings.

6. All former laws in conflict with the provisions of this act are hereby repealed.

7. This act shall be in force from its passage.

[Wheeling Acts Extra Session, May 6, 1862, p. 14.]

CHAP. 18.—AN ACT to amend and re-enact the act passed February 8th, 1862, entitled "An act to reorganize the Kanawha Board."

Passed May 15, 1862.

1. Be it enacted by the General Assembly of Virginia, That until the individuals holding stock in the Kanawha river improvement shall hold a meeting within the jurisdiction of this assembly, for the election of directors, the board of public works shall annually appoint five directors for the Kanawha Board, with power to sue and be sued, as a body politic and corporate, who shall have control and supervision of the Kanawha river and road, according to the provisions of the act providing more effectual means for the improvement of the Kanawha river, passed February fifteenth, eighteen hundred and fifty-eight, and an act to amend the charter of the James River and Kanawha Company, passed March twenty-third, eighteen hundred and sixty, so far as the same may be consistent with the provisions of this act. The said board of directors shall hold their offices for one year, or until their successors are appointed, and shall have all the powers pertaining to the said board, as fully as if they had been appointed according to the provisions of the said act, passed February fifteenth, eighteen hundred and fifty-eight.

2. The board of public works shall appoint a collector of tolls for each of the two collection districts on the Kanawha river, with salaries to be fixed by the board aforesaid. That the said collectors shall give bond and security to the Kanawha board, in such sum, in each case, as the said board shall prescribe, for the faithful performance of the duties of their respective offices, as well as to account for the tolls collected by them respectively. The said collectors shall collect all tolls, which shall have accrued on the river in their respective districts prior to, and since the twenty-fourth of May, eighteen hundred and sixty-one, to the time of their qualification, and for this purpose may require manifests of the subjects of toll, from the parties who may owe them, to be made out on oath; and may also require such manifests of all steam boats, and other vessels navigating and carrying freight on the Kanawha river; and the said collectors shall make full report of all tolls collected, and from whom, and account quarterly to the board aforesaid for all monies collected by them and pay the same promptly to the said board or its order.

3. And the said Kanawha board is hereby authorized and required to prosecute the improvement of the Kanawha river by contract, according to the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty, or by appropriating the surplus tolls accruing on the river and road, as they may deem most expedient; provided that nothing in this act shall be so construed as to authorize the new board to make any contracts binding on the commonwealth for the payment of money or the issuing of bonds, to supply any deficiency, not heretofore issued under the provisions of the aforesaid act, passed March twenty-third, eighteen hundred and sixty.

4. And the said Kanawha board shall also have full control over the Kanawha road, and shall appoint a general superintendent, who shall have supervision of both the Kanawha river and road, whose duty it shall be to collect from the gate-keepers, quarterly, the net proceeds of the tolls collected by said gate-keepers, and keep such road in repair by the use of said tolls, and pay over the residue to the said board for the river improvement; also to take charge of and secure for the use of the board, all the boats, tools and other property now on the river, which was procured by the late Kanawha board, in and for the improvement of the Kanawha river and road; and manage and superintend the improvement of the river, subject to the control of said board, and shall make quarterly returns to said board of his collections and disbursements, and shall receive for his services annually, a sum not exceeding twelve hundred dollars.

5. The said board shall, annually, make full report to the board of public works, of all their acts and doings pertaining to said road and river improvement. 16

6. All former laws, in conflict with the provisions of this act, are hereby repealed.

7. This act shall be in force from its passage.

ACTS OF THE RESTORED GOVERNMENT OF VIRGINIA, ACTS AND CONSTITUTIONAL PROVISIONS OF WEST VIRGINIA, AND ACTS OF UNITED STATES CONGRESS IN CONNECTION WITH THE FORMATION OF THE STATE OF WEST VIRGINIA.

[Wheeling Acts, Session June 11, 1861, p. 5.]

A DECLARATION OF THE PEOPLE OF VIRGINIA, REPRESENTED IN CONVENTION, AT THE CITY OF WHEELING, THURSDAY, JUNE 13, 1861.

5

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed, and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter to abolish it. The Bill of Rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the General Assembly, calling the Convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the Convention thus called has not only abused the powers nominally entrusted to it, but, with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The Convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against citizens of neighboring States, with whom they have heretofore maintained friendly, social and business relations:

It has attempted to subvert the Union founded by Washington and his co-patriots, in the purer days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country:

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees:

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes:

It has, in conjunction with the State executive, instituted wherever their usurped power extends, a reign of terror intended to suppress

the free expression of the will of the people, making elections a mockery and a fraud:

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the Capital of the Union:

They have attempted to bring the allegiance of the people of 6
the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances, treason against the former.

We, therefore, the delegates here assembled in Convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the Universe for the rectitude of our intentions, do hereby, in the name and on the behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said Convention and Executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said Convention and Executive, whether legislative, executive or judicial, are vacated.

[Wheeling Acts, Session June 11, 1861, p. 6.]

An ORDINANCE for the Reorganization of the State Government.

Passed June 19, 1861. 6

The People of the State of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. A governor lieutenant governor and attorney general for the state of Virginia, shall be appointed by this convention, to discharge the duties and exercise the powers which pertain to their respective offices by the existing laws of the state, and to continue in office for six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant-governor by the people as soon as in their judgment such election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention, to consult with and advise the governor respecting such matters pertaining his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the twenty-third day of May last, and the senators entitled under existing laws to seats in the next general assembly, together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the state, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the first day of July next, and proceed to organize themselves as prescribed by existing laws, in their respective branches. A majority in each branch of the members qualified as aforesaid, shall constitute a quorum to do business. A majority of the members of each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-seventh section of the fourth article of the constitution of the state.

4. The governor, lieutenant-governor, attorney-general, members of the legislature, and all officers now in the service of the state, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the state, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm,) that I will support the constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the state of Virginia, or in the ordinances of the convention which assembled at Richmond on the thirteenth of February, eighteen hundred and sixty-one, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one."

5. If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy at some convenient and early day to be designated in said writ; of which due publication shall be made for

the information of the persons entitled to vote at such election; and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ, but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Wheeling A. A. Session June 11, 1861, p. 15.]

An ORDINANCE declaring null and void the proceedings of the Richmond Convention of 1861.

Passed August 9, 1861. 15

The People of Virginia, by their Delegates assembled in Convention at Wheeling, do ordain as follows:

1. All ordinances, acts, orders, resolutions and other proceedings of the convention which assembled at Richmond on the thirteenth day of February last, being without the authority of the people of Virginia constitutionally given, and in derogation of their rights, are hereby declared illegal, inoperative, null, void, and without force or effect.

ARTHUR I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

[Ordinance of Convention at Wheeling, 11th June, 1861, p 16.]

An ORDINANCE to provide for the formation of a new State out of a portion of the territory of this State.

16

Passed August 20, 1861.

Whereas, it is represented to be the desire of the people inhabiting the counties hereinafter mentioned, to be separated from this commonwealth, and be erected into a separate state, and admitted into the union of states, and become a member of the government of the United States:

1. The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new state, to be called the state of Kanawha, be formed and erected out of the territory included within the following described boundary; beginning on the Tug Fork of Sandy River, on the Kentucky line where the counties of Buchanan and Logan join the same; and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer county line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh county line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton, to the south-west corner of Hardy county; thence with the dividing line of the counties of Hardy and Tucker, to the Fairfax Stone; thence with the line dividing the states of Maryland and Virginia, to the Pennsylvania line; thence with the line dividing the states of Pennsylvania and Virginia, to the Ohio river; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning; including within the boundaries of the proposed new state the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Wood, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke and Hancock. 17

2. All persons qualified to vote within the boundaries aforesaid, and who shall present themselves at the several places of voting within their respective counties, on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new state, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed state.

3. The convention hereinbefore provided for may change the boundaries described in the first section of this ordinance, so as to include within the proposed state the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries, or to the counties named in this section; if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed state, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed "For the New State," the other "Against the New State." And it shall be the duty of the commissioners who superintended, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election, to employ clerks to record the votes, and to endorse on the respective poll books the expenses of the same.

If on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

We,..... commissioners, and..... conducting officer, do certify, that we caused an election to be held at ....., in the county of....., at which we permitted all persons to vote that were entitled to do so under existing

laws, and that offered to vote, and that we have carefully added up each column of our poll books, and find the following result:

For a new state,.....votes; Against a new state,.....votes

Given under our hands, this....day of....., 1861.

Under which certificate there shall be added the following affidavit:

.....County, to-wit:

I,.....a justice of the peace, (or any officer now authorized by law to administer oaths,) in and for said county, do certify that the above named commissioners and conducting officer severally made oath before me, that the certificate by them above signed is true.

Given under my hand, this.....day of.....1861.

The original poll books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new state, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the secretary of the commonwealth the name or names of the person or persons elected to the said convention.

6. It shall be the duty of the governor, on or before the fifteenth day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance, shall be in favor of the formation of a new state, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling, on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the constitution that may be 19
agreed upon by it, to the qualified voters within the proposed state, to be voted upon by the said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance, shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one delegate. The said delegates shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent according to the consti-

tution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new state, and also in favor of the constitution proposed to said voters for their adoption.

9. The new state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests in lands within the proposed state, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the state of Virginia.

The lands within the proposed state, of non-resident proprietors, shall not in any case be taxed higher than the lands of residents therein. No grants of lands or land warrants, issued by the proposed state, shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last, which shall be located on lands within the proposed state now liable thereto.

10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted into the union of states.

11. The government of the state of Virginia as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed state, undiminished and unimpaired, all the powers and authority with which it has been vested, until the proposed state shall be admitted into the union by the congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized state government in any county which shall not be included within the proposed state.

A. I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

Extracts from the Constitution of the State of West Virginia proposed by a Convention which assembled at Wheeling on the 26th day of November, 1861, being the Constitution referred to in the Act passed May 13th, 1862, giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of Virginia.

CONSTITUTION OF WEST VIRGINIA.

1

ARTICLE I.

THE STATE.

1. The State of West Virginia shall be and remain one of the United States of America. The Constitution of the United States, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

2. The following counties, formerly parts of the State of Virginia, shall be included in, and form part of, the State of West Virginia, namely: The counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Pleasants, Tyler, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier and Monroe.

And if a majority of the votes cast at the election or elections held, as provided in the schedule hereof, in the district composed of the counties of Pendleton, Hardy, Hampshire, and Morgan, shall be in favor of the adoption of this Constitution, the said four counties shall be included in, and form part of, the State of West Virginia; and if the same shall be so included, and a majority of the votes cast at the said election or elections, in the district composed of the counties of Berkeley, Jefferson and Frederick shall be in favor of the adoption of this constitution, then the three last mentioned counties shall also be included in, and form part of, the State of West Virginia.

The State of West Virginia shall also include so much of the bed, banks and shores of the Ohio river as heretofore appertained to the State of Virginia; and the territorial rights and property in, and the jurisdiction of whatever nature over, the said bed, banks and shores heretofore reserved by, or vested in, the State of Virginia, shall vest in, and be hereafter exercised by, the State of West Virginia.

3. The powers of Government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.

4. The Legislative, Executive and Judicial departments of the Government shall be separate and distinct. Neither shall exercise the powers properly belonging to either of the others. No person shall be invested with or exercise the powers of more than one of them at the same time.

5. Writs, grants and commissions issued under state authority, shall run in the name of, and official bonds shall be made payable to, The State of West Virginia. Indictments shall conclude "against the peace and dignity of the State of West Virginia."

6. The citizens of the State are the citizens of the United States residing therein; but no person in the military, naval or marine service of the United States shall be deemed a resident of this State by reason of being stationed therein.

7. Every citizen shall be entitled to equal representation in the government, and in all apportionments of representation, equality of numbers of those entitled thereto shall, as far as practicable, be preserved.

ARTICLE VIII.

15

TAXATION AND FINANCE.

1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law, be exempted from taxation.

2. A capitation tax of one dollar, shall be levied upon each white male inhabitant who has attained the age of twenty-one years.

3. The Legislature shall provide for an annual tax, sufficient to defray the estimated expenses of the State for each year; and whenever the ordinary expenses of any year shall exceed the income, shall levy a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such year.

4. No money shall be drawn from the Treasury but in pursuance of appropriations may by law, and an accurate and detailed statement of the receipts and expenditures of the public money shall be published annually.

5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

6. The credit of the State shall not be granted to, or in aid of, any county, city, town, township, corporation or person; nor shall the State ever assume or become responsible for the debts or liabilities of any county, city, town, township, corporation or person, unless incurred in time of war or insurrection for the benefit of the State.

7. The Legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank. If the State become a stockholder in any association or corporation for purposes of internal improvement, such stock shall be paid for at the time of subscribing, or a tax shall be levied for the ensuing year, sufficient to pay the subscription in full.

8. An equitable proportion of the public debt of the Common- 16
wealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

[Wheeling Acts—Extra Session, May 6, 1862.]

CHAP. 1.—An ACT giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State.

Passed May 13, 1862. 1

1. Be it enacted by the General Assembly, That the consent of the Legislature of Virginia be, and the same is hereby given to the formation and erection of the State of West Virginia, within the jurisdiction of this State, to include the counties of Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor, Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan, according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia and the schedule thereto annexed, proposed by the convention which assembled at Wheeling, on the twenty-sixth day of November, eighteen hundred and sixty-one.

2. Be it further enacted, That the consent of the legislature of Virginia be, and the same is hereby given, that the counties of Berkeley, Jefferson and Frederick, shall be included in and form part of the State of West Virginia whenever the voters of said counties shall ratify and assent to the said constitution, at an election held for

the purpose, at such time and under such regulations as the commissioners named in the said schedule may prescribe.

3. Be it further enacted, That this act shall be transmitted by the executive to the senators and representatives of this commonwealth in congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of congress to the admission of the State of West Virginia into the Union.

4. This act shall be in force from and after its passage.

[12 U. S. Statutes at Large.]

CHAP. VI.—*An Act for the Admission of the State of "West Virginia" into the Union and for other Purposes.*

Whereas the people inhabitating that portion of Virginia known as West Virginia did, by a Convention assembled in the city of Wheeling on the twenty-sixth of November, eighteen hundred 633
and sixty-one, frame for themselves a Constitution with a view of becoming a separate and independent State; and whereas at a general election held in the counties composing the territory aforesaid on the third day of May last, the said Constitution was approved and adopted by the qualified voters of the proposed State; and whereas the Legislature of Virginia, by an act passed on the thirteenth day of May, eighteen hundred and sixty-two, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia, and to embrace the following named counties, to wit: Hancock, Brooke, Ohio, Marshall, Wetzel, Marion, Monongalia, Preston, Taylor Tyler, Pleasants, Ritchie, Doddridge, Harrison, Wood, Jackson, Wirt, Roane, Calhoun, Gilmer, Barbour, Tucker, Lewis, Braxton, Upshur, Randolph, Mason, Putnam, Kanawha, Clay, 634
Nicholas, Cabell, Wayne, Boone, Logan, Wyoming, Mercer, McDowell, Webster, Pocahontas, Fayette, Raleigh, Greenbrier, Monroe, Pendleton, Hardy, Hampshire, and Morgan; and whereas both the Convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the Constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State. Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of West Virginia be, and is hereby, declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever, and until the next general census shall be entitled to three members in the House of Representatives of the United States: *Provided, always*, That this

act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.

It being represented to Congress that since the Convention of the twenty-sixth of November, eighteen hundred and sixty-one, that framed and proposed the Constitution for the said State of West Virginia, the people thereof have expressed a wish to change the seventh section of the eleventh article of said Constitution by striking out the same and inserting the following in its place, viz: "The children of slaves born within the limits of this State after the fourth day of July, eighteen hundred and sixty-three, shall be free; and that all slaves within the said State who shall, at the time aforesaid, be under the age of ten years, shall be free when they arrive at the age of twenty-one years; and all slaves over ten and under twenty-one years shall be free when they arrive at the age of twenty-five years; and no slave shall be permitted to come into the State for permanent residence therein:" Therefore—

SEC. 2. *Be it further enacted,* That whenever the people of West Virginia shall, through their said Convention, and by a vote to be taken at an election to be held within the limits of the said State, at such time as the Convention may provide, make, and ratify the change aforesaid, and properly certify the same under the hand of the president of the Convention, it shall be lawful for the President of the United States to issue his proclamation stating the fact, and thereupon this act shall take effect and be in force from and after sixty days from the date of said proclamation.

APPROVED December 31 1862.

[Wheeling Acts Extra Session, Dec. 4, 1862, p. 71.]

No. 2.—Joint resolution requesting the House of Representatives of the United States to take up and pass without amendment, the bill for the admission of the State of West Virginia, passed by the United States Senate on the 10th of July last.

71

Passed December 9, 1862.

Resolved, That feeling the greatest anxiety and interest in the successful issue of the movement for a new state in West Virginia, we earnestly request the house of representatives of the United States to take up and pass, without alteration or amendments, the bill which passed the senate of the United States on the 10th of July last.

ACTS RESTORED GOVERNMENT AT WHEELING TRANSFERRING PROPERTY AND MONEY TO THE PROPOSED NEW STATE.

[Wheeling Acts Extra Session, May, 1862, p. 13.]

CHAP. 15.—An ACT making an appropriation to the proposed State of West Virginia.

13

Passed May 14, 1862.

1. Be it enacted by the General Assembly, That there shall be and is hereby appropriated out of any money in the treasury, not otherwise appropriated, to the state of West Virginia, when the same shall become one of the states of the Union, one hundred thousand dollars.

2. Be it further enacted, That so much of the public revenue due the state of Virginia from the counties embraced within the boundary of the proposed state of West Virginia, including bank dividends and all money from any source whatsoever, due the state, as shall not have been paid into the treasury of the state at the time of the admission of the proposed state of West Virginia as one of the United States, shall be the property of the said state of West Virginia, and the several sheriffs and other collectors of the public revenue, and all persons holding money due the state within the said boundary, shall pay the same into the treasury of West Virginia. All of the appropriation made by this act shall be charged to the state of West Virginia, in the settlement between the states of Virginia and West Virginia.

3. This act shall be in force from its passage.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 68.—An ACT transferring to the proposed State of West Virginia, when the same shall become one of the United States, all this State's interest in property, unpaid and uncollected taxes, fines, forfeitures, penalties and judgments, in counties embraced within the boundaries of the proposed State aforesaid.

58

Passed February 3, 1863.

1. Be it enacted by the General Assembly of Virginia, That all property, real, personal and mixed, owned by or appertaining to this

state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the state of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof situated within the said boundaries, and now vested in this state, or in the president and directors of the board of the literary fund, or the board of public works thereof, or in 59
any person or persons, for the use of this state to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries; and all stocks of any other company or corporation, the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

2. Be it further enacted, That all unpaid and uncollected arrearages of taxes on lands, town lots, property tax, capitation tax, license tax, militia fines, fines imposed by courts, forfeitures and penalties, belonging to the state in the hands of sheriffs, collectors or individuals, in any or all of the counties embraced within the boundaries of the proposed state of West Virginia, as also all bonuses on the capital stock of any bank, taxes on the dividends declared by any bank, savings institution or insurance company; dividends on stock owned by the state, or by the board of public works, or the president and directors of the board of the literary fund, in any bank, bridge, or other corporation in any one of the counties aforesaid; also taxes on seals, deeds, wills, writs and other legal processes due from the clerks of the courts, notaries public or the secretary of the commonwealth; taxes on passengers and tonnage due from railroad companies, taxes on bank notes or other property transported by express companies within the counties aforesaid; also all fines, forfeitures and penalties incurred by railroads, express companies or other parties or persons within the counties aforesaid; also all judgments, decrees or penalties incurred by officers of the state, railroad or express companies, or other persons before or since the reorganization of the state government at the city of Wheeling; also all suits and their results now pending in the name of the board of public works, or of the president and directors of the board of the literary fund in any court of any of the counties aforesaid; also all taxes on lands, town lots, property tax, capitation tax, license tax, assessed in the counties aforesaid, and due the state for the year eighteen hundred and sixty-three, in the hands of officers of the state or individuals, together with all the rights of the state, or of the board of public works, or of the president and directors of the board of the literary fund to any and all moneys

and claims in the counties aforesaid that may not be specifically mentioned in this act, but that rightfully belong to the state or corporation for the use of the state, shall be the property of the state of West Virginia, when the same shall become one of the United States.

3. It shall be the duty of all sheriffs or collectors of the public revenue, also of all the presidents or other officers of railroad, express, bridge or internal improvement companies, presidents and other officers of banks, savings banks and insurance companies, clerks of courts, notaries public, the secretary of the commonwealth, and of individuals owing or having money in their hands due the state, or the board of public works, or the president and directors of the board of the literary fund, in any of the counties aforesaid, to pay the same into the treasury of the state of West Virginia, when the same shall become one of the United States.

4. Be it further enacted, For the purpose of carrying this act into effect, that suits may be brought in the name of this commonwealth for the use of the state of West Virginia, when it becomes one of the United States on any bond or claim which shall pass to or become the property of the state of West Virginia by virtue of this act.

5. Be it further enacted, That if the appropriations and transfers of property, stocks and credits provided for by this act take effect, the state of West Virginia shall duly account for the same in the settlement hereafter to be made with this state: provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.

6. It shall be the duty of the auditor of public accounts, the secretary of state, the treasurer, and the adjutant general of this commonwealth to procure fit and proper blank books for the purpose, and cause to be transcribed therein true copies of all such records, official acts, orders, minutes and memoranda, and like copies of original papers upon which any such official action was based, which from its locality or general state interest appertains to and will be useful and advantageous to the State of West Virginia; and the officers aforesaid shall severally certify to the governor of this commonwealth the correctness of their respective copies; and it shall be the duty of the governor to certify to all whom it may concern, the official character of such officers so certifying under the great seal of this commonwealth, and deliver all such copies to the governor of West Virginia, when his election is officially declared, for the use of said state of West Virginia.

7. This act shall take effect when the proposed state of West Virginia shall become one of the United States.

[Wheeling Acts—Extra Session, Dec. 4, 1862.]

CHAP. 72.—An ACT making an appropriation to the proposed new State of West Virginia when the same shall become one of the United States.

Passed February 4, 1863.

62

1. Be it enacted by the General Assembly of Virginia, That the sum of one hundred and fifty thousand dollars, be, and is hereby appropriated to the state of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.

2. Be it further enacted, That there shall be, and hereby is appropriated to the said state of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said state of West Virginia shall become one of the United States: provided, however, that when the said state of West Virginia shall become one of the United States, it shall be duty of the auditor of this state, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said state of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state.

3. Be it further enacted, That the act passed May four- 63
teenth, eighteen hundred and sixty-two, making an appropriation of one hundred thousand dollars to the state of West Virginia, be, and the same is hereby repealed.

4. This act shall be in force from its passage.

ACTS AUTHORIZING RECEIPT OF CONFEDERATE MONEY FOR TAXES.

[Richmond, Va., 1861-2, p. 32.]

CHAP. 11.—An ACT authorizing the receipt of Confederate States Treasury notes in payment of Taxes and other Public Dues.

Passed March 22, 1862. 32

1. Be it enacted by the general assembly, that the Confederate States treasury notes shall hereafter be receivable by sheriffs and other collecting officers in payment of taxes and other public dues to the state.

2. The act shall be in force from its passage.

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863. 3

* * * * * * * * * * * * *

Confederate treasury notes receivable in payment of taxes. 33

109. The act entitled an act authorizing the receipt of Confederate States treasury notes in payment of taxes and other public dues, passed March twenty-second, eighteen hundred and sixty-two, shall be and the same is hereby amended and re-enacted so as to read as follows:

"Confederate States non-interest bearing notes of the denomination of, or over five dollars, dated and issued on and after the first day of April eighteen hundred and sixty-three, shall hereafter be receivable in payment of taxes and other public dues to the state."

ACTS RELATING TO ASSESSED VALUATION OF LANDS AND LOTS 1862 AND 1863.

[Richmond Acts, 1862-3.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 27, 1862.

Value of lands and lots not to be changed.

73. The value of lands and lots as ascertained by the assessment made under the tenth chapter of the acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under subsequent special acts, and under the thirty-fifth chapter of the Code in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter in case of a partition or conveyance; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

[Richmond Acts, 1863-4.]

CHAP. 1.—An ACT imposing Taxes for the Support of Government.

Passed March 28, 1863.

Value of lands and lots generally not to be changed.

90. The value of lands and lots, as ascertained by the assessment made under the tenth chapter of the Acts of eighteen hundred and fifty-five and eighteen hundred and fifty-six, passed March tenth, eighteen hundred and fifty-six, under special acts, and under the thirty-fifth chapter of the Code, in respect to new grants, shall be permanent and not be changed, except under the provisions of the said thirty-fifth chapter, in case of a partition or conveyance, and except as provided by this act; and the auditor of public accounts may so far change the form of the commissioner's land book as to show in one column the value of lands and lots, exclusive of buildings.

When the value of lands and lots may be changed.

91. And inasmuch as many tracts of land and lots, with improvements thereon, situate in counties invaded by the public enemy, have

been permanently diminished in value by said invasion, and despoiled and reduced in value by military occupation, and by the waste and violence incident to war, it shall be the duty of the commissioners of the revenue for such counties, upon the requisition of the owner of any real property situate in such counties, or of his agent, to make a new assessment of such real property, upon the following basis and mode of valuation, viz: The commissioner shall deduct from the amount at which such property stands assessed at its last assessment, such sum as is equal to a fair estimate of the permanent diminution in the value thereof, caused by the invasion of such county, and of the permanent injury and damage inflicted upon such property by military occupation thereof, and the waste and violence incident to war. In making which estimate, he shall appraise and fix the amount of suche permanent diminution, injury and damage, according to what would have been the standard and rate of valuation thereof, if such permanent diminution, injury and damage had been estimated during the year eighteen hundred and fifty-six; and the remainder left, after deducting the diminution, damage and injury thus estimated, shall be the valuation at which such property shall be assessed by the commissioner.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT C-1 (PARAGRAPH III OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

Trans-Alleghany Lunatic Asylum.

24

[Wheeling Acts. Extra Session, July 1, 1861, p. 24.]

No. 5.—Resolution concerning the money received from the Branch of the Exchange Bank of Virginia at Weston.

Resolved, With the concurrence of the Senate, That the money taken from the Weston Branch of the Exchange Bank of Virginia, be sold for currency, and the premium be paid to said Branch.

Resolved, That out of the currency so obtained, there be placed at the disposal of the board of directors of the Lunatic Asylum west of the Allegheny mountains, five thousand three hundred and sixteen dollars and ninety-eight cents; of which sum three thousand three hundred and sixteen dollars and ninety-eight cents shall be for the payment of work done, services rendered and materials furnished for said Asylum prior to July first, eighteen hundred and sixty-one, and the balance shall be expended in protecting the building until the work shall be resumed.

Resolved, That as soon as the state of affairs in the country will allow the further prosecution of said work, it shall be completed.

[Wheeling Acts. December 2, 1861. p. 15.]

CHAP. 22.—An ACT appropriating Twenty-one Thousand Six Hundred and Eighty-four Dollars to the Northwestern Lunatic Asylum.

Passed January 14, 1862. 15

1. Be it enacted by the General Assembly, That the sum of twenty-one thousand six hundred and eighty-four dollars be, and the same is hereby appropriated, out of any money in the treasury not otherwise

appropriated, to the Northwestern Lunatic Asylum, to be expended under the direction of the board of directors, and so much as may be necessary shall be devoted to completing the south wing of said building, being the balance of the amount taken from the branch of the Exchange Bank of Virginia, at Weston, and deposited in the treasury, by joint resolution number five, of the extra session of the legislature, in July last.

2. This act shall take effect from the passage thereof.

Brandonville, Kingwood and Evansville Road.

CHAP. 142.—An ACT to provide for the construction of a road from Brandonville to the North-western turnpike.

(Passed April 7, 1838.) 99

1. *Be it enacted by the general assembly*, That Harrison Hagan, Israel Baldwin and Benjamin Jeffers, be, and they are hereby appointed directors, who, together with two other directors to be appointed by the board of public works, shall constitute a board to superintend and direct the construction of a road from Brandonville in the county of Preston, by Kingwood, to a suitable point on 100 the North-western turnpike near Evansville. The said road shall be constructed on the route heretofore surveyed and located for such a road, and on the plan and agreeably to the conditions prescribed for the road from the mouth of Fishing creek to the state line, in the direction of Smithfield, by the act passed March the fifteenth, eighteen hundred and thirty-six, entitled, "an act to provide for the construction of a road from the Ohio river by Morgantown to the Maryland line."

2. *Be it further enacted*, That the said board of directors be and they are hereby authorized to receive subscriptions and donations in money only, from individuals and from the county court of Preston county, for the construction of said road, and the said board of directors and county court may respectively exercise the like powers in relation to the payment of such subscriptions, as are provided in such cases by the aforesaid act of the fifteenth of March, eighteen hundred and thirty-six.

3. *Be it further enacted*, That the sum of ten thousand dollars be and is hereby appropriated from the public treasury to the construction of said road, to be paid upon the like terms and conditions and in like proportions with the payments by individuals and said court, as are prescribed by the before recited act of the fifteenth of March, eighteen hundred and thirty-six. And all the provisions of the said

act in relation to the powers and duties of the said court and board of directors, the bond of the treasurer, (which shall be deposited in the clerk's office of Preston county,) the duties of said treasurer, and the powers of the board of public works, (who shall from time to time request the auditor of public accounts to issue warrants upon the treasury for the appropriation aforesaid, as it shall be called for, agreeably to the terms herein provided.) shall be held and taken to apply as effectually to this act, and to the road herein authorized to be made, as if they were specially recited herein, so far as such provisions are applicable to the purposes herein contained: *Provided*, That whenever one thousand dollars shall be paid by individuals and the said court, such amount of the aforesaid appropriation shall be paid as will be in proper proportion hereto.

4. This act shall be in force from its passage.

CHAP. 104.—An ACT to provide additional capital for the Brandonville, Kingwood and Evansville road.

[Passed February 16, 1847.] 91

1. *Be it enacted by the general assembly*, That the capital stock of the Brandonville, Kingwood and Evansville road shall be and is hereby increased the additional sum of fifteen thousand dollars, two fifths whereof, or six thousand dollars, shall be and is hereby subscribed on behalf of the commonwealth; which subscription shall be payable in the manner prescribed with respect to the appropriation to said road, made by the act passed April the seventh, eighteen hundred and thirty-eight, chapter one hundred and forty-two.

2. *Be it further enacted*, That before the treasurer of said road shall be authorized to receive any part of the above appropriation, he shall produce to the Board of public works his certificate countersigned by the president of the board, and accompanied by the affidavit of said treasurer, taken before some justice of the peace, that the requisite proportion payable by the county and individuals has been received, and accompanied by a statement of the names of each contributor, and the amount paid by each. And he shall produce a similar affidavit from time to time, as other instalments of the state subscription may be called for, until the whole amount thereof shall be paid to said treasurer.

3. This act shall be in force from its passage.

CHAP. 172.—An ACT to increase the capital stock of the Brandonville, Kingwood and Evansville turnpike company.

[Passed March 21, 1851.] 116

1. *Be it enacted by the general assembly,* That the Brandonville, Kingwood and Evansville turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of planking or macadamizing portions of their road, and making a branch thereof from the wire suspension bridge on Cheat river to the Kingwood and West Union turnpike road, either by the Ashby's gap route or up the river, at the discretion of said company.

2. And the Board of public works is hereby authorized and required to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or of smaller sums from time to time, of which individuals and the county court of Preston have subscribed two-fifths, until the whole of the increase of capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided,* That such payments by said board shall be made *pari passu* with those of individuals and other subscribers.

3. This act shall be in force from its passage.

Clarksburg and Buchanan Turnpike Company.

CHAP. 196.—An ACT to incorporate the Clarksburg and Buchannan turnpike company.

[Passed March 9, 1848.] 219

1. *Be it enacted by the general assembly,* That for the purpose of constructing a turnpike road from Clarksburg in the county of Harrison, to Buchannan in the county of Lewis, it shall be lawful to open books for receiving subscriptions to an amount not exceeding fifteen thousand dollars in shares of twenty-five dollars each. The said books shall be opened at Clarksburg in Harrison county, under the direction of George H. Lee, Robert Johnston, Charles Lewis, Edmund L. Stealey, Richard Fowks and Hamilton G. Johnson, or any one of them; at Romine in the same county, under the direction of judge E. S. Duncan, Andrew Radcliff, John H. Shuttleswerth, Edward Stewart and Martin E. Hall, or any one of them; and at Buchannan in Lewis county, under the direction of David S. Pennell, Leonard L. D. Lowden, Adam Carper, David S. Hazelden and John B. Brake, or any one of them. 220

2. *Be it further enacted*, That when two hundred and forty shares have been subscribed, the subscribers, their executors, administrators and assigns, shall be and are hereby incorporated into a company by the name and style of "*The Clarksburg and Buchannan Turnpike Company*," subject to the provisions of the act, entitled "an act prescribing certain general regulations for the incorporation of turnpike companies:" *Provided*, That the said company may dispense with a summer or side road to their turnpike, and shall not be compellel to pave or cover the same with stone or gravel; that said road shall be cleared at least thirty feet wide and improved sixteen feet wide, and shall no where exceed a grade of four degrees.

3. *Be it further enacted*, That the Board of public works shall subscribe on behalf of the commonwealth for three hundred and sixty shares or nine thousand dollars, that sum being three fifths of the capital stock of said company: *Provided*, That before such subscription shall be made the said board shall be satisfied that two fifths of the whole capital of said company has been paid or secured to be paid by subscribers, solvent and fully able to pay, other than the commonwealth. Said subscription shall also be made subject to the provisions of the act passed February the eleventh, eighteen hundred and thirty-two, "prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth."

4. *Be it further enacted*, That the sum above authorized to be subscribed on behalf of the commonwealth shall be paid from any money in the treasury not otherwise appropriated.

5. *Be it further enacted*, That the county courts of Lewis and Harrison counties are hereby authorized to subscribe for so much as they may respectively think proper of the capital of said company: *Provided*, That at the court making such subscription a majority of all the acting justices of the county shall be present, all the acting magistrates having been summoned to attend; and further, that those voting for such subscription shall constitute a majority of the acting justices of the county. And the court so subscribing may raise the amount of such subscription by an assessment upon all the taxable property, real and personal, of citizens of the county, to be collected and accounted for by the sheriff of said county as county levies are collected and accounted for.

6. This act shall be in force from its passage.

CHAP. 177.—An ACT to increase the capital stock of the Clarksburg and Buckhannon turnpike company.

[Passed March 5, 1851.] 118

1. *Be it enacted by the general assembly*, That the Clarksburg and Buckhannon turnpike company be and is hereby authorized to in-

crease its capital stock the additional sum of five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase, upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board by the act concerning said company, passed March the ninth, eighteen hundred and forty-eight.

2. This act shall be in force from its passage.

CHAP. 79.—An ACT to provide for macadamizing or planking certain parts of the Clarksburg and Buchanan turnpike road.

[Passed March 18, 1853.] 70

1. Be it enacted by the general assembly, that the Board of public works be and are hereby directed to have such parts of the Clarksburg and Buchanan turnpike road macadamized or planked as they may think stand in need of such improvement; and for the purpose of making said improvement, they are hereby authorized to borrow, from time to time, according to the laws now in force, such sums as may be necessary, not exceeding in any one year ten thousand dollars, and not exceeding in the aggregate the sum of twenty thousand dollars.

2. This act shall be in force from its passage.

Kingwood and West Union Turnpike Company.

CHAP. 193.—An ACT to incorporate the Kingwood and West Union turnpike company.

[Passed March 25, 1848.] 216

1. *Be it enacted by the general assembly*, That for the purpose of constructing a turnpike road from a point at or near the town of West Union on the Northwestern road in the county of Preston, to Kingwood in the same county, and thence to some point on the Beverley road west of Laurel Hill in the direction of Morgantown in the county of Monongalia, it shall be lawful to open books for receiving subscriptions to the amount of ten thousand dollars, in shares of twenty-five dollars each. The said books shall be opened at German Settlement in Preston county, under the direction of Jacob Stertsman, John Shaver and William H. Grimes, or any one of them; at King-

wood in the same county, under the direction of Buckner Fairfax, E. M. Hagans and Israel Baldwin, or any one of them; and at Morgantown in Monongalia, under the direction of Edgar C. Wilson, Alexander Hayes and William Lazier, or any one of them.

2. When one hundred and sixty shares shall have been subscribed, the subscribers, their executors, administrators and assigns shall be, and are hereby incorporated into a company by the name and style of *"The Kingwood and West Union Turnpike Company,"* subject to the provisions of the act, entitled "an act prescribing certain general regulations for the corporation of turnpike companies," passed February the seventh, eighteen hundred and seventeen: *Provided,* That the said company shall not be compelled to make a summer or side road to their turnpike; that said road shall be cleared not less than forty feet wide, and shall be improved not less than twelve nor more than eighteen feet wide, and that the grade of the same shall no where exceed four and a half degrees.

3. When two fifths of the capital stock of the company shall 217
have been paid or subscribed by persons other than the commonwealth solvent and fully able to pay, the Board of public works shall then subscribe on behalf of the commonwealth for six thousand dollars, or two hundred and forty shares, the remaining three fifths of the capital; such subscription by the Board of public works to be payable in proportion to the payment of the private subscription.

4. The sum herein authorized to be subscribed by the Board of public works shall be paid from any money in the treasury not otherwise appropriated.

5. The county courts of Monongalia and Preston shall have authority to subscribe to such amounts of the capital stock of said company as they may respectively think proper; all the acting justices of the said counties respectively having been summoned to consider of such subscription, and a majority of such justices in both or either of said counties actually voting for the same.

6. And the courts of said counties shall pay any expenses incurred within their counties by said company on account of the condemnation of land or materials for the use of said company; which expense with the subscriptions above authorized shall be paid by levies on taxable subjects other than tithables, to be laid, collected and accounted for in the manner of county levies.

7. This act shall be in force from its passage.

CHAP. 182.—An ACT to amend the act passed March the 25th, 1848. "incorporating the Kingwood and West Union turnpike company."

[Passed March 8, 1849.] 127

1. *Be it enacted by the general assembly*, That when one fifth of the capital stock of the Kingwood and West Union turnpike company shall have been paid or subscribed by persons other than the commonwealth, solvent and fully able to pay, the Board of public works shall subscribe on behalf of the commonwealth for one half of three fifths of the capital stock of the said company; and as often thereafter as additional subscriptions to the stock of said company shall be paid by persons other than the commonwealth, or made by such persons, solvent and able to pay, the said board shall subscribe, in the same proportion as above prescribed, on behalf of the commonwealth, until the whole amount of the capital stock is subscribed.

2. *Be it further enacted*, That the president and directors of the Cheat river tollbridge company shall have authority, if they shall deem it expedient, to construct their bridge at any point across the Cheat river, not exceeding one mile above the location designated by the first section of the act incorporating the company, passed January the fifteenth, eighteen hundred and forty-eight.

3. *Be it further enacted*, That the Board of public works is directed to subscribe on behalf of the commonwealth for three fifths of the capital stock of the said bridge company, such subscription being subject to the terms and provisions contained in the eighth section of the above cited act, and being in lieu of the two fifths subscription authorized by that section.

4. *Be it further enacted*, That the further time of one year shall be given for the commencement and completion of said bridge.

5. This act shall be in force from its passage.

CHAP. 171.—An ACT to increase the capital stock of the Kingwood and West Union turnpike company.

[Passed March 24, 1851.] 116

1. *Be it enacted by the general assembly*, That the Kingwood and West Union turnpike company is hereby authorized to increase its capital stock by the additional sum of ten thousand dollars, for the purpose of finishing their road to Kingwood, and of extending it to Morgantown by such route and termini at or near Morgantown as the said company may select.

2. And the Board of public works is hereby authorized and required

to subscribe on behalf of the commonwealth for the three-fifths of said additional sum or sums from time to time, of which individuals and the county courts of Monongalia and Preston have subscribed two- fifths, until the whole of the increase of the capital aforesaid has been subscribed, and to pay said subscriptions in such convenient sums as may be required for the completion and extension of said road: *Provided*, That such payments by said board shall be made *pari passu* with those of individuals and other subscribers: *Provided*, The cost of construction of said road shall not exceed four hundred dollars per mile.

3. This act shall be in force from its passage.

CHAP. 84.—An ACT to macadamize the Morgantown, Kingwood and West Union turnpike.

Passed February 28, 1853. 71

1. Be it enacted by the general assembly, that the sum of twenty-eight thousand dollars be and the same is hereby appropriated for the purpose of macadamizing the Morgantown, Kingwood and West Union turnpike from Morgantown in Monongalia county to the Cranberry Summit in the county of Preston, on the line of the Baltimore and Ohio railroad. And the Board of public works is hereby directed to borrow the said sum to pay the said appropriation as 72 is provided by law.

2. This act shall be in force from its passage.

Berryville and Charlestown Turnpike.

CHAP. 172.—An ACT concerning the Berryville and Charlestown turnpike company.

[Passed March 12, 1849.] 120

1. *Be it enacted by the general assembly*, That the further time of two years from the passage of this act, be allowed the Berryville and Charlestown turnpike company, to begin the work of said turnpike, and that the said work shall be completed within ten years from the passage of this act.

2. *And be it further enacted*, That when it shall be shewn to the satisfaction of the Board of public works, that two fifths of the capital stock of said company has been paid into the hands of the treas-

urer of the company, or has been subscribed by solvent persons fully able to pay, and that one fourth of such two fifths has been actually paid to the treasurer, then the Board of public works are directed to subscribe, on behalf of the commonwealth, for three 121
fifths of the capital stock of said company, agreeably to the terms of the act, so far as the same are applicable, passed February eleventh, eighteen hundred and thirty-two, entitled 'an act prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the commonwealth.

3. *And be it further enacted*, That the third section of the act passed March twenty-second, eighteen hundred and forty-seven, entitled "an act to incorporate the Berryville and Charlestown turnpike company," be and the same is hereby repealed.

4. This act shall be in force from its passage.

CHAP. 123.—An ACT to increase the capital stock of the Berryville and Charlestown turnpike company.

84

[Passed March 18, 1850.]

1. *Be it enacted by the general assembly*, That the Berryville and Charlestown turnpike company be and is hereby authorized to increase its capital stock the additional sum of twelve thousand dollars, so that the whole amount of capital stock may be thirty-five thousand dollars; and the Board of public works is directed to subscribe on behalf of the commonwealth for three-fifths of such increase upon the same terms and in the same proportion to individual subscriptions and payments as are prescribed in relation to the subscription authorized to be made by said board, by the act concerning said company, passed March the twelfth, eighteen hundred and forty-nine.

2. This act shall be in force from its passage.

No. 2.—Resolution in relation to the sale of works of internal improvement in which the state is interested.

289

Adopted February 26, 1856.

Resolved by the general assembly, that the board of public works be and are hereby authorized and directed to attend, either in person or by agent duly appointed by said board, the sale of any work of internal improvement in which the state is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judg-

ment or other lien, and that said board be authorized to purchase, on the part and for the use of the commonwealth, any such public work so offered for sale, if in the judgment of said Board of public works the interest of the state would be protected or promoted thereby.

2. Be it further resolved, that no sale of any work of internal improvement in which the state is a stockholder or otherwise interested, shall take place, whether by virtue of mortgage, trust, judgment, decree or other lien, without ninety days' notice in the principal newspapers in the city of Richmond and in the local newspapers of the county wherein such improvement is situated, and further without ninety days' notice served on the Board of public works of this state by the person or persons authorized to make the sale.

CHAP. 124.—An ACT to provide for the payment fot the purchase money of the Berryville and Charlestown turnpike by the Board of public works.

Passed April 2, 1858. 95

Whereas it is represented to the general assembly, that the Board of public works, in pursuance of authority vested in them by a resolution of the general assembly, adopted on the twenty-sixth of February, eighteen hundred and fifty-six, at a sale made on 96 the eighteenth of January, eighteen hundred and fifty-eight, under a deed of trust executed to Andrew Hunter and Province McCormick, trustees, became a purchaser of the road, appurtenances and franchises of the Berryville and Charlestown turnpike, for the sum of seven thousand one hundred and fifty dollars: therefore,

1. Be it enacted by the general assembly, that a sufficient sum be and is hereby appropriated out of the public treasury to pay said sum of seven thousand one hundred and fifty dollars, together with the interest which may have accrued since the day of the sale. And the auditor of public accounts is hereby required to issue his warrant in favor of the said trustees for such sums as may be necessary to discharge the said claim.

2. Authority is hereby given to the Board of public works to appoint a superintendent of the said turnpike in the same manner that superintendents are appointed for other turnpikes having a state superintendent, whose salary is to be fixed by the said board at a sum not exceeding one hundred and fifty dollars per annum.

3. This act shall be in force from its passage.

Payments to School Commissioners in West Virginia.

CODE OF VIRGINIA, 1849.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

How the fund is appropriated. 367

§6. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First. The sum of seventy thousand dollars, to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white population of the State, according to the next preceding census, taken under the authority of the *United States*, and to be paid to such local officers of such counties, cities and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or parts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

1 R. C. p. 87, ch. 33, § 10; 1820-21, p. 1, ch. 11, § 1, (1821-2, p. 1, ch. 13, § 1, (1823-4, p. 1, ch. 7. 1828-9, p. 12, ch. 14, § 1, 4. 1829-30, p. 11, 8, § 1, 2. 1832-3, p. 12, 11. 1835-6, p. 7, 1836-7, p. 1, 11. 1838, p. 31, 19, 20. 1839-40, ch. 1840-41, ch. 24, 26. 1841-2, ch. 1842-3, ch. 1843--4, ch. 1844-5, ch. 1845-6, ch. § 6, 7.; ch. 4 1846-7, p. 1, 15, p. 23, ch § 7, 8, 9; p. 36, ch. 29 t 1848-9, p. 5 105.

Extract from foot note to Chapter LXXIX of the Code of Virginia, 1849, appearing on page 366.

On the 21st of Feb. 1818, an act passed providing for the appointment, annually, by the court of every county and corporation, of commissioners of schools, at which poor children were to be educated. This act appropriated for each county and corporation, annually, such

proportion of $45,000 as its free white population might bear to the whole free white population of the state.

CODE OF VIRGINIA, 1860.

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

* * * * *

Capitation Tax. 416

3. p. 43. § 1, 2, 3.

3. The auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last, and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in 417 the same manner as the appropriations from the literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.*

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*This section is the act of 25th of March, 1853, which took effect from its passage. The constitution of the state requires at least a moiety of the capitation tax to be applied to the purposes of education in primary and free schools. Const. of Va. art. 6, §24. By act of 18th March 1856, p. 23, c. 16, the literary fund board were required to pay into the treasury to the credit of the commonwealth the sum of fifty thousand five hundred and sixty-two dollars and fifty-five cents, the amount reported by the second auditor for investment; and the auditor of public accounts was required to deliver to the said board a bond conditioned to pay the interest at the rate of six per centum per annum semiannually for that amount, and to redeem the principal at the pleasure of the general assembly.

How the fund is appropriated.

4. The following sums shall be annually appropriated out of the revenue of the literary fund, that is to say:—

First—The sum of *eighty*† thousand dollars to be so divided among the several counties and those cities and towns which have corporation courts, that the part of every such county, city or town, shall bear to the whole sum the same proportion which its free white population may bear to the whole free white poulation of the state, according to the next preceding census, taken under the authority of the United States, and to be paid to such local officers of such counties, cites and towns, and to be applied in such manner, as may be prescribed by law. But when any new county is created out of part or aparts of one or more counties, after the time of taking such census, the school commissioners of the county or counties from which the new county is taken, shall, for the fiscal year in which the new county is created, apply the quotas allotted them out of the literary fund, in such part of the new county as is taken from their county or counties, in like manner as if the new county had not been created; and for subsequent years, until a new census is taken, the second auditor shall apportion the amount of the school quotas to be paid such new county and the county or counties from which it is taken, according to the first returns of persons subject to county levies, that may be made after the creation of the new county. This section shall apply to a case in which part of a county is added to another.

1 R. C. p. 5
c. 33, § 10.
1820-21, p.
16, c. 11, §
1821-2, p.
c. 13, § 1.
1823-4, p.
c. 7
1828-9, p. 1
c. 14, § 1, 4
1829-30, p.
c. 8, § 1,
1832-3, p. 1
1835-6, p.
1836-7, p. 1
1838, p. 31
c. 19, 20
1839-40, c.
1840-41, c.
26
1841-2, c.
1842-3, c.
1843-4, c.
1844-5, c.
1845-6, c.
§ 6, 7; c. 4
1846-7, p.
15, p. 23, c.
8, 9; p. 26
c. 29 to 33
1848-9, p.
c. 105
1850-51, p.
c. 41, § 9
1853-4, p.
c. 33, § 1

Harper's Ferry Raid.

CHAP. 27.—An ACT appointing Commissioners to audit and pay the Expenses incurred by the Executive for the purchase of Arms and Munitions, and for the Defence of the Commonwealth.

128

Passed January 23, 1860.

1. Be it enacted by the general assembly, that the secretary of the commonwealth, the auditor of public accounts and the adjutant general, any two of whom may act, shall be and are hereby appointed commissioners, with authority to audit and settle all accounts for expenses incurred in assembling, arming, equipping and maintaining

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†In the first edition this sum was "seventy" thousand dollars: by act of 1850 51, p. 33, c. 41, §9, it was increased to seventy-five thousand; and by act of 1853-4, p. 25, c. 33, §1, the sum of five thousand dollars additional was annually appropriated.

troops, and for transportation and pay of same, and for the purchase of arms and munitions, and for other incidental expenses incurred in the defence of the state, and in the execution of prisoners under sentence of the circuit court of Jefferson county.

Said accounts, before being allowed, shall be sustained by proper vouchers, verified by officers in command, or shall be such accounts as were incurred in the execution of legal orders issued by competent authority. And when the said accounts are so sustained and allowed, the said commissioners are hereby authorized to direct the auditor of public accounts to issue his warrants for the several amounts thereof in behalf of those severally entitled thereto; to be paid out of any money in the treasury not otherwise appropriated: provided, however, that no account claimed by or due to any general, field or staff officer or rail road company, shall be paid by the commissioners aforesaid; but the same shall, when audited, be reported by them to the general assembly; and in auditing any account or accounts due to any rail road company in arrear or indebted to the commonwealth, the amount due from said rail road company to the state shall be first deducted: and provided further, that if the commissioners aforesaid deem it doubtful what law of congress, under the Code of Virginia, fixes the pay of company and non-commissioned officers, musicians and privates, they shall report the fact to the general assembly: provided, however, that the appropriation hereby authorized shall not exceed the sum of one hundred and fifty thousand dollars.

2. The said commissioners shall keep an accurate account 129
of all moneys allowed by them, and paid by their order. They shall ascertain also the accounts heretofore paid by orders of the executive for similar expenditures; and it shall be their duty to report both amounts to the general assembly as soon as practicable.

3. Immediately after the passage of this act, the commissioners shall advertise for the presentation of claims; and unless the same are presented within six months from the passage of this act, they shall not be considered by said commissioners.

4. The commissioners aforesaid are authorized to employ a clerk.

5. This act shall be in force from its passage.

CHAP. 28.—An ACT making an additional Appropriation to defray the Expenses incurred for the Defence of the Commonwealth.

Passed March 6, 1860 129

1. Be it enacted by the general assembly, that the board created by the act entitled an act appointing commissioners to audit and pay the expense incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed twenty-third January

eighteen hundred and sixty, shall continue to audit the claims which they are authorized to audit and pay by said act, and to issue warrants on the treasury for the amount due and unpaid, under the limitations and restrictions imposed by said act; and for that purpose, an additional sum of seventy-five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

2. In the payment of any claim hereafter presented to the auditor, which has been allowed under this or the act aforesaid, no claim which shall have been assigned by the original claimant to another person prior to the passage of the joint resolution authorizing extra pay, shall be paid to any person but to the said original claimant, or his authorized agent, by an order given subsequent to the passage 130 of said resolution. But the general assembly disapprove of the principle adopted by the commission on the Harpers Ferry accounts in auditing the accounts of officers, insomuch as the allowances for horses and servants not in the service of such officers are concerned, and hereby direct the said commission to reaudit the said accounts so far as that point is concerned, and to exclude from their settlement all allowances of any kind for horses and servants not actually in the service of any officer, and all allowances for any service of a constructive nature, and not actually rendered by the officer making the claim.

3. This act shall be in force from its passage.

CHAP. 29.—An ACT making further Appropriations to pay Expenses for the Defense of the Commonwealth.

130

Passed March 28, 1860.

1. Be it enacted by the general assembly, that the additional sum of thirty-one thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of defraying the expenses incurred by the executive, in consequence of the raid on Harpers Ferry; to be expended upon the principles and under the restrictions imposed by the several acts passed at this session, making appropriations "to defray the expenses incurred for the defence of the commonwealth."

2. The commissioners appointed by the act to audit and pay the expenses incurred by the executive for the purchase of arms and for the defence of the commonwealth, passed January twenty-third, eighteen hundred and sixty, shall be and they are hereby authorized to pay all claims of officers and rail road companies which have been heretofore reported by them to the general assembly, and all claims of officers and rail road companies which may be hereafter audited by them,

upon the principles and under the limitations and restrictions imposed by the said act, and by the act making an additional 131
appropriation to defray the expenses incurred for the defence of the commonwealth, passed on the eighth day of March eighteen hundred and sixty.

3. This act shall be in force from its passage.

Surveys.

CHAP. CXIV. AN ACT directing a survey of the Shenandoah river, and the country adjacent thereto, and the South branch of the Potowmac.

(Passed March 30, 1831.) 164

1. *Be it enacted by the general assembly,* That the *ex-officio* members of the board of public works be, and they are hereby authorized and required to direct the civil engineer of the state, or one of his assistants, during the present year, to examine and survey the Shenandoah river from its mouth to the highest point capable of navigation, and also the Shenandoah valley on each side of the Massanutten mountain, with a view of ascertaining the practicability and relative advantages and disadvantages of the improvement of said river by locks and dams, or by a canal, or of a railroad through the said valley; and to estimate the cost of each method of improvement, and report the result of his examination to the said *ex-officio* members of said board, that such report may be laid before the next general assembly.

2. *Be it further enacted,* That the said engineer, or one his assistants, be also directed to survey, as soon as previous engagements will permit, the South branch of Potowmac, and report upon the practicability and expediency of its improvement by canal, locks and dams, or otherwise.

3. This act shall be in force from and after the passage thereof.

CHAP. 75.—An ACT to authorize a geological reconnoisance of the state, with a view to the chemical composition of its soils, minerals and mineral waters.

(Passed March 6, 1835.) 55

1. *Be it enacted by the general assembly.* That as soon after the passage of this act as it may be convenient, it shall be the duty of the board of public works to appoint a suitable person to make a geological reconnoisance of the state, with a view to the general

geological features of our territory, and to the chemical composition of its soils, minerals and mineral waters, and to report to the next general assembly a plan for the prosecution of a geological survey of the state, together with such facts as may have come to his knowledge during the progress of said reconnoisance, illustrative of any advantages likely to accrue from a more complete examination.

2. *Be it further enacted*, That the said board of public works shall have authority to allow to the geologist who may be employed under the provisions of this act, such compensation as they may deem reasonable, to be paid out of any unexpended moneys in the treasury: *Provided*, That such compensation shall not exceed the sum of fifteen hundred dollars.

3. This act shall commence and be in force from the passing thereof.

CHAP. 89.—An ACT directing a survey of Elk river.

(Passed February 21, 1835.)

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby authorized and directed to appoint a competent engineer to survey, without delay, Elk river from its junction with the Great Kanawha, to the Union mills in the county of Nicholas, and to report to the board the best and most practicable plan of improving the navigation thereof the probable advantages of such improvement, and the cost of the method of improvement preferred by him.

2. This act shall be in force from its passage.

No. 13.—Resolution authorizing a survey and location of a route for a branch of the North-western turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with said turnpike west of Clraksburg.

(Agreed to by both houses, February 20, 1834.)

Resolved by the general assembly, That the board of public works be, and they are hereby authorized and required to appoint a competent engineer to survey and locate without delay, the most practicable and best route for a turnpike road from Sistersville, by way of Middlebourne, to some point of intersection with the North-west-

ern turnpike road, west of Clarksburg: *Provided*, That the expense of said survey and location shall not exceed the sum of five hundred dollars.

No. 16.—Resolution for a survey of a road from Lewisburg to the Blue Sulphur springs in Greenbrier.

(Agreed to by both houses, March 13, 1834.) 324

Resolved by the general assembly, That the board of public works be required, as soon as previous arangements will permit, to employ an engineer to survey and locate the route for a turnpike road from Lewisburg to the Blue Sulphur springs in the county of Greenbrier, in pursuance of the act passed at the present session.

CHAP. 105.—An ACT directing the survey of a route for a road from Moorefield to the North-western turnpike.

[Passed March 16, 1836.] 83

1. *Be it enacted by the general assembly*, That the board of public works be and they are hereby instructed to cause to be surveyed by some competent engineer, as soon as existing engagements will permit, the best practicable route for a road from Moorfield in the county of Hardy to its intersection with the North-western turnpike, at or near the residence of Charles Blue in the county of Hampshire; and that such engineer be required to report an estimate of the cost of a road of the kind most proper to be made, and the probable advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 106.—An ACT directing the survey of a route for a road from the North-western road to some point on Leading creek, in the county of Randolph.

(Passed January 12, 1836.)

1. *Be it enacted by the general assembly*, That the board of public works be, and they are hereby directed to instruct the principal

engineer of the state, during the present year, or as soon as his existing engagements will permit, to survey and locate a route for a road leaving the North-western turnpike at the German settlement in the county of Preston, and running about thirty miles south-west in the direction of Beverley in Randolph county, to some suitable point on Leading creek, so as to intersect the location for a road from Clarksburg to Beverley, and to report to said board the kind of road most proper to be made, and the probable 84
cost and advantages of its construction.

2. This act shall be in force from its passage.

CHAP. 107.—An Act directing the survey and location of routes for certain roads therein mentioned.

[Passed January 12, 1836.]

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby instructed to direct the principal engineer of the state to survey and locate, during the present year, or as soon as his existing engagements will permit, the best and most suitable route for a road at the lowest practicable grade, no where exceeding five degrees, from the Pennsylvania line near the farm of Bushrod Hoge in the county of Monongalia, by Morgantown, to a suitable point of the North-western road west of Cheat river, so far as to intersect the road leading from Beverley to Clarksburg, at or near the house of Solomon Yeager; and also to survey and locate, in like manner, a route from Morgantown to the Pennsylvania line, in the direction of Uniontown or Monroe, and to report to said board the probable cost and advantages of each road.

2. This act shall be in force from its passage.

CHAP. 119.—An ACT directing a survey of the Little Kanawha river.

(Passed February 20, 1838.) 89

1. *Be it enacted by the general assembly,* That the board of public works be, and they are hereby directed to appoint a competent engineer to make a survey of the Little Kanawha river from its mouth to the Bulltown salt works, and report to the said board his opinion of the practicability and cost of a lock and dam navigation thereon, and

of such other mode of improvement as he may deem more advisable.

2. The act shall be in force from its passage.

Loan to the Trustees of the Town of Bath.

CHAP. 106.—An ACT to provide for the construction of a road from Bath in Morgan county, to the mouth of St. John's run on the Potomac.

[Passed March 8, 1847.] 92

1. *Be it enacted by the general assembly,* That the Board of public works be and is hereby authorized to pay from time to time, out of the Fund for internal improvement, a sum or sums of money not exceeding twenty-five hundred dollars, to the treasurer of the trustees of the town of Bath in the county of Morgan, upon the order of the said trustees, for the purpose of constructing a road from the town of Bath to the mouth of St. John's run on the Potomac. The said treasurer shall receive and account for the same, in his official character, to the said trustees, and shall pay or deliver such sums as may be required from time to time, upon their order, until the whole amount received by him under authority of this act shall be exhausted. And he shall be liable and proceeded against in like manner for any default in the payment of the money aforesaid as for other defaults upon his official bond.

2. *Be it further enacted,* That the said trustees shall have the disposition of the money aforesaid, and may employ and pay such engineer and superintendent, or other agents, as they may think proper for the construction of said road. And said trustees, by themselves and their agents, may exercise the same powers and shall be subject to the same restrictions in the acquisition of land and other materials necessary for said road as are prescribed to the president and directors of turnpike companies by the act passed February the seventh, eighteen hundred and seventeen. As soon as the road is completed they may demand and receive thereon such tolls as may from time to time be prescribed by the Board of public works; such tolls to be applied to the necessary expenses and repairs of the road; and any surplus remaining, to be applied in payment of the interest on the sum paid on the part of the commonwealth for construction of said road. Any deficiency of the nett surplus of tolls to pay said interest may be paid from the receipts on account of bathing at the medicinal springs belonging to the commonwealth in said town of Bath.

3. *Provided,* That no part of the above appropriation shall be advanced by the Board of Public works until the said trustees shall have given bond with good security, payable to the said board and approved by them, for the punctual payment of interest annually on the sum advanced by the commonwealth for the construction of said road: and for any default in the payment of such interest, the said board may recover judgment against said trustees upon motion in the county or superior court of Morgan county, by giving ten days notice of such motion.

4. This act shall be in force from its passage.

ACTS RELATING TO ITEMS IN JOINT EXHIBIT D-1, (PARAGRAPH IV OF DECREE) CLAIMED BY PLAINTIFF AND EXCLUDED BY DEFENDANT.

400

Tobacco Receipts.

CODE OF VIRGINIA, 1849.

CHAPTER LXXXVII.

OF THE INSPECTION OF TOBACCO.

* * * * *

C. p. 148, 151, 128, 32, 61. § 8. The governor may require the inspectors of the public warehouses, belonging to the state, to have all proper repairs of said warehouses made, the expense whereof, on being allowed 402
by the governor, shall be paid by the inspectors out of the rents received by them for the use of the state.

Books to be kept by inspectors; they prohibited from trading in 407
tobacco; not liable for defects of tobacco delivered out.

§ 40. The inspectors shall provide and keep books in which they shall enter the numbers, weight, marks and owners' names, of all tobacco received, inspected or delivered out by them, as well at the time the same was received, as at the time the same was 408
inspected or delivered out, and note the state and condition of each hogshead or cask; and in which also they shall keep fair and true accounts of all money received by them to the use of the proprietors of the warehouses or of the commonwealth, or for any tobacco sold by the min pursuance of law.

Salaries of inspectors; and other charges for inspection.

§ 44. The salaries to the inspectors in any warehouse are to be paid out of the receipts for inspection at such warehouse, and in no case is the state to be charged therewith, or with any other expenses of such warehouse.

Waste and sample tobacco, or tobacco remaining three years in warehouse, to be sold. 409

§ 52. All waste tobacco, and all samples drawn and not taken away from any warehouse by the owner or purchaser of the tobacco, shall be carefully preserved by the inspectors for the benefit of the state. Such samples and waste tobacco shall from time to time be sold, for the use of the state, by the inspectors, who shall have a commission of five *per centum* on the proceeds.

§ 54. When any tobacco shall have remained in any warehouse undemanded for three years from the time of its reception therein, the inspectors for each warehouse shall advertise in some newspaper published convenient to said warehouse, for three weeks successively, a list of the marks, numbers and weight of such tobacco, with the names of the persons to whom notes or receipts for it were given; and, if no owner claim the same, within three months after such advertisement, they shall proceed to sell the same and have the like commission on the proceeds as is prescribed in the fifty-second section for waste tobacco. The proceeds of such sale shall be paid into the treasury, after deducting therefrom all legal charges 410 for storage, rent, duty and inspectors' fees. The amount so paid into the treasury, shall be refunded to the owner of said tobacco when he shall establish his right thereto. 2 R. C. p. § 70.

Inspectors to account for and pay money, received by them.

§ 56. Inspectors of tobacco shall annually return to the first auditor an account on oath of all money received, or which ought to be received by them for the state, within the year ending the thirtieth day of September, and they shall, before the tenth day of October, pay into the treasury all balances due to the state on such account. The said account shall state the number of hogsheads, casks or parcels, of tobacco received and delivered out during the said year. Id. p. 159, § 48, 49.

Liability of commonwealth or inspectors for tobacco burnt.

§ 58. If any tobacco in any warehouse, where the same was received for inspection, shall, within a year from the date of its being received, be damaged therein by fire, the owner thereof may recover from the state a sum equal to the damage so sustained. 2 R. C. p. § 67. 1825-6, p. 14, § 7. 3 Leigh 26

§ 59. If any tobacco, stored in any warehouse belonging to the state, be so damaged at any time while remaining in said warehouse, the owner may in like manner recover the amount of his damages. Id.

§ 60. If the inspectors at any warehouse belonging to the state refuse to receive any inspected tobacco on storage, (of which refusal Id.

they shall give a certificate,) and the same shall be stored in any other warehouse established by law in the same town, and be therein damaged by fire at any time within a year after such refusal, the owner of such tobacco may in like manner recover the amount of his damages.

Commissioners to examine warehouses; how inspectors may be removed. 412

p. 162, § 52. § 72. The court having the power to nominate inspectors to a warehouse shall annually appoint one or more commissioners, who shall visit such warehouse at least once in every two months, and report to the said court its condition, the quantity of tobacco it is capable of containing, and what repairs, if any, are required.

C. p. 162. § 75. Every such commissioner shall be allowed by said court two dollars for every day he is employed, which shall 413 be paid out of the treasury from the tobacco fund.

Constitutional Conventions.

CHAPTER 15.—An act to organize a Convention.

(Passed February 10th, 1829.) 17

Whereas, in pursuance of the act of the General Assembly, passed at the last session, entitled, "an act concerning a Convention," the sense of the good people of this Commonwealth has been taken on the question, whether they desire a Convention to amend the State Constitution, or not; and it has been thus ascertained, that it is the wish of the people that a Convention shall be called for the purpose aforesaid: In order, therefore, to the forming and assembling of such Convention:

1. *Be it enacted*, That the persons qualified according to law to vote for members of the House of Delegates, in each county, city and borough, within the several Senatorial districts of this Commonwealth, as at present established by law, shall assemble at their respective court-houses, or other places appointed by law for holding elections of members of the General Assembly, on the several court days of each county, city and borough, composing a district, in the month of May, in the year of our Lord one thousand eight hundred and twenty-nine, and then and there vote for four discreet and proper persons as members of the said Convention.

* * * * *

12. Every person authorised by law to compare the polls, as 20 aforesaid, shall receive for his services therein, one dollar and sixty seven cents for every day on which he shall necessarily attend

at the place appointed by law to compare said polls, together with all charges for ferriage and tolls, and four cents a mile for travelling to and from the county in which he shall meet for that purpose. Every claim for the compensation hereby allowed, shall be presented to the court of the county or corporation in which the claimant may live; shall be verified by the affidavit of the claimant, and by such other evidence as shall be satisfactory to the court, and being certified by them to be correct, shall be allowed by the Auditor and paid out of the public treasury.

* * * * *

14. The persons who shall be elected in pursuance of the provisions of this act, shall on the first Monday in October, in the year of our Lord one thousand eight hundred and twenty-nine, meet and assemble at the Capitol in the city of Richmond, in general Convention, to consider, discuss and propose a new Constitution, or alterations and amendments to the existing Constitution of this Commonwealth.

15. The said Convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess and enjoy, in the most full and ample manner, all and every the privilege and privileges, which members elected to, and attending on the General Assembly, are entitled to; and moreover, shall be allowed the same pay for travelling to, and attending on, and returning from the said Convention, as is now allowed to the members of the General Assembly for travelling to, attending on, and returning from the same; and the said Convention shall be and is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper; which several sums shall be allowed by the Auditor, and paid by the Treasurer of this Commonwealth.

* * * * *

CHAP. 8.—An ACT to take the sense of the people upon the call of a convention, and providing for organizing the same.

[Passed March 4, 1850.] 9

Whereas it is represented to the general assembly, that a portion of the good people of this commonwealth are desirous of amending the constitution of the state:

1. *Be it therefore enacted,* That it shall be the duty of the officers authorized to conduct elections within this commonwealth, at the time and places of holding their respective elections for delegates to the general assembly in the month of April next, to open separate polls for the purpose of taking the sense of the people upon the question, whether they desire a convention or not. The polls to be opened shall contain two columns, and shall be headed on the one

side of the poll-book thus: "Shall there be a convention to amend the constitution of this commonwealth?"

CONVENTION. | NO CONVENTION.

The officers conducting the elections shall take the vote on the question aforesaid, of every person qualified, according to the existing laws of this commonwealth, to vote for delegates to the general assembly, who shall come forward during such election to give his vote, and shall cause the names of those who vote for a convention to be written in the first column under the word "Convention;" the names of those who vote against a convention, to be written in the second column under the words "No convention;" and no person shall be permitted to vote on said question more than once, either in the same county or in different counties.

* * * * *

11. The said convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess, and enjoy, in the most full and ample manner, all the privileges 11
which members elected to, and attending on the general assembly are entitled to; and moreover shall be allowed the same pay for travelling to, attending on, and returning from the said convention, as is now allowed to members of the general assembly for like services. And said convention is hereby empowered to appoint such officers, and to make them such reasonable allowances for their services as it shall deem proper, which several allowances shall be audited by the auditor of public accounts, and paid by the treasurer of the commonwealth upon proper warrants.

* * * * *

16. The sheriffs or other officers shall receive the same com- 12
pensation, and be paid in like manner for attending and comparing the polls under this act, as in cases of senatorial elections.

Slaves Transported and Executed.

[REVISED CODE OF VIRGINIA, 1819.]

C. 111.

An act reducing into one, the several acts concerning Slaves, Free Negroes and Mulattoes.

[Passed March 2, 1819.]

* * * * *

37. THE value of a slave condemned to die, who shall suffer 430
accordingly, or, before execution of the sentence, perish, 'escape,' or be sold for transportation by the Executive, to be estimated by the justices triers, shall be paid by the public to the owner.

* * * * *

39. THE Governor, with the advice of Council, shall be and is hereby authorised, when it shall be deemed expedient, to contract and agree with any person or persons, for the sale and purchase of all those slaves who may be under sentence of dath, for conspiracy, insurrection or other crimes. The person or persons, at the time of making such purchase, shall enter into bond with sufficient security, in the penalty of one thousand dollars for each slave, payable to the Governor and his successors, for the use of the literary fund, with condition that he or they will carry out of the United States, all the slaves by him or them purchased, who may be under sentence of death; and the sale and disposal of every such slave shall amount to a reprieve of him or them from such sentence of death; *Provided always,* That if any slave, sold pursuant to this act, shall return into this State, he shall be apprehended and executed under the condemnation of the court, as if no reprieve had taken place. 'And the owner or owners of any slave 'so executed, shall not be 'entitled to receive compensation from the public for his or her 'value.'

* * * * *

41. THE owners of slaves so sold or transported, shall be paid in the same manner as for slaves executed; which payment shall be immediately made, in the same manner as for slaves executed, so soon as the Executive shall determine on the sale or transportation of them.

* * * * *

64. IT shall not be lawful for any free negro or mulatto, to 437
migrate into this Commonwealth; and every free negro or
mulatto, who shall come into this Commonwealth, contrary to this act, shall and may be apprehended and carried by any citizen before some justice of the peace of the county where he shall be taken; which justice is hereby authorised to examine, send and remove every such free negro or mulatto out of this Commonwealth, into that state or island, from whence it shall appear he or she
last came; and for this purpose, the sheriff or other officer, 438
and other persons, may, by such justice, be employed within
the Commonwealth, upon the same terms as are by law directed in the removal of criminals from one country to another; 'and the ex-'penses and charges of such removal, to be audited and paid out of 'the treasury as other public charges.' And every free negro or mulatto, who shall come, or be brought into this Commonwealth by water, from any country, state or island, may and shall be exported to the place, from whence he or she came, or was brought; and the charges attending the same shall be paid by the importer; to be recovered by motion in the name of the Commonwealth, upon ten days previous notice thereof, in any court of record; 'and every 'free negro or mulatto so removed or exported, and thereafter re-

'turning to this Commonwealth, (unless it be in consequence of 'shipwreck or some other unavoidable necessity,) upon proof thereof 'made before any magistrate of this Commonwealth, shall receive, 'by order of such magistrate, thirty-nine lashes on his or her bare 'back well laid on; which punishment may, at the discretion of any 'magistrate, be repeated once in every week, so long as such free 'negro or mulatto shall remain within the Commonwealth.'

[CODE OF VIRGINIA, 1849.]

CHAPTER XVII.

102

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

Power to reprieve or pardon.

1800-1, p. 24, c. 42. R. C. p. 430, 29.

§ 19. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the 106
United States. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the *United States,* and shall never afterwards return into this state.

[CODE OF VIRGINIA, 1849.]

CHAPTER CC.

OFFENCES BY NEGROES. 753

1822-3, p. 37, ch. 14, § 3. 1831-2, p. 21, § 6. 1847-8, p. 125, § 1, 5.

§4. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro, at the time of committing the same is punishable with death or by confinement in the penitentiary for not less than three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the *United States.*

§ 5. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be punished with death, or, at the discretion of the court, by sale and transportation as aforesaid. 754

1847-8, p. 125, § 2, 3, 14, 15.

§ 6. If a slave be sentenced to sale and transportation, under either of the next two proceeding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation.

[CODE OF VIRGINIA, 1849.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

§ 9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 787

1 R. C. p. 430, § 37, 41. 1839-40, p. 51, c. 61, § 1. 1847-8, p. 162, §

§ 10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly.

1839-40, id. § 1847-8, p. 162, §

* * * * *

Slaves sentenced as a free man. 788

§ 19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be empanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 789

1847-8, p. 164, § 19, 20.

[CODE OF VIRGINIA, 1860.]

CHAPTER XVII.

* * * CONCERNING THE GOVERNOR'S POWERS AND DUTIES.

* * * * *

Commutation of punishment; * * * 121

* * * * *

1800-1, p. 24, c. 43. 1 R. C. p. 430, § 39.

20. In the case of a slave under sentence of death, the governor may order a commutation of the punishment by directing that such slave be sold, to be transported beyond the limits of the United States. The governor shall cause him to be sold, and the purchaser, before delivery to him of the slave, shall pay into the treasury the price agreed, and enter into bond, approved by the governor, in the penalty of one thousand dollars, conditioned that the slave shall within three months be transported beyond the limits of the United States, and shall never afterwards return into this state.

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[CODE OF VIRGINIA, 1860.]

CHAPTER CC.

OFFENCES BY NEGROES.

* * * * *

1822-3, p. 37, c. 34, § 3. 1831-2, p. 21, § 6. 1847-8, p. 125, 6, § 1, 5.

7. If a slave plot or conspire to rebel or make insurrection, or commit an offence for the commission of which a free negro at the time of committing the same, is punishable with death or by confinement in the penitentiary for not less three years, he shall be punished with death. But unless it be an offence for which a free white person, if he had committed it, might have been punished with death, such slave, instead of being punished with death, may, at the discretion of the court, be punished by sale and transportation beyond the limits of the United States 816

1. § 2. 3, 14, 15.

8. If a slave commit an offence for which a free negro, if he had committed it, might be punished by confinement in the penitentiary for a period less than three years, such slave shall be punished by stripes; and if, having been once sentenced for such offence, he afterwards commit an offence for which a free negro, if he had committed it, might be punished by such confinement, he shall be

punished with death, or, at the discretion of the court, by sale and transportation as aforesaid.

9. If a slave be sentenced to sale and transportation, under either of the next two preceding sections, the same proceedings shall be had as in the case of a slave under sentence of death, whose punishment is commuted by the governor to sale and transportation. Ante, c. 17, § 10 to 22 Post. c. 212, §

[CODE OF VIRGINIA, 1860.]

CHAPTER CCXII.

OF PROCEEDINGS AGAINST NEGROES.

* * * * *

Of slaves condemned to death.

9. The value of a slave condemned and executed, or sentenced to, or reprieved for, sale and transportation, shall be paid to the owner out of the treasury; such value shall be the cash price for which he would sell at public sale, with a knowledge of his condemnation. It shall be fixed by the court, and entered of record. 848 1 R. C. p. 430, § 37, 41. 1839-40, p. 51, c. 61, § 1 1847-8, p. 162, §

10. If such slave be a slave only for a term of years, or for the life of another person, he shall be valued accordingly. 1839-40, id. § 1847-8, p. 162, §

* * * * *

19. If a negro, condemned as a free man and executed, be claimed to have been a slave, the claimant may present his petition, under oath, to the court in which the conviction was, stating the grounds of his claim, and a jury shall be impanneled to enquire into the fact. If they find that the convict was the property of the claimant, when he was executed, his value shall be ascertained by the court, and paid to such claimant. In an enquiry under this or the preceding section, the attorney for the commonwealth, in the court, shall appear for the state. 849 1847-8, p. 164, § 19, 20 Ante § 9, 10

Boundary Lines.

CHAPTER 14.—An act to settle the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed February 28, 1822.]

1. *Be it enacted by the General Assembly of Virginia*, That the governor, by and with the advice and consent of the council, be, and he is hereby authorised to appoint three commissioners 15

on the part of this state to meet such commissioners as may be appointed for the same purpose by the commonwealth of Maryland, to settle and adjust, by mutual compact between the two governments, the western limits of this state and the dividing and boundary line between this state and the commonwealth of Maryland: to commence at Fairfax's stone on the head waters of the north branch of the Potowmac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania; and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general Assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection.

* * * * *

4. *And be it enacted*, That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorised to employ a surveyor, two chain-carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favour of such surveyor for four dollars per day for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just; whereupon the auditor of public accounts, upon application, shall issue warrants in favour of such chain-carriers and markers.

5. *Be it further enacted*, That all expenses to be incurred in running and settling the aforesaid divisional line shall be paid out of any money in the treasury of this commonwealth not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

CHAP. 32.—An ACT to settle the western limits of this State, and the dividing and boundary line between this state and the commonwealth of Maryland.

[Passed March 5th, 1833.]

1. *Be it enacted by the general assembly of the commonwealth of Virginia*, That the governor be and he is hereby authorized to appoint three commissioners on the part of this state, to meet such

commissioners as may be appointed for the same purpose, by the commonwealth of Maryland, to settle and adjust by mutual compact between the two governments, the western limits of this state, and the dividing and boundary line between this state and the commonwealth of Maryland, to commence at the Fairfax stone, or at the first fountain of the Cohongoroota or North branch of the Potomac river, and to run a due north course to intersect the line between this state and the state of Pennsylvania. If, however, the commonwealth of Maryland shall fail to appoint commissioners, then, and in that event, the commissioners appointed by the governor of this commonwealth, or any two of them, shall run and mark said line, according to the provisions of this bill: and the commissioners appointed as aforesaid, are required to report their proceedings in virtue of their appointment and authority, to the general assembly of this state, at the session next after the same shall have been concluded, for confirmation or rejection:

And whereas, sundry citizens of this state, may hold lands in virtue of patents granted by the commonwealth of Maryland, before the divisional line shall have been settled and adjusted between the two states, and as it is proper that all inhabitants on either side of the boundary line, so to be settled and adjusted, who shall have obtained patents for their lands in Virginia or Maryland, should have their titles confirmed in whichever state they may happen to fall.

* * * * *

4. *And be it enacted,* That the commissioners appointed as aforesaid, shall receive four dollars per day, while employed in settling and adjusting the aforesaid divisional line; and they are hereby authorized to employ a surveyor, two chain carriers, and one or more persons to mark the said line. And it shall be the duty of the said commissioners, to ascertain the number of days the surveyor shall be so employed, and certify the same to the auditor of public accounts, who shall thereupon issue a warrant in favor of such surveyor, for four dollars per day, for his services: the said commissioners shall also certify to the auditor of public accounts, the names of the chain carriers and markers employed, the number of days each has been so employed, and such daily allowance as to them may seem just: whereupon, the auditor of public accounts, upon application, shall issue warrants in favor of such chain carriers and markers.

5. *Be it further enacted,* That all expenses to be incurred in running and settling the aforesaid divisional line, shall be paid out of any money in the treasury of this commonwealth, not otherwise appropriated.

6. This act shall be in force from and after the passage thereof.

No. 4.—Preamble and resolutions relative to the boundary between Virginia and Ohio.

[*Adopted March 23, 1847.*] 237

1. *Resolved by the general assembly of the state of Virginia,* That a board to consist of three commissioners, citizens of Virginia, be appointed by the governor of this state, who shall be authorized to meet a like board, to be appointed by the state of Ohio, at such time and place as may be agreed upon, and to enter into a compact with such Ohio commissioners, settling the jurisdiction or boundary, or both, upon that part of the Ohio river which divides the states of Virginia and Ohio. *Provided,* That such compact shall not be considered as binding until the same be ratified by the said states respectively, and by the congress of the United States.

2. *Resolved,* That the governor be authorized to supply any vacancy which may happen in the board of Virginia commissioners, and that said board report their proceedings, under these resolutions, to the general assembly of Virginia at the next session, and that they be allowed the sum of four dollars per day for each day they may be occupied in the business of their commission, and four dollars for every twenty miles of travel, to be paid out of any moneys in the treasury not otherwise appropriated, on the warrant of the auditor of state, who shall adjust their accounts.

3. *Resolved,* That the governor of this state forward a copy of these resolutions to the governor of the state of Ohio.

CHAP. 4.—An ACT for running and marking the boundary line between North Carolina and Virginia.

Passed April 2, 1858. 4

Whereas there is some difficulty between the states of North Carolina and Virginia as to the precise point where the line dividing the two states now is: and whereas the citizens of each state immediately along the same, are equally desirous of having it more certainly fixed and established: therefore,

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized and required to appoint a commissioner, who, together with the commissioner who may be appointed on the part of North Carolina, shall cause the said line to be accurately surveyed, traced, and marked with stone monuments, not exceeding five miles apart, beginning at the county line dividing Pittsylvania and Henry

counties, where it intersects with the North Carolina line, and thence running west to the intersection of the line of the state of Tennessee.

2. It shall be the duty of the commissioners, after running, locating, establishing and marking the said line, to make a report, setting forth all the facts touching the same, and to forward copies of the joint report to their respective legislatures. And upon ratification of such report by the legislatures of the states of North Carolina and Virginia, the said boundary line shall be fixed and established; to remain forever, unless changed by the mutual consent of the said states.

3. That the governor shall be and is hereby authorized to pay one-half of all the expense which may be incurred in running and marking said line as aforesaid, and also the sum of five dollars per day to the commissioner appointed by the executive of this state, for each day he may be engaged in performing the service, and ten cents per mile for each mile he may travel to and from his residence in going to and returning from the line aforesaid; to be paid, upon the order of the governor, out of any money in the treasury not otherwise appropriated.

4. This act shall be in force from its passage.

No. 14.—Resolutions concerning the Boundary Lines between Tennessee and Virginia.

Adopted March 9, 1860. 698

1. Resolved, that the general assembly do hereby disapprove and reject the line between Virginia and Tennessee, as run and reported by Leonidas Baugh and James C. Black, as commissioners on the part of Virginia.

2. Resolved, that the governor be and he is hereby authorized to settle with said Leonidas Baugh and James C. Black, for their services rendered and expenses incurred by them in running said line; and he is hereby empowered to draw his warrant on the treasury for the amount ascertained by him to be due, payable out of any money in the treasury not otherwise appropriated; and that he be further authorized, if he shall deem it necessary, to appoint a commissioner to examine the account and take evidence in relation to the said claim for compensation and expenses.

3. Resolved, that the governor be and he is hereby authorized to appoint one or more commissioners to run again and re-mark the line between Virginia and Tennessee, in strict conformity with the compact of eighteen hundred and two, ratified by the legislature of Virginia in eighteen hundred and three; and he is authorized to allow to

such commissioner or commissioners a reasonable compensation for their services.

4. Resolved, that the governor be directed to communicate a copy of these resolutions to the governor of Tennessee, with a request that the authorities of that state will concur, and appoint a commissioner on their part.

No. 15.—Resolutions concerning the Boundary Line between Maryland and Virginia.

Adopted March 10, 1860. 699

Whereas the legislatures of Maryland and Virginia have each passed an act (the former, March twenty sixth, A. D. eighteen hundred and fifty-two, and the latter, March twenty-ninth, A. D., eighteen hundred and fifty-eight), providing for the surveying, retracing and marking of the boundary line between the two states, which runs from Watkins' Point, on the Eastern Shore, to the Atlantic ocean:

And whereas, in accordance with the provisions of said acts, Colonel Thomas J. Lee, on the part of Maryland, and Colonel Angus W. McDonald, on the part of Virginia, were appointed commissioners, jointly to have (among other things) the said line retraced, surveyed and marked, and have, with the assistance of Lieutenant N. Michler of the United States corps of engineers, assigned to that service by the war department, caused said line to be retraced, surveyed and marked, and full and elaborate plats and maps of the same made and returned to each of said states: Therefore,

1. Resolved, that suitable and permanent monuments should be erected at the termini and along said line, to perpetuate the location of the same, at the joint cost of said two states, and that Virginia's portion of such cost is provided for by the said act of March twenty-ninth, eighteen hundred and fifty-eight.

2. And be it further resolved, that the governor of this commonwealth, if he deem it expedient, be and he is hereby authorized and requested to send to England a competent agent, and obtain from thence all record and documentary evidence tending to ascertain and establish the true lines of boundary between Virginia and the states of North Carolina, Tennessee and Maryland: The cost of such agency not to exceed two thousand dollars; provision for which is also made by said act of March twenty-ninth, eighteen hundred and fifty-eight.

Maps.

CHAPTER 17.—An act to provide for engraving the Map of Virginia.

[Passed February 14th, 1825.] 19

1. *Be it enacted by the General Assembly*, That the Executive of this commonwealth be, and they are hereby authorized and required, to contract for engraving the general Map of the territory of this Commonwealth, prepared in conformity with the provisions of the act entitled, "an act to provide an accurate chart of each county, and a general Map of the territory of this Commonwealth," with such person, and upon such terms as they shall think best calculated to effect the object of the said act.

2. This act shall be in force from the passing thereof.

CHAPTER 15.—An Act making provision for furnishing the public offices with the new Map of Virginia, and for other purposes.

(Passed February 11th, 1828.) 13

1. *Be it enacted by the General Assembly*, That the Executive of this Commonwealth shall be, and they are hereby authorised and required to distribute to the committee of Roads and Internal Navigation, and to each of the other standing committees of the House of Delegates, who have not heretofore been furnished therewith, a copy of the Revised Code, and such of the Sessions Acts of the General Assembly, as may be in the Executive department for distribution, which shall be preserved by the clerks of the said committees respectively, for the use of the same. And the Executive shall moreover distribute to the public offices the new Map of Virginia, in the manner following, that is to say: To the Executive Chamber, one Map of the large size, hung on rollers; to the Register's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form; to the Treasury and First Auditor's office, each one Map of the small size, in port folio form; to the Second Auditor's office, one Map of the large size, hung on rollers, and one of the small size, in port folio form; and to the committee of Propositions and Grievances, and of Roads and Internal Navigation, each one Map of the large size, hung on rollers.

2. *Be it further enacted*, That it shall be the duty of the clerks of the said committees respectively, to keep and preserve the said Maps during the session of the General Assembly, subject at all times to the use and reference of the said committees: and for the more secure and better preservation thereof, the Executive shall cause to be procured,

and furnished to the said clerks, tin cases of sufficient length and capacity to contain the same, which cases, with the Maps therein, the said clerks shall, at the close of the session of Assembly, deposit in the office of the clerk of the House of Delegates, for which he shall grant a receipt.

3. *And be it further enacted*, That the Executive are hereby authorised and required to present to the Government of the United States, and of each of the States within this Union, one of the new Maps of Virginia, of the largest size, the presentation thereof to be made to the Executive departments of said governments, and in such manner as the Executive of this Commonwealth may deem most proper and expedient.

4. This act shall be in force from the passing thereof.

CHAP. 93.—An ACT providing for a geological survey of the state, and for other purposes.

[Passed February 29, 1836.] 67

1. *Be it enacted by the general assembly*, That the president and directors of the board of public works be, and they are hereby required, as speedily as may be, to cause a complete and detailed geological survey of the entire territory of this state to be made and executed, and a careful and accurate chemical examination and analysis of the various soils which may be found in different parts thereof, as also of the principal ores, marls, saline and mineral waters within said territory.

2. *Be it further enacted*, That for the purposes of making such survey and analysis, it shall be lawful for the said president and directors to employ a competent and skilful geologist, and an assistant geologist if need be; and may also engage the services of, or employ a topographical surveyor, whose duty it shall be to make such observations and admeasurements as may be found necessary in the preparation and construction of the geological map of the state hereinafter provided for, and to perform such other labours connected with the general purposes hereby intended, as the geologist may from time to time prescibe and direct. In addition to the duties before mentioned to be performed, the geologist who may be employed by virtue of this act, shall also ascertain by accurate barometical observations the height of the principal mountains in the state; and in the progress of the surveys and examinations hereby directed, shall collect and preserve all such specimens of rocks, fossils, ores, mineral compounds and organic remains, as shall tend to exemplify the general geological structure of the state, or be in any wise useful or interesting. The specimens, so far as prac-

ticable, shall be collected in sufficient number to authorize a distribution of a suite thereof to the principal institutions of learning in the state, if it shall hereafter be found expedient to make such distribution.

3. *Be it further enacted,* That said geologist shall annually, and before the tenth day of January in each year, make report to the president and directors of the board of public works, of his progress in the work hereby authorized and required, accompanying 68
said report with such profiles and maps, together with a glossary of scientific or technical terms, as may be useful in illustrating the same; which reports, profiles and maps, it shall be the duty of the said president and directors immediately to lay before the general assembly.

4. *Be it further enacted,* That for the purpose of defraying the expenses which may be incurred under this act, a sum not exceeding five thousand dollars per annum, be and the same is hereby appropriated, to be apportioned among the several persons hereby authorized to be employed, in such manner, and in such amount as to the president and directors of the board of public works shall seem best, to be paid upon their certificate out of any moneys in the treasury not otherwise appropriated, upon the warrant of the auditor of public accounts: *Provided,* That the amount to be paid to the geologist and the assistant geologist shall not exceed the sum of three thousand dollars per annum, to be apportioned and divided between them in manner above directed, and the sum to be paid to the topographical surveyor shall not exceed one thousand dollars.

5. *Be it further enacted,* That when the entire work hereby contemplated and provided for, shall have been fully completed, it shall be the duty of the geologist in charge thereof to make a general and final report thereon, embracing in such report, in detail, the result of all the surveys, examinations and discoveries which shall have been made, geological, chemical and topographical, and all other matters connected therewith, which may be considered by him as likely to be in any manner useful to the public or interesting to science. He shall also construct and prepare for engraving, a complete geological map of the state, shewing not only the general geological structure thereof, but plainly and accurately delineating the stratification of its principal rocks, and the position and boundary of all the mineral deposites which may be now known or be ascertained by the investigations which shall have been made, accompanying said map with such a series of sections or profiles as may be necessary to a proper exhibition of the geology of the region to which they may relate. The final report, together with the map and the accompanying sections and profiles, the president and directors of the board of public works shall communicate to the general assembly as soon as may be, to be printed, engraved, published and disposed of, in such manner as to the said general assembly shall seem proper.

6. *Be it further enacted,* That the mineral materials and other

specimens which may be collected during the operations of the geologist and others who may be engaged with him, shall be carefully preserved in some convenient apartment of the library room, until otherwise provided for. A complete catalogue of such specimens and materials shall be made out, and preserved in the same apartment, shewing the name, locality and general properties and value of each, as ascertained by the analysis to which it may have been subjected, and referring to the corresponding number which shall be affixed to the specimen itself.

7. This act shall be in force from and after the passage thereof.

No 3.—Resolution providing for the preparation of a map of the internal improvements of the state.—[*Adopted March* 15, 1848.]

Resolved by the general assembly, That the Board of public 353
works cause to be prepared by C. Crozet, Esq., at a cost not exceeding fifteen hundred dollars, in some cheap and convenient form, a lithographic map of the state of Virginia, exhibiting all railroads, canals, M'Adamized and turnpike roads, constructed, surveyed or authorized in this state, distinguishing each kind of improvement, and as far as may be the condition thereof, and shewing their connection with the principal improvements of neighbouring states; and that he accompany the same with a brief outline of the history of each improvement, together with such portions of the reports of 354
engineers upon the same, as he may deem expedient; and that one thousand copies thereof be deposited in the office of said board, subject to the order of the next general assembly.

No. 5.—Resolution for completion of state map.

Adopted February 18, 1853. 358

1. Resolved by the general assembly, that for the purpose of enabling the Board of public works to improve the map of Virginia and to ascertain her true boundaries, they are hereby authorized to contract for the purchase of new plates, it being suggested that the old plates have been mislaid, and if found are unfit for use; and the said board for the same purpose are moreover authorized to cause the necessary astronomical observations to be made: provided the cost of such map and the taking of such observations shall not exceed the sum of three thousand dollars, to be paid out of the contingent fund.

6. Deaf, Dumb and Blind Institute.

CHAP. 19.—An ACT to provide for the establishment of the Virginia asylum for the education of the deaf and dumb and of the blind.

(Passed March 31, 1838.) 31

1. *Be it enacted by the general assembly,* That there shall be established on a site, at such place as the legislature may by joint resolution select, an institution to be called "The Virginia institution for the education of the deaf and dumb and of the blind," which shall be under the government of seven visitors, to be appointed annually by the president and directors of the literary fund, who shall notify them of their appointment, and prescribe a day for their first meeting, or in the event of failure, for a subsequent one.

2. The said visitors, or a majority, shall appoint from their own body, a president to preside at their meetings, and a secretary to record, attest and preserve their proceedings.

3. In the said institution, there shall be two schools, each separate and distinct from the other in all respects whatsoever. In one of them, such deaf mutes, and in the other, such blind pupils as may be placed in said institution, as hereinafter provided, shall be exclusively educated under so many professors, instructors and assistants as may be deemed necessary and expedient by the board of visitors.

4. The said visitors shall be charged with the erection, preservation and repair of the buildings, the care of the grounds and appurtenances, and of the interests of the institution generally. They shall have power to employ all necessary agents; to appoint and remove professors (two-thirds of the whole number concurring in every case of removal); to fix their compensation; prescribe their duties and the course of education in each school; to establish rules for the government and discipline of the pupils; to regulate tuition fees; to prescribe and control the duties and proceedings of all officers, servants and others, with respect to the buildings, 32 lands, appurtenances and other property and interests of the institution; to draw from the literary fund or the treasury, such moneys as are or shall be charged by law on either for the benefit and support of the institution; and in general, to direct and do all matters and things, which, not being inconsistent with the constitution and laws of the United States or of this state, shall seem to them most expedient for promoting the purposes and fulfilling the objects of said institution; which several functions they shall be free to exercise in the form of by-laws, rules, resolutions, orders, instructions or otherwise, as they shall deem proper.

5. The said visitors shall have such stated and occasional meetings as they shall themselves prescribe. A majority shall constitute a quorum for business, and all vacancies occurring by death, resignation, removal from the commonwealth, or failure to act for the space of six months, shall be supplied by the appointing power.

6. The president and visitors shall be, and they are hereby declared to be a body corporate, under the style and title of "The president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind," with the right, as such, to use a common seal, to plead and be impleaded, in all courts of justice, and in all cases in which the interests of the institution are involved; and they shall be capable in law, and in trust for the institution, of receiving subscriptions and donations, real and personal, as well from bodies corporate, and persons associated, as from private individuals.

7. The institution hereby established, shall in all things, and at all times, be subject to the control of the legislature; and it shall be the duty of the board of visitors annually to make a report to the president and directors of the literary fund, (to be laid before the general assembly,) which shall embrace a full account of receipts and disbursements, the funds on hand, and a general statement of the condition of said institution.

8. There shall be maintained and educated at the public expense, at the institution hereby established, such poor and destitute deaf mutes and blind persons as are unable to pay for such maintenance and education, to be selected in the mode that the board of visitors shall prescribe: *Provided nevertheless,* That such selection shall be made with a due regard to the claims of every portion of the commonwealth. There shall also be educated in both of said schools, such other deaf and dumb and blind persons, whether from Virginia or elsewhere, and whether sent at individual or at state expense, as said board of visitors shall deem it advisable to admit, and upon such terms for their instruction and support as they may prescribe.

9. *Be it further enacted,* That there shall be appropriated out of the revenue of the literary fund which had accumulated prior to the passage of the act appropriating the surplus revenue of the literary fund, passed March the twenty-second, eighteen hundred and thirty-six, so much as shall be necessary, not exceeding twenty thousand dollars, for the purpose of procuring a suitable site or sites, and for erecting thereon the necessary buildings; and the further sum of ten thousand dollars shall be annually applied to the support of said institution: *Provided, however,* That not more than one-half of the first mentioned appropriation shall be expended in one year: *And provided also,* That no portion of the 33
annual endowment shall be paid until the institution goes into

actual operation; and it shall be discretionary with the president and directors of the literary fund, at any time, to withhold any part of said annual endowment, if not required by the wants of the institution.

10. *Be it further enacted,* That when the institution hereby established shall go into operation, the appropriation of the surplus revenue of the literary fund by the act of twenty-second of March, eighteen hundred and thirty-six, shall be limited to the sum of twenty-five thousand dollars; and all excess of such surplus, if any, not exceeding ten thousand dollars, shall be applied in payment of the annuity herein before granted; and if such excess should not amount to ten thousand dollars, the deficiency shall be charged upon the ordinary revenue of the state.

11. This act shall be in force from and after the passing thereof.

CHAP. 14.—An ACT directing the payment of a sum of money to the visitors of the Virginia institution for the education of the deaf and dumb and of the blind.

[Passed March 20, 1841.] 37

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby instructed to issue a warrant upon the treasury in favour of the visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of six thousand two hundred and fifty dollars, being the amount expended by the said visitors in the purchase of furniture, musical instruments, books, apparatus, and other articles required for the outfit of the institution; which amount shall be paid out of any moneys in the treasury not otherwise specifically appropriated: *Provided,* That whenever there shall be any excess of the income arising from the Literary fund, over and above the appropriations 38 heretofore made of said income, such excess shall be paid into the public treasury until the sum herein appropriated shall be reimbursed.

2. *Be it further enacted,* That the auditor of public accounts shall not issue a warrant upon the treasury for the whole or any part of the sum herein appropriated, until a copy of the contract or contracts made by the said visitors for the erection of the necessary buildings as provided in the act establishing said institution, passed March the thirty-first, eighteen hundred and thirty-eight, signed by all the visitors who were present at the board when such contract or contracts were made, and likewise by the contractor or contractors, accompanied by the specifications of said contract or contracts, and

communicated to the president and directors of the Literary fund; and unless it shall appear to the said president and directors that the entire completion of said buildings, including the purchase of a site for the same, will not exceed the sum appropriated for that purpose in the before recited act. And if the said visitors have exceeded or shall exceed the said appropriation, they shall be held bound in their individual character, without any recourse to the commonwealth.

3. This act shall be in force from the passing thereof.

CHAP. 9.—An ACT making appropriation for the completion of the buildings of the deaf and dumb and blind institution.

[Passed January 23, 1845.] 13

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and he is hereby authorized and directed to issue his warrants on the treasury in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and of the blind, for the sum of twenty-five thousand dollars, to be applied in completing the buildings of the said institution: *Provided*, That the said sum shall be paid in six equal semi-annual instalments: that is to say, four thousand one hundred and sixty-six dollars sixty-six cents within six months after the passage of this act, and the same sum within each of five successive periods of six months after the expiration of the first six months aforesaid: *Provided further*, That the aforesaid appropriation shall be so expended as fully to complete the said buildings in such mode and style as such appropriation would warrant.

2. This act shall be in force from the passing thereof.

CHAP. 18.—An ACT appropriating a sum of money to provide furniture for the institution of the deaf and dumb and of the blind.

[Passed February 24, 1846.] 20

1. *Be it enacted by the general assembly*, That the auditor of public accounts be and is hereby authorized and directed to issue his warrant on the treasury, in favour of the "president and visitors of the Virginia institute for the education of the deaf and dumb and of the blind," for the sum of five thousand dollars, to be expended in

providing the necessary furniture and fixtures for the buildings of the said institution: *Provided,* That two thousand five hundred dollars of this appropriation may be paid by the auditor immediately after the passage of this act, and the remainder in one year from the time of the first payment.

2. This act shall be in force from the passing thereof.

CHAP. 272.—An ACT authorizing the payment of a certain sum of money to William C. Adams.

[Passed March 20, 1847.] 230

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby authorized and required to issue his warrant upon the treasury (payable out of any money therein not otherwise appropriated) in favour of William C. Adams, or his legal representative, for the sum of five thousand nine hundred and ninety-eight dollars and ninety-eight cents, it being an allowance made to the said Adams on account of work done, materials furnished, and expenses incurred in the erection of the buildings of the deaf and dumb and blind institution near Staunton.

2. *Be it further enacted,* That the said auditor of public accounts shall be and he is hereby authorized and directed to retain and withhold out of the semi-annual instalment to fall due on the twenty-third day of January, eighteen hundred and forty-eight, by virtue of an act, entitled "An act making appropriation for the completion of the buildings of the deaf and dumb and blind institution," passed the twenty-third day of January, eighteen hundred and forty-five, the sum of three thousand six hundred and seventy-eight dollars, which said sum is to be deducted from the appropriation of the twenty-third of January, eighteen hundred and forty-five, aforesaid, and the balance to be applied as prescribed by the said act.

3. This act shall be in force from its passage.

CHAP. 15.—An ACT to increase the annuity to the Virginia institution for the education of the deaf and dumb and of the blind, and for other purposes.

[Passed March 16, 1847.] 16

1. *Be it enacted by the general assembly,* That from and after the passage of this act the annuity of the Virginia institution for the

education of the deaf and dumb and of the blind, shall be increased to the sum of fifteen thousand dollars.

2. *Be it further enacted*, That hereafter the surplus of the Literary fund, if any, above the sum of twenty-five thousand dollars set apart by the acts of the twenty-second day of March eighteen hundred and thirty-six, and of the thirty-first day of March eighteen hundred and thirty-eight, not exceeding fifteen thousand dollars, shall be applied in payment of said annuity to said Virginia institution; and if such excess should not amount to fifteen thousand dollars, the deficiency shall, as heretofore, be paid out of any money in the treasury not otherwise appropriated: *Provided, however*, That the sum of five thousand dollars, a part of said annuity, shall exclusively be paid out of the treasury of the commonwealth.

3. *Be it further enacted*, That the president and visitors of said Virginia institution be, and they are hereby authorized, to expend the sum of two thousand dollars in the purchase of twenty acres of land adjoining and lying south of the present institution lot; and the further sum of one thousand dollars in the purchase of such raised and common types, moulds and other printing apparatus, as may be required, as well in the deaf mute as in the blind department of said institution; and the further sum of two thousand three hundred dollars in the purchase of materials, machines and tools, for the various workshops of said institution, and for the completion of said workshops.

4. *Be it further enacted*, That in case of the passage of acts before the passage of this act appropriating more than the probable balance in the treasury on the thirtieth of September eighteen hundred and forty-seven, as estimated and reported by the auditor of public accounts, the president and visitors of said Virginia institution are hereby authorized to borrow, for a period not exceeding twelve months, and at a rate of interest not exceeding six per centum per annum, the sum of five thousand dollars, to be applied for the present year in aid of the annuity of ten thousand dollars already established by law, for the support of said Virginia institution; and the further sum of five thousand three hundred dollars, to be applied to the purposes specified in the third section of this act if so much shall be necessary; the sum so borrowed by said president and visitors, to be paid out of the revenue of the commonwealth for the year eighteen hundred and forty-eight.

5. *Be it further enacted*, That the property of said Virginia institution, whether real or personal, including servants hired for the use of said institution, shall hereafter be exempted from taxation under the revenue laws of the commonwealth, and from county and parish levies; and that the officers, attendants and servants of said Virginia institution, shall not in future be required to serve on

juries, to work on the public highways, or to perform military duty, except in case of actual invasion of the commonwealth.

6. *Be it further enacted*, That hereafter the fiscal year of said Virginia institution shall terminate with the calendar year; and the president and visitors shall hereafter cause their annual 17
accounts to be closed on the thirty-first of December in each year, and shall as soon thereafter as practicable make the annual report required by law.

7. *Be it further enacted*, That in consideration of the appropriation herein contained for printing materials and apparatus for said institution, the president and visitors of said Virginia institution shall cause to be printed for the use of the general assembly, at least three hundred and fifty copies of their annual reports, and at least three hundred and fifty copies of the annual reports of the president and directors of the Western lunatic asylum at Staunton, without charge to the commonwealth, except for paper and ink.

8. This act shall be in force from its passage.

CHAP. 12— An ACT to provide additional accommodations for the deaf and dumb and blind institution.

[Passed January 25, 1849.] 14

1. *Be it enacted by the general assembly*, That the auditor of public accounts is hereby directed to draw his warrants on the treasury, payable out of any money therein not otherwise appropriated, in favour of the president and visitors of the Virginia institution for the education of the deaf and dumb and blind, for such sum or sums as may be from time to time required by the said president and visitors, not exceeding in the aggregate four thousand dollars; which amount, or so much as may be necessary, the said president and visitors are hereby directed to apply to the erection of a plain, substantial brick building, of sufficient size to contain a laundry and bakehouse for the said institution, together with convenient accommodations for the servants employed therein.

2. This act shall be in force from its passage.

CHAP. 1—An ACT appropriating the public revenue.

3

[Passed March 14, 1850.]

* * * to pay for the furniture purchased for the increased 4
number of pupils received in the institution for the education of

the deaf and dumb and of the blind, under the act of March the sixteenth, eighteen hundred and forty-seven, and for arrears in support account of same institution, the sum of six thousand dollars; * * *

CHAP. 2.—An ACT appropriating the public revenue, and for other purposes.

[Passed March 7, 1851.] 4

* * * for completing the buildings of the institution for the deaf and dumb and blind, two thousand five hundred dollars. * * *

CHAP. 35.—An ACT appropriating two thousand dollars to purchase a library and philosophical apparatus and organ for the institution of the deaf and dumb and of the blind.

Passed June 5, 1852. 29

1. *Be it enacted by the general assembly*, That the sum of two thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of purchasing a library, philosophical apparatus and an organ for the Virginia institution for the education of the deaf and dumb and the blind; and that the same be paid, upon the warrant of the auditor of public accounts, to the president and visitors of said institution.

2. This act shall be in force from its passage.

CHAP. 145.—An ACT increasing the annuity of the institution for the education of the deaf and dumb and the blind, by the addition thereto of five thousand dollars, and appropriating twenty thousand dollars to erect a building at said institution, and to warm and light the same with steam and gas.

Passed February 24, 1853. 126

1. Be it enacted by the general assembly, that the annuity of the institution for the education of the deaf and dumb and the blind be and the same is hereby increased by the addition thereto of the sum

of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of twenty thousand dollars is hereby appropriated out of the treasury, to be paid on the orders of the visitors of the said institution; seven thousand dollars, part thereof, to be applied by said visitors to the construction of fixtures for warming the buildings of said institution with steam; five thousand dollars, another part thereof, to be applied to the construction of apparatus for lighting said buildings with gas; and eight thousand dollars, the residue thereof, to the erection of an additional building at said institution: one-half of said aggregate sum of twenty thousand dollars to be paid during the present fiscal year, and the remaining half of said sum to be paid during the next ensuing fiscal year.

3. This act shall be in force from its passage.

CHAP. 41.—An ACT appropriating ten thousand dollars for the purpose of supplying the Institution for the deaf and dumb and the blind with water.

Passed March 4, 1854. 30

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and is hereby appropriated for the purpose of enabling the board of visitors of the Institution for the deaf and dumb and the blind to provide said institution with an adequate and permanent supply of water, and that the same be paid on the orders of said board.

* * * * *

CHAP. 93.—An ACT making an appropriation to the deaf and dumb and the blind institution at Staunton.

[Passed March 13, 1856.] 80

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of twelve thousand and eighty dollars and six cents, to be paid on the order of the board of visitors of the institution for the deaf and dumb and the blind, of which five thousand five hundred and eighty dollars and six cents shall be paid during the present, and the residue thereof during the next fiscal year, and to be applied by said board as follows: Three thousand dollars, part thereof,

in the purchase of an additional boiler and the erection of a suitable boiler-house, to complete the heating of the buildings of the said institution by steam; two thousand seven hundred and thirty-nine dollars and six cents, another part thereof, to meet the deficiency which has occurred in the support fund of the said institution during the two last fiscal years; one thousand dollars, another part thereof, in the purchase of a fire engine and the erection of an engine-house; fifteen hundred dollars, another part thereof, in addition to the sum already appropriated by a former act for the purchase of an organ; one thousand dollars, another part thereof, in fencing the grounds of said institution; and two thousand eight hundred and forty-one dollars, the residue thereof, to supply the deficiency on account of the chapel, steam and gas fund of the said institution.

2. This act shall be in force from the passage thereof.

CHAP. 12.—An ACT making an Appropriation to the Deaf and Dumb and Blind Institution.

Passed January 10, 1860. 106

1. Be it enacted by the general assembly, that the annuity of the Institution for the deaf and dumb and the blind be and the same is hereby increased, by the addition thereto of the sum of five thousand dollars; which shall be paid in the manner prescribed by law in respect to the existing annuity of said institution.

2. The sum of seven thousand dollars is hereby further appropriated out of the treasury, to be paid on the orders of the visitors of said institution; and to be applied by them to pay for the erection of a shop building at said institution, and to warm and light the same with steam and gas. 107

3. This act shall be in force from its passage.

International Exchanges.

No 1.—Preamble and resolutions relative to a national interchange of productions of art, science, industry and natural history. —[*Adopted March* 23, 1848.] 353

Whereas the legislature of Virginia regards with interests the noble design of a national interchange of productions of art, science, industry and natural history, projected by Mons. Alexandre Vatte-

mare, and patronized with such munificence by the French government, and is desirious of contributing to a work so important:

1. *Resolved by the general assembly,* That the spirit which has conceived this design is an admirable as the disinterested enthusiasm which has achieved it; and that this legislature, as a testimonial of its appreciation of the character and services of its distinguished author, hereby invite him to visit the halls of legislature during the session of the legislature, and hereby tender to him the appointment of agent of the state of Virginia, for conducting the exchange of such subjects as may be presented by Virginia to France.

2. *Resolved,* That the legislature has learned with gratitude that France, of whose prosperity we always hear with pleasure, and in whose misfortunes we always sympathize, has presented to Virginia, literary works of a rare, useful and costly character, for which it is incumbent to make some return even if inadequate.

3. *Resolved,* That the state librarian be instructed to forward to the agent of international exchanges such copies of the code and of the law reporters, of the journals and other legislative documents, or other works as may be spared without detriment to the library; he shall forward such reports of the moral, social and political statistics of Virginia as may tend to diffuse amongst other nations a correct knowledge of her institutions, her condition and her capacities; that he shall likewise forward any private donations intended for the department of international exchanges; and that he be required to report annually to the joint committee of the library.

Printing Treasury Notes.

CHAP. 11.—An ACT to authorize the issue of treasury notes.

Passed March 18, 1856. 18

1. Be it enacted by the general assembly, that the governor be and he is hereby authorized to cause to be prepared and signed, in order to borrow money thereon from time to time, as hereinafter provided, treasury notes for such sum or sums as he may be advised by the auditor of public accounts that the exigencies of the government require for purposes other than works of internal improvement: provided, that the amount of such notes outstanding shall not at any time exceed the limit hereinafter named.

2. The said treasury notes shall be made payable to the order of the person or persons to whom they are given in evidence of money borrowed, and shall also be payable at the treasury of the commonwealth not more than one year after their respective dates. From

which dates, until the dates at which they are severally payable and no longer, they shall bear such interest as shall be expressed on the face of the said notes. Which rate of interest upon each several issue of the said notes shall be fixed by the governor, with the advice of the auditor of public accounts; but shall in no case exceed the rate of six per centum per annum. The said notes shall be redeemed and paid at the treasury to the holders respectively, upon the warrant of the auditor of public accounts; and the said redemption and payment shall include the principal of each note, and the interest which may be due thereon at the time of payment. For this payment and redemption, at the times and place herein specified, the faith of the commonwealth of Virginia is hereby solemnly pledged.

* * * * *

9. The said treasury notes shall be prepared under the direction of the governor, and shall be signed, on the part of the commonwealth, by the treasurer, and countersigned by the auditor of public accounts, from time to time, as they are delivered to the parties from whom money is borrowed, and to whose order they are made payable. And those officers respectively shall, as checks upon each other, and to secure the public safety, keep separate, full and accurate accounts of the number, date, denomination and amount of all the notes signed and countersigned by them respectively, and of the names of the persons to whose order the said notes are severally made payable. Which said amounts shall be carefully preserved and kept on file in their respective offices, and also similar accounts kept and preserved in the same manner of all the said notes redeemed, as the same shall be returned and canceled. The auditor of public accounts shall further account monthly for all notes delivered to him by the treasurer, to be countersigned for delivery. The said auditor is authorized, with the consent of the governor, to employ such additional temporary clerks as the duties enjoined on him hereby may render necessary: provided, that the expense of such clerks shall not exceed, in the aggregate, nine hundred dollars per annum. 19

* * * * *

12. A sum not exceeding five hundred dollars, to be paid out of any money in the treasury not otherwise appropriated, is hereby appropriated annually for three years, for defraying the expense of preparing, printing, engraving and signing the treasury notes hereby authorized, and other expenses incident thereto. The plate or plates for such engraving shall be carefully preserved, as the governor may direct, and shall be destroyed when the issue of the said notes shall cease.

* * * * *

[CODE OF VIRGINIA, 1849.]

Interest On Public Debt.

CHAPTER XLIV.

230

PUBLIC DEBT.

Of certificates of debt.

§ 1. If any of the old state certificates, which, by an act passed the nineteenth of January eighteen hundred and twenty-five, were required to be presented for redemption before the first day of September following, shall hereafter be produced, payment shall be made of the principal sum appearing due by such certificate, and interest thereon at the rate of six per centum per annum, to the day last mentioned. 1824-5, p. 29.

§ 2. Upon the new certificate for twenty-four thousand and thirty-nine dollars and seventeen cents, issued in lieu of the certificates mentioned in the said act, as held by the president and directors of the literary fund, interest shall continue to be paid annually at 231 the rate of six per centum per annum. Id.

§ 3. Upon the certificate for three hundred and nineteen thousand dollars, which, under an act passed the twenty-fourth of February eighteen hundred and thirty-two, was issued in favor of the said president and directors in lieu of three hundred and nineteen certificates for a thousand dollars each, purchased by them under an act passed the twenty-fourth of February eighteen hundred and sixteen, interest shall continue to be paid semi-annually on the first day of January and July, at the rate of seven per centum per annum, according to the act of the first day of February eighteen hundred and fourteen, under which the said money was borrowed. 1831-2, p. 13. 1815-16, p. 2, § 6. 1813-14, p. 27.

§ 4. Upon the certificates issued under the act passed the twentieth of February eighteen hundred and thirty-three, authorizing a subscription to the stock of the *Chesapeake* and *Ohio* canal company, amounting to two hundred and fifty thousand dollars, interest shall continue to be paid quarterly, at the rate of five per centum per annum. 1832-3, p. 97.

§ 5. Upon the certificates issued under the act passed the ninth of March eighteen hundred and thirty-nine, providing for subscriptions to the Exchange Bank, and Northwestern Bank of Virginia, amounting together to four hundred and fifty thousand one hundred and seven dollars, interest shall continue to be paid semi-annually, at the rate of six per centum per annum, according to the said act. 1839, p. 32.

§ 6. The certificates before mentioned shall continue registered in the office in which the same are registered now, and all payments on account thereof shall be made upon the warrant of the first auditor.

p. 24, ch. 12. § 7. The certificates of debt now registered in the second auditor's office shall continue registered therein. All certificates for money borrowed hereafter by the board of public works shall be registered in the same office. In the book containing such registry, reference shall be made to the special act authorizing the loan.

§ 8. Every such certificate shall be signed by the treasurer and countersigned by the second auditor. All payments on account thereof shall be made upon the warrants of the second auditor.

CHAP. 97.—An ACT authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company.

(Passed February 20th, 1833.)

1. *Be it enacted by the general assembly of Virginia*, That the treasurer of the commonwealth be, and he is hereby authorized and directed to subscribe, in the name and for the use of the commonwealth of Virginia, for two thousand five hundred shares of the capital stock of the Chesapeake and Ohio canal company, and to pay for the same in manner following, that is to say: the said treasurer is further authorized and directed to issue, in the name of the commonwealth, certificates of stock of the state, in sums of one hundred dollars each, bearing interest from the date thereof, at the rate of five per cent. per annum, payable quarterly, the principal sum whereof shall be irredeemable prior to the year one thousand eight hundred and fifty, to the amount of the par value of the said two thousand five hundred shares of canal stock; of which certificates he shall deliver to the treasurer or other proper officer or agent of the said company, on the first day of May next, or as soon thereafter as practicable, a sum equivalent, at their par value, 60 to that which the state of Maryland shall have on that day paid, or have been called upon to pay, on account of the like subscription of the said state to the capital stock of the said company, and the residue of the said certificates, the said treasurer shall, in like manner, pay over to the treasurer or other proper agent of the said company, as the other holders of the stock thereof shall be required to pay the several remaining instalments upon the stock subscribed by them respectively to the capital of the said company, until the whole amount thereof be issued and paid: *Provided*, That prior to the first day of May, one thousand eight hundred and thirty-three, the president and directors of the said company shall certify to the said treasurer, their agreement, under the corporate seal of the said company, to accept and receive in payment as aforesaid, the said certificates of the stock of the state, at par value, in satisfaction

of the subscription authorized and directed as aforesaid: *And provided, moreover,* That the said president and directors shall agree to appropriate a sum not exceeding in amount eighty thousand dollars, towards the construction of suitable locks to enable the river boats to reach the canal, and to return from it to the river again, at or near each of the following points on the river Potomac, to wit: the mouth of Goose creek and the base of the Ketocton mountain, in the county of Loudoun, the ferry across the Potomac at Shepherdstown, in the county of Jefferson, and the ferry across the same river at Light's, or at the mouth of the Opequon, in the county of Berkeley, and to cause the said locks to be constructed by the first of November, one thousand eight hundred and thirty-five, and sooner if practicable.

2. *Be it further enacted,* That the treasurer be, and he hereby is authorized and required, if the certificates directed by this act to be delivered to the treasurer or other proper agent of the Chesapeake and Ohio canal company, can be sold at a premium, or above their par value, to sell the same for the best price to be had, after advertising the time and place of sale for six weeks, in such newspapers as he may think expedient, and pay to the treasurer or other proper officer of said company, so much money as may be due and payable on account of the subscription of the state to the stock of said company, according to the provisions of this act; and pay the balance into the treasury to the credit of the fund for internal improvement.

3. This act shall commence and be in force from the passing thereof.

CHAP. 97.—An ACT to provide for the appointment of a proxy to represent the state in the Chesapeake and Ohio canal company, and for other purposes.

(Passed March 8, 1834.) 110

1. *Be it enacted by the general assembly,* That the stock held by the state in the Chesapeake and Ohio canal company, under the provisions of an act passed the twentieth of February, eighteen hundred and thirty-three, entitled, "an act authorizing a subscription by the state of Virginia to the stock of the Chesapeake and Ohio canal company," together with the dividends and other income which shall hereafter accrue thereon, shall be, and they are hereby transferred to, and vested in the president and directors of the board of public works, as a part of the fund for internal improvement: *Provided, however,* That the said stock, its dividends and other in-

come, shall be subject to such future disposition as may by law be directed for the payment of the interest and redemption of the principal of the sums borrowed under the act aforesaid.

2. *Be it further enacted,* That the appointment of proxy to represent the state in all meetings of the stockholders of the Chesapeake and Ohio canal company, shall henceforth be made by the board of public works, until otherwise provided by law. And it shall be the duty of the said proxy, if in his power, to cause to be transmitted to the said board copies of the annual and other reports of the president and directors of said company, the proceedings of the stockholders, and other interesting documents relating to the said improvement.

CHAP. 12.—An ACT providing for the negotiation of loans for purposes of internal improvement.

(Passed April 9, 1838.) 24

1. *Be it enacted by the general assembly,* That all loans hereafter authorized by law for the payment of subscriptions on behalf of the commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the state is or may be interested, as well as all such loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

2. The board of public works, in effecting such loans, shall borrow upon the credit of the commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the commonwealth, and that such certificate or certificates were issued under authority of the special act authorizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be kept for that purpose by the second auditor, and shall be transferrable on the books of his office in person or by attorney. The semi-annual interest on such certi-

ficate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and cancelled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner aforesaid. All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemed at the pleasure of the general assembly.

3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other nett income which may accrue therefrom to the commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the nett income and other profits which may so accrue from works in which the state is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed: and if the stock aforesaid and the said dividends, nett profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal, of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the dividends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of the inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are hereby authorized to borrow the necessary amount from the banks of this state, at a rate of interest not exceeding six per centum per annum, on the credit of the commonwealth, to be repaid in such manner as the general assembly may by law direct.

4. The surplus dividends and other income arising from any stock or work as aforesaid, and remaining after the payment of the interest due upon the certificates issued for loans applied to such stock or work, shall from time to time be applied by the board of

public works to the purchase of such certificates, if to be procured on satisfactory terms; and if not, then of any other certificates of state debt, or any other public debt or other stock which can be so purchased, which shall be held as a fund for the payment of the interest and redemption of the principal of the loans obtained for the payment of such stock or such work, and the interest accruing therefrom shall also from time to time be invested and held in like manner: and the said certificates of debt so purchased, together with the stock pledged, shall be disposed of in such manner as the general assembly may direct: *Provided,* That the certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the board of public works to reimburse the fund for internal improvement for all payments of interest made out of the income for that fund on account of such loan, by virtue of this act.

5. The board of public works shall be and they are hereby fully authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint, if they see fit, one or more agents, with the necessary powers, and to allow him or them such compensation as they may deem reasonable. In the event of a loan or loans being effected in Europe, the said board may provide for the payment of the interest on the same semi-annually, in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans. They shall also be empowered generally to do and execute all such acts and writings as may be necessary to complete the said loans, and to cause the prompt payment of the amount thereof into the public treasury.

6. *Be it further enacted,* That the person or persons, body or 26
bodies politic or corporate, in whose names any of the certificates of the public debt of this commonwealth shall be issued, in conformity to the provisions of this act, shall be deemed as to the commonwealth the owner of the said stock until a transfer shall be duly made on the books of the second auditor, or other proper officer, to some other person or body politic or corporate. And if the person or body politic or corporate, in whose name the said certificate shall stand, shall for valuable consideration, and *bona fide*, sell and deliver the said stock to any other person, body politic or corporate, accompanied by a power of attorney duly executed and authenticated, such sale and delivery shall vest in the transferree all the title of the transferrer, either in law or equity, to the said certificate; and upon the application of the attorney, and delivery of the certificate of debt therein assigned to the second auditor, or other proper officer of the commonwealth, it shall be his duty to

transfer the same, and issue a new certificate or certificates therefor in the name of the transferree: *Provided, however,* That all payments made by the commonwealth prior to such transfer, on account of the interest on such certificate, shall discharge the commonwealth from all claim on account of the interest so paid.

7. If any person, in whose name the said stock shall stand on the books of the commonwealth, shall die without having made a sale or transfer thereof, and his executor or administrator shall produce to the second auditor, or other proper officer, the original certificate or certificates of the said stock, and duly authenticated evidence that he is, by the laws of the country in which such holder may have died, the lawful executor or administrator of such holder, the second auditor shall, on his application in person, or by power of attorney duly authenticated, transfer the said stock to the said executor or administrator, or to such person as he may direct.

8. Whenever any certificate of stock created in pursuance of the provisions of this act, or by authority of any previous act, for purposes of internal improvement, shall have been lost by the holder or holders thereof, it shall and may be lawful for the second auditor and treasurer to renew the same in the manner mentioned in this act: *Provided, however,* That such certificate shall not be renewed until the party applying for the same shall produce satisfactory proof of his having advertised the same for at least three months previously to his application; shall execute a bond with sufficient security, to the treasurer and his successors, conditioned to indemnify the commonwealth against any loss in consequence of the renewal of such certificate, and shall moreover file an affidavit, setting forth the time, place and circumstances of the loss aforesaid.

9. It shall be lawful for any bank incorporated in this commonwealth, through its proper officers, and by the authority, and under the direction of the said board, to act as the agent of the board of public works in negotiating, obtaining or contracting for any loan which may be so authorized, and to do all necessary acts for the transfer of the proceeds of such loan into the public treasury, in specie or other satisfactory funds, by bills of exchange or otherwise, and to make on behalf of the said board the necessary arrangements for the punctual and regular payment of the interest on such loan, according to the terms of the contract therefor.

10. And whereas, should large sums be borrowed, of which a 27
considerable part would necessarily lie idle until required for the purposes for which the loans may be respectively designed, whereby a great loss of interest would be incurred, the board of public works may deposite the same with the banks of this commonwealth, at such rate of interest as may be agreed upon by the board and said banks. The said board may also lend such part thereof to joint stock companies, as the said companies may be entitled by law

to receive from them at subsequent periods, on such conditions and security as the board may deem expedient.

11. This act shall be in force from its passage.

CHAP. 86.—An ACT to provide for further subscriptions on the part of the state to the Exchange bank and Northwestern bank of Virginia.

(Passed March 19, 1839.) 52

1. *Be it enacted by the general assembly,* That the treasurer of this commonwealth shall be, and he is hereby required to subscribe for four thousand five hundred shares of stock in the Exchange bank of Virginia on behalf of the commonwealth, and shall pay up, at par value, the entire amount of so many shares so subscribed for, as shall be equal in number to the shares fully paid up by subscribers other than the state, and shall also pay on the residue of the additional shares so subscribed for by him, as much as may, from time to time, be paid on a like number of shares by individuals other than the state, not exceeding, however, one hundred dollars per share; and for the purpose of paying such subscription, it shall be lawful for the treasurer, from time to time, to borrow upon the credit of the state, the amount required upon each payment so to be made, and to issue a certificate or certificates of loan to the lender for the amounts so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates with legal interest payable at the treasury semi-annually, and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth. Such certificates shall be made and signed by the treasurer of the commonwealth, and countersigned by the auditor of public accounts, and shall be transferrable in his office in the manner prescribed by law, for the transfer of certificates of loan issued for the purposes of internal im- 53
provement. And the general assembly hereby pledges itself to provide adequate funds for the redemption of the principal sums hereby authorized to be borrowed, and for the payment of the interest accruing thereon, at the time it shall become due: *Provided,* That the commonwealth shall receive upon the stock which may be hereafter subscribed in its name, such proportion of the dividends afterwards declared, as the period of time between the subscription and the making of the dividends, shall bear to the term of six months.

2. *Be it further enacted,* That to enable the treasurer of the

commonwealth to pay up the state's subscription to the Northwestern bank of Virginia, heretofore made, he is hereby authorized to borrow upon the credit of the state, the amount required to complete the same, and to issue a certificate or certificates of loan to the lender for the amount so borrowed, stating therein that the commonwealth owes the principal sums specified in such certificate or certificates, with legal interest, payable at the treasury of the commonwealth and redeemable after twenty years, in whole or in part, at the pleasure of the commonwealth; such certificate shall be made and signed, countersigned and transferrable in the same manner, and upon the same terms and conditions in all respects, as is herein provided for the payment of the additional stock to the Exchange bank of Virginia; and the general assembly doth hereby pledge itself to provide adequate funds for the redemption of the principal sums authorized to be borrowed by this section, and for the payment of the interest accruing thereon, at the time it shall become due.

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[CODE OF VIRGINIA, 1860.]

CHAPTER XLIV.

PUBLIC DEBT.

259

Sinking fund.

1. There shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that being seven per centum on eleven millions nine hundred and seventy-one thousand eight hundred and thirty-eight dollars thirty cents, the ascertained debt of the commonwealth on the first day of January 1852. The sum so set apart shall be called "the sinking fund," and shall be applied as follows: So much of said fund as arises from the seven per centum on the debt existing on the first day of January eighteen hundred and fifty-two, together with the proceeds of the sales of bank stocks, shall be applied to the redemption of such part of said debt as may be redeemable; and if no part thereof be redeemable, the said residue shall then be devoted to the purchase at their market value, and cancellation of any outstanding bonds or certificates of said debt; and so much of said fund as arises from one per centum on the debt created since the first

1852-3, p. 29, c. 17, § 1. 1855-6, p. 21, c. 14, § 1, 2. 1857-8, p. 9, c. 9, § 1, 2.

260

day of January eighteen hundred and fifty-two, shall be invested in the outstanding bonds or certificates of the said debt, at their market value, and held by said commissioners for the benefit of said fund. But if no bonds or certificates of either issue can be purchased with fund applicable thereto, the same shall be invested in the stocks or bonds of other states, or of the United States, as shall be deemed most advantageous by the said commissioners. In purchasing such bonds or certificates of debt, those which are redeemable at any early date shall be bought in preference to those which are redeemable at a later date: provided they can be bought at the same price.

5-6, p. 22, 15, § 4. 7-8, p. 10, c. 11, 4.

Future debts provided for.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per centum the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner herein before directed.

2-3, p. 29, 17, § 2.

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Redemption of debt prior to 1852; interest, how and when paid.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt herein after required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semiannual interest on said debt which shall be due and payable at each respective date.

§ 4. 29, 21, 9,

Subsequent debts provided for.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of the sinking fund, one per centum on the aggregate amount 261

§ 5.

of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semiannual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided, however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semiannual periods on which it shall be come due.

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Treasurer's duty.

15. The treasurer shall receive and pay the moneys be- 262 1852-3, p. 30.
longing to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

Transfers of evidences of debts between auditors.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transactions of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt 263
created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semiannual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public

Id. § 16. See Acts 185 p. 52.

accounts, as well as any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semiannual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

Interest on revolutionary debt paid.

§ 17. 17. The accruing interest on the six per centum revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per centum war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

Interest on internal improvement debt.

§ 18. 18. The semiannual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

d. p. 32, § 19. 19. The semiannual interest becoming due at the same time, on that part of the state debt of eighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

CONSTITUTION OF VIRGINIA.

(Adopted August 1st, 1851.) 34

ARTICLE IV.

* * * * *

Taxation and Finance.

29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the state debt existing 47
on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking fund, and shall be applied to the payment of the interest of the state debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent, the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion.

CHAP. 17.—An ACT establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853. 29

1. Be it enacted by the general assembly, that there shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars

thirty cents, the ascertained debt of the commonwealth on the first day of January one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the state debt and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the commonwealth, or of the United States, or of some of the states of the Union, and applied to the payment of said debt as it shall become redeemable.

2. Whenever after the said first day of January eighteen hundred and fifty-two, a debt shall be contracted by the commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

3. If at any time the legislature shall direct a sale of the stocks held by the commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt hereinafter required to be furnished him by the second auditor, to pay into the treasury of the commonwealth, on or before the first day of January eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the state debt existing on the first of January eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of the said, fund, on or before the first day of January eighteen hundred and fifty-three, and first day of July eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semi-annual interest on said debt which shall be due and payable at each respective date.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the state, to the credit of the sinking fund, one per centum on the aggregate amount of debt contracted by the state between the first day of January eighteen hundred and fifty-two and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of debt which shall be contracted in each or

any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the said fund, on or before the first day of January and first day of July eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semi-annual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided however, that the amount of the interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semi-annual periods on which it shall become due.

6. For the purpose of managing, preserving and applying the sinking fund created by this act, the auditor of public accounts, register and secretary of the commonwealth, for the time being, are hereby constituted a corporate body under the style of "The Commissioners of the Sinking Fund."

7. It shall be their duty to apply the moneys appropriated out of the said fund to the payment of the interest and redemption of the principal of the state debt at the respective periods prescribed in the fourth and fifth sections of this act for the payment of the sinking fund into the treasury by the auditor of public accounts, and to invest any part of the appropriations for the latter purpose, which cannot be so applied to the purchase of public stock, agreeably to the provisions of the second and third sections of this act.

8. The said commissioners, at their discretion, may apply that part of the sinking fund set apart for the redemption of the principal of the debt, to the payment in the first place of such bonds and certificates as the state is bound to redeem at fixed periods, provided such bonds and certificates shall be redeemable by the state before the arrival of such fixed periods.

9. All the certificates of debt which shall be redeemed under this act, shall be canceled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office.

10. At each period for the payment of the installment of interest and the redemption of any part of the principal of the debt, the said commissioners shall, by a special order entered on the minutes of their proceedings, authorize the second auditor to issue his warrants on the treasury, from time to time, to the persons entitled thereto, in the same manner as they have heretofore been paid in his office.

11. They shall cause to be published in the Enquirer and Whig of the city of Richmond, and in the Union and National Intelligencer of Washington city, a list of the bonds or certificates intended to be redeemed from time to time, at least three months previously to the time fixed upon by them for that purpose, showing the date, number and amount of each, and calling for the surrender thereof on or before a specified day, and stating that the interest thereon will cease on and after that day.

12. Any two of said commissioners may form a board for the transaction of business. They may appoint a secretary, and shall keep a correct journal of their proceedings, of which they shall make a report to each regular session of the legislature. They shall hold their meetings in the second auditor's office, in which their books and papers shall be deposited for safe keeping.

13. It shall be the duty of the second auditor to prepare the necessary statements, showing the amount of the semi-annual interest payable on the public debt at each successive period, and the amount of the principal of the debt proposed to be redeemed at each or either of them, and to furnish the same to the commissioners of the sinking fund, by whom they shall, if approved, be certified to the auditor of public accounts for his government. He shall also prepare and deliver to the commissioners of the sinking fund, lists in detail of such bonds or certificates of state debt as they shall from time to time designate, for redemption, and furnish them with such other statements and information as they may at any time require of him. He shall keep the accounts of the sinking fund with the treasury in such manner as to show distinctly at all times the amount of the transactions, on account of each appropriate head of receipts and expenditures, and shall report the same to each session of the legislature.

14. All moneys belonging to the sinking fund shall be paid into the treasury on the warrant of the second auditor, and shall be paid out in like manner when authorized by the commission of said fund.

15. The treasurer shall receive and pay the moneys belonging to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

16. In order to collect in one office the accounts of the debt of the commonwealth and the transaction of all business connected therewith, it is hereby provided that the existing certificates of debt of the state, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt created by authority of an act to provide for the further subscriptions on the part of the state to the Exchange Bank and Northwestern Bank of Virginia, passed March the nineteenth, eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semi-annual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on the auditor of public accounts, as well as

any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor: provided, that the amount of the semi-annual installment of interest of the first of July eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

17. The accruing interest on the six per cent. revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per cent, war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the Literary fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

18. The semi-annual installment of interest payable the first day of July eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

19. The semi-annual interest becoming due at the same time, on that part of the state debt ofeighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor: provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

20. It shall be the duty of the Board of public works to cause to be paid into the treasury, to the credit of the commonwealth, on the first day of January and first day of July one thousand eight hundred and fifty-three, or within thirty days after such dates, and semi-annually thereafter, the net surplus revenue of the Fund for internal improvement during each half year preceding those days respectively, after deducting the fixed and incidental charges and special appropriations made by law on the revenue of said fund: provided, however, that nothing in this act is intended to discharge the said board from the obligation to pay the future semi-annual installments of the

interest on the certificates of the internal improvement debt owned and held by the Literary fund, as they shall hereafter become payable on and after the said first day of January eighteen hundred and fifty-three; but said interest shall be duly paid or set apart as a charge on said revenue before such surplus shall be ascertained and paid over as herein directed.

21. This act shall be in force from and after its passage.

See also Acts of Assembly referred to on plaintiff's and defendant's Joint Exhibit A-1.

Sinking Fund.

See Section 29, Constitution of Virginia, 1851, Under heading interest on public debt, supra.

See also Chap. 17, Act of March 26, 1853, printed under title of interest on public debt, supra.

Literary Fund.

CHAP. VIII.

An Act to Provide for the Education of the Poor.

8

[Passed February 12, 1811.]

1. *Be it enacted by the General Assembly,* That all sums of money which have accrued, or may hereafter accrue to the literary fund established by an act, entitled an act, to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, shall be, and the same are hereby vested in the following persons, to wit: The governor, lieutenant governor, treasurer, attorney general and president of the court of appeals of this commonwealth for the time being, and they and their successors are hereby constituted a body politic and corporate under the denomination of the president and directors of the literary fund, with power to sue and be sued, plead and be impleaded, and to hold lands and tenements, goods and chattels, and the same to sell, dispose of or im-

prove for the purposes hereafter mentioned. And the said commissioners, or any three of them shall have power to constitute a board for the transacting of all buisness relative to the said fund, of which board, when present, the governor shall be president, and they shall have power to appoint a clerk without their own body, and such other officers as they may deem necessary, and 9 to make such rules and regulations for the better ordering of their proceedings as to them may seem meet; *Provided* they be not inconsistent with the constitution and laws of this commonwealth. And the said president and directors shall report to the general assembly once in every year the state of the funds committed to their charge, with such recommendations with regard to the improvement thereof, as to them shall seem advisable.

2. *And be it further enacted*, That in further aid of the said fund, the said president and directors are hereby empowered to raise annually for a term of years not exceeding seven, by lottery, any sum not exceeding thirty thousand dollars. In recovering money due for tickets in said lottery, the said president and directors may have remedy by motion against the purchasers thereof, and the agents and their securities who may be appointed to sell the same: *Provided moreover*, that it shall be lawful for the said president and directors to conduct all the operations of such lottery in person or by commissioners or agents by them appointed for that purpose, or if it be deemed more advisable, to contract for the drawing of the said lottery, with any undertaker or undertakers for such share of the profit thereof as to them may appear reasonable, reserving to the fund which it is designed to aid, or not, at their discretion, a greater or less interest in such lottery.

3. And for the more speedy and certain collection of the literary fund throughout the commonwealth, the said president and directors are authorised and required to appoint in each county and corporation therein an attorney or agent for the collection of the funds of that county or corporation, who shall act without any fee or emolument, and whose duty it shall be to report to the president and directors, from time to time, such portion of the said fund as any officer appointed to collect the same may have collected and failed to pay into the public treasury, or such portion thereof as may be uncollected in the hands of any person, and to authorise proper actions to be instituted for the recovery thereof in the name of the said president and directors, the costs of which shall be defrayed by the said president and directors out of the literary fund: Provided, that nothing in this act shall be construed to prevent the sheriffs of the respective counties from collecting such fines and other sums of money as they are at present by law authorised and required to collect and account for.

4. *And be it further enacted,* That as soon as a sufficient fund shall be provided for the purpose, it shall be the duty of the directors thereof to provide a school or schools for the education of the poor in each and every county of the commonwealth.

5. And whereas by an act, entitled an act to appropriate certain escheats, penalties, confiscations and forfeitures to the encouragement of learning, it is provided, that the literary fund herein mentioned shall be appropriated to the sole benefit of schools to be kept in each and every county in this commonwealth, an object equally humane, just and necessary, involving alike the interests of humanity and the preservation of the constitution, laws and liberty of the good people of this commonwealth; the present general assembly solemnly protest against any other application of the said funds by any succeeding general assembly to any other object than the education of the poor.

6. This act shall commence and be in force from the passing thereof.

[CODE OF VIRGINIA, 1849.]

CHAPTER LXXIX.

OF WHAT THE LITERARY FUND CONSISTS, AND HOW IT IS APPROPRIATED.

Of what it consists and its objects. 366

C. p. 82, ch. 1, 2, 10. C. p. 28, ch. 2.

§ 1. All money, stocks, or other property, which now or hereafter may belong to the literary fund, shall be devoted to the promotion of learning.

C. p. 82, § 1. p. 9, ch. 8, 11. C. p. 31, ch. 8. C. p. 26, ch. 19.

§ 2. To the literary fund shall belong whatever shall accrue to the state from escheats, forfeitures, or fines, (except militia fines,) from the estate of a decedent of which there is no other distributee, or from any other property as derelict and having no other owner; and also whatever shall be received from the *United States*, on account of payments by this state to officers of the Revolution, for half-pay, or commutation thereof; and whatever may arise from lands for taxes thereon, for the year eighteen hundred and thirty-one, or any year prior thereto.

C. p. 13, ch. 1, 2.

§ 3. The clerk of the circuit court of each county west of the Alleghany mountains, shall annually, before the first day of December, transmit to the first auditor an abstract of all orders of such court, for the sale of land by the commissioners of forfeited and delinquent lands, or for the confirmation of such sales, or for the payment

of the proceeds of such sales into the treasury. Such abstracts shall shew the name of each purchaser at any such sale, the amount of money in the commissioners' hands, deducting the commissions allowed by the court, and the expenses of sale, and also whether the said commissioners have made reports of their proceedings according to law. Any clerk failing to comply with this section shall forfeit six hundred dollars.

See post, c
§ 1, 2, 3, a
367 to those

CHAP. 26.—An ACT appropriating the entire capitation tax to the purposes of education in primary and free schools.

Passed March 25, 1853. 43

1. Be it enacted by the general assembly, That the auditor of public accounts shall annually, on the first day of January, upon the order of the second auditor, set apart and pay into the treasury, to the credit of the Literary fund, for the purposes of education in primary and free schools, the amount of the capitation tax for the preceding year, after deducting therefrom the commissions of sheriffs and collectors, and the amount of insolvent returns on account of the capitation tax allowed during the preceding year.

2. The amount of said tax for the year eighteen hundred and fifty-two, after deducting the commissions of sheriffs and collectors, shall be set apart and paid as aforesaid immediately after the passage of this act.

3. The second auditor shall cause the amount received during the present year to be apportioned and applied to the purposes of education in primary and free schools, as far as practicable, as if it had been received on the first day of January last and after the first day of January next, and annually thereafter, the amounts received shall be apportioned amongst the several counties, and those cities and towns which have corporation courts, in the same manner as the appropriations from the Literary fund for the same purposes are now or may be hereafter made, and shall be paid and applied as is now or may be hereafter prescribed by law.

4. This act shall be in force from its passage.

See also title "Payments to School Commissioners," Supra.

Virginia Military Institute. 17

CHAP. 20—An ACT amending and reducing into one the several acts concerning the re-organization of the Lexington arsenal and the establishment therewith of a military school at Washington college.

Passed March 29, 1839.

Whereas it is represented to the general assembly, that the state arsenal situated near the town of Lexington, in the county of Rockbridge, can be advantageously converted into a public military school without endangering the public arms, or other property, thereto belonging, and without imposing any additional expense upon the commonwealth:

1. *Be it therefore enacted*, That the sum of six thousand dollars, be and the same is hereby appropriated annually from the public treasury for the establishment and support of a military school at the said arsenal, upon the plan hereinafter provided for, which said school shall be called the "Virginia Military Institute."

2. *Be it further enacted*, That the governor of this commonwealth shall annually appoint nine fit and proper persons, who, together with the adjutant general shall constitute a board of visitors for said military school, any four of whom shall constitute a quorum for the transaction of the mere ordinary business, but in making arrangements for the erection of buildings, or for material and permanent alterations of the present buildings, as well as the removal of professors from office, not less than six shall constitute a quorum. And it shall be the duty of said visitors on or before the first day of June next, and annually thereafter, at such times as they themselves shall designate, to meet at said arsenal, and there to establish and declare such regulations as they may deem necessary and proper for the organization and good government of said school. Said visitors shall have power to establish such by-laws for the management of the school, and the protection of the public property, as shall not be inconsistent with the laws of this state, or of the United States; shall appoint a treasurer, taking from him bond with ample security, made payable to the governor, and his successors in office, and conditioned for the faithful keeping and disbursement of such moneys herein appropriated, and such other moneys as shall be allowed by said visitors, from time to time, to come into his hands; they shall also examine and settle his accounts an- 18
nually or oftener; inspect the public arms and other property, at said arsenal, and make minute and full report of their condition, as well as the condition of the school to the governor, to be by him

laid before the general assembly; shall have power to appoint one or more professors qualified to give instruction in military science, and in other branches of knowledge, which they the said managers may deem essential; to fix the salaries of said professors, and to remove them for a good cause; but in every case of removal, a majority of the whole number of visitors shall concur, and shall communicate to the governor in writing, a full statement of the reasons upon which the removal was made. Besides prescribing the general terms upon which students may be admitted, the course of their instruction, the kind and duration of their service, (which duration shall not exceed five, nor be less than two years,) the said visitors are still further empowered to admit as the regular students or cadets at said military school any number of young men not fewer than twenty, nor exceeding forty, and who shall not be less than sixteen nor more than twenty-five years of age; and in this admission to be made upon undoubted evidence of fair moral character, a strict regard shall be had to the proportionate population of the four great constitutional divisions of the state, taking in the first place one from each senatorial district offering one, so that the relative claims of each one to a due participation in the benefits of said school may be secured; but in the event of any of the constitutional divisions of the state not furnishing their full proportions of students, the board of visitors after having given due notice of such deficiency, shall be and are hereby authorized to fill such vacancy or vacancies, with proper applications from any other of the constitutional divisions of the state. The students at the school thus admitted shall be formed into a military corps, and shall constitute the public guard of the arsenal aforesaid. And whenever the said visitors shall certify to the governor that the said school is ready to go into operation, and that a sufficient number of students or cadets have been admitted, to guard effectually the public arms, and other property at the said arsenal, the governor shall forthwith disband the present public guard, and order the grounds, buildings, arms and all other property belonging to said arsenal, to be surrendered to said visitors, or to any one thereof, who may have been designated by them to receive such surrender. And the said professors and military students shall be collectively and individually responsible for the safe keeping, protection and preservation of the said grounds, buildings, arms and other property, in all respects, as the commandant, other officers and public guard are now responsible.

3. Any three of the visitors may form a board for the transaction of business, and all vacancies occurring from death, removal, refusal to act or otherwise, shall be immediately communicated by the residue of said visitors to the governor, who shall forthwith proceed

to supply them. All reasonable expenses incurred by said visitors in discharging the duties hereby imposed upon them, (not including however any wages or per diem compensation,) shall be allowed, and when admitted by the governor, shall by him be caused to be paid by warrant on the treasury.

4. Any commissioned officer of the militia of Virginia, may enter as a pupil the school hereby established for a period of time not exceeding ten months, and receive instruction in any- 19
or all of the departments of military science, therein taught, without being required to pay any fee or charge whatsoever, but such officer shall not be recognized as a regular student, and as such admitted to the further privileges hereafter provided for.

5. And whereas it is believed by the general assembly, that some auxiliary connexion between the arsenal hereby erected into a public school, and Washington college, which is situated in its vicinity, might be established, and in such way as to promote the purposes and benefits of instruction, in both: *Be it therefore enacted*, That the visitors aforesaid shall have full power to enter into any legal arrangement with the trustees of said Washington college, by which the students at the arsenal and those at the college may respectively be admitted to all the advantages and departments of instruction provided for at either place, and upon such terms as said parties shall mutually stipulate, and which terms may from time to time be varied, or may be revoked as the parties may mutually determine.

6. That it shall be lawful for the board of visitors to expend so much of the appropriation herein provided, as may be proper for the repair and erection of such buildings as may be necessary for the accommodation of officers and students of said military school. Said board of visitors shall be and are hereby authorized to contract for and have erected, at such time as they may deem proper and necessary, such additional building or buildings: *Provided however*, That such expenditure shall not exceed one thousand dollars annually for the first three years, and in any subsequent year shall not exceed the sum of five hundred dollars.

7. The act, entitled, "an act re-organizing the Lexington arsenal, and establishing a military school in connexion with Washington college," passed March the twenty-second, eighteen hundred and thirty-six, is hereby repealed.

8. This act shall be in force from the passing thereof.

CHAP. 15.—An ACT providing for the erection of a steward's house, and for furnishing a supply of water for the Virginia military institute.

[Passed March 6, 1840.] 26

Whereas it is represented to the general assembly, that a reorganization of the Lexington arsenal has taken place, agreeably to the provisions of the act passed March the twenty-ninth, eighteen hundred and thirty-nine, entitled "an act to reorganize the Lexington arsenal, and to establish a military school thereat," and that a military school is now in successful operation; and whereas it is represented by the board of visitors, as well as by the principal professor of the Virginia military institute, that a house for the steward and his family is greatly needed, as also a supply of good water within the enclosure of said institute:

1. *Be it therefore enacted,* That the sum of four thousand five hundred dollars be and is hereby appropriated out of any money in the treasury not otherwise appropriated, which sum shall be applied to the erection of a steward's house, the conveying of water by iron pipes to the institution, and to such other purposes as the board of visitors may consider necessary to its prosperity: *Provided nevertheless,* That the said sum of four thousand five hundred dollars shall be paid by the warrant of the first auditor on the treasury in three payments, as follows: fifteen hundred dollars in the present year, fifteen hundred dollars in the year eighteen hundred and forty-one, and fifteen hundred dollars in the year eighteen hundred and forty-two: *And provided also,* That no money shall be expended under this act, until a contract or contracts shall have been made to complete the several works herein provided for, so that the entire cost thereof shall not exceed the above mentioned sum.

2. This act shall be in force from the passing thereof.

CHAP. 27.—An ACT providing for the erection of a magazine and shelter for artillery at the Virginia military institute.

[Passed February 14, 1844.] 22

Whereas it is represented to the general assembly that a magazine for the safe-keeping of powder is necessary, as well to the security of the public property as to the safety of the professors and cadets of the Virginia military institute, and that a shelter for the artillery at that post is also necessary for its preservation:

1. *Be it therefore enacted*, That a sum not exceeding one thousand dollars shall be and is hereby appropriated for the erection of the said buildings; the work to be contracted for by the superintendent of the institute, with the sanction of the board of visitors, upon whose certificate of the execution and cost of the work, the auditor shall issue his warrant or warrants for the amount, to be paid out of any money in the treasury not otherwise appropriated.

2. This act shall be in force from the passing thereof.

CHAP. 17.—An ACT concerning the Virginia military institute, the University, and the colleges of the commonwealth.

[Passed March 7, 1848.] 18

Whereas it is represented to the general assembly by the board of visitors of the Virginia military institute, that they have been constrained to provide a residence for the additional professor authorized by the act of the last session of the general assembly; and also, that a small but convenient hospital should be erected for said institute:

1. *Be it therefore enacted*, That for the purpose of erecting a house for said professor, and for the purpose of erecting a hospital at said institute, the sum of four thousand five hun- 19
dred dollars be, and the same is hereby appropriated, payable out of any money in the treasury not otherwise appropriated, to the treasurer of the said institute: *Provided*, That the money hereby appropriated shall be so expended as to fully complete and finish the buildings hereby authorized to be erected.

* * * * *

CHAP. 19.— An ACT making an appropriation for the erection of new barracks at the Virginia military Institute.

[Passed March 8, 1850.]

Whereas it appears to the general assembly, by various reports of the board of visitors of the Virginia military institute, that the buildings occupied as quarters for the cadets are wholly inadequate in extent, are unsuitable in their construction for the purposes of a military school, are in a dilapidated and uncomfortable condition, exposing the health of the cadets and subjecting the large

amount of public property in the arsenal to destruction by fire, and that improvements in regard to other buildings and to the grounds and enclosures are absolutely necessary: 17

1. *Be it therefore enacted by the general assembly,* That the sum of eleven thousand five hundred dollars a year for four years shall be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, to be applied to the construction of suitable buildings for quarters for the cadets and for other purposes, as specified in the report of the board of visitors of the fifteenth September, eighteen hundred and forty-nine; this appropriation to be drawn upon the order of the board of visitors from time to time, after contracts have been made and approved by the said board for the said buildings and improvements.

2. This act shall be in force from its passage.

CHAP. 20.—An ACT appropriating the public revenue for the fiscal year 1851 and 1852.

[Passed June 5, 1852.] 20

* * * military school at Lexington, for support, seven thousand, seven hundred and ten dollars; and for balance of appropriation for erection of new barracks, under the act of eleventh of March, eighteen hundred and fifty, five thousand dollars; * * *

CHAP. 34.—An ACT making provision for additional accommodation for the cadets of the Virginia military institute.

[Passed May 29, 1852.] 29

Whereas it is represented by the board of visitors of the Virginia military institute that the quarters provided in the new barracks erected under the act of March eighth, one thousand eight hundred and fifty, are insufficient to accommodate the additional state and pay cadets designed to be admitted, and an addition of funds is needed for this purpose, and also to meet the cost of the improved heating and lighting arrangements introduced by the board of visitors:

1. *Be it enacted by the general assembly,* That the sum of thirty thousand dollars be and the same is hereby appropriated, from any funds in the treasury not otherwise appropriated, for these pur-

poses, and the auditor of public accounts is hereby instructed to issue his warrant for the same, upon the order of the president of the board of visitors.

2. *Be it further enacted,* That so much of the first section of the act, entitled "an act appropriating the public revenue," passed March seventh, one thousand eight hundred and fifty-one, as appropriates the sum of twenty-three thousand dollars to the military school at Lexington for erecting new barracks, be and the same is hereby repealed.

3. This act shall be in force from its passage.

CHAP. 42.—An ACT providing for the completion of the barracks and the erection of a mess hall at the Virginia military institute.

Passed March 1, 1854. 31

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of completing the barracks and erecting a mess-house at the Virginia military institute, to be paid in installments of five thousand dollars each: the first to be paid on the first day of April eighteen hunderd and fifty-four; the second, on the first day of June, eighteen hunderd and fifty-four; the third, on the first day of August eighteen hundred and fifty-four; and the fourth, on the first day of October eighteen hundred and fifty-four.

2. The expenditure of the appropriation herein authorized shall be made under the supervision of an architect to be appointed by the board of visitors.

3. This act shall be in force from its passage.

CHAP. 162.—An ACT making an appropriation to the Virginia military institute for the purpose of completing its buildings, enclosing its grounds and procuring a supply of water for said institute.

Passed March 31, 1858. 115

1. Be it enacted by the general assembly, that the sum of twenty-five thousand dollars be and is hereby appropriated to the Virginia military institute out of any money in the treasury not otherwise appropriated, to be expended as follows: Sixteen thousand dollars to meet the deficiency in the building fund and complete the barracks and

mess hall; six thousand for procuring a supply of water for the institution, and three thousand for enclosing the grounds; but not more than ten thousand dollars of the appropriation herein made shall be called for in any one of the two fiscal years ending on the thirtieth of September eighteen hundred and fifty-nine.

2. Before any part of the money herein appropriated shall be expended for the objects severally specified, except the sum of ten thousand dollars to meet the present deficiency in the building fund, the board of visitors shall obtain from competent men, practically acquainted with such matters, in no wise connected with the said institution, plans and estimates of cost for each item of expenditure; and if the estimated cost shall not exceed the sums herein specified for each of the objects contemplated, and are approved by the board, the work shall be contracted for by the board, and executed under the supervision of the superintendent of the said institution: provided, that it shall be the duty of the board to contract for such work at the lowest price for plain and substantial constructions suitable to said several objects, and shall not under any circumstances exceed the amounts thereto respectively appropriated, or pledge the faith and credit of the state in any manner to pay a greater sum therefor than is herein specially provided: and provided further, that if more work is done than is contemplated by this act, or at a cost greater than that therein specified, the said superintendent alone shall be responsible therefor. 116

3. Nothing in this act is to be construed as an approval of the board of visitors in exceeding the appropriations heretofore made to the military institute; and it is the express intent and purpose of the general assembly that no contract shall be entered into for any work or object contained in this act, unless the same is strictly limited to an amount not exceeding the sums respectively designated for such work or object.

4. This act shall be in force from its passage.

CHAP. 7.—An ACT making an additional appropriation to the Virginia Military Institute.

103

Passed March 28, 1860.

1. Whereas it is represented to the general assembly of Virginia, by the board of visitors of the Virginia military institute, that the present buildings at the said institute are insufficient for the purposes of the school as a military organization, and that additional appropriations are absolutely required to provide additional accommodations for cadets and for the support of the school: and it appearing further, that the corps of cadets, in the course of their regular military education,

may readily be employed to prepare such munitions of war as may be demanded by the wants of the state:

1. Be it enacted by the general assembly, that the sum of twenty thousand dollars be and the same is hereby appropriated from any money in the treasury not otherwise appropriated, for the erection of such additional buildings as may, in the judgment of the board of visitors, be demanded for giving effect to the purposes of this act: the same to be drawn in two annual payments—one-half in eighteen hundred and sixty, and the other half in eighteen hundred and sixty-one, upon the order of the board of visitors aforesaid.

2. The board of visitors shall admit, as state cadets, free of charge for board and tuition, not less than fifty young men, in lieu of the number now required, with the qualifications now prescribed by law, one of whom shall be selected from each of the senatorial districts as at present constituted. Whenever a vacancy has occurred, or is likely to occur, due notice of the time and place of making the appointment to supply the vacancy shall be given. If, after such notice, no suitable person shall apply from any district, the vacancy may be supplied from the state at large. And for the purpose of providing a fund for the support of the state cadets herein required to be admitted, the additional sum of five thousand seven hundred and ninety dollars is hereby appropriated annually; and the auditor of public accounts is hereby authorized and required to issue his warrant or warrants 104
on the treasury for the same, in the manner that other warrants to the said institute have been heretofore issued.

3. This act shall be in force from its passage.

University of Virginia Water Supply.

CHAP. 36.—An ACT making an appropriation to the University of Virginia for certain purposes.

Passed February 28, 1854. 26

1. Be it enacted by the general assembly that the sum of twenty-five thousand dollars be and the same is hereby appropriated to the University of Virginia, for the purpose of repairing and improving the buildings thereof, and for furnishing a supply of water for the protection and preservation of the said buildings and other valuable property of the institution.

2. The appropriation hereby directed shall be paid out of the treasury of the commonwealth, upon the order of the bursar of the university, on the auditor of public accounts, and shall be applied to the purposes named in the first section of this act, and to none others whatsoever.

3. This act shall be in force from its passage.

Improvements Capitol Square.

CHAP. IV.—An act providing for repairs to the Capitol.

[Passed March 19th, 1832.]

1. *Be it enacted by the general assembly,* That the superintendent of public buildings be and he is hereby authorized and required to contract, on behalf of the commonwealth, for such repairs to the capitol in the city of Richmond, as in the opinion of the said superintendent may be deemed necessary for the preservation and good appearance of the building, including stuccoing, plastering, carpenter's work, painting, stone masonry, and any other description of mechanical labour which may be necessary to effect that object; and to make a suitable communication between F street and the capitol square, at the northern end of the Museum, or other suitable place at or near thereto: also for such alterations in the ground floor of the building, as may be calculated to improve the condition of the public offices, and preserve the public records and papers deposited therein: and it shall be the duty of the said superintendent to cause the stoves now in the hall of the house of delegates to be removed, and to substitute therefor either suitable fire places or open stoves, to be placed in such parts of the hall as will more comfortably and effectually warm the same; and also to make such alterations in the fire-places in the senate chamber as may be necessary, or to substitute Franklin stoves therefor; also to purchase a neat and substantial chandelier for the use of said hall, and also one for the use of the senate chamber. The said superintendent shall, in such manner as the governor may direct, cause to be fitted up and put in good order a room for the office of the clerk of the senate, and also a room for the office of the clerk of the house of delegates, for the preservation of the books and papers belonging to their respective offices: *Provided, however,* That the expenditures for all the said repairs and improvements, shall not exceed the sum of ten thousand five hundred dollars.

2. *Be it further enacted,* That any contract made by the superintendent, under the authority of this act, shall be submitted to the governor and be approved by him, before any such contract shall be binding on the commonwealth, and that it shall be the duty of the said superintendent to superintend the execution of the work hereby authorized, and see that the same be faithfully performed according to contract. All accounts for the repairs and improvements hereby required to be made, shall be certified by the superintendent of public buildings and approved by the governor, whereupon they shall be paid out of the treasury on the auditor's warrant for the same.

3. This act shall be in force from and after the passage thereof.

CHAP. 11.—An ACT authorizing the purchase of certain vacant lots adjoining the public square, and the sale of a strip of land near the law building of B. B. Minor.

[Passed April 3, 1848.]

1. *Be it enacted by the general assembly,* That the executive be and he is hereby authorized and required to purchase, or cause to be purchased, for and on behalf of the commonwealth, the vacant ground on Governor street, at or near the southeastern corner of the capitol square, and adjoining the government grounds attached to the governor's house; and also so much of the adjoining lot of Mr. Joseph Allen, as may be desirable: *Provided,* That said lots can purchased at a price not exceeding forty dollars per foot, fronting on said street, or at that sum per foot front on such other street or cross street, as any part thereof may front, and to which a good, sufficient and valid title in fee simple, can be made by the owner or owners thereof, by such deed or deeds conveying the same to the executive, or governor of the commonwealth for the time being, and his successors in office, for the use and benefit of the commonwealth, as may be approved by the attorney general, (and duly admitted to record in the proper office,) as good and sufficient to convey such title in and to the same. Whereupon the auditor of public accounts shall, upon the production to him of such deed or deeds, duly certified by the clerk of the proper court, as having been admitted to record in his office, accompanied by a certificate from the executive that all the preliminaries of the conveyance have been fully complied with, issue his warrant or warrants on the treasury, in favour of the grantor or grantors, or their order, or their heirs or assigns, their executors or administrators, for the amount of such purchase money, payable out of any money therein not otherwise appropriated. The said deed or deeds, shall be filed and preserved in the executive chamber. And after the said purchase shall be completed, the said land or lots shall be considered as part of the government grounds composing the public or capitol square, and under the same care and control until otherwise ordered.

2. *Be it further enacted,* That the executive be and is hereby authorized to sell to B. B. Minor, or to his heirs or assigns, a certain strip of the public ground near to, and corresponding in length with his law building erected upon so much of the public lot on Franklin street as was sold to him under the authority of the act, entitled "an act to provide for the repairs of the capitol and governor's house, and the erection of a courthouse," passed March the second, eighteen hundred and forty-six, and not exceeding in depth twenty feet, at such price, and on such terms as may be agreed upon by and between the said parties: and not exceeding, if any credit be allowed, six, twelve

and eighteen months, taking from the purchaser a lien upon the property, with personal security, to secure the payment of such purchase money. And the money arising from such sale, shall be paid into the treasury of the commonwealth, after being duly audited according to the provisions of this act, and such contract as shall be made with the executive for the sale thereof, (which contract shall be filed in the office of the auditor of public accounts,) deducting only the proper or necessary expenses, if any, attending the execution of such contract and sale.

3. This act shall be in force from the passing thereof.

Fugitive Slave Expense, and Rewards, (Additional.)

CHAP. 48.—An ACT to amend the 24th, 25th, 26th, 27th and 28th sections of chapter 192 of the Code of Virginia, so as more effectually to prevent the escape of slaves.

Passed March 17, 1856.

1. Be it enacted by the general assembly, that the twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh and twenty-eighth sections of chapter one hundred and ninety-two of the Code of Virginia be and the same are hereby amended and re-enacted so as to read as follows:

* * * * *

Any free white person, who will give such information as will lead to the conviction of a free white person engaged in carrying off or attempting to carry off a slave, or in any manner concerned in aiding or persuading a slave to escape or attempt to escape, shall be entitled to a reward of five hundred dollars; to be paid by the state on the order of the court convicting the party of such offense: provided such conviction be procured by other testimony than that of the informer; or if such testimony be used upon the trial, that the same shall be sustained by other corroborating facts or circumstances, to be certified by said court.

* * * * *

CHAP. 49.—An ACT to amend the 4th section of chapter 105 of the Code so as to increase the rewards for the arrest of runaway slaves.

Passed March 17, 1856.

* * * * *

7. Upon the arrest of a fugitive slave in a nonslaveholding state, when under the provisions of this section the person making such arrest is entitled to a reward of as much as or more than one

hundred dollars from the owner of such slave, it shall be the duty of the auditor of public accounts to issue his warrant on the treasury for the sum of fifty dollars, in favor of such person or his assigns: provided, that a certificate from the court of the county in which the value of such slave has been ascertained, under the provisions of this section, (or when it appears to the said court that such value has been agreed upon by the parties, stating the fact of such arrest and the amount of such reward,) shall be presented to the auditor within three months from its date, and within twelve months from the date of such arrest; which, in all cases, shall be stated in such certificate.

8. The amount herein provided to be paid by the auditor of public accounts, to the person holding the certificate of the county court as aforesaid, shall only be payable out of any moneys in the treasury arising from fines, forfeitures and confiscation, imposed and made under the provisions of laws now existing and hereafter to be enacted, providing for the punishment of persons aiding and abetting the escape of slaves, or interfering with the rights of property in slaves, and from funds arising from the sale of free negro convicts failing to leave the state after the expiration of their term of imprisonment.

9. Whenever the said reward, to be paid by the owner of the slave so arrested, shall have been certified by the court, as herein provided, to be due to the person apprehending such slave, and the same shall not be paid or satisfied within thirty days from the date of such certificate, after demand made therefor, the owner or holder of such certificate shall be empowered and he is hereby authorized to recover the same by motion, after ten days' notice, together with the costs of such motion, before any court of record in the county where the owner of said slave may reside, or in which the said slave may be.

* * * * *

Penitentiary.

CHAP 19.—An ACT concerning the penitentiary institution.

(Passed March 9th, 1833.) 18

1. *Be it enacted by the general assembly of Virginia,* That the governor be, and he is hereby authorized to cause to be erected at the penitentiary, a suitable and convenient hospital for the accommodation of the sick therein; also, to cause the outer walls of the prison to be well ventilated, in a secure and substantial manner, and to have erected suitable buildings and sheds easy of access from the work shops, and perfectly secure against escapes, for the preservation and security of timber and manufactured articles, and if found necessary for security, to enlarge a part of the outer walls to take them within the enclos-

ure. A sum not exceeding seven thousand dollars shall be, and the same is hereby appropriated to defray the expense of the aforesaid improvements, to be paid on the orders of the governor.

2. *Be it further enacted,* That the solitary confinement of convicts in the penitentiary, constituting a part of the sentence of the court, shall not exceed one twelfth part of the whole term of imprisonment, and it shall be inflicted at intervals not exceeding one month of solitude at a time; any law to the contrary notwithstanding.

3. *Be it further enacted,* That the fourth section of the act passed the twenty-seventh day of February, eighteen hundred and twenty-nine, entitled, "an act concerning the penitentiary institution," shall be and the same is hereby repealed.

4. *Be it further enacted,* That the governor be required to cause to be made an estimate of the expense of draining the pond near the penitentiary, by means of a culvert or otherwise.

5. This act shall be in force from its passage.

Calling out Militia at Wheeling in 1838.

CHAP. 34.—An ACT concerning certain volunteer companies of the fourth regiment of Virginia militia.

41

(Passed April 7, 1838.)

Whereas it appears to the general assembly that the colonel commandant of the fourth regiment Virginia militia, upon the requisition of the sheriff of Ohio county, made on the fifth day of June, eighteen hundred and thirty-six, ordered into service the Wheeling guards, the City blues, and the Wheeling riflemen, three infantry companies attached to said regiment, and that said companies did continue in actual service from the fifth to the fifteenth day of August, eighteen hundred and thirty-six, in guarding the jail and protecting the persons and property of the citizens of said county, for which it is right that they should receive the usual pay of the militia when in actual service:

1. *Be it therefore enacted,* That the auditor of public accounts is hereby authorized and required to issue and deliver to the colonel of said regiment, or his order, a warrant upon the treasury for the sum of one thousand and ninety-nine dollars, payable out of any money therein not otherwise appropriated: *Provided,* That the auditor shall first take bond with good security, in the penalty of two thousand dollars, payable to the governor or chief magistrate of this commonwealth, conditioned for the faithful distribution of the said 42
sum of money as hereinafter directed.

2. *Be it further enacted,* That the said colonel of the said regiment shall distribute the said sum of money between the said three companies in proportion to the number of officers and privates employed in each company, and shall pay the same into the treasury of each company for the use and benefit of said companies,

3. This act shall be in force from the passing thereof.

Medical College of Virginia.

CHAP. 8.—An ACT appropriating $30,000 to the Medical College of Virginia, for enlarging its Hospital or Infirmary; for extending the College Buildings, and for the improvement and extension of the College Museum.

Passed March 1, 1860. 104

1. Be it enacted by the general assembly, That there be and is hereby appropriated out of the treasury, out of any money not otherwise appropriated, the sum of thirty thousand dollars; to be paid to the Medical College of Virginia for the purposes herein after set forth.

2. The Medical college of Virginia shall apply the sum of money hereby appropriated solely to the purpose of enlarging the hospital or infirmary annexed to the college; of extending the college buildings for the accommodation of a larger number of students, and for the improvement and extension of the college museum: And the said sum of money shall be applied to the several purposes herein stated, in such proportions as shall be deemed proper by the trustees of the said Medical college of Virginia.

3. Provided, that the said sum of thirty thousand dollars shall not be paid until a deed, conveying all the property of said college to the Literary fund, shall be prepared by the attorney general, and approved of by the governor of the state, and executed by the college authorities acknowledged and duly recorded: And provided further, that the money shall not be drawn from the treasury until, in the opinion of the governor, it is needed for the purposes contemplated by this act.

4. This act shall be in force from its passage.

Lunatic Hospitals.

EASTERN ASYLUM AT WILLIAMSBURG.

CHAPTER 90.—An act to provide for the enlargement of the lunatic hospital in the city of Williamsburg.

(Passed March 5th, 1824.) 93

Whereas it is represented to this General Assembly, that the females confined in the lunatic hospital, are entirely destitute of a convalescent apartment; and whereas it is also represented, that many citizens unfortunately suffering under mental derangement, are now confined in common jails within this Commonwealth, because of the want of accommodation for them in the said hospital, and whose situation humanity loudly and justly calls upon the General Assembly to relieve;

1. *Be it therefore enacted by the General Assembly*, That the court of directors of the hospital in the city of Williamsburg, for the maintenance and cure of persons of unsound mind, be and they are hereby authorised to contract for, or let to the lowest bidder, the erection of an additional brick building, containing a convalescent apartment for the females, and as many cells or separate apartments for the accommodation of patients, as to the said court of directors shall seem necessary. To enable the said directors to erect the aforesaid additional building, they, or a majority of them, are hereby authorised, through their treasurer, in the manner now prescribed by law, from time to time, to draw upon the auditor of public accounts, for such sums as may be required for the completion of the aforesaid additional building, not exceeding five thousand dollars; for which draft or drafts the auditor of public accounts is hereby authorised and required to issue warrants on the treasury, which shall be paid out of any money therein not otherwise appropriated. The accounts for money expended in erection of the aforesaid building, shall be settled by the treasurer with the court of directors, and certified in the same manner as all other accounts of the hospital are passed and certified.

2. This act shall commence and be in force from and after the passage thereof.

CHAP. 29.—AN ACT to provide for extending and enlarging the lunatic hospitals.

[Passed March 1st, 1833.] 22

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, or any seven of them, shall be, and they are

hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given public notice, by advertisement, in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond with sufficient security, from the contractor or contractors, in the penal sum of twenty thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sums of money as may be necessary to defray the expenses of said additional building; *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors, and shall contain no more than forty cells or apartments: *And provided*, That the whole expense thereof shall not exceed six thousand dollars.

3. *Be it further enacted*, That the court of directors of the Western lunatic hospital shall, in like manner, be and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital, in iron pipes, without the use of forcing pump or other machinery: *Provided*, The whole expense thereof 23 shall not exceed one thousand dollars.

4. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected, an additional building for that institution, calculated to accommodate an additional number of lunatics, not exceeding forty: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided*, That the whole expense shall not exceed six thousand dollars.

5. This act shall be in force from the passage thereof.

CHAP. 19.—An ACT to amend an act, entitled, "an act to provide for extending and enlarging the lunatic hospitals," passed March 1st, 1833.

(Passed March 12, 1834.) 27

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital, and the directors of the lunatic hospital at

Williamsburg, shall have full power to order and direct their treasurers, respectively, to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of the additional buildings of those institutions, authorized by an act of this legislature, passed the first of March, eighteen hundred and thirty-three, entitled, "an act to provide for extending and enlarging the lunatic hospitals:" *Provided*, The whole expense thereof shall not exceed nine thousand dollars for each hospital, over and above the amount already appropriated to those objects by the said act of the first of March, eighteen hundred and thirty-three.

2. This act shall be in force from and after the passing thereof.

CHAP. 17.—An ACT providing for a further appropriation to complete the improvements at the lunatic hospitals at Williamsburg and Staunton.

(Passed March 12, 1835.) 17

1. *Be it enacted by the general assembly*, That the directors of the lunatic hospital at Williamsburg be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth for the sum of two thousand six hundred and sixty dollars, which sum it has been represented will be necessary to complete the additional buildings at said institution, which said amount of two thousand six hundred and sixty dollars the treasurer of the commonwealth is hereby authorized and empowered to pay to the order of the treasurer of the institution aforesaid out of any money in the treasury not otherwise appropriated.

2. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sum appropriated by the act of March first, eighteen hundred and thirty-three, as may be necessary for the fulfilment of their contract for conducting an ample supply of good spring water to the said hospital in iron pipes: *Provided*, The said additional sum hereby appropriated shall 18
not exceed the sum of twelve hundred dollars.

3. *Be it further enacted*, That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money in addition to the sums heretofore appropriated by the act of March the first, eighteen hundred and thirty-three, and the act of

March the twelfth, eighteen hundred and thirty-four, as may be necessary for the fulfilment of their contracts for the completion of the additional buildings authorized by said acts: *Provided*, The said further sum hereby appropriated shall not exceed the sum of fifteen hundred dollars; and for completing the graduation, and building partition walls for the male and female wards, the sum of fifteen hundred dollars.

4. This act shall be in force from and after the passing thereof.

CHAP. 19.—An ACT concerning the Western lunatic hospital and the lunatic hospital at Williamsburg.

(Passed March 31, 1837.) 18

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic hospital and the directors of the lunatic hospital at Williamsburg, be and they are hereby authorized and empowered, in behalf of their institutions, severally to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for such sum or sums of money as may be necessary for the purchase of land, near each of said hospitals, a neat two horse carriage, and a pair of horses, and such other articles as are recommended in the report of the physician of the Western lunatic hospital, communicated by the directors thereof to the present general assembly, and by them caused to be printed, as are calculated in the opinion of the directors of said hospitals, to aid in the restoration of patients confined in a lunatic hospital: *Provided*, That the expenditures thereby incurred, do not exceed the sum of one thousand dollars, for each of said hospitals, and which sum is hereby appropriated for said purposes.

2. This act shall be in force from the passing thereof.

CHAP. 21.—An ACT providing for the enlargement of the lunatic hospitals of the commonwealth, and for other purposes.

(Passed April 3, 1838.) 33

1. *Be it enacted by the general assembly*, That the directors of the Western lunatic asylum, or any seven of them, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, so as to make the same fit for the reception and accommodation of an additional number of lunatics, having previously given

public notice by advertisement in some newspaper printed in the city of Richmond, and in some other newspaper printed in the town of Staunton, for sixty days, that they will receive proposals for the building thereof; and shall take bond, with sufficient security, from the contractor or contractors, in the penal sum of twenty-four thousand dollars, payable to themselves, and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of said directors.

2. The said directors shall have full power, from time to time, to order and direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary to defray the expenses of said additional building: *Provided*, That the plan and dimensions of said building shall be agreed upon and prescribed by said directors: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

3. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered, in like manner, and for the same purposes as above prescribed, to contract for and cause to be erected an additional building for that institution, calculated to accommodate an additional number of lunatics: *Provided*, That the mode of making the contracts therefor, and the payment on that account from the treasury, shall be the same as above provided for the Western lunatic hospital: *And provided also*, That the whole expense thereof shall not exceed twelve thousand dollars.

4. *Be it further enacted*, That the directors of the Western lunatic hospital are hereby authorized and empowered, in behalf of that institution, to direct their treasurer to draw upon the treasurer of the commonwealth (to be audited by the auditor of public accounts) for such sums of money as may be necessary for the purchase of land near said hospital, the erection of workshops, the purchase of tools and materials for manufacture, and such other articles as are recommended by the report of the physician of the Western lunatic hospital, or by the report of the directors of said institution to the present general assembly: *Provided*, That the expenditures thereby incurred do not exceed five thousand dollars.

5. *Be it further enacted*, That the directors of the lunatic hospital at Williamsburg, shall be, and they are hereby empowered to contract for the enclosures and other buildings recommended in the report of the directors of that institution, to the present general assembly, on the terms they may think most suitable; and they shall have full power to order their treasurer to draw on the treasurer of the commonwealth for such sum or sums of money (to be audited by the auditor of public accounts) as may be necessary to complete the same: *Provided*, That the whole expense thereof shall not exceed five thousand dollars.

6. This act shall be in force from its passage.

CHAP. 19.—An ACT providing for the enlargment of the lunatic asylums of the commonwealth.

[Passed March 25, 1842.]

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice, by advertisement in some newspaper published in the city of Richmond, and a newspaper published in the town of Staunton, that they will receive proposals for the work authorized; and on the letting out of said work, they shall take bond with approved security, from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. *Be it further enacted,* That a sum not exceeding twenty-four thousand dollars be, and the same is hereby appropriated, for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: eight thousand dollars on the ratification of the contract and the execution of the bond required; eight thousand dollars in twelve months thereafter; and the remaining eight thousand on the completion of the building, provided the same shall not be in less than twelve months from the last payment.

3. *Be it further enacted,* That the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be, and they are hereby empowered in like manner to contract for and cause to be erected an addition to the Eastern asylum, at an expense not exceeding twelve thousand dollars, to be paid in the following manner: six thousand dollars when the contract is ratified and the bond duly executed; and the remaining six thousand dollars on the completion of the building, provided the same shall not be in less than twelve months after the first payment is drawn. The mode and terms of contracting shall be the same as that provided for in the erection of the addition to the Western asylum, except as to the cost and payment, and that the advertisement for proposals shall be in some newspaper published in the borough of Norfolk instead of the town of Staunton.

4. This act shall be in force from the passing thereof.

CHAP. 12.—An ACT appropriating a sum of money therein mentioned to John B. Hart and Martin Tutwiler, securities of John K. Sheperson for the erection of an additional building to the Eastern lunatic asylum at Williamsburg.

[Passed February 12, 1844.] 17

1. *Be it enacted by the general assembly,* That the auditor of public accounts be and he is hereby authorized to issue his warrant on the treasury, (upon the requisition of the directors of the Eastern lunatic asylum at Williamsburg,) in favour John B. Hart and Martin Tutwiler, securities for John K. Sheperson, who contracted with said directors for the erection and completion of an additional building to the said asylum, and who failed to complete the same according to contract, for the sum of two thousand dollars, being so much allowed to them in advance upon the remaining instalment, to enable them to complete such additional building; said sum to be paid to Hart and Tutwiler, so soon as they shall have executed their bond with approved security, made payable to the directors aforesaid, and conditioned for the true and faithful appropriation of the said sum of two thousand dollars, and for the completion of said additional building, according to the terms of the contract entered into between the said Sheperson and the aforesaid directors of the Eastern lunatic asylum at Williamsburg. And in making said requisition upon the auditor, the said directors shall certify that said bond has been duly executed in accordance with the provisions of this act.

2. This act shall be in force from the passing thereof.

CHAP. 11.—An ACT making an appropriation for the Eastern lunatic asylum.

[Passed February 14, 1844.] 16

1. *Be it enacted by the general assembly,* That the sum of five thousand dollars be, and the same is hereby appropriated for the purpose of remodelling and repairing the body of the old building of the Eastern lunatic asylum at Williamsburg, to be paid to the treasury of said asylum, on the requisition of the board of directors thereof, at any time after the first day of July next; and the auditor of public accounts is hereby authorized and required, on the requisition of said board, at any time after the said first day of July, eighteen hundred and forty-four, to issue his warrant on the treasury of the commonwealth, in favour of the treasurer of said asylum, for the amount above mentioned.

2. *And be it further enacted,* That before the repairs mentioned in the preceding section shall be contracted for, the said board of directors shall advertise the time and place of letting out the same, and shall let out the same to the lowest bidder, taking bond and good security of the contractor or contractors for the due execution of the contract; and the terms of the contract shall not be altered after being entered into, without the previous consent of the general assembly: *Provided however,* That said board may let out the work hereby provided for in one contract, or may let it out in two or more contracts, as to them may seem proper.

CHAP. 12—An ACT to authorize the enlargement of the lunatic asylums of the commonwealth.

[Passed January 17, 1848.] 16

1. *Be it enacted by the general assembly,* That the directors of the Western asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper published in the city of Richmond and in the newspapers published in the towns of Staunton and Winchester, that they will receive proposals for the work authorized; and on letting out of said work they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

2. That a sum not exceeding thirty-six thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings hereby authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Western asylum, in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: Seven thousand dollars on the ratification of the contract and the execution of the bond required; seven thousand dollars on the first of July, eighteen hundred and forty-eight; seven thousand dollars on the first of January, eighteen hundred and forty-nine; seven thousand dollars on the first of July, eighteen hundred and forty-nine, and eight thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

3. *Be it further enacted,* That the directors of the Eastern asylum

for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for the extension of the buildings of that institution, after having first given at least sixty days notice by advertisement in some public newspaper in each of the cities of Richmond, Petersburg and Norfolk, that they will receive proposals for the work authorized; and on letting out of said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they deem sufficient, conditioned for the faithful execution of the contract.

4. *Be it further enacted,* That a sum not exceeding twenty-five thousand dollars be and the same is hereby appropriated for the entire completion of the additional buildings in said last section authorized, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum in favour of the treasurer thereof, on the auditor of public accounts, in the following manner: Five thousand dollars on the ratification of the contract and the execution of the bond required; five thousand dollars on the first of July, eighteen hundred and forty-eight; five thousand dollars on the first of January, eighteen hundred and forty-nine; five thousand dollars on the first of July, eighteen hundred and forty-nine, and five thousand dollars on the first of January, eighteen hundred and fifty: *Provided,* That said buildings shall be completed on the day last aforesaid; if not, then upon the completion thereof.

5. This act shall be in force from its passage.

CHAP. 13.—An ACT providing for the purchase of furniture for the Eastern and Western asylums, and for other purposes.

[Passed January 13, 1849.]

1. *Be it enacted by the general assembly,* That a sum not exceeding eight thousand five hundred dollars be and the same is hereby appropriated for the purchase of furniture for the two additional buildings heretofore directed to be built by the directors of the Western asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum; and that said sum of money be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Western

asylum, in favour of the treasurer thereof, on the auditor of public accounts.

2. *Be it further enacted,* That a sum not exceeding six thousand two hundred and sixty-six dollars be and the same is hereby appropriated for the purchase of furniture for the additional building referred to in the report of the directors of the Eastern asylum for the maintenance and cure of insane persons, and of such clothing as may be necessary for the additional number of patients to be admitted into said asylum, and to pay the excess of the price of the buildings contracted for by said directors, over and above the appropriation of the last session; and that said sum of money be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favour of the treasurer thereof, on the auditor of public accounts.

3. This act shall be in force from its passage.

CHAP. 17.—An ACT providing for the payment of arrears on buildings, and furnishing water and additional accommodations for free colored insane persons at the Eastern lunatic asylum.

[Passed January 22, 1850.] 16

1. *Be it enacted by the general assembly,* That for the purpose of paying arrears on building account at the Eastern lunatic asylum for the maintenance and cure of insane persons, to provide additional accommodations for free colored insane persons, to purchase furniture for the new building now being erected, and to furnish the said asylum with a sufficient supply of water, the sum of eleven thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated; and the auditor of public accounts is hereby directed to draw his warrant on the treasury in favor of the treasurer of the said Eastern asylum, upon the order of the board of directors of said asylum, authorizing him to receive the same, for the said sum of eleven thousand five hundred dollars, to be applied by the said directors to the purposes aforesaid.

2. This act shall be in force from its passage.

CHAP. 144.—An ACT appropriating seven thousand dollars for repairing and erecting buildings at the Eastern lunatic asylum.

[Passed January 21, 1853.] 126

1. Be it enacted by the general assembly, that the directors of the Eastern asylum for the maintenance and cure of insane persons, shall be and they are hereby empowered to contract for repairing or rebuilding the granaries, stables and other out-houses of the institution, and for remodeling the building used for colored patients, after having first given at least sixty days' notice by advertisement in some newspaper published in the city of Richmond, and a paper published in the city of Norfolk, that they will receive proposals for the work authorized; and on letting out the said work, they shall take bond with approved security from the contractor or contractors, payable to said directors and their successors in office, in such penalty as they may deem sufficient, conditioned for the faithful execution of the contract.

2. That the sum of seven thousand dollars be and the same is hereby appropriated for the completion of the buildings and other work hereby authorized, and for the purchase of the Six-Chimney lot recently made by the directors of the Eastern lunatic asylum; to be paid out of the treasury of the commonwealth, upon the order of the court of directors of said Eastern asylum, in favor of the treasurer thereof, on the first auditor, in the following manner: Six hundred and sixty-one dollars for the purchase of the lot hereinbefore mentioned; eighteen hundred and thirty-nine dollars on the ratification of the contract and the execution of the bond required; two thousand five hundred dollars after the work shall have been half completed, and two thousand dollars on the completion of the contract hereby authorized.

3. This act shall be in force from its passage.

CHAP. 39.—An ACT appropriating seventeen thousand seven hundred and fifty dollars for erecting and repairing buildings and enclosures at the Eastern lunatic asylum; for purchasing a lot of land for the use of the asylum, for improving its grounds, for providing furniture and other conveniences for the same, and for lighting the institution with gas.

[Passed March 1, 1854.] 29

1. Be it enacted by the general assembly, that the sum of eleven thousand seven hundred and fifty dollars be and the same is hereby

appropriated for erecting and repairing buildings and enclosures at the Eastern lunatic asylum, for purchasing a lot of land for the use of the asylum, for improving its grounds and for providing furniture and other conveniences for the same; which sum shall be paid out of the treasury of the commonwealth upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, to-wit: three thousand seven hundred and fifty dollars on the first day of July next; four thousand dollars on the first day of January next, and four thousand dollars on the first day of July, eighteen hundred and fifty-five.

2. Be it further enacted, that the directors of the said asylum be and they are hereby empowered to contract for the lighting of that institution with gas, after having given at least sixty days' notice by advertisement in the Virginia Gazette, in some newspaper published in the city of Richmond, and in one other newspaper, to be selected by them, that they will receive proposals for the construction of the fixtures and works necessary for the purpose. The said directors shall, on letting out the work, take bond with approved security from the contractor or contractors, payable to the said directors and their successors in office, in such penalty as they may deem sufficient, and with the condition that the contract be faithfully executed. For this purpose, the sum of six thousand dollars is hereby appropriated, to be paid out of the treasury of the commonwealth, upon the order of the court of directors of the said asylum, in favor of the treasurer thereof, on the auditor of public accounts, in the following manner, viz: Two thousand dollars on the ratification of the contract and the executing of the bond aforesaid; two thousand dollars when the work shall have been, in the estimation of the said directors, half completed, and two thousand dollars on the completing of the work according to the contract.

3. This act shall be in force from its passage.

Western Asylum at Staunton.

CHAPTER 35.—An act to authorise the establishment of a Western Lunatic Hospital.

[Passed January 22d, 1825.] 30

Whereas it appears to the General Assembly, that the present public hospital for persons of unsound minds, is insufficient for the reception and cure of all such unfortunate persons:

1. *Be it therefore enacted,* That John S. Barnes, of the county of Monongalia, Joel Shrewsbury, senior, of the county of Kanawha, Briscoe G. Baldwin, of the county of Augusta, John B. George, of the county of Tazewell, and Allen Taylor, of the county of Botetourt, be, and they are hereby appointed commissioners, for the purpose of selecting a site for the erection of a lunatic hospital on the west side of the Blue Ridge. It shall be the duty of the said commissioners or a majority of them, to meet at Lewisburg, on the first day of April next, or as soon thereafter as practicable, and shall forthwith proceed to execute the duty required by this act, and make report thereof to the Executive of this Commonwealth. In case of the death, or refusal to act, or inability of the said commissioners, or either of them, the Governor with advice of council shall be, and he is hereby authorised to supply such vacancy or vacancies. The said commissioners shall be entitled to receive four dollars each per day, for every day they shall be employed in carrying into effect the provisions of this act.

2. When the said commissioners shall have made the selection and report as aforesaid, the Executive shall forthwith appoint a court of directors, consisting of thirteen persons as convenient to the place selected as may be, who shall be, and they are hereby constituted and appointed, with their successors to be chosen when vacancies happen by the Executive, a body politic and corporate, to have perpetual succession by the name of "The Directors of the Western Hospital of Virginia, for the maintenance and cure of persons of unsound mind," and by that name may sue and be 31 sued, and may and shall have and use a common seal, and are enabled to take any estate real or personal, given or to be given to the said hospital or to themselves for the use thereof; so as the annual income of such donations, shall not exceed the sum of three thousand dollars; any law or statute to the contrary notwithstanding.

3. The said directors shall and may, so often as it may be necessary, choose a president, to continue in office until his death, resignation or removal; and they or any seven of them shall form a court, and shall from time to time ordain regulations for the government of the said hospital, and appoint a keeper and matron thereof, with nurses and guards when they shall be necessary; and provide for the accommodation, maintenance and cure of the patients received, or to be received therein: *Provided, nevertheless,* That any five of the said directors shall form and constitute a court for the examination of ideots and lunatics, and shall have power as may seem to them best to receive or reject any applicant.

4. The said directors, or any seven of them, shall be and they are hereby empowered to purchase a piece or parcel of land not

exceeding four acres, the most healthy in situation that can be procured, and as convenient as may be, to the site selected by the commissioners appointed under this act; and to contract for the building thereon, a commodious house or houses, fit for the reception and accommodation of persons of unsound minds, having previously given public notice by advertisement published in the Richmond Enquirer, and in some newspaper published in Staunton for sixty days, that they will receive proposals for the building thereof, and shall take bond with sufficient security, from such person or persons, in the penal sum of twenty thousand dollars, payable to themselves and their successors in office, conditioned for the faithful performance of said contract, under the immediate superintendence of the said directors. The said directors shall have full power from time to time, to order and direct their treasurer to draw upon the treasurer of this Commonwealth, (which shall be audited by the Auditor of Public Accounts,) for such sums of money, including the cost of the site aforesaid, as may be necessary to defray the expenses of said building or buildings; which shall be paid out out of any money in the treasury not otherwise appropriated: *Provided*, That the whole expense thereof, shall not exceed the sum of ten thousand dollars.

5. When the said hospital shall have been erected, the expenses thereof shall be provided for and paid in the same manner, that the expenses of the present hospital are provided for and paid; the jurisdiction, powers and duties of the directors and keepers of both the said hospitals shall in all respects be the same; the proceedings by magistrates and courts concerning the examination of persons of unsound minds, or those supposed to be so, and their removal to the hospital hereby established, shall in all respects be the same as are now required or observed in examining such persons, and removing them to the present hospital; and the persons and estates of persons who may be removed to the hospital hereby established, shall be in the same condition, and subject to the same laws, as are now in force in relation to the persons and estates of those removed to the present hospital.

6. The court of directors shall have power to appoint a clerk, attending physician and treasurer; to each of whom they may make a reasonable compensation for their services. The 32
treasurer, (who shall not be a member of the court of directors,) shall be appointed annually, and shall be required, before entering on the duties of the office, to give bond with approved security, in the penalty of twenty thousand dollars, payable to the president and directors and their successors in office, conditioned for the faithful discharge of the duties of his office, and for the settlement of his accounts before the said court of directors, once in six

months; which accounts the said court of directors are hereby required to cause to be certified to the auditor, to be audited as other public accounts. And the said court of directors, shall have power and authority to draw through their treasurer for the whole amount, or any part of the annual appropriation, for which draft or drafts when presented, the auditor of public accounts is hereby authorised and required to issue a warrant on the treasury: *Provided however*, That no such draft made upon the appropriations of one year, shall be allowed, until all monies drawn on account of the appropriations of one year next preceding, shall have been duly accounted for by the treasurer of the hospital.

7. The said directors shall, so soon as the hospital hereby established, shall be finished, give notice thereof by advertisement in some paper printed in the city of Richmond, to be published thirty days; a copy whereof shall be sent, under the direction of the Executive, to every county and corporation court of this Commonwealth; upon the receipt whereof, it shall be the duty of all magistrates or courts, having custody of or jurisdiction over persons of unsound mind, to have all such as may be confined in the county jails or elsewhere, (for want of room in the present public hospital,) removed to the hospital hereby established. And in all cases that may afterwards occur west of the Blue Ridge, wherein it may be necessary to remove persons of unsound mind, they shall be removed to the hospital hereby established, so long as it can conveniently receive them. If it be full, they shall be sent to the hospital now at Williamsburg. And, so long as the latter hospital cannot conveniently receive any persons that may be sent to it, such persons shall be sent to the hospital hereby established, from whatever part of the Commonwealth they may come. When the hospital at Williamsburg can conveniently receive them, all such persons east of the Blue Ridge shall be sent thither.

8. All acts and parts of acts coming within the purview of this act, shall be and the same are hereby repealed.

9. This act shall be in force from and after the passing thereof.

CHAPTER 4—An act making farther appropriation for the completion of the Western Lunatic Hospital.

[Passed February 24th, 1827.] 9

1. *Be it enacted by the General Assembly*, That the sum of twelve thousand dollars be, and the same is hereby appropriated

out of any money in the Treasury, not otherwise disposed of, toward the completion of the Western Lunatic Hospital, to be paid by instalments, as the progress of the work may require: And the Auditor of Public Accounts is hereby required to issue a warrant on the Treasury, to the order of the Court of Directors for the said hospital, for such sum as the said court may from time to time deem necessary, so as not to exceed the appropriation aforesaid.

2. *Be it further enacted,* That the said Directors shall not enter into any contract whatever, beyond the sum hereby appropriated.

3. This act shall commence and be in force from and after the passing thereof.

CHAPTER 7.—An act concerning the Western Lunatic Hospital.

[Passed February 28th, 1828.] 9

Whereas, it is represented to this General Assembly, by the court of directors of the Western Lunatic Hospital, that the land purchased by them is not sufficient for the humane purposes of the institution:

1. *Be it therefore enacted,* That the said court of directors be, and they are hereby authorised, if they shall deem it expedient, having a due regard to economy, to procure by purchase, an additional quantity of land, adjoining the present lot, not exceeding six acres: But if they, the said president and directors of the Western Lunatic Hospital, shall be unable to procure the said quantity of land, situate as aforesaid, on terms by them deemed fair and reasonable, they may proceed to have the same condemned for the purpose aforesaid, by applying to the county court of Augusta, for a writ of ad quod damnum; having given ten days previous notice to the proprietor thereof, if he be found in the county, and if not, then to his agent, if any he hath, which court shall thereupon order their clerk to issue such writ, to be directed to the sheriff, commanding him to summon and impannel twelve fit persons, to meet upon the lands so proposed to be condemned for the use of the said Hospital, on a certain day to be named by the court, and inserted in the said writ, of which notice shall be given by the sheriff to the proprietor or his agent as before directed. The freeholders taken, shall be charged by the said sheriff impartially and to the best of their skill and judgment, to view the lands so situate as aforesaid, and to locate and circumscribe by certain metes and bounds six acres thereof, or any smaller quantity, as desired by the said president and directors, and to appraise the same according to its true value. The inquest so made and sealed by the said jurors, together with the said writ,

shall by the said sheriff be returned to the succeeding court, who shall thereupon order summonses to be issued to the several persons, proprietors or tenants of the lands so located, to shew cause why the same shall not be condemned for the use aforesaid. If on such inquest, or other evidence, it shall appear to the court, that the valuation of the said lands, has been just and reasonable, and the location has been properly made, they shall order the same to be recorded, whereupon the said president and directors of the Western Lunatic Hospital, shall out of any funds which are or may be appropriated for the completion of the said Hospital, make payment of such assessed valuation, to the proprietor or proprietors thereof, according to the said inquest, and the land so located shall vest in the Commonwealth absolutely, for the uses and purposes aforesaid.

2. This act shall commence and be in force from and after the passage thereof.

CHAPTER 6.—An act amending the acts concerning idiots and lunatics, to provide for clothing the public guard, and for other purposes.

(Passed February 17th, 1830.)

* * * * *

5. *Be it further enacted,* That the directors of the Lunatic Hospital at Staunton be and they are hereby authorised to cause the buildings of that asylum, with the lot, to be enclosed with a suitable wall of stone or brick, in their discretion, for which purpose the sum of five thousand dollars shall be and the same is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

See Act March 1st, 1833, Chap. 29, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1834, Chap. 19, under "Eastern Asylum at Williamsburg," supra.

See Act March 12, 1835, Chap. 17, under "Eastern Asylum at Williamsburg," supra.

CHAP. 8.—An ACT appropriating a further sum of money for completing the improvements of the Western lunatic hospital.

(Passed March 22, 1836.) 9

1. *Be it enacted by the general assembly,* That the directors of the Western lunatic hospital be, and they are hereby authorized and empowered to direct their treasurer to draw upon the treasurer of the commonwealth, to be audited by the auditor of public accounts, for such further sum of money, in addition to the sums heretofore appropriated for the same purposes, as may be necessary to fulfil their contracts for the completion of the additional buildings heretofore authorized to be erected, and also for the completion of the partition walls authorized to be erected by the act of March the twelfth, eighteen hundred and thirty-five: *Provided,* That said further sum hereby appropriated shall not exceed six thousand dollars.

2. This act shall be in force from its passage.

See Act of March 31, 1837, Chap. 19, under head "Eastern Asylum at Williamsburg," supra.

See Act April 3rd, 1838, Chap. 21, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the lunatic asylums of this commonwealth.

[Passed April 10, 1839.] 14

1. *Be it enacted by the general assembly,* That the directors of the western lunatic hospital shall be, and they are hereby authorized to contract for conducting an ample supply of good spring water to the said hospital in iron pipes, without use of forcing pumps or other machinery, from some point sufficiently elevated to allow the water to be conducted into the upper story of the principal building of said hospital, and for the purpose of defraying the expense thereof, 15 the said directors are hereby empowered to direct their treasurer to draw upon the treasurer of the commonwealth, (to be audited by the auditor of public accounts,) for any sum not exceeding five thousand dollars, in addition to the sum heretofore appropriated for that purpose.

* * * * *

CHAP. 18.—An ACT providing for paying the workmen for completing the additional building to the Western lunatic asylum.

[Passed March 8, 1842.] 16

1. *Be it enacted by the general assembly,* That the sum of nine thousand and sixty dollars and forty-four cents be, and are hereby appropriated out of any money in the treasury, to discharge in full, including any claim for interest, the debt due from the commonwealth to the workmen for completing the additional building to the Western lunatic asylum; and the court of directors of that institution are authorized to direct their treasurer to draw on the treasurer of this commonwealth for the same.

2. This act shall be in force from the passing thereof.

See Act of March 25th, 1842, Chap 19, under head "Eastern Asylum at Williamsburg," supra.

See Act Feb. 12, 1844, Chap. 10, under head "Eastern Asylum at Williamsburg," supra.

CHAP. 17.—An ACT concerning the Western lunatic asylum at Staunton.

19

[Passed March 4, 1846.]

Whereas it is represented to the general assembly by the president and directors of the Western lunatic asylum, that the interests of that institution would be greatly promoted by the acquisition of an additional quantity of land:

1. *Be it therefore enacted,* That the court of directors of the said asylum be and they are hereby authorized to procure by purchase an additional quantity of land, adjoining the lands belonging to said asylum, not exceeding one hundred and twenty acres. But if the said directors shall be unable to secure the said quantity of land, situate as aforesaid, on terms deemed by them reasonable, they may proceed to have the same condemned, or so much thereof as they may deem necessary for the purpose aforesaid, by applying to the county court of Augusta, who are hereby authorized and required to appoint five fit and discreet freeholders of said county, who after being first

duly sworn for that purpose, before some justice of the peace for said county; and after having given at least ten days previous notice to the owner or owners of such land, their agent or attorney, shall, on such day as they may appoint, go upon the lands which the directors of said asylum may require to be condemned for the use of the same, and value the same at cash price, according to the best of their skill and judgment, and after they shall have ascertained the value of such land or lands as they may be required to condemn, shall make report to the next court for the said county, who shall, on the return thereof, direct summons to issue to the several persons, proprietors or tenants of the lands so condemned for the use aforesaid, returnable to the first term thereafter. And if on the return of such summons, the party on whom the same has been executed, shall fail to appear and contest the same, the said county court shall confirm the said report or reports; and on payment of the valuation of such land or lands to the person or persons entitled to the same, the said land or lands shall be fully vested in the directors of the said asylum for the time being, and their successors in office forever. But if the owner or owners of said land or lands, or either of them, shall appear and contest said report, the said county court shall hear and determine the same in the same manner as is now prescribed by law in cases of writs of *ad quod damnum*, awarded on the report of viewers of a road. And the proceedings under this act subsequent to the return of the report of the commissioners aforesaid, shall in all things conform to the proceedings in cases of roads: *Provided, however,* That in proceeding to make condemnation of the necessary quantity of land, it shall not be lawful to interfere with the private residence, garden or yard of the individual, whose land it may be necessary to condemn.

2. *Be it further enacted,* That the sum of four thousand dollars be and the same is hereby appropriated, for the purpose of carrying into effect the object of this act, out of any money in the treasury not otherwise appropriated. And the president and directors of the Western lunatic asylum are hereby authorized to draw on the auditor of public accounts for the said sum of four thousand dollars, as soon as it may be necessary for them to pay for any land or lands acquired under this act.

3. This act shall be in force from the passing thereof.

See Act Jan. 17, 1848, Chap. 12, under head, "Eastern Asylum at Williamsburg," supra.

See Act Jan. 13, 1849, Chap. 13, under head, "Eastern Asylum at Williamsburg," supra.

CHAP. 16.—An ACT for providing for the erection of necessary out-buildings at the Western asylum, and requiring that the funds of said asylum shall be kept in the Valley Bank at Staunton.

[Passed January 19, 1850.]

1. *Be it enacted by the general assembly*, That for the purpose of erecting at the Western asylum for the maintenance and cure of insane persons, a plain and substantial building, to contain a kitchen, bakery, pantry, store-rooms, dining-room, chapel, clothes-rooms, medicine and library-rooms, and other rooms rendered necessary by the great enlargement of said asylum by previous acts of the general assembly, the sum of fourteen thousand five hundred dollars be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, and that the auditor of public accounts draw two warrants on the treasury in favor of the treasurer of said Western asylum, each for seven thousand two hundred and fifty dollars, the first payable the first of July, eighteen hundred and fifty, and the second payable the first of January, eighteen hundred and fifty-one, together making the said sum of fourteen thousand five hundred dollars; that sum being sufficient, in the opinion of the directors of said asylum, to complete entirely the necessary out-buildings, in conformity with the present enlarged plan of said asylum.

* * * * *

CHAP. 36.—An ACT appropriating the sum of five thousand dollars to construct fixtures and apparatus for lighting the Western lunatic asylum with gas.

[Passed February 25, 1852.]

1. *Be it enacted by the general assembly*, That the sum of five thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of constructing suitable fixtures and apparatus for lighting the Western lunatic asylum with gas, and that said sum of money be drawn from the treasury, upon the warrant of the auditor of public accounts, in favor of the directors of said Western lunatic asylum.

2. This act shall be in force from its passage.

CHAP. 40.—An ACT appropriating thirty-four thousand one hundred and eighty-eight dollars to heat the buildings of the Western lunatic asylum by steam, to erect covered connections and verandahs, and to enclose the grounds of said asylum.

29

Passed March 1, 1854.

1. Be it enacted by the general assembly, that there be and there is hereby appropriated out of the treasury of the commonwealth the sum of thirty-four thousand one hundred and eighty-eight dollars, to be paid on the orders of the board of directors of the Western lunatic asylum, to be applied by said board as follows: Fifteen thousand dollars, part thereof, to the heating by steam of the buildings of said asylum; nine thousand one hundred and fifty dollars, another part thereof, to the erection of covered connections and verandahs between the said buildings, and ten thousand and thirty-eight dollars, the residue thereof, to the enclosing of the grounds of said asylum: one-half of said aggregate sum of thirty-four thousand one hundred and eighty-eight dollars to be paid during the present fiscal year, and the remaining half of said sum during the next succeeding fiscal year.

2. This act shall be in force from its passage.

CHAP. 166.—An ACT appropriating the sum of ten thousand dollars to procure a supply of water for the Western lunatic asylum.

Passed March 19, 1858. 116

1. Be it enacted by the general assembly, that the sum of ten thousand dollars be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of procuring a supply of water for the Western lunatic asylum, and that the said sum of money be drawn from the treasury upon the warrant of the auditor of public accounts in favor of the directors of the said Western lunatic asylum; one-half in the present fiscal year, and the other half in the next succeeding fiscal year.

2. Be it further enacted, that the directors of said asylum be and they are hereby authorized and empowered to contract with the owner of any springs and land which may be deemed proper for the said supply of water, for the purchase of such springs and land as may be necessary adjacent to the same, not exceeding half an acre, and for such rights of way and other privileges as may be requisite for the purposes contemplated by this act; and in the event that they cannot agree with the proprietors of said springs and land for the purchase of the same and the necessary rights of way and other privileges, the

said directors are hereby authorized to proceed, in the mode indicated in sections six to eleven, inclusive, of chapter fifty-six of the Code, to obtain title to the same.

3. This act shall be in force from its passage.

CANNON HOUSE IN SURRY COUNTY.

CHAPTER 98.—An act concerning John Peter.

(Passed February 20th, 1824.) 101

1. *Be it enacted by the General Assembly,* That the auditor of public accounts shall be, and he is hereby authorised and required to issue a warrant on the public treasury in favor John Peter of the county of Surry, for the sum of one hundred and ten dollars, (being a balance due said Peter for the erection of a cannon-house, for the seventy-first regiment,) to be paid to the said Peter or his legal representative, out of any money therein not otherwise appropriated.

2. This act shall commence and be in force from the passing thereof.

GUN HOUSE RICHMOND ARTILLERY.

CHAP. 21.—An ACT to amend the several laws concerning the militia of this commonwealth, and for other purposes.

(Passed March 11, 1835.) 21

* * * * *

6. *Be it further enacted,* That the governor be, and he is here- 22
by authorized to furnish immediately to the Richmond Fayette and Portsmouth artillery companies, and from time to time to any other companies of artillery in the state, which may be furnished with cannon, and shall require the same, as many caissons and other needful equipments as, in his opinion, may be necessary and proper; and cause, where they may be necessary, suitable houses or shelters to be erected for the preservation and safe keeping of such caissons and cannon, with their necessary equipments; and also to arm and equip any troop or troops of cavalry, if he shall deem it expedient to do so. Any expense which may be incurred in pursuance of the provisions of this act, shall be defrayed out of any money in the treasury not otherwise appropriated.

JOINT RESOLUTIONS OF THE WEST VIRGINIA LEGISLATURE RELATING TO THE VIRGINIA DEBT QUESTION.

HOUSE JOINT RESOLUTION NO. 10, CONCERNING THE VIRGINIA DEBT.

(Adopted February 7th, 1895.) 494

Resolved by the Legislature of West Virginia:

That this Legislature hereby declines to enter into any negotiaton with the debt commissioners, or commission appointed under a joint resolution, adopted by the General Assembly of Virginia, in the month of March, 1894, looking to the settlement of the Virginia debt question, on the basis set forth in said joint resolution.

HOUSE JOINT RESOLUTION NO. 3.

(Adopted January 21, 1897.)

A resolution relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this Legislature that West Virginia does not owe one cent of the so called "Virginia debt," and that this Legislature is opposed to any negotiation on that subject.

(H. J. R. No. 6)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1899)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That this legislature declines and refuses to take any action in regard to what is known as the Virginia debt, or Virginia deferred certificates, either by considering any propositions of adjustment or settlement, so called, or by authorizing the appointment of any committee or committees having for their purpose the consideration of the same; and that it is the sense of this legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt or certificates.

(S. J. R. No. 2.)

JOINT RESOLUTION NO. 21.

(Adopted January 16, 1901.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia: 495

That this legislature declines or refuses to take any action in regard to what is known as the Virginia Debt, or Virginia Deferred Certificates, either by considering any proposition of adjustment for settlement so called, or by authorizing the appointment of any committee, or committees, having for their purpose the consideration of the same.

And, That it is the sense of the Legislature that the State of West Virginia is in no way obligated for the payment of any portion of the said debt, or certificates.

(H. J. R. No. 3.)

JOINT RESOLUTION NO. 3.

(Adopted January 21, 1903.)

Relating to the Virginia debt question.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject. And, *further*, that this legislature declines, and most emphatically refuses, to take any action in regard to what is known as the Old Virginia debt, or Virginia deferred certificates, either by the consideration of a proposition of adjustment for settlement, or by authorizing the appointment of any committee or committees having for their object or purpose the consideration of same; and that is the sense of this legislature that the State of West Virginia is in no way or manner obligated, either morally or legally, for the payment of any portion of the said debt or certificates. Nor do we owe any other state or territory in this Union.

(H. J. R. No. 7.)

JOINT RESOLUTION NO. 3.

(Adopted January 20, 1905.)

Relating to the Virginia debt.

Resolved by the Legislature of West Virginia:

That it is the sense of this legislature that the state of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on that subject.

IN THE

SUPREME COURT OF THE UNITED STATES.

No. , ORIGINAL.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF THE BONDHOLDING CREDITORS OF THE COMMONWEALTH OF VIRGINIA.

The Case.

In the first quarter of the nineteenth century the Commonwealth of Virginia entered upon a system of public internal improvements which, it was contemplated, should include the entire territory of the State. This system embraced in its design the construction of graded roads, bridges, canals, and railways, extending through the State from tidewater toward the Ohio river, and adapted not to the needs of any one region of the State only, but of the State as a unit in interest. The construction of these works was interrupted by the outbreak of the civil war, and their completion was prevented by the separation of the territory now form-

ing the State of West Virginia and the erection thereon of that new State. The cost of the construction of these works, so far as that construction had progressed up to the first day of January, 1861, was defrayed by the proceeds of loans made in the United States and in Europe, and evidenced by the bonds of the Commonwealth of Virginia, which were issued from time to time, as the exigencies of the work required, under the authority of several acts of the General Assembly of Virginia.

The amount of the public debt of the Commonwealth of Virginia, evidenced by the bonds issued under these acts, was, on the first of January, 1861, $33,897,073.82.

On the 20th day of August, 1861, certain citizens of Virginia, residing in the western parts of the State, assembled in convention in the city of Wheeling, and there adopted an ordinance to "provide for the formation of a new State out of a portion of the territory of this State," and, prior thereto, there was organized a form of government known as the "Restored State of Virginia."

On the 31st day of December, 1862, an act was passed by the Congress of the United States, which provided that the new State formed in pursuance of the ordinance aforesaid should, upon certain conditions, be admitted into the Union by the name of "West Virginia," with a constitution which had theretofore been framed for it and adopted by the people of that territory.

On the 20th day of June, 1863, the new State of West Virginia was formally admitted into the Union as one of the coequal States thereof.

The constitution under which the new State was admitted into the Union contained, among other provisions, the following, viz:

> "No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war.

"The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.

"An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

Sections 5, 7, and 8 of Article 8 of the Constitution.

From the year 1865 down to a short time before the institution of this suit the Commonwealth of Virginia had sought in every practicable way to obtain from West Virginia a friendly settlement of the matter, looking to the ascertainment of the reasonable and proper proportion of the public debt of the Commonwealth of Virginia, which, by her constitution, that State had assumed to pay; but, after her liability for an "equitable proportion" had thus been recognized for many years, West Virginia, by a subsequent convention, withdrew such formal recognition from her constitution, and, by repeated acts of her legislature, expressly disclaimed any liability whatever for any part of such public debt.

Appendix to the Record, p. 247.

Virginia, deprived of one-third of her territory and population, divested of those vast mineral sources of wealth, by the development of which she had reasonably expected to redeem her obligations, acquire a fixed and certain source of revenue, and restore contentment and happiness to the inhabitants of her western parts, had yet retained her credit in the money markets of the world, and no cloud of doubt

had as yet been cast upon her willingness and her ability to discharge her obligations.

The attitude assumed by those in control of the political government of West Virginia made it necessary for Virginia to act promptly and decisively with reference to her outstanding obligations.

By act approved March 30, 1871, the General Assembly of Virginia provided that—

> "The owners of any of the bonds, stocks or interest certificates heretofore issued by this State, which are recognized by its constitution and laws, as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the James River Company, and the bonds of the James River and Kanawha Company guaranteed by this State, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due on the first day of July, 1871, in six per centum coupon or registered bonds of this State, of the denomination of one hundred and multiples thereof, dated that day, and to become payable and due in thirty-four years after date, but redeemable at the pleasure of the State, after ten years, the interest so to be payable semi-annually, on the first days of January and July of each year. * * * The holders of the five per centum dollar bonds, may, in like manner, fund the same in like bonds, bearing five per centum, instead of six per centum interest."
>
> "3. Upon the surrender of the old, and the acceptance of the new bonds for two-thirds of the amount due, as provided in the last preceding section, there shall be issued to the owner or owners for the other one-third of the amount due upon said old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded, as provided in the last preceding section, and that payment of said amount, with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall thereafter be had between the States of Virginia and West Virginia, in regard to

> the public debt of Virginia existing at the date of the dismemberment, and the State of Virginia holds said bonds, as far as unfunded, in trust for the holder or his assignees; and provided further that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on said bonds, after July first, 1871, and for the interest accrued to that date, certificates, dated on that day, shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both as to the bonds and the certificates shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as may be made with West Virginia."

Under this act of 1871, and under the subsequent acts of 1879, 1882, and 1892, bonds and other evidences of indebtedness to the amount of several millions of dollars were surrendered by the holders thereof, and new bonds of the Commonwealth of Virginia, for two-thirds of their several amounts, and certificates for the other one-third of such amounts—representing the estimated proper proportion of such indebtedness to be borne by the State of West Virginia—were issued by Virginia and accepted by the holders of the old bonds who had surrendered them.

Under a joint resolution of the General Assembly of Virginia, approved March 6, 1894, and an act of March 6, 1900, a commission was created and—

> "authorized and empowered, by and with the advice and approval of the attorney general of Virginia, to take such action and institute such proceedings on behalf of the State as may, in the judgment of said commission and attorney general, be needful and proper to protect the interest of the State, and bring about, and carry into effect a settlement as aforesaid" (1 May's Compend., pp. 40-44).

On January 15, 1905, the commission addressed a communication to the Governor of West Virginia, which was approved by the attorney general of Virginia, and on the first of February, 1905, Mr. Randolph Harrison, a member of the commission, and on behalf of the commission, made an address before the finance committee of the legislature of West Virginia, in which he set forth fully and clearly the grounds on which a friendly adjustment of the matter should be entered upon by the two States (1 May's Compend., pp. 68-82).

On January 20, 1905, the legislature of West Virginia had adopted the following joint resolution, viz.:

> "*Resolved by the legislature of West Virginia,* That it is the sense of this legislature that the State of West Virginia does not owe any part of the so-called Virginia debt, and that this legislature is opposed to any negotiations whatsoever on the subject" (Appendix to Record, p. 248).

On the — day of ——, 1906, the Commonwealth exhibited her bill in equity in this court, in which are set forth fully and distinctly the grounds on which she asked the relief there prayed, and invoked the aid of this court to protect her from the intolerable burden of that proportion of the public debt incurred by the Commonwealth of Virginia during a period of forty years prior to the erection of the new State within her ancient borders, and created, as the bill charges, by the hearty concurrence and earnest efforts of the representatives in the legislature from that region of the old State which now forms the State of West Virginia, and which should be borne by West Virginia.

In February, 1907, the State of West Virginia appeared, by her attorney general, and tendered a demurrer to the bill on eight assigned grounds. On the argument before the court the defendant State, through her counsel, assigned a wholly distinct ground, on which the argument mainly proceeded. That ground was that a compact had been entered

into between the two States, by the terms of which the legislature of West Virginia had been made the sole arbiter of the fact and the amount of West Virginia's liability, and that this court was without jurisdiction to hear and determine that question.

The demurrer was overruled on all the grounds assigned and argued, and the defendant State was required to answer the bill.

In October, 1907, West Virginia filed her answer to the bill.

On May 4, 1908, a decree was made referring the cause to a special master, with directions to ascertain and report on seven designated subjects of inquiry. The special master heard the evidence offered on either side, and in March, 1910, he filed his report to this court, with certain documents referred to and more specifically indicated in a letter accompanying his report, and to be read and considered therewith.

(NOTE.—The attorney general of West Virginia has caused to be printed and has distributed a correct transcript of the pleadings in the cause, with all the proceedings had thereon, the oral and printed arguments of counsel, and the orders and decrees made in the cause, which by consent, with the approval of the court, will be used and cited in the further arguments offered, in lieu of or in connection with the original record.)

The Pleadings in the Case and the Issues Resulting therefrom.

In The State of Rhode Island *vs.* The State of Massachusetts, 14 Peters, 257, this court said:

> "The proceedings in this case will therefore be regulated by the rules and usages of the court of chancery. Yet, in a controversy where two States are contesting the boundary between them, it will be

> the duty of the court to mould the rules of chancery practice and pleading, in such manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of chancery pleading. * * * And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength."

That was one of the earliest cases brought before this court presenting a controversy between two States, and the views expressed there have since been somewhat modified; but we do not object to their application here in their strictest form.

Attention is called to the case presented in the bill and the answer, as showing what facts alleged in the bill are admitted in the answer, and what denials made in the answer are responsive to any allegations made in the bill, and also to the affirmative averments made in the answer which the defendant State, under the rules of chancery practice, must support by proof, but has wholly failed to do.

The bill is arranged in twenty-two numbered paragraphs, the first twenty of which each contains a distinct charge of some material fact. The answer following this order takes notice of each of these distinct charges of fact and undertakes to reply to them.

(1.) The bill charges that on the first day of January, 1861, Virginia was indebted in the sum of about $33,000,000, evidenced by her obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory, and that in addition to the above liability there was a large indebtedness to the commissioners of the sinking fund and to the literary fund of the State.

The answer of the defendant admits the charge of the

amount of the debt of $33,000,000, but denies the charge of indebtedness to the two boards.

(2.) The bill charges that "the completion of some of the main lines of improvement beyond the said range, and through to the Ohio river, *since the first day of January, 1861,* has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory, now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines east of said range been first constructed."

The answer of the defendant denies "that such increase was caused by the improvements made within her present territory *prior to 1861,* but nearly all of the improvements and developments of resources in said State have been made within the last twenty-five years, and are due to railroads and other public works constructed by her own people and by private capital brought within her territory, and by appropriations made by Congress and are *almost* entirely disconnected and independent of any expenditures made by Virginia prior to January 1, 1861, either by the proceeds of bonds issued and sold by her, or from any other means derived from the creation of any debt by her."

(3.) The bill charges that Virginia entered upon this scheme of internal improvements, in a very large measure, for the purpose of developing the resources of the western part of the State, now constituting West Virginia, and that it was with this view that she took upon herself the burden of debt for which her bonds were issued, and that in corroboration of this, as she further charges, the public records of the legislature show that the appropriations for the improvements, and the indebtedness incurred by the bonds issued therefor, were carried through the legislature by the votes of the members of the house and senate from the counties now forming the State of West Virginia, and against the votes of the members from the counties now forming Virginia.

The answer denies the charge of the motive and purpose, but admits the charge as to the votes of the members from the western counties.

(4.) The bill charges that the system of public improvements was incomplete in 1861, "though a very considerable portion of such improvements had, prior to that time, been constructed in the territory now constituting West Virginia in order to meet the needs of the people in that portion of the State for their local purposes."

The answer denies this charge in the very words in which it was made, and yet the report of the special master, under article 1, pages 31-36, shows hundreds of turnpikes, railways, and navigation companies constructed in the western parts of the State with the proceeds of these bonds long prior to 1861.

(5, 6, and 7.) These charges of the bill are not denied in the answer.

(8.) The bill charges, and sets out in exact terms, certain acts of the legislature of the restored State of Virginia, and states their legality and effect.

The answer does not deny the acts as recited, but denies the effect given to them in the bill.

This is matter of construction for the court.

(9.) The bill charges another act of that legislature.

The answer admits the act, but denies the effect given to it by the bill.

(10.) The bill recites certain provisions in the constitution of the State of West Virginia and states their effect.

The answer admits the provisions, but denies the effect as given in the bill, yet this court, in passing on the demurrer to the bill, has distinctly held that the effect charged by the bill was the true effect, and that the words "public debt" and "previous liability" referred to the public debt of Virginia and to nothing else.

(11.) The bill charges that after the year 1865 and prior to the year 1872 Virginia had made many attempts to have

the amount of West Virginia's liability on account of the public debt ascertained, but without effect.

The answer, through six of its pages, denies this charge, which is now established beyond dispute by the production of the official records of the two States.

(12.) The bill charges the efforts made by Virginia alone to effect a settlement with her bondholding creditors after her efforts to secure the co-operation of West Virginia had failed.

The answer makes no denial, but indulges in irrelevant comments on Virginia's course.

(13.) The bill charges that since the first day of January, 1861, Virginia has actually paid off, retired, and discharged, or has assumed and given her new obligations for the aggregate sum of over seventy-one million dollars on account of the common debt; that West Virginia, in the early years of her history, conceded that she should bear an equitable portion of this common debt, but that she has for a number of years refused to recognize that any liability whatever rested on her on that account.

The answer does not deny this charge, but contents itself with the remark that "this is a matter of which the Commonwealth of Virginia cannot complain."

(14.) The bill charges that by the acts for the settlement of her debt it was provided that the bonds of Virginia, so far as not funded in the new obligations issued by her, should be surrendered to and held by her, who would hold the same, so far as unfunded, in trust for the creditor who deposited the same, or his assigns, and certificates to this effect were given by her to each creditor who so surrendered.

The answer, not denying this charge, affirmatively avers that all the bonds so deposited were in fact "surrendered and cancelled," and that the Commonwealth of Virginia now holds said certificates in trust only for the owners thereof.

Which, with great respect for the State of West Virginia,

we venture to characterize as sheer nonsense and contradicted by the acts themselves.

The answer further denies, under this article, that "Virginia used any means for an amicable settlement of said debt with West Virginia, except as stated in paragraph XI of the answer."

(15.) The bill charges that as she has taken up and holds nearly all of the old bonds issued by her, she has now the right to call on West Virginia for a settlement, etc.

The answer, not denying the fact charged, denies that this fact gives Virginia a right to call on West Virginia for a settlement.

(16.) The bill charges that by reason of the facts charged she has a right and a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

The answer denies that Virginia has any claim against West Virginia on account of any payments made by Virginia; denies that West Virginia is liable for any part of the obligations mentioned in paragraphs 15 and 16 of the bill.

(17.) The bill charges the existence of certain obligations on which Virginia was bound prior to 1861 as guarantor, which should be included in the proposed settlement with West Virginia.

The answer denies the liability of West Virginia on account of such debts.

(18.) The bill charges as a recapitulation five grounds, on all or either of which West Virginia should be held liable for a proper proportion of the public debt of Virginia.

The answer denies that West Virginia is liable on any of these grounds except the second.

The second ground, as is manifest, is but a historical fact, which is recited, without any admission of its validity or force, in the same manner and to the same extent that a debtor who admits and agrees to pay a debt barred by limitations may be held liable on it, even though the deed in which such admission be made be held void and fraudulent.

(19, 20.) The bill charges that by a joint resolution, approved March 6, 1894, and by an act approved March 6, 1900, of the General Assembly of Virginia, a commission was created to bring about a settlement with West Virginia, and that such commission did "make most earnest efforts to bring about an amicable settlement of the matter."

The answer appears to deny the facts charged, and indulges in several pages of explanation.

This concludes all the charges of fact made in the bill and all the responses made to these charges by the answer of the defendant.

But the defendant did not stop in its answer with these responses, but proceeded to aver certain affirmative grounds of defense to the case presented by the bill, which were not responsive to any charge made in the bill, but rest upon the construction given to certain ordinances and acts of the legislature which are set out in the bill.

(1.) In paragraph XX of the answer (May's Comp., p. 22) it is averred as follows, viz.:

> "And so this respondent is advised and now avers, that when West Virginia framed her constitution and inserted in it the provision concerning the adjustment of the public debt of Virginia, and the Commonwealth of Virginia, through her legislature, by the act aforesaid approved the constitution of West Virginia, as the basis of her consent for the formation of that State and her admission into the Union, and upon the passage of the act of Congress admitting the said State into the Union, *a compact between the two States prescribing the manner in which this respondent's equitable proportion of the debt should be ascertained was concluded, and it became, and is binding upon the Commonwealth of Virginia and the State of West Virginia.*
>
> "The respondent avers that her equitable proportion of said debt cannot be otherwise ascertained or determined than by the action of the State of West Virginia, through her legislature, as provided by her constitution, nor can its liquidation be otherwise pro-

> vided for than by a sinking fund of sufficient amount to pay the accrued interest and redeem the principal of whatever sum may be thus ascertained within the period of thirty-four years as likewise therein provided. *Respondent therefore pleads and relies upon said compact in bar of plaintiff's right to prosecute and maintain this suit in this honorable court, and prays that the said bill may be dismissed.*"

(2.) The second ground of defense, nearly allied to the first, but so as with a difference, rests upon the ninth section of the ordinance passed by the convention of August, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State." It appears that the people who assembled in that August convention, with the purpose and intent of converting the territory of the "Restored State of Virginia" into the new State of West Virginia, recognized that some provision must be made for meeting and discharging such proportion of the public debt of the Commonwealth of Virginia as must reasonably be borne by that portion of the territory and population of the ancient Commonwealth which they proposed to erect into a new State, before the Congress of the United States would admit such new State into the Union, and accordingly they attempted to insinuate into the ordinance providing for such new State this ninth section, by which a fantastic device was contrived for relieving the new State of any liability whatever for any part of said public debt.

The XX paragraph of the answer avers as follows, viz.:

> "And when the constitution of West Virginia was framed and adopted in the year 1861, the said section nine was in full force, and both the Commonwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new State was to be formed, were satisfied with the methods therein provided for ascertaining this respondent's equitable proportion of said public debt, and the constitution was framed and adopted *and West Vir-*

ginia's equitable proportion of said public debt was assumed on the basis of the said ordinance and not otherwise."

In these two grounds so set out in the answer of West Virginia there is presented the sole defense which she here sets up to the demand of the bill, that she should be required to contribute to the discharge of a reasonable and proper proportion of the public debt of Virginia, created prior to the erection of the new State. Much of these grounds of defense has already been disposed of by this court in the decrees heretofore made in the cause, and the disposition of the several members of the court is quite unmistakably indicated in the course of the oral arguments made at the bar on the demurrer and on the order of reference. These are more minutely pointed out in the subsequent parts of this brief.

The contention made on behalf of West Virginia, then, is that the ninth section of the Wheeling ordinance, providing a method or scheme for ascertaining the equitable proportion of the public debt of Virginia, was a proposition made by Virginia to the inchoate State of West Virginia, and subsequently accepted by that State, and thereby became and continues a constituent term in a compact entered into between these two States.

That such ninth section was a valid, constitutional, and operative feature in the ordinance to provide for the creation of a new State out of a portion of the territory of Virginia.

It does indeed appear that the attorney general of Virginia seems to have assented to much of this view. In his oral argument before the court, at the October term, 1896, after reciting the ninth section of the ordinance, he said:

> "This is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of the new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards,

> in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitutes a primary obligation and lies at the very foundation of the right of West Virginia to be a State*" (1 May's Compend., p. 325).

And again, in his printed brief (2 May's Compend., p. 136), this learned attorney general says:

> "While the basis of settlement prescribed by the Wheeling ordinance, is, as we have always considered it, arbitrary and inequitable, we have never taken the position that that ordinance, reasonably and fairly construed, and taken and applied together with the Act of the Restored Government of Virginia of February 3, 1863, and section 8 of Article VIII, of the Constitution under which West Virginia became a State, was not binding on both States."

The writer of this brief, who, by the grace of this court, has been permitted to appear and argue this case on behalf of the bondholding creditors of the Commonwealth of Virginia (who are the sole beneficiaries under that trust which Virginia assumed, and in execution of which this suit was in large measure brought and prosecuted, and who must be the sole recipients of whatever amount may be here recovered), dissents in toto from the views expressed by the attorneys general of the two States respectively, and he has in the subsequent parts of this brief ventured to expose the fallacies which infect the views so presented. He will endeavor to show under subsequent headings in this brief:

> 1. That the ninth section of the ordinance was not "the basis upon which the consent of the Commonwealth of Virginia was given to the formation of the

new State." But that such ninth section was never, for one instant of time, recognized by any convention or legislature as having any binding force upon either State or person, and that as a proposition made by Virginia to West Virginia it was never accepted by the latter State.

2. That the ninth section was not "a stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given and which was afterwards accepted and assented to by the people of West Virginia."

3. That it was not "a contractual or a fundamental provision, and that it did not constitute a primary obligation, or lie at the foundation of the right of West Virginia to be a State."

West Virginia became a State by being admitted into the Union by the Congress of the United States, upon the consent, first obtained, of the Restored State of Virginia, and such consent, in its express terms, referred to the constitution framed for West Virginia, and did not by expression or implication refer to the ordinance or to any of its provisions.

4. The "basis of settlement prescribed by the Wheeling ordinance," whether taken alone or in connection with any legislation or constitutional provision, was never binding "on both States" or on either State.

It was not referred to in the case of Virginia *vs.* West Virginia, in 11th Wallace, and, as shown by Mr. Faulkner, the counsel for West Virginia in that case, had no relevancy or connection with the line of argument taken by either the counsel or the court in that case.

The bondholding creditors, whose interests this court has allowed to be represented here, are creditors of Virginia and of West Virginia alike. They are not formal parties to this

cause, but their interests are fully recognized and secured by the several acts of the General Assembly of Virginia, which form part of this record, and under which Virginia has received and holds the bonds deposited by them, as a trustee, as to the unfunded one-third of the amounts of such bonds. The Commonwealth of Virginia has by her bill exhibited here disclosed fully her relations to her bondholding creditors and to the State of West Virginia, who, as a constituent part of the original debtor State, is liable for an equitable proportion of such common debt. Her chief ground for the relief asked is that West Virginia has disclaimed and repudiated all liability for any part of such indebtedness, and Virginia fears that unless this codebtor be made to pay such equitable portion of the debt that the burden of paying it will fall upon her. She asks that this threatened danger be averted by a decree of this court requiring West Virginia to pay so much of such debt as may be ascertained to be her equitable proportion thereof.

These creditors insist that they should not be prejudiced in their rights by any contracts or agreements entered into between the two debtor States, or by any concessions or admissions that may be made as either the law or the facts by the counsel representing these States at this bar.

It will be observed that of the seven subjects for inquiry and report referred to the special master, five of them relate exclusively to the matters involved in the ninth section of the Wheeling ordinance. The master now reports, under the third paragraph of that order of reference, that the plan of ascertainment proposed by the ninth section of the ordinance bears no relation whatever *to the amount of the public debt.*

It may not unreasonably be inferred that such inquiry would not have been directed by the court but for the apparent concurrence of view of the attorneys general of the two States.

THE ARGUMENT.

The bill was filed by Virginia to have ascertained the proportion of the public debt of the Commonwealth of Virginia which should justly and equitably be borne by West Virginia, and to require her to pay such amount to the exoneration of Virginia from that portion of the common burden.

The first and controlling subject of inquiry is, What plan or method shall be adopted for ascertaining this proportion? But two have been proposed and urged by the parties to the cause.

It would seem to be obvious that the proper proportion of this public debt which should be borne by West Virginia should be ascertained by the proportion that her territory and population bore to the territory and population of the Commonwealth of Virginia on the first day of January, 1861, or on May 13, 1862, when Virginia consented to the erection of the new State, or on the 20th of June, 1863, when West Virginia was admitted into the Union.

On the part of Virginia and of her bondholding creditors, who are the beneficiaries of the trust which Virginia took upon herself, it is insisted that the only just and reasonable plan or method for ascertaining the proportion of the debt to be borne by West Virginia is that stated and approved by the writers on international or public law, and which was announced by Mr. Justice Field, in delivering the opinion of this court, in the case of Hartman *vs.* Greenhow, 102 U. S., 672. He said:

> "Duringthe war a portion of her territory was separated from her, and by its people a new State named West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were taken from her jurisdiction. But as the whole State had created the indebtedness for which the bonds

> were issued, and participated in the benefits obtained by the money raised, it was but just that a portion of the indebtedness should be assumed by that part which was taken from her and made a new State. Writers on public law speak of the principle as well established, that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them. On this subject, Kent says: 'If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement, their rights are to be enjoyed, and their obligations fulfilled by all the parts in common' (1 Comm., 25). And Halleck, speaking of a State divided into two or more distinct sovereignties, says: 'In that case the obligations which have accrued to the whole before the division are, unless they have been the subject of a special agreement, ratable binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of the courts and the practice of nations' " (International Law, c. 3, sec. 27).

Among the writers on public law, referred to by the learned justice, whose opinions concur in the view expressed by him, there may be mentioned the following:

Puffendorf, Law of Nature and Nations, Book VIII, chap. 12, sec. 5.

Phillimore, International Law, Part II, chap. 137.

Wheaton, Dana's ed., sec. 30.

Moore's Int. Law Digest, p. 334.

Wharton, Int. Law Digest, sec. 5, p. 19.

1 Openheim International Law, p. 122.

5 Moore on International Arbitration, pp. 4618-4619.

Mr. Hannis Taylor's International Law is cited with great approbation by the counsel for West Virginia and copious extracts from his chapter on this subject are quoted. Mr. Taylor, however, closes this chapter with a "summary" of

his views, which seems to have escaped the attention of counsel. It is as follows:

> "SEC. 168. After a careful review of all the authorities the general statement may be made, (1) That no matter whether a State is entirely extinguished by a division into two or more States, or (2) whether it loses its identity by being absorbed into another State, or (3) whether a State, without loss of its identity, has a portion of its territory taken from it to form an integral part of another State, or (4) whether such severed part is erected into an entirely new and independent State, all local charged and guaranteed debts to which certain domains and their revenues are dedicated survive as charges upon the localities to which they relate, with their equities unimpaired. In the case first named the general debt of the State would certainly be ratably binding, morally, if not legally, on its several parts. In the second, it passes as a whole to the absorbing State. In the third, the acquiring State should assume a ratable proportion of it, and in the fourth, every principle of equity and good conscience requires that it should be provided for out of the common State property, and the residue divided in the proportion to the resources of the two distinct Commonwealths. *In the notable case of West Virginia that obligation, though formally recognized, has never been discharged.*"

The public debt of the Commonwealth of Virginia is evidenced by her bonds issued by her, under the authority of several acts of the General Assembly, from the year 1823. These bonds are shown in the schedules annexed to the two first paragraphs of the report of Special Master Littlefield, as to which the master says (Report, p. 29):

> "The schedules hereto annexed and marked Par. I, Ex. 1, Par. I, Ex. 2; Par. I, Ex. 3, show by what authority of law, and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness."

From these schedules there has been compiled a series of tabulated statements showing that these bonds fall into eight distinct groups, distinguished by the purposes for which each series of bonds was issued, the rates of interest borne by each, and the proportion of each which should be borne by Virginia and West Virginia respectively. There is further shown the calculations made upon the established bases of territory, population, and valuation, by which is ascertained the exact proportion of the entire debt which West Virginia should bear on each of such bases.

West Virginia's Proportion of the Public Debt under Paragraphs I and II.

The amount of the public debt of Virginia as found by the master	$33,897,073.82

Annexed to the report, under paragraph I, are three tabulated schedules which, the master states, "show by what authority of law and for what purposes the same was created, and the dates and nature of the bonds being the evidence of said indebtedness" (page 29).

It appears from Schedule 3 that of the bonds evidencing this debt certain of them bore interest from their date to their maturity at the rate of six per cent per annum to the amount of	$30,842,659.43
and certain others bore interest at the rate of five per cent	2,077,204.50
Making the total of interest-bearing principal	$32,919,953.93
Which, with the interest accrued thereon to January 1, 1861	977,209.89
makes the aggregate debt as of January 1, 1861	$33,897,073.82

The master was directed to ascertain and report the extent and assessed value of the territory of Virginia and of West Virginia as of June 20, 1863, and the population thereof, with and without slaves.

He has responded to that direction in paragraph II, page 37, of his report, by a tabulated statement, which shows that—

West Virginia contains of the extent of
the area of the old State..... 36.1843 per cent
and of the land area, exclusive of water.. 37.3686 per cent
and of the assessed valuation..... 21.7812 per cent
and of the population, with slaves..... 24.5125 per cent
and of the population, without slaves... 33.5231 per cent

From the evidence taken before the master, and which appears in the printed volume accompanying his report (pages 341-379), I have had prepared a tabulated statement, which will be found in the printed pamphlet filed as part of this brief, which shows, on pages 16 and 17, West Virginia's proportion of the public debt, calculated on each of the foregoing bases, *including* therein the bonds held by the sinking fund, the literary fund, and the board of public works.

West Virginia's proportion on the basis of
land area $39,637,940.59
West Virginia's proportion on the basis of
total area 38,381,719.81
West Virginia's proportion on the basis of
assessed valuation 23,103,940.50
West Virginia's proportion on the basis of
population, with slaves 26,003,229.86
West Virginia's proportion on the basis of
population, without slaves 35,528,615.64

Since the master's report was returned, showing that he has rejected the claim of Virginia to have the bonds held by

these State boards, included in the total amount of the public debt, evidenced by the State bonds, I have had the calculation made on that basis (it appears in two printed pages filed in the pamphlet with brief):

Land area	$36,595,744.45
Total area	35,435,938.09
Assessed valuation	21,330,722.30
Population, with slaves	24,007,492.37
Population, without slaves	32,829,776.90

The pamphlet filed with this brief shows that the public debt of Virginia on the first of January, 1861, was evidenced by bonds issued under different acts of the legislature, maturing at different periods, and bearing different rates of interest. These bonds are classified in eight separate groups, an index of which appears on page 1 of the pamphlet, and each of said groups is presented as required by paragraph I of the decree.

If the liability of West Virginia is determined in accordance with the doctrine laid down by the writers on public or international law, which appears to have been approved by this court in Hartman *vs.* Greenhow, *supra*, such liability must be for an ascertained proportion of the public debt of Virginia evidenced by said bonds, such proportion to be ascertained on one or the other of the several bases above calculated. The public debt for which West Virginia is liable is the debt evidenced by the bonds, and must be, therefore, for the principal of said bonds and the interest that accrued thereon up to the maturity thereof. The interest has been accordingly calculated on each of the eight groups of bonds according to rate prescribed by the bond and up to the date of its maturity.

The constitution of West Virginia, under which she was admitted into the Union, provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by the State," &c.

An equitable proportion of the public debt as it stood on January 1, 1861, embraced both the principal and the interest of the debt as it was then evidenced, and if it was evidenced by bonds that bore interest until they were redeemed or paid, West Virginia's proportion of the debt so evidenced, embraced the principal and the interest thereon up to the redemption of the bond or to the expiration of the period through which, according to its terms, the bond bore interest.

Even against a sovereign government, when its consent to pay interest "has been manifested by an act of its legislature, or by a lawful contract of its executive officers, interest has been allowed" (United States *vs.* North Carolina, 136 U. S., 216). The United States has been required to pay interest in one case on an implied contract (United States *vs.* New York, 160 U. S., 598).

Both on the ground of public or international law and on the express provision of the constitution of the State, under which Congress admitted it into the Union, the liability of West Virginia for an equitable proportion of the public debt of Virginia appears to be unavoidable and, indeed, does not appear here to be questioned.

We have then "the amount of that public debt as of January 1, 1861, the form in which it was evidenced, the authority of law by which it was created, and the dates and nature of the bonds and other evidence of said indebtedness." We have the extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves. We have then every factor necessary for a correct ascertainment of the actual amount of the equitable proportion of the public debt which West Virginia should contribute, and we have all the calculations accurately made on each of the several bases indicated by the court in its decree, and we show what that proportion is under each of said several bases.

Of the five several bases on which the ratable proportion of the debt to be borne by West Virginia may be ascertained, the least reliable is that of the "assessed valuation" of the real and personal property. The last assessment of real estate prior to January 1, 1861, was made in 1856, the assessments being at that time made every ten years, and the master has shown in his treatment of this subject, under paragraph V (pages 142 to 173), that the assessment of that year forms no safe or fair basis. He has pointed out that both real and personal property suffered great depreciation in quantity and in value during the early period of the war.

Paragraphs IV and V of the decree do not appear to have been intended by the court as the means of affording bases for the ascertainment of the proportion of the *public debt to be borne by West Virginia*, but only, as their language imports, for affording a basis for ascertaining "such proportion of the *ordinary expenses of the government of Virginia* since any of said debt was contracted as was properly assignable to the counties which were created into the State of West Virginia."

Paragraph II (page 37) directs the ascertainment of "the extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves."

The decree gives no direction that warrants the distinction taken in the report between the land area and the water area of the two States. It only directs that the "extent of the territory" be ascertained. The difference is too small to justify a formal exception to the report on that ground, and we submit that as valuation is the object sought, and as land only, and not the water surface, was the subject of valuation, that the land area affords the only proper basis.

As to the matter of "slaves," they appear in both the States, but in far greater number in Virginia, in proportion to the entire population, than in West Virginia. How far they should be taken into any account in this case is ques-

tionable, because their status as persons was uncertain and their value as property was even more uncertain. The Emancipation Proclamation of President Lincoln certainly impaired the value of slaves as property in the border States of the South, while it did not tend to make them citizens. It made both their value and their status uncertain, and hence they cannot safely be accepted as fixed factors in any equation employed to ascertain the certain proportion of the public debt of Virginia which West Virginia should bear. They were without civil or political capacities in either State, and should not be reckoned as part of the population, on the basis of which the proper proportion of the debt due from West Virginia should be ascertained. The only fair, reasonable, and just bases on which such proportion can properly be established are total population of white citizens and total land area of the several States.

The amount of the public debt of Virginia as of January 1, 1861, is ascertained and is undisputed.

The evidences of that debt are shown to be bonds, issued by the Commonwealth, and which appear by the master's report to have been issued for different amounts and at different dates and with different periods of maturity. (See schedules annexed to paragraph I, "Joint Exhibit A-1," page 213, Record). The pamphlet filed with this brief shows the calculations by which the amount to be borne by West Virginia is ascertained on each of the several bases.

The bonds evidencing the public debt of Virginia prior to the first day of January, 1861, and surrendered by the holders thereof to the Commonwealth of Virginia, under the provisions of the several funding acts, were not canceled or extinguished as to the one-third of the amount thereof, estimated to be the equitable proportion of such debt to be borne by the State of West Virginia.

It has been repeatedly insisted by counsel for West Virginia, in their oral and printed arguments, that all of the

bonds that were surrendered by the holders under the funding acts were actually canceled and thus extinguished, and that both States were thereby released from liability by reason of those bonds.

By the act of March 30, 1871 (pages 14-17), it was provided in section 2:

> "The owners of any of the bonds * * * *may fund two-thirds of the amount of the same*, together with two-thirds of the interest due or to become due thereon * * * in coupon or registered bonds of this State."

And in section 3:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owners or owner, for the other one-third of the amount due upon the bond * * * so surrendered, a certificate bearing the same date as the new bond, setting forth *the amount of the bond which is not funded*, as provided in the last preceding section, and that payment of such amount * * * will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia, * * * and *that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees.*"

And in section 4:

> "*Each bond* * * * *to be funded* as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act, * * * The treasurer shall, by proper endorsement, written or stamped upon each bond * * * *so surrendered and delivered to him*, cancel the same and endorse thereon the date of such cancellation." * * *

So it appears that the cancellation was to be made only of the bonds that were to be funded, and not of so much of such bonds as were not to be funded, but were to be held by Virginia in trust for the holder or his assignee. By the act of March 28, 1879, section 6 (page 20), it was expressly provided:

> "The rules prescribed under the act approved March 30, 1871, in respect to preparing, signing, and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling, and registering the old bonds shall be observed by the officers of the treasury in the execution of this act, * * * Whenever an obligation of the State shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. * * * But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act, holes shall be punched in one or more places and in such manner *as to render a new funding of the same impossible*, and every bond or coupon so cancelled shall be filed for reference."

In the 7th section it was provided:

> "The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability *on account of said certificates*."

By none of these acts were the bonds surrendered by the holders for funding directed or authorized t obe canceled, except to the extent that such bonds could be funded. They could not be funded as to the one-third of their amount estimated to be due from West Virginia.

In his oral argument before this court (page 351), Mr. Carlisle said:

> "Now what was the obligation assumed by Virginia by the issue of these certificates? Was it to pay money? None of the counsel has said to the court that if Virginia should fail to provide for this additional one-third by a settlement with West Virginia, that the holders of these certificates could come back upon the State of Virginia and demand their money. That has not been suggested. What the holder could do, perhaps, would be to demand his bond, but that would be of no value to him, because the bond has been cancelled, and I will also show before I get through that nearly all of the holders of these certificates issued under the act of 1871 have deposited their certificates with the commission under a contract which releases Virginia."

It is certainly true that no suggestion has been made by counsel for Virginia that the certificates issued by her were intended to, or that they did, create or evidence any indebtedness on her part to the holders of them. And hence it was that in the acts and on the face of the certificates was the admonition, distinctly given, that the "acceptance of the certificate for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on *account of this certificate.*"

And on each certificate it was stated that it was issued "without recourse upon this Commonwealth."

It was to expressly declare that Virginia, being already liable on the bonds *held by her in trust for the owner*, would not be made liable for the same debt by virtue of these certificates, which were issued as mere memoranda of the trust on which Virginia held the bonds as to the unfunded one-third of their several amounts.

The bondholders did surrender their bonds to the State of Virginia, the debtor and obligor. Such surrender, unexplained or unqualified, would tend to prove the satisfaction

and extinguishment of the bonds as evidences of indebtedness. But Virginia was satisfying them only as to two-thirds of their amounts. The other one-third was not paid, satisfied, or discharged, but was kept alive as a still subsisting obligation. Hence the agreement, that all the bonds so surrendered should be held by Virginia as satisfied and extinguished as to the two-thirds paid by Virginia by the substitution of her new bonds, but as held in trust by her for the creditors to the extent of the remaining one-third, and *as to this one-third the bonds were not canceled*, and this the acts of the legislature and the certificates themselves fully attest.

The Commonwealth of Virginia has never been discharged from liability on the bonds issued by her prior to January 1, 1861, *except as to the extent of the two-thirds of the amount thereof, for which amount the holders of the old bonds surrendered them as to such two-thirds and received in lieu thereof new bonds of the Commonwealth.*

In the brief filed on behalf of West Virginia in support of the demurrer to the bill, and repeatedly thereafter, it has been insisted that—

> "these certificates were accepted by the creditors without recourse upon Virginia, in payment or settlement of this one-third of her debt, thereby releasing Virginia from the payment of the one-third of her old, original debt" (1st May's Comp., page 121).

Mr. Carlisle, in the brief signed by him alone (1st May's Comp., page 383), makes the same assertion, but with some qualification. He says:

> "We think it clear that Virginia has been released by the provisions contained in the various acts, by the surrender and cancellation of the bonds, by the acceptance of the certificates under the acts, and by the contracts entered into between the creditors and the commissions; but, even if there had been no for-

> mal or voluntary release, the State has repeatedly declared in the funding acts and in the joint resolution of March 6, 1894, and the act of March 6, 1900, under which this act is brought, that she is not liable for the unfunded one-third of the debt."

A brief notice of the several funding acts here relied on will serve to dispel the notion that they provided for, or even contemplated, release of Virginia from her obligation of the unfunded one-third of her bonded debt.

The act of March 30, 1871, is set out in full (May's Comp., pages 14-17), and it contains nothing to warrant the assertion. Indeed, counsel for West Virginia, in their first brief, expressly say:

> "Under the terms of this statute Virginia still remained liable for the payment of her entire debt, including the one-third unfunded, for which deferred certificates were to be issued, payable upon a final settlement between Virginia and West Virginia" (May's Comp., page 112).

The next act in course was that of March 28, 1879 (*Ibid.*, pages 17-22). It does provide in section 7, page 21:

> "The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia *from all liability on account of this certificate.*"

Not from all liability on account of her *bond,* which was held by Virginia, unfunded and uncanceled, in trust for the depositor as to the one-third thereof, but from liability on account of this *certificate.* The reason is plain. The State acknowledged her liability on her bond, but the bond had been surrendered into her hands by the holder of it, because she had paid two-thirds of the full amount of it. She had not paid the remaining one-third of it, because she looked to West Virginia to provide for that, but the holder

entrusted her with the bond on her assurance that she would hold it in trust for him. Being liable on the bond, she did not intend that she should be also liable on the certificate, which merely represented the bond. She was not willing to have outstanding two written, negotiable evidences of the same indebtedness. Hence the stipulation that she should not be held liable "on account of said certificate."

The third act was that of February 14, 1882 (*Ibid.*, pages 22-31). The form of the certificate prescribed by this act provided on its face (page 30) as follows:

> "The Commonwealth of Virginia has this day discharged her equitable share of the bond for —— dollars, held by —— ——, dated the — day of ——, and numbered —, leaving a balance of —— dollars, with interest from ——, to be accounted for by the State of West Virginia, *without recourse upon this Commonwealth.*"

Her "equitable share of the bond" she had estimated at two-thirds of its full amount. The remaining one-third she estimated to be the equitable share of West Virginia, but she knew that she was legally liable for the entire bond, and that this certificate was but an additional evidence of so much of that liability, and for that reason she provided that she should not be liable on the certificate.

The next act was that of February 20, 1892 (*Ibid.*, pages 32-40). The form of the certificate prescribed by this act appears on page 37, and it concludes, "without recourse upon this Commonwealth."

So it appears that by none of the acts of the Virginia legislature providing for the ascertainment of Virginia's share of the public debt was it stipulated or declared that Virginia should be released from her legal liability for the one-third of the debt evidenced by the West Virginia certificates.

West Virginia's Plan.

On the part of West Virginia, it is insisted that the two States have, by a special agreement or compact entered into between them, provided that the method for ascertaining West Virginia's proportion of the public debt, proposed in the ninth section of the ordinance passed on the 20th day of August, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," is the only method proper to be now employed.

That ninth section is as follows, viz.:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

In the answer filed by West Virginia in this case, it is averred in paragraph XX (May's Comp., page 21):

> "After the promulgation of the ordinance of the convention the people of Virginia, as well those residing in that part of the territory to be converted into a new State as those residing in the other parts of the Commonwealth of Virginia, which constitutes the present territory of that State, were fully advised as to the provisions of the said ordinance, defining the manner in which the equitable proportion of said debt was to be ascertained, and when the con-

> stitution of West Virginia was framed and adopted in the year 1861, the said section nine was in full force, and both the Commonwealth of Virginia and the citizens residing in that portion thereof out of which the proposed new State was to be formed were satisfied with the methods therein provided for ascertaining respondent's equitable proportion of the said public debt, and the constitution was framed and adopted, and West Virginia's equitable proportion of said debt was assumed on the basis of said ordinance and not otherwise."

In his argument before this court, Mr. Carlisle said (May's Comp., page 290):

> "Our argument was that Virginia had made a proposition in the 9th section of the ordinance, and tendered it to West Virginia; that when West Virginia's convention assembled, which was the first time that State could speak on the subject, it accepted the proposition, with the addition to it, that the legislature of West Virginia should be the tribunal to ascertain her just proportion of the debt, and that Virginia, subsequently, by the passage of the act asking for the admission of West Virginia into the Union, under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it. So, we argued, that the compact consisted not only of the 9th section of the ordinance, but of the whole of the eighth section of the West Virginia constitution, including that part of it, of course, which provided that the legislature should ascertain her just proportion."

Here then is the alleged "compact" entered into between the two States of Virginia and West Virginia, and here are the grounds upon which it is claimed that such compact was actually entered into, and on which alone its existence is maintained.

Let these grounds be examined.

There was a convention in Wheeling, in June, 1861, of the people of that part of Virginia which at present consti-

tutes the State of West Virginia, and that convention did, in August of that year, adopt the ordinance entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," and the ninth section of that ordinance was as above recited, and that convention did adjourn *sine die*.

There was another convention called to frame a constitution for the proposed new State of West Virginia, and that convention did frame such constitution. But it is altogether inaccurate and misleading to speak of this second convention as though it were another and distinct people there assembled, to say, "When West Virginia's convention assembled, which was the first time that State could speak on the subject;" for the fact cannot be disguised that the second convention represented the same people as the first, and none other. The same counties were represented in both conventions, and these were the same counties that were represented in the legislature of the Restored State of Virginia, and then later of the State of West Virginia. The fallacy that pervades and infects the entire argument lies in the assumption that two distinct bodies of people were concerned here and were contracting with each other.

In the written opinion given by Attorney General Edward Bates to President Lincoln, as to the action he should take on the act of Congress admitting West Virginia into the Union, he said:

> "And the legislature which pretends to give the consent of Virginia to her own dismemberment is (I am credibly informed) composed chiefly, if not entirely, of men who represent the forty-eight counties which constitute the new State of West Virginia. The act of consent is less in the nature of a law than of a contract. It is a grant of power; an agreement to be divided. And who made the agreement? The representatives of the forty-eight counties with themselves. Is that fair dealing? Is that honest legislation? Is that a legitimate exercise of a constitutional power by the legislature of Virginia? It seems to

> me that it is a mere abuse, nothing less than an attempted secession, hardly valid under the flimsy forms of law."

The tenth section of the "ordinance to provide for the erection of a new State," &c., provided that—

> "when the General Assembly shall give its consent to the formation of the new State, it shall forward to the Congress of the United States such consent, together with an 'official copy' of such constitution, with the request that the new State may be admitted into the Union of States."

It did not provide that a copy of the "ordinance" should be forwarded to Congress, and there is nothing in this entire record to sustain the assertion that Congress ever saw or knew of that ordinance or of its provisions.

The constitution framed by the November convention for the new State of West Virginia provided, in the eighth section of its eighth article, as follows, viz.:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

On the 18th of May, 1862, the legislature of the Restored State of Virginia gave its consent to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of * * *; then follows the names of the forty-eight counties forming West Virginia,

> "according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed,

proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Provision is further made in this act for the inclusion of the counties of Berkeley and Jefferson and Frederick whenever the voters of said counties shall ratify and assent to the constitution.

The Congress of the United States, by act approved December 31, 1862, in which the names of the forty-eight counties were recited, did admit the State of West Virginia into the Union.

These were the same counties, and none others, that constituted the Restored State of West Virginia.

The argument that the convention which framed the constitution for West Virginia was bound by the provisions of the ordinance adopted by the preceding convention, and that the requirement of the eighth article of the constitution, that "the legislature shall ascertain the same as soon as may be practicable," meant that the legislature should ascertain the equitable proportion of the public debt to be borne by West Virginia, according to the method prescribed by the ninth section of the ordinance, finds no support from anything disclosed in this record.

That ordinance, as shown by its title, was to provide for the formation of the new State. All of its sections, except the ninth, were directed toward that end. The State was formed when its constitution was framed and adopted by the people. The ordinance then became *functus officio*, and ceased to have any operation. The ninth section, as said by Mr. Carlisle in his argument, "was a proposition made by Virginia, and tendered to West Virginia." If this be true, then West Virginia's day of grace was when she was assembled in convention in November, 1861—three months after the proposition was tendered; then, and only then, while she was framing her constitution could she have signified her acceptance of the proposition by embodying it in her constitution. But she did not embody it. She embodied

something altogether different, and made no reference to the ninth section of the ordinance. But the view now urged on behalf of the defendant State is, that while her constitution does not expressly refer to the ordinance, yet when it directed that the legislature should ascertain the amount due from West Virginia it meant that the legislature should ascertain such proportion by the method proposed by the ninth section of the ordinance, which is merely assuming the very thing that West Virginia has undertaken to prove.

The entire defense here made by West Virginia to the bill rests upon the ninth section of the ordinance—that the fantastic plan there proposed for ascertaining the "equitable proportion of the public debt" which the constitution prescribed should be assumed by West Virginia—was, by solemn compact between the Commonwealth of Virginia of the one part and the State of West Virginia of the other part, adopted and agreed upon as the method to be employed.

Few men in the State of West Virginia had more intimate and thorough knowledge of the history of those times than the Hon. Charles James Faulkner, a lifelong resident of Berkeley county, a Representative in Congress from that district prior to the Civil War, and United States Minister at the Court of France at the breaking out of that war. Mr. Faulkner had been leading counsel for the State of West Virginia in the case of Virginia *vs.* West Virginia, reported in Eleventh of Wallace, which involved the question of the status of Berkeley and Jefferson counties, and to his ability and skill must be allowed the credit of that victory. Because of his familiarity with the whole history of the evolution of West Virginia, his opinion was asked as to the effect that should be allowed to the ninth section of the ordinance. His opinion was given in 1884, in the course of which he said:

> "After a careful examination of the case of Virginia *vs.* West Virginia, I cannot perceive that the court attaches any peculiar legal efficacy to the ordinance of August, 1861. It is true it referred to that

> ordinance historically, but only for the purpose of showing that even at that early period of our history the counties of Berkeley and Jefferson were contemplated as possible additions to the State of West Virginia. My reasons for supposing that the court might not regard the ordinance of 1861 as prescribing a binding rule for settlement of the debt are, that by the subsequent constitution, framed and adopted by the people of West Virginia, this basis of settlement is abandoned, and we are there made to assume an equitable proportion of the public debt of Virginia prior to January 1st, 1861, and the legislature is directed to ascertain the same as soon as may be practicable. Virginia, in giving her consent to the formation of a new State in May, 1862, expressly does so upon the provisions set forth in the constitution of West Virginia. Upon these terms we were admitted by Congress as a State of the Union, and the constitution of 1863, thus ratified by the two States and by Congress, would be more likely to be taken as the basis of the contract than the effete ordinance of August, 1861."

And the view here expressed by this great lawyer, that the constitution framed and adopted by the people of West Virginia altogether superseded and supplanted the propositions of the August convention, finds strong support in the decision of this court in the case of Strauder *vs.* Graham, reported in the 10th of Howard, where it was said:

> "The State comes in under the provisions of its own constitution; you cannot look outside of it; you cannot look behind it. This is the final, ultimate expression of its civil and political rights and powers."

It is denied on the part of Virginia that the method proposed by the ninth section of the ordinance adopted by the convention on the 20th of August, 1861, for ascertaining West Virginia's just proportion of the public debt of Virginia, formed part of any compact or agreement whatever between the two States, or of the consent given by Virginia

or that such method was proposed as a condition or as a measure upon the acceptance or rejection of which the formation of the new State in anywise depended.

It does not purport to have been proposed as a condition or term of an agreement between the two States. The form and structure of the section in which it appears precludes the belief that it was anything more than a suggestion or recommendation offered to the convention which was soon thereafter to assemble. It is wanting in all the characteristic features of a solemn condition or limitation prescribed by a State as a term upon the acceptance of which alone she will consent to a cession of a portion of her territory. Many compacts between States of this Union have been before this court, but all of these have appeared clothed in a form and expressed in language that left no room for doubt as to their significance and purpose.

The compact between Virginia and Maryland in 1785, entered into at Mt. Vernon, was clear, formal, and unambiguous, and stated in a series of distinct paragraphs, each embodying a distinct term of the agreement.

City of Georgetown *vs.* Alexandria Canal Co., 1 Peters, 94.

The compact between South Carolina and Georgia of April 12, 1787, was expressed in solemn, formal style in numbered articles.

South Carolina *vs.* Georgia, 93 U. S., 4.

And so in the compacts which received consideration by this court in the cases of—

Poole *vs.* Flegar, 3 Wheat., 212.
Burton, lessee, *vs.* Williams, 3 Wheat., 529.
Green *vs.* Biddle, 8 Wheat., 1.

The *subject-matter* of the ninth section of the ordinance—that is, the mere plan or method by which an amount should be ascertained—cannot be made the subject of a compact or

a condition upon which an existing State consents to a cession of part of her territory for the erection of a new State.

The subject-matter of such compacts cannot be allowed to embrace any other subjects than the extent of the territory so ceded and the usual and ordinary incidents appurtenant to such territory.

All other matters fall within the exclusive power and control of the new State so formed.

In none of the compacts made between States does it appear that the parent State has ever sought or been allowed to impose on the new State any such conditions, limitations, or burdens as were not immediately connected with the territory ceded for the new State.

In Virginia *vs.* Tennessee, 148 U. S., 520, and in Wharton *vs.* Wise, 159 U. S., 170, this court, referring to section 10 of article 1 of the constitution, prohibiting any State from entering into any agreement or compact with another State, quote from Story, Comm., section 2403, as follows:

> "Compacts and agreements might then very properly apply to such as regarded what might be deemed mere private rights of sovereignty, such as questions of boundary, interests in land situate in the territory of each other, and other internal regulations for the mutual comfort of States bordering on each other."

The territory ceded, its boundaries, the rights to and in water courses flowing through and by it, the rights, titles, and interests therein acquired from the parent State, these and other kindred matters may form the subject of a compact between States, but other matters affecting the domestic concerns of the new State, such as the basis and the rate of taxes to be laid therein, its police policy and regulations, its powers in the contracting and payment of its public debts, all these, and others like them, are beyond the power of the parent State to control or in anywise affect, and are exclusively within the control of the sovereign State so created.

The public debts of a State are burdens resting upon it,

for the discharge of which the revenues of the State arising from taxation laid upon its lands are justly applicable, and where a State burdened with a large public debt is divided into two or more States it may very well be deemed proper and provision may be made by conditions annexed to the cession or by compact between the parent State and each of the proposed new States that such new States should assume and bear their respective proportions of such public debt. The new States may thus be required to take their respective portion of the territory ceded, with the burdens resting upon such portions.

All other matters connected with the discharge of the liabilities thus assumed must be left to the new State so assuming them. Any other requirement would indeed be, what Mr. Justice Johnson, in Green *vs.* Biddle, 8 Wheat., 99, characterized as "cutting deep indeed into the sovereign powers of the State."

Virginia might with great propriety have imposed the condition to the erection of the new State within her territory that such new State should take upon herself a just proportion of the public debt. She knew that West Virginia would be liable—under the doctrine of public or international law—for her just proportion, but what concern was it of Virginia's how West Virginia should ascertain the amount of such liability, or whether she did so by her legislature or her Governor or her treasurer or by the method prescribed by the ninth section of the ordinance? Virginia knew, as any creditor would know, that if the amount so ascertained was not a "just proportion" it would not be accepted as such. Why should Virginia, in convention assembled, insist that the new State, for whose creation she was providing, should bear a just and reasonable part of a common debt, and then further insist that such part should be ascertained only by the new State, through her legislature, and by a method which is admitted by counsel and found by the master in this case to have no relation whatever

to the amount of that debt? This inquiry serves to bring to the light the grave fact, not adverted to heretofore, that the State of Virginia, which adopted this ordinance and gave its consent to the creation of the new State, consisted only of the same territory and the same people who were to constitute the State of West Virginia.

Less than one-third of the territory and less than one-third of the population of the Commonwealth of Virginia were participating or represented in the conventions and legislatures that were engaged in the creation of this new State.

To be sure, they were recognized by the political departments of the Federal Government as being the Commonwealth of Virginia, and it is beyond question that the political product of their labors—the new State of West Virginia—was invested with sovereignty and autonomy that are indestructible and must endure. But will that panoply serve, in this judicial investigation, to shield this defendant State from the scrutiny that must result in the discovery that the two alleged contracting parties—the one submitting a proposition and the other accepting it—were in truth and in fact but one person and the same person throughout? The counties that composed the Restored State of Virginia, and which were represented in these conventions and legislatures, were the same counties and none other that composed the State of West Virginia and were represented in her councils.

Here we find the explanation of the curious feature that the State of Virginia in giving her consent to the erection of West Virginia imposed it as a condition of that consent that West Vrginia should be the arbitrator to ascertain the amount of her "just proportion," and that she ascertain it by a method which Virginia then knew, and which we all know now, would bring Virginia in debt to West Virginia, or else would find a very small balance the other way.

The public debt was evidenced by the bonds of Virginia

to the amount of about $33,000,000. These were outstanding in the hands of holders for value. To the extent that West Virginia was released from her liability on these bonds would the liability of Virginia be increased. Why, then, should Virginia desire to release West Virginia from her just proportion of this liability? Because the Virginia that was thus seeking to release West Virginia would in a short time cease to exist; she would be merged into and become herself West Virginia, and so, when the bondholder presented himself and demanded payment of the bond of Virginia held by him, the only Virginia remaining to make response to his demand would be the present Commonwealth of Virginia, and when she should call on West Virginia to contribute her proper proportion of this common indebtedness she would be met by the reply that has greeted us here, "Virginia has entered into a compact with West Virginia by which West Virginia has been released from all liability on these bonds."

No Compact Was Ever Entered into Between Virginia and West Virginia.

The compact, as West Virginia contends, was formed by a proposition made by Virginia to West Virginia by and through the ninth section of the Wheeling ordinance. This proposition, as contended, was accepted by West Virginia by and through the eighth section of the eighth article of her constitution, "with the addition to it that the legislature of West Virginia should be the tribunal to ascertain her just proportion of the debt, and that Virginia subsequently, by the passage of the act asking for the admission of West Virginia into the Union under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it." (Carlisle's argument, 1 May's Comp., p. 290.)

Conceding, for the sake of the argument, that the plan for ascertaining West Virginia's just proportion of the public

debt was a proposition submitted by Virginia for West Virginia's acceptance, *did West Virginia ever accept it as it was offered?* It is admitted that she did not; but it is said that she did accept it *with an additional term added.* It is insisted that Virginia subsequently acceded to this additional term by the act of May 13, 1862.

In Minneapolis, &c., Railway Co. *vs.* Columbia Rolling Mill, 119 U. S., 149, this court said:

> "As no contract is complete without the mutual assent of both parties, an offer to sell imposes no obligation until it is accepted according to its terms. So long as the offer has been neither accepted nor rejected, the negotiation remains open, and imposes no obligation upon either party. The one may decline to accept, or the other may withdraw his offer; and either rejection or withdrawal leaves the matter as if no offer had ever been made. A proposal to accept, or an acceptance upon terms varying from those offered, is a rejection of the offer, and puts an end to the negotiation unless the party who made the original offer renews it or assents to the modification suggested. The other party, having once rejected the offer, cannot afterwards revive it by tendering an acceptance of it."

To the same effect is the case of Compania Bilbania *vs.* Spanish American Co., 149 U. S., 497, and Virginia Hot Springs Co. *vs.* Harrison, 93 Virginia, 569.

The text-writers concur in the doctrine thus announced. In 1 Chitty on Contracts (11 Amer. ed.), page 15:

> "Where an agreement is sought to be established by letters, such letters will not constitute an agreement unless the answer be a simple acceptance of the proposal without the introduction of any new term."

In Anson on Contracts (2 Amer. ed.), page 22, it is said:

> "Acceptance must be absolute; unless this is so the intention expressed by one of the parties is either doubtful in itself or different from the other. If A

> offers to X to do a definite thing, and X accepts conditionally, or introduces a new term into the acceptance, his answer is either a mere expression of willingness to treat, or it is, in effect, a counter-proposal."

The ninth section of the Wheeling ordinance proposed that

> "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State government, since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the new State during the same period."

That was the proposal made by Virginia.

The eighth section of the eighth article of the constitution of West Virginia provided:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

That was West Virginia's acceptance of the proposal. Not only was it not an "absolute acceptance" of the proposal as made, but it was materially and essentially different in each of its terms.

It provided for an "equitable" instead of a "just" proportion of the debt. It ignores the plan of ascertainment by the deduction of payments from receipts. It provides that the legislature of West Virginia shall be the sole arbiter to ascertain and determine the amount that West Virginia

shall assume. It provides that the debt to be assumed by West Virginia shall not be liquidated for thirty-four years.

Was there an agreement of minds of the two parties as to the terms of the alleged compact? Manifestly not, as the matter stood upon the proposal and the alleged acceptance.

But it is said that subsequently Virginia, "by the act asking for the admission of Virginia into the Union under that constitution, had agreed to this additional clause which the West Virginia convention had inserted in it."

By "this additional clause" is meant the clause making the West Virginia legislature the sole arbiter in the matter. But even that does not meet the other additional terms inserted by the West Virginia convention.

Now look at the act referred to (1 May's Comp., p. 438). It gives the consent of Virginia to the erection of the new State within the jurisdiction of Virginia.

If the legislature had had before it the plan proposed by the ordinance and that prescribed by the constitution, and had intended to exclude the conclusion that it approved of and adopted the terms of the ordinance, it could not have employed more apt and adequate terms. It makes no reference whatever to the ordinance, nor does it in anywise refer to the public debt or to the proportion of it to be borne by West Virginia, but it gives the consent of Virginia to the erection of the new State "according to the boundaries and under the provisions set forth in the constitution for the State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

If the plan proposed by the Wheeling ordinance was but a proposition made by the June convention of Virginia to the State of West Virginia, then West Virginia, assembled in convention on the 26th of November, 1861, should have either accepted or rejected the proposition thus made. It did neither; it simply ignored it altogether. Indeed, from all that appears here, the convention of West Virginia had no notice or knowledge of the proposition so made, for it no-

where refers to it. It makes provision for the same subject-matter, but that provision, as we have seen, is altogether different from the proposition made in the ordinance.

By what rule of construction can it be contended that when the West Virginia convention provided in the constitution it was framing that "the legislature shall ascertain the same as soon as may be practicable" meant that the legislature should ascertain the same in accordance with the plan proposed by the ordinance framed by the Virginia convention? Even if it be true that an act or ordinance passed by one State may be construed *in pari materia* with an act or ordinance passed by another State, which we do not admit, construing the ordinance of the Virginia convention with the constitutional provision of the West Virginia convention must result only in the conviction that the latter body, after considering the provision proposed by the former, found it absurd, inequitable, and improper, and rejected it.

The method proposed by the ninth section of the Wheeling ordinance should not be accepted as the proper plan for ascertaining West Virginia's just proportion of the public debt of Virginia for which she is liable.

1. The method proposed has no relation whatever to the public debt, and it cannot be applied so as to ascertain any proportion of that debt.

In his response to the third paragraph of the decree of reference, the master, in his report, says (page 39):

> "The Wheeling ordinance is not predicated upon the *amount* of the public debt. Upon the assumption that West Virginia would be liable for 'a just proportion of the public debt' in case of separation, the ordinance prescribes an arbitrary method by which that 'just proportion' shall be ascertained, &c."

And this view of the master has strong support from the admissions of counsel for West Virginia at the bar of this court. Mr. Carlisle, in his argument, said:

> "I say that the method of settlement provided for in the ninth section of the ordinance has no relation to the amount of the public debt of Virginia existing on the first day of January, 1861. In other words, it is wholly unnecessary, in making a settlement under the terms of that ordinance, to ascertain what the amount of Virginia's public debt was on the first day of January, 1861."

Upon this declaration Mr. Justice White then said from the bench:

> "Then, if that provision for settlement has no relation, and does not concern itself at all with a just proportion of the public debt, which you say is the case, is there not an absolute incompatibility of the constitution with the provision of the ordinance?" (2 May's Compilation, p. 281).

Mr. Carlisle had elsewhere said:

> "An examination of the Wheeling ordinance shows that the amount of the Virginia debt, as it existed prior to January 1st, 1861, is not a factor to be taken into consideration in ascertainng West Virginia's just proportion" (1 May's Comp., p. 190).

And further (page 360) he said:

> "The amount of the debt and the purpose for which it was created have nothing whatever to do with the settlement under the terms of the ordinance. They are not factors in the problem submitted under that agreement."

And Senator Spooner said (2 May's Comp., page 253):

> "Counsel are very accurate when they say that this ordinance does not deal in terms with the debt; that is true; it is no assumption of any part of the debt, as such."

True, the ninth section of the ordinance does declare that "the new State *shall* take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and it does purport to prescribe a method by which that "just proportion" shall be *ascertained.*

Yet here we have the iterated solemn declarations of the counsel for West Virginia that this ordinance "is no assumption of any part of the debt," and that the "amount of the debt and the purpose for which it was created are not factors in the problem submitted under that agreement." The amount, then, that might be ascertained by the method prescribed by the ordinance would be no *proportion of the public debt* at all. It would be only the difference between the amount expended by legislative appropriations and the amount paid into the treasury from the counties forming West Virginia through a period of about forty years.

But, assuming for the sake of argument, that the proposition had been made by Virginia, and had been accepted by West Virginia, that the method prescribed by the ninth section of the ordinance should be the method for ascertaining West Virginia's just proportion of the debt, what does an examination of that method disclose? We have seen that the master has reported, and that counsel for West Virginia have insisted, that by that method no proportion of the debt could be ascertained; that there was no relation between that method and the amount of the debt.

In the case of Hume *vs.* United States, 132 U. S., 406, a contract between the two parties was held to be "extortionate and unconscionable on its face," and Fuller, C. J., speaking for the court, referred to the opinion of Lord Hardwicke in Chesterfield *vs.* Janssen, in which he said:

> "Fraud may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses, and not under delusion would make on the one hand, and as no honest and fair man would accept on the other," &c.

I invite the application of this test to the ninth section of the Wheeling ordinance.

Would the Commonwealth of Virginia, knowing as she did that the State of West Virginia was liable for a just and reasonable proportion of her public debt, have agreed that such proportion should be ascertained by this method, and that the legislature of West Virginia should be the tribunal to ascertain it?

In the answer of West Virginia it is distinctly averred (page 20, sec. XX) that—

> "the finance committee of one branch of her legislative body had ascertained and reported that there was no liability upon her part to the Commonwealth of Virginia, on account of the said public debt under the ordinance of the Wheeling convention, and this respondent now denies that she owes, or will owe any sum whatever to the State of Virginia, upon a settlement made in the mode provided in said ordinance."

And this answer is sworn to by the Governor of West Virginia. The Governor could conscientiously swear to that averment, because he knew that the "mode provided" had been intelligently provided to produce that result, and, in the hands of the West Virginia legislature, it had produced the result originally contemplated.

The master in this case has succeeded by the application of certain fixed principles, which have resulted in the rejection of many items claimed by West Virginia, and the allowance of others to which that State objected, in obtaining a very different result from that reached by the West Virginia legislature, and in so doing he has disappointed the expectations of the framers of the method of the ordinance; but the result reached by the master has no relation to the public debt of Virginia, or to West Virginia's liability for a proper proportion thereof, because the method itself had no such relation, and the pretense that the two States had by

compact agreed upon that method as the mode of ascertainment is found to be wholly without support.

We have endeavored to show heretofore that the acts of the conventions and legislatures, relied on as constituting a "compact" between Virginia and West Virginia, do not, on any reasonable principles of construction, suffice to form such compact; that they are altogether inadequate in their forms and character to be construed as intended to constitute a solemn compact between sovereign States, and that the mere method to be employed in ascertaining the amount for which a State is liable cannot be made the subject-matter of such a compact.

We now ask that the transaction be considered in the light of the alleged compact itself, its terms and provisions, its efficiency for the object had in view, its reasonableness and its fairness, the parties to it, their known relation to each other, and their evident object in contriving the method proposed by the Wheeling ordinance.

1. It is found by the master, and is admitted by counsel for West Virginia, that the method proposed is not adapted to ascertain West Virginia's just proportion of the public debt. While the ordinance provides that West Virginia shall take upon herself a just proportion, "to be ascertained" by this method, that it is now admitted that this method cannot accomplish that result. It is immaterial to the present purpose how or why it was adopted as the method. It is enough to know that it is altogether inadequate, and hence cannot be employed to ascertain the result sought.

How, then, can this court be asked to accept as the proper plan for ascertaining the amount of West Virginia's just proportion of this debt a method now known to be improper and ineffectual?

2. The method proposed, even if agreed on by the two States, should not be accepted and applied by this court, because it discloses on its face not only its inefficiency, but

its unreasonableness and its unfairness. The professed object of the two States was to provide a method by which a just proportion of the amount of a known public debt could be ascertained. When that method is examined it is found to have no relation whatever to that amount, but to consist only of the difference between the amounts received and the amounts expended by certain counties within a certain period. But when that difference is ascertained by that method it affords no aid toward ascertaining the proportion of the public debt proper to be borne by West Virginia. It is not pretended that the two States ever agreed that the amount so ascertained should be accepted *in lieu* of a just proportion, or that it should be the measure of such just proportion. The only "compact" claimed to have been made is that West Virginia should take up herself a just proportion of the public debt, to be ascertained in the manner agreed. If the two States through error, mistake, or ignorance agreed upon a rule of measurement that is now found to be impracticable, they cannot ask this court to apply that impracticable rule. If, on the other hand, the two States agreed upon this rule, knowing at the time it was impracticable, that it could not ascertain the result sought, then their conduct is open to scrutiny and they must explain why they agreed on a rule known by them to be unfit. And this inquiry must lead to an investigation as to the parties to such agreement.

3. The parties to the agreement appear to be the State of Virginia and the State of West Virginia.

But the method of asceertainment appears to have been contrived and proposed by Virginia, and she was the obligor in the bonds that constituted the debt. In providing for the erection of a new State from a part of her territory, and thus diminishing her sources of revenue by the cession of nearly one-third of her territory and her population, a sane regard for her own interests and the interests of her bondholding creditors should have prompted Virginia to require

of the proposed new State some recognition of her liability for a just proportion of that public debt and some provision for the discharge thereafter of such liability. She did require that the new State should take upon itself a just proportion of the public debt, but she further proposed that such just proportion should be ascertained by the method indicated.

What fair and reasonable construction should be placed upon this conduct? Virginia must be held to have had intelligent regard to her own interests, yet she was not only ceding near one-third of her territory, but was also releasing West Virginia from her liability for her proportion of the debt. How can these be reconciled? Plainly enough. There were two Virginias. One had preceded the formation of the Union; the other was a reorganization of the government of the former, effected on June 13, 1861, in the city of Wheeling. It took upon itself the name and sought to perform the functions of the Commonwealth of Virginia, and it was recognized by the Federal Government as being the true and real Commonwealth of Virginia. It sent Senators and Representatives to the Congress of the United States, and received from the United States money that belonged to the Commonwealth of Virginia. The reason of the existence of this Restored State was the conversion of the territory occupied by it and that of the population of such territory into a new State, which was to be admitted into the Union as an independent sovereign State. Such new State could not be erected within the territory and jurisdiction of Virginia without the consent of Virginia, and the State of Virginia, whose capital was in the city of Richmond, it was reasonably feared would not give such consent. Hence the necessity of forming another Virginia whose consent could be obtained. So the Restored State of Virginia was formed of forty or more counties of the old Commonwealth, and two months later it provided by ordinance for the erection of the new State, which was composed of those same coun-

ties, and none other. The Restored State of Virginia became the State of West Virginia. Its territory and its population became the territory and population of West Virginia, and all that remained to that evanescent State was its name and its Governor. The Governor was, to be sure, a resident of the new State of West Virginia, but his sense of official duty required that he should retain his office and his government, although there remained to him nothing to govern. He removed the seat of his government to Alexandria, and later, after the evacuation of the city of Richmond, he removed to that city and held himself out as Governor.

On March 2, 1867, Congress, by an "act to provide for the more efficient government of the rebel States" (14 St., p. 428), declared that—

> "Whereas no legal governments or adequate protection for life and property now exist in the rebel States of Virginia, etc., * * * and
>
> "Whereas it is necessary that peace and good order should be enforced in said States until loyal, republican governments can be legally established, &c.,"

and the entire government of the Restored State of Virginia was swept out of existence, and a major-general of the U. S. Army reigned in its stead. So we can now perceive why it was that the two States of Virginia and West Virginia might very intelligently have entered into such a compact. The Restored State knew that her days were numbered and that the only function of her sovereign existence was to provide for the transformation of herself into the new State of West Virginia. She took care to provide a method for ascertaining West Virginia's proportion of the public debt, which would secure West Virginia from all but a nominal liability, and it concerned her not at all that the burden of the entire debt should fall upon the old Commonwealth of Virginia when she emerged from the horrors of war. Now we can all plainly see that while there appeared to be two parties enter-

ing into a solemn compact, these two were but one and the same party at different stages of its political existence.

The convention that framed the constitution for the proposed new State did not regard itself as bound by any suggestions or requirements made by the Wheeling ordinance, and it either ignored or repudiated the suggestions made as to the name of the proposed State, and as to the method of determining the proportion of the public debt of Virginia for which West Virginia should be held liable.

The Wheeling ordinance, as its title declared, was framed and passed only "to provide for the formation of a new State out of a portion of the territory of this State."

It was not intended and it did not purport to do anything more than make appropriate provision for the organization of such new State, by calling a convention which should be empowered to frame a constitution for the new State, and to do anything else that was within the power of a constitutional convention.

The convention had been called under the provisions of the ordinance, and that instrument had now performed all its functions and ceased to be any longer operative and binding.

The first section of the ordinance had provided that—

> "The people of Virginia, by their delegates in convention assembled, do ordain that a new State, *to be called the State of Kanawha*, be formed and erected out of the territory included within the following-described boundary," &c.

Article 1, section 1, of the constitution framed by the convention assembled under that ordinance, provided:

> "1. The State of *West Virginia* shall be and remain one of the United States of America."

In the very important feature of the name of the new State, the first act of the convention was to disregard altogether the requirement of the ordinance that the new State should be called "Kanawha," and to fix upon it the name of West Virginia.

So, as has been seen, in the matter of providing the method for ascertaining the proportion of the public debt to be borne by the new State, the convention disregarded the suggestion or requirement of the ordinance and made a wholly different provision.

The convention called to frame the constitution for the new State was elected, and it assembled and entered upon the discharge of its duties, in obedience and pursuant to the mandate of the ordinance, but when it assembled and had organized it recognized the fact that it represented the sovereign powers of the people who had called it together and had clothed it with full authority to exercise those powers. The people it represented had imposed no restrictions or limitations upon it, and the preceding convention, which had framed and passed the ordinance under which it had been called, was without authority to impose such restrictions or to prescribe to it the duties it was to perform. If that convention had the power to dictate to it the provisions of the constitution it was called to frame—even the single provision as to the method by which the amount of the public debt to be borne by the new State should be ascertained—then, plainly, it was not what it purported to be, representing the sovereign powers of the people who were thus "in convention assembled," but it was merely empowered to record the prescripts and mandates of the former convention.

It doubtless had before it the ordinance under which it had been called into being, and was fully advised of all that the ordinance contained, and was further advised as to its obligations and duties under the ordinance. It did not regard itself bound by those obligations and duties to adopt

the name of the State prescribed by the ordinance, and, doubtless, for the same reasons disregarded the suggestion made in the ordinance as to the method proposed for ascertaining the amount of the liability of the State for the public debt.

The argument urged on behalf of West Virginia in this case has been that when that State accepted the constitution framed for her by the people of Virginia, then within the territory of the proposed new State, she accepted it under the ordinance, and thereby assented to each and all of the provisions of that ordinance, and among these the provisions embraced in the ninth section, prescribing the method for ascertaining the amount of West Virginia's liability for the public debt of the Commonwealth of Virginia.

That argument, however, assumes as a postulate the very thing to be proven. Where and how does it appear that the people of West Virginia, when they ratified and adopted the constitution that had been framed for them, "assented to each and all of the provisions of the ordinance" under which the convention had been assembled?

They certainly did not assent to the provision as to the name by which the proposed State should be called, and they assented to the provision made by the convention, and not to that made by the ordinance, for the ascertainment of the amount of the liability of the new State.

But, it is insisted, the provision of the constitution referred to and adopted as an implied, although unexpressed term, the method proposed by the ordinance in this, that it directed that "the legislature shall ascertain the same as soon as may be practicable," and the legislature could ascertain it only by the method proposed by the ordinance.

But here, again, is a desperate assumption as a fact of what at most is but conjectural. Why was the legislature restricted as to the method of ascertainment to that fantastic device proposed by the ordinance?

We have shown, and may repeat, that by the method of

the ordinance it is now agreed and insisted by counsel for West Virginia no proportion whatever of the public debt of Virginia could possibly be ascertained. If by the method prescribed or proposed it is now agreed that no proportion—just or equitable or possible—could be ascertained, how can it be reasonably contended that the two States did solemnly agree that by that method only should West Virginia's liability be ascertained? If there was such an agreement or compact entered into between the two States, and they did know at the time that the method agreed on was impracticable, futile, and impossible, and with such knowledge did enter into such compact, then it was a fraud on the creditors whose rights they professed to be providing for and a deliberate fraud on the real Commonwealth of Virginia, upon which, at last, the entire burden of the public debt, as they well knew, inevitably falls. On the other hand, if the two States entered into this compact in ignorance of the fact that the method agreed on between them was impracticable and could not accomplish the result for which it was intended, then the compact, void as to this feature of it, because founded on mutual mistake.

But was the provision made by the constitution based upon the provision made by the ordinance and intended by its framers to be carried out by the method proposed by the ordinance?

Let the two provisions be contrasted with each other:

Ninth Section of the Ordinance.

The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in the lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed new State, and shall be governed by the laws now existing in the State of West Virginia.

Eighth Article of Constitution.

An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years.

The general purpose and avowed object of both provisions was to fix upon the new State to be formed out of a part of

the territory of Virginia a reasonably proper proportion of the public debt of the Commonwealth to the creation of which the people of both the old and the new State had, through their common legislature, contributed and in the benefits of which that people had equally participated. If, as insisted now by West Virginia, the framers of her constitution intended that her legislature should ascertain such proportion by the method proposed by the ordinance, and that method appears on its face and without the aid of external evidence to have been impracticable and impossible and leading inevitably to absurd and monstrous consequences, should any construction be given to the constitution that must involve such result?

Judge Cooley, in speaking of the rules for the construction of constitutions, and particularly of "unjust provisions," says (Constitutional Limitations, ed., p. 73):

> "We do not say, however, that if a clause should be found in a constitution which should appear at first blush to demand a construction leading to monstrous and absurd consequences, it might not be the duty of the court to question and cross-question such clause closely, with a view to discover in it, if possible, some other meaning more consistent with the general purposes and aims of the instrument."

The application of this rule of construction must relieve the constitutional convention of the charge made by West Virginia that it intended by the eighth section of the eighth article of the constitution framed by it to adopt the method proposed by the ordinance as the only method by which the legislature should ascertain the amount of West Virginia's liability. It is by construction only that the conclusion can be reached that the two States by solemn compact agreed, through the medium of this constitutional provision, that the method of the ordinance was the method that should be employed.

Passing from the matter of construction, let us proceed to contrast the two provisions. We observe, in the first place, that the constitutional provisions employ different words and phrases from those employed in the ordinance. On the theory that the provision of the constitution is but a continuation of that made by the ordinance—that they are to be construed *in pari materia*, and, if possible, made to stand together—the inquiry is at once suggested, why this change of words? This court has said that "a change in phraseology creates a presumption of a change in intent" (Crawford *vs.* Burke, 195 U. S., 190).

The ordinance said: "The new State shall take upon itself a just proportion."

The constitution said: "An equitable proportion, &c., shall be assumed."

Does this "change in phraseology create a presumption of change in intent?" Have the words employed in the one a different significance from those employed in the other?

In Anderson's Dictionary of Law (1889) these words are thus defined:

> "JUST.—Probable, adequate, equivalent.
>
> "EQUITABLE.—1. According to natural right and justice, just and right in a particular case, as distinguished from the strict rule of a general law.
>
> "2. That which can be sustained or made available or effective in a court of equity, or upon principles of equity jurisprudence."

"Just" characterizes the result sought to be reached by arbitration, while "equitable" characterizes the result sought to be reached by the chancellor in applying the rules and principles of equity jurisprudence.

The arbitrator is controlled by what he regards as the rules of common sense—fairness between man and man. The chancellor is controlled by ascertained and established rules and doctrines laid down in judicial decision and by text-writers of accepted authority.

The results to be reached by the application prescribed by the ninth section of the Wheeling ordinance were doubtless regarded by its framers as "just" under all the circumstances of their status, historical, economical, and political; but under the interpretation given to that method by the learned counsel for West Virginia and from its admitted inadequacy for the ascertainment of the proper proportion of this public debt to be borne by West Virginia, it cannot be accepted as "equitable."

Indeed, it is manifest that the counsel for West Virginia, in their contentions on the demurrer, have regarded the matter in dispute here as having been referred by both States to the arbitrament and award of the legislature of West Virginia. Mr. Carlisle, in his argument on the demurrer (1 May's Comp., p. 181), said:

> "Virginia referred this matter absolutely to the judgment of the legislature of West Virginia and tacitly agreed to abide by the action of this legislative body."

And again (page 190) he said:

> "An examination of the Wheeling ordinance shows that the amount of the Virginia debt, as it existed prior to January the first, 1861, *is not a factor to be taken into consideration in ascertaining West Virginia's just proportion.*"

That is, the just proportion of a thing may be ascertained without knowing what the thing is—the amount or the extent of the thing of which the just proportion is to be ascertained is not a factor to be taken into consideration in the calculation.

Now, when we find the convention with the ordinance before it rejecting the word "just" and employing the word "equitable," is it not a reasonable presumption that it perceived that the method proposed by the ordinance could not ascertain a "just proportion" or an equitable proportion, and

that it was unwilling to employ terms that might indicate that it approved of or countenanced that method, and for that reason it changed the word employed in the ordinance and substituted the word "equitable" to indicate that the proportion to be assumed by West Virginia was such as a court of equity might ascertain, but which could not be ascertained by the method proposed by the ordinance?

But we are told that this court has already decided this question, and has held that when the convention provided by the eighth section of the eighth article of the constitution that "the legislature should ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Let us examine that contention.

West Virginia demurred to the bill on a ground not stated in either the formal demurrer filed or in the amended demurrer, but stated for the first time in Mr. Carlisle's brief (1 May's Comp., p. 186) as follows, viz.:

> "The two States have, therefore, by compact between themselves and with the consent of Congress, as required by the constitution, designated a tribunal to ascertain and settle West Virginia's share of the debt. This tribunal still exists, and is unquestionably competent to discharge the duties imposed upon it. And, moreover, but most important of all, *it is the only tribunal existing or that can be established possessing the power to provide for the payment of West Virginia's share of the debt when the same has been ascertained, in accordance with the terms of the compact.* It cannot be coerced by any judicial or other civil process known to the constitution or laws of the country. No court can compel it either to adjust the debt or to provide a sinking fund, or impose taxes, issue bonds, or appropriate money."

It was in meeting that ground of demurrer that the Chief Justice used the language which is now relied on as expressing a final judgment on the facts. He said:

> "It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of West Virginia to Virginia was submitted to the arbitrament and award of the legislature of West Virginia as the sole tribunal which could pass upon it."

And then, after referring to the provisions of the constitution and to the act of the Virginia legislature of May 13, 1862, the Chief Justice proceeded:

> "When Virginia, on August 20, 1861, by ordinance provided for the formation of a new State out of the territory of this State, and declared therein that 'the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861,' to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should 'ascertain the same as soon as practicable,' it referred to the method of ascertainment provided by the Virginia convention."

The court was not here deciding as a fact that the constitutional convention did refer to the method of ascertainment provided by the ordinance. It was meeting the objection urged in support of the demurrer, that this court could not exercise jurisdiction to "ascertain and settle West Virginia's share," because the two States had agreed to submit that matter to the arbitrament and award of the West Virginia legislature.

It said, in substance: Assuming that this alleged compact was entered into between the two States, yet enough appears on the face of the bill to show that the legislature was not vested with absolute, exclusive power to determine the matter by any method it saw fit to employ, because when the

convention referred the matter to the legislature to ascertain West Virginia's equitable proportion of the debt it is to be supposed that it referred to the method provided by the ordinance.

This merely suggests a theory, consistent with the case stated in the bill, which is sufficient to meet the theory advanced by the demurrant. It decides nothing more. The court decides nothing as to the merits of the method provided by the ordinance, nothing as to adequacy, efficiency, or its adaptability to meet the requirements of the professed object of the ordinance, and nothing as to the persons who contrived that method or as to their real object and purpose in contriving it as they did. If it now is made evident that the method provided by the ordinance is inappropriate, that no proportion whatever of the public debt can be ascertained by it, can this court be asked to apply it? If the two States agreed upon, knowing its inefficiency or not knowing it, can a compact founded in fraud or in ignorance be insisted on? If the convention that framed the constitution, having before it the ninth section of the ordinance and being persuaded that the method proposed by it would defeat the very object and purpose of the framers of the constitutions, which was to ascertain an equitable proportion of the debt, did reject that method and employed other and different terms from those employed in the ordinance, should it be presumed to have intended that some other method should be employed by the legislature?

Finally, from all the facts and considerations here indicated, can it be held or presumed that the framers of the constitution intended to adopt, approve, or recognize the method proposed by the ordinance as the method by which they contemplated that the legislature would ascertain the equitable proportion to be borne by West Virginia?

The act of Congress of 31st of December, 1862, admitting the State of West Virginia into the Union, did not affirm the Wheeling ordinance, expressly or by implication, nor did it affirm the alleged compact between Virginia and West Virginia.

Mr. Carlisle has stated the transaction as he contends for it as follows:

> "The compact was entered into by the sovereignty conventions of the two States. In one the proposition was made in the form of an ordinance and in the other it was accepted in the form of a constitutional provision; and then it was consented to by Congress, and thus became an absolute and permanent obligation of the two States, which neither of them could thereafter abrogate or alter" (1 May's Comp., p. 386).

We have seen that the convention of August 20, 1861, which framed the Wheeling ordinance, providing for the election of the constitutional convention, which assembled in November, 1861, directed, in the tenth section of that ordinance—

> "that when the General Assembly shall give its consent to the formation of the new State, it shall forward to the Congress of the United States such consent, together with *'an official copy of such constitution,'* with the request that the new State be admitted into the Union of States."

It did not direct that there should be forwarded to the Congress an official copy of the Wheeling ordinance, because between that convention and its function and its work and the Congress of the United States there was no sort of relation or connection. The function of that convention was merely to provide for the assembling of another convention in the future, to which should be entrusted the

more important work of framing a constitution for the new State.

The functions and powers of the August convention expired upon its adjournment *sine die*. It had provided for an election of delegates to the November convention and had laid certain duties upon the Governor of the State and certain other duties upon the legislature, all relating to the work of the approaching convention, and then it adjourned. It performed no act of which the Congress of the United States could take cognizance. It purported to be speaking for Virginia and not for West Virginia, and it was West Virginia alone that was to deal with Congress. Hence it was that the constitution framed by the people of the proposed new State of West Virginia, and not the ordinance framed by the people of Virginia, was the only instrument proper or needful to be forwarded to Congress upon the application of West Virginia for admission into the Union.

We have seen that the convention of November, 1861, when it framed the constitution for West Virginia, utterly ignored and disregarded the provision made by the Virginia convention of August, 1861, for the ascertainment of the just proportion of the public debt of Virginia to be taken upon itself by West Virginia.

The November convention doubtless regarded the provision proposed by Virginia as an attempted invasion of the sovereign rights of the new State an impertinent intrusion into a matter which was peculiarly one of domestic concern to her as to which Virginia could not decently dictate. There is nothing in this record to warrant the suggestion that the Wheeling ordinance was ever before Congress or known to that body when it passed the act admitting West Virginia into the Union. On looking to the act itself, we find that it refers to the constitution framed by the convention which assembled on the 26th of November, 1861, and to the act of the Virginia legislature of May 13, 1862, giving consent to the erection of the new State, but it nowhere

refers to the convention which assembled in August or to the ordinance passed by that convention.

We have seen that the consent of Virginia was given to the erection of the new State "according to the boundaries and under the provisions set forth in the constitution for the State of West Virginia * * * proposed by the convention which assembled in Wheeling on the 26th day of November, 1861."

We have seen that the convention which framed the constitution for West Virginia makes no reference whatever to the convention of August or to the ordinance framed by that convention, and although it deals with the matter of West Virginia's equitable proportion of the public debt of Virginia, it does not refer to the provision proposed for the same matter by the ninth section of the ordinance. Upon what ground, then, we ask, is it contended that the provisions of that ordinance ever came to the knowledge and received the consideration of Congress, and that Congress admitted West Virginia into the Union subject to a compact between Virginia and West Virginia, which compact embraced the provisions of the ordinance?

The act of Congress admitting West Virginia expressly declares that she is admitted "on an equal footing with the original States in all respects whatever."

The constitutions of the several original States defined their rights, powers, and duties. None of them came into being as members of the Union with any restriction imposed upon them as to their right to determine how and in what manner their domestic concerns should be managed. Yet the claim here asserted is that West Virginia was admitted into the Union shorn of any right or discretion to determine how her proportion of this congenital debt should be ascertained.

We believe that we have shown that the evidence relied on by West Virginia is altogether insufficient to establish any compact or agreement whatever formed between her and

Virginia at the period of her creation; that the Wheeling ordinance, and especially the ninth section thereof, was not recognized by the convention that framed the constitution for West Virginia in November, 1861, and did not enter in spirit or substance into that constitution; that it was not known to or considered by the Congress of the United States when it passed the act admitting West Virginia into the Union; that there was no special agreement or compact entered into between Virginia and West Virginia providing a method for ascertaining the contributive proportion to be borne by West Virginia of the public debt of Virginia, and that therefore that proper portion of this public debt to be borne by West Virginia rests alone upon the recognized doctrines of international law, and that no exception has been shown to have existed which takes her case out of the operation of that law.

The act of the Virginia legislature giving consent to the creation of the new State within its jurisdiction did not regard the Wheeling ordinance, and the consent was not given on the condition, expressed or implied, that the ordinance or any of its provisions should form a compact between the States.

The act was passed on the 10th of May, 1862, and is in part as follows:

> "*Be it enacted by the General Assembly*, That the consent of the legislature of Virginia be, and the same is hereby given, to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of * * * according to the boundaries *and under the provisions* set forth in the constitution for the said State of *West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the 26th day of November*, 1861," &c.

The consent, then, was given, not under the provisions of the ordinance adopted by the convention which assembled at Wheeling in August, 1861, but under the provisions of the constitution for the State of West Virginia proposed by the convention which assembled at Wheeling on the 26th day of November, 1861.

Why was this unusual precision of language used to describe the exact conditions under which that consent was given? Not content with stating that the consent was given to the erection of a State "under the provision of the *constitution*," they proceed further to identify that constitution as the one proposed by a convention which assembled in November, and not by a convention which had assembled in the same place in the previous August.

The object really appears to have been to exclude the notion, now insisted on, that the ordinance framed by the convention which assembled in August exercised any influence or control whatever on the action of the legislature in giving its consent.

It certainly tends to exclude that notion that the legislature expressly declared that the consent was given to the State which was to be under the provisions of a constitution which was before it, and not under the provisions of the Wheeling ordinance, which was not mentioned or referred to in the act.

How, then, can it be insisted, as it is insisted in behalf of West Virginia, that this act of the Virginia legislature was a ratification of the ordinance?

Mr. Carlisle (1 May's Comp., p. 386) says in his carefully prepared brief:

> "We insist that the compact is binding as a whole or it is not binding at all, and that the act of the Virginia legislature, passed May 13th, 1862, while it was not necessary to the validity of the compact, constituted a ratification of it by that body."

We utterly deny that there was any compact or agreement whatever between Virginia and West Virginia, and that the whole notion is a creation of the imagination of counsel—necessary, it may be, to the completeness of the kaleidoscopic dream which in its varying forms has been projected here as a defense to the bill.

Mr. Justice Story, in his Commentaries on the Constitution, section 1405, says:

> "Thus, where a State is admitted into the Union notoriously upon a compact made between it and the State of which it previously composed a part, there the act of Congress admitting such State into the Union is an implied consent to the terms of the compact. This was true as to the compact between Virginia and Kentucky upon the admission of the latter into the Union, and the like rule will apply to other States, such as Maine, more recently admitted into the Union."

The compact between Virginia and Kentucky was notorious because it was incorporated into the constitution of Kentucky, but the ninth section of the Wheeling ordinance was not incorporated into the constitution of West Virginia, but rather, as we have seen, was repudiated and rejected by the convention that framed that constitution. Where, then, shall we look to learn its terms and conditions? It is now insisted that the ninth section was a proposition submitted by Virginia to West Virginia as a condition in which alone Virginia would consent to the erection of the new State.

Mr. Carlisle's construction of the several transactions is thus stated:

> "The convention proposed that a new State might be formed, to be called the State of Kanawha, to include certain counties, and that the new State should assume a just proportion of the public debt of Virginia as it existed on the 1st day of January, 1861, to be ascertained, as stated in the ordinance, by charging to the new State all the money expended

> within her limits—within the limits of that territory—since any part of the debt was contracted, and with her just proportion of the ordinary expenses during the same time, and crediting the new State with all money that has been paid in from that territory during the same period. That was Virginia's proposition to the new State. Of course, there was no State of Kanawha at that time, and therefore there was no second party to the proposed contract; but subsequently the people within that territory assembled in a sovereignty convention, and then, for the first time they had a right, and the power, to consent or dissent from the proposition that Virginia had made. It was still open; it had not been withdrawn; and the new State accepted it *with these additions;* that the amount of the debt should be ascertained by the legislature of the new State as soon as practicable, and that it should establish a sinking fund sufficient to provide for the payment of the interest, and the redemption of the principal within thirty-four years."
>
> 1 May's Comp., page 357.

This is a full, clear statement of the compact. But, pray, by what process of reasoning and by what rules of construction is the provision made in the eighth article of the constitution made *in addition* to the ninth section of the ordinance?

We have shown, we think, that the two provisions are repugnant to each other; that the provision made in the constitution was a distinct repudiation and rejection of the provision made in the ordinance; that it was a substitute for it, and was made final and conclusive by being embodied in the fundamental law of the State.

West Virginia at no time and in no form ever accepted the proposition made to it by Virginia through the Wheeling ordinance. The constitution of West Virginia was the final word spoken on the subject, and it nowhere speaks or refers to the proposition contained in the ordinance, but ignores it save in so far as it adopted a wholly different and

conflicting provision as to the subject-matter of the ordinance.

An act of legislature repealing a previous enactment may in a loose and very inaccurate sense be said to be an *addition* to the previous act. It refers in express terms to the previous act, or else in general terms by repealing "all acts inconsistent with this act." It recognizes that there are or may be acts having provisions inconsistent with this act. But here it is apparent, and indeed admitted, that while the ordinance proposes a method for ascertaining a "just proportion of the public debt," that the method proposed is unfit and inadequate for such ascertainment, because there is no relation between the amount of such debt and the method proposed for ascertaining a proportion of it, as counsel for West Virginia insist "that the amount of the debt is not a factor to be taken into consideration in ascertaining West Virginia's just proportion of it." So it is manifest that the method proposed is inconsistent with and repugnant to the expressed object and purpose of the ninth section of the ordinance.

The eighth article of the constitution of West Virginia contains no such vicious method of ascertainment. Its provisions are altogether inconsistent with it. How, then, can the ninth section of the ordinance and the eighth article of the constitution be read together, and how can the method proposed by the ordinance be "added" to the provision of the constitution? As already shown, the suggestion made by this court in its opinion on the demurrer to the bill was but the indication of a view that on a demurrer, where every presumption is to be taken against the demurrant which is warranted by the case stated in the bill, that for all that appeared on the face of the bill it was not impossible that the language used in the constitution had reference to the method proposed in the ordinance. But it cannot be seriously contended here on the final hearing that the opinion of the court on the demurrer was intended to adjudicate and

determine any matter of fact involved in the issue on the merits of the case.

The ordinance providing for the creation of the new State was not necessary or material to the creation of that State. The consent of Virginia and the act of Congress were all that was needed, and had there been no ordinance at all the validity of the act of Congress would be beyond question in the courts. When the State was created and admitted into the Union the ordinance became exhausted and at an end.

The point here is whether the ninth section of that ordinance, which assumed to prescribe to the new State the method by which its liabilities should be ascertained and provided for after the State was clothed with sovereignty, was not vain and futile because of an attempted limitation on the sovereignty of the State and an invasion of her domestic concerns.

Summary of the points herein made in support of the argument that the plan or method for ascertaining West Virginia's proper proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, *indicated in the International Law doctrine, as recognized in the case of Hartman vs. Greenhow,* 102 *U. S.,* 672, *is the only plan that can be adopted, and that the plan proposed by the ninth section of the "Wheeling Ordinance" is now shown to be unjust and impracticable.*

(1.) The aggregate amount of the public debt as of January 1, 1861, is ascertained to be $33,897,073.82.

This is charged in the bill and admitted in the answer, and now found by the special master in paragraph of his report.

(2.) The government of the "Restored State of Virginia" was set up in June, 1861, and gave its consent to the erection of the new State of West Virginia out of part of the territory of Virginia. The Restored State of Virginia was

recognized by the political departments of the United States as the lawful State of Virginia, and as such was represented in the Congress of the United States.

(3.) Upon the partition of the territory of Virginia and the erection of the State of West Virginia upon one of those parts, that new State, under the doctrines of international law, became liable for an equitable and proper proportion of the debt of the parent State on the basis of territory and population, unless some other method of fixing such proportion was provided by *a special agreement between the two States.*

(4.) The burden of proof lies upon the State claiming under such *special agreement* to prove the same by adequate evidence, and such evidence must be the same that would be required in a like case between private parties.

(5.) If such special agreement consisted of a proposition made by Virginia to West Virginia, then, before such agreement could be formed, it must appear that West Virginia accepted the terms proposed, without addition thereto or subtraction therefrom, but absolutely and unconditionally. If one term of such proposal was omitted, or other terms added, that was a rejection and not an acceptance of the proposal.

(6.) If the ninth section of the "Wheeling Ordinance" is relied on as the proposal, and the eighth section of the eighth article of the constitution of West Virginia is relied on as the acceptance of the proposal, then it is manifest from a comparison of the two that West Virginia did not accept such proposal in the terms in which it was made, but rejected the same.

(7.) The averment by West Virginia that the language employed in the eighth article of the constitution—"and the legislature shall ascertain the same"—meant that the legislature should ascertain it by the method proposed by the ordinance, finds no support from anything that appears in this record, and is not warranted by the character of the transaction, the relation of the parties, or by the inherent

nature of the method proposed by the ordinance, because—

(8.) The method proposed by the ordinance is now admitted by counsel for West Virginia and is found as a fact by the special master to bear no relation whatever to the amount of the public debt, and is inadequate and incapable of employment in the ascertainment of any proportion whatever of such debt.

(9.) That the method proposed by the ninth section of the ordinance for ascertaining West Virginia's proportion of the public debt was not a term proposed by Virginia, upon the acceptance of which she would consent to the creation of the new State. It was not a condition precedent or subsequent to the creation of such new State, and, in both its *form* and its *subject-matter*, could not have been intended, or if intended could not have been allowed, as a reasonable and proper provision in an ordinance adopted by one State looking to the creation of a new State within its territory.

(10.) That the act of the legislature of Virginia of February 13, 1862, giving its consent to the erection of the new State, cannot be construed as basing such consent upon the ninth section of the ordinance, because, in express terms, it bases it upon the provision of the *constitution*, and does it in such terms as to exclude the notion that it contemplated the action of any other convention than the November convention that framed the constitution.

(11.) That the convention that framed the constitution did not regard the ninth section of the Wheeling ordinance as controlling its action to any extent appears from the fact that it changed the name of the State from that fixed by the prior convention and prescribed wholly different terms and methods for ascertaining West Virginia's proportion of the debt from that proposed by the ordinance.

(12.) That the Congress of the United States, before it admitted West Virginia into the Union, inquired, through certain of its members, in open session, as to what provision had been made for the payment of the public debt, and not

until the assurance had been given that such provision had been made by its *constitution* did it admit the State. It cannot be supposed that Congress would have admitted it had it appeared that the only provision for meeting West Virginia's proper proportion of the debt was made in the ninth section of the ordinance, which, it is now admitted, bears no relation whatever to the amount of that debt.

These considerations, I confidently submit, make it impossible for this court to hold that the method proposed by the ninth section of the ordinance can be employed to ascertain the proportion of the public debt proper to be borne by West Virginia. The only other method practicable for this purpose is that indicated by the well-established doctrine of international law.

HOLMES CONRAD,
Counsel for the Bondholding Creditors of Virginia.

SEPTEMBER 5, 1910.

INDEX TO METHOD OF COMPUTING INTEREST ON THE CLAIM AGAINST WEST VIRGINIA, BASED ON THE DIVISION OF THE DEBT AS IT EXISTED JANUARY 1ST, 1861:

Group 1—6% Registered Bonds redeemable at the pleasure of the General Assembly.....	$9,729,326.36
This amount is divided on the various bases shown in Joint Exhibit B1 and interest on only that portion chargeable to West Virginia is computed from Jan. 1, 1861, to Sept. 1, 1909.	
Group 2—5% Registered Bonds redeemable at the pleasure of the General Assembly.....	452,200.00
Treated in the same manner as Group 1.	
Group 3—6% Annuity on old James River Stock....	350,000.00
Treated in the same manner as Groups 1 and 2.	
Group 4—6% Registered Bonds Redeemable in 20 years	125,393.27
No interest on this sum computed from Jan. 1, 1861.	
Group 5—6% Registered Bonds redeemable in 34 years.....	8,861,864.33
The interest on each of the four loans grouped hereunder is computed from Jan. 1, 1861, to a date 34 years after the date of the act authorizing such issue, and this interest is divided on the various bases shown in Joint Exhibit B1.	
Group 6—6% Coupon Bonds redeemable in 35 years.	13,082,500.00
This amount is divided on the various bases shown in Joint Exhibit B1 and interest on only that portion chargeable to West Virginia is computed from Jan. 1, 1861, to Mar. 29, 1886, being 35 years after Mar. 29, 1851, the date of the act authorizing this issue.	
Group 7—6% Registered Bonds in lieu of Coupon bonds redeemable in 35 years.....	1,059,500.00
This amount is divided on the various bases shown in Joint Exhibit B1 and interest on only that portion chargeable to West Virginia is computed from Jan. 1, 1861, to Mar. 29, 1886, being 35 years after Mar. 29, 1851, the date of the first act authorizing the issue of Coupon Bonds for which these bonds were exchanged.	
Group 8—5% Registered Bonds redeemable in 35 years.....	5,000.00
Carried forward	$33,665,783.96

Brought forward	$33,665,783.96
The interest on this sum is computed from Jan. 1, 1861, to Mar. 19, 1866, being 35 years after Mar. 19, 1831, the date of the act authorizing this issue, and this interest is divided on the various bases shown in Joint Exhibit B1.	
Group 9—5% Sterling Coupon Bonds redeemable in 35 years	1,815,204.50
This amount is divided on the various bases shown in Joint Exhibit B1 and interest on only that portion chargeable to West Virginia is computed from Jan. 1, 1861, to Mar. 29, 1886, being 35 years after Mar. 29, 1851, the date of the act authorizing this issue.	
	$35,480,988.46

GROUP 1.

6% Registered Bonds Redeemable at Pleasure of General Assembly.

	Amount
Alleghany & Huntersville Road	$5,000.00
Alexandria Canal Co.	234,200.00
Berryville Turnpike Co.	8,000.00
Berryville & Charlestown Turnpike Co.	6,400.00
Beverly & Fairmount Road	16,600.00
Blue Ridge Railroad Co.	32,200.00
City Point Railroad Co.	50,000.00
Charlestown & Point Pleasant Turnpike Co.	20,800.00
" " " "	5,800.00
Cacapon & North Branch Turnpike Co.	11,000.00
Cumberland Gap Road	67,600.00
Clarkburg & Buckhannon Turnpike Co.	9,000.00
Coal River Navigation Co.	4,000.00
Dismal Swamp Canal Co.	16,500.00
Dragon Swamp Navigation Co.	1,464.00
Exchange Bank of Virginia & Northwestern Bank of Virginia	447,407.00
Giles Fayette & Kanawha Turnpike Co.	13,400.00
Goose Creek & Little River Navigation Co.	7,000.00
Holliday Cove Turnpike Co.	4,700.00
Huntersville & Warm Springs Turnpike Co.	300.00
Hardy & Winchester Turnpike Co.	19,300.00
Howardsville & Rockfish Turnpike Co.	9,000.00
Hampshire & Morgan Turnpike Co.	4,600.00
Ice's Ferry Road	1,358.00
Bank of Virginia	99,000.00
Carried forward	$1,094,629.00

6% Registered Bonds Redeemable at Pleasure of General Assembly—(Continued).

Brought forward	$1,094,629.00
James River Co.	149,083.33
" " "	170,050.00
" " "	13,000.00
" " "	3,500.00
James River & Kanawha Co.	1,925,683.59
" " " " "	250,000.00
" " " " "	1,216,950.00
" " " " "	110,000.00
Jordans Furnace & Rockbridge Turnpike Co.	3,600.00
Louisa Railroad Co.	171,750.00
" " "	131,687.00
" " "	12,900.00
Lewisburg & Blue Sulphur Springs Turnpike Co.	1,000.00
Lafayette & English Ferry Turnpike Co.	2,550.00
Lynchburg & Buffalo Springs Turnpike Co.	8,500.00
Little Stone Gap Road	3,000.00
Marshall & Ohio Turnpike Co.	9,000.00
Moorefield & North Branch Turnpike Co.	12,900.00
Morgantown & Bridgeport Turnpike Co.	1,940.00
Moorefield & Alleghany Turnpike Co.	3,600.00
Morgantown & Beverly Road	3,000.00
Natural Bridge Turnpike Co.	6,100.00
North Carolina & Wytheville Road	100.00
North Western Turnpike Road	65,850.00
" " " "	16,600.00
" " " "	2,000.00
" " " "	12,484.00
" " " "	9,354.73
" " " "	5,100.00
Newmarket & Sperryville Turnpike Co.	9,100.00
Ohio River & Maryland Line Road	12,000.00
" " " " "	2,000.00
" " " " "	6,600.00
Orange & Alexandria Railroad Co.	108,900.00
Petersburg Railroad Co.	150,000.00
Portsmouth & Roanoke Railroad Co.	64,950.00
" " " "	50,000.00
Pittsylvania, Franklin & Botetourt Turnpike Co.	9,090.10
Richmond & Petersburg Railroad Co.	176,400.00
" " " "	50,000.00
Rappahannock Co.	13,350.00
" "	97,100.00
Red & Blue Sulphur Springs Turnpike Co.	4,900.00
Rivanna Navigation Co.	6,300.00
Richmond & Danville Railroad Co.	380,090.00
Richlands to Kentucky Line Road	3,520.00
Rocky Mount Turnpike Co.	10,000.00
Rich Patch Turnpike Co.	1,100.00
Staunton & Parkersburg Road	4,500.00
" " "	16,510.00
Carried forward	$6,592,321.75

6% Registered Bonds Redeemable at Pleasure of General Assembly—(Concluded).

Brought forward	$6,592,321.75
Salem & Pepper's Ferry Turnpike Co.	5,400.00
Salem & Newcastle Turnpike Co.	3,875.00
South Western Turnpike Road	81,970.00
" " " "	153,162.00
Smiths River Navigation Co.	2,600.00
Tazewell Court House and Fancy Gap Road	3,420.00
Upper Appomattox Co.	43,900.00
Valley Turnpike Co.	233,813.00
" " "	24,664.00
Virginia & Maryland Bridge Co.	10,000.00
Virginia, Tennessee Railroad Co.	66,800.00
Winchester & Potomac Railroad Co.	10,000.00
" " " " "	133,935.00
Wheeling, West Liberty & Bethany Turnpike Co.	10,867.61
Weston & Fairmount Turnpike Co.	4,000.00
Weston & Gauley Bridge Turnpike Co.	5,000.00
Wellsburg & Bethany Turnpike Co.	1,700.00
Williamsport Turnpike Co.	1,250.00
Registered Bonds	2,340,648.00
	$9,729,326.36

Elapsed time from Jan. 1, 1861, to Sept. 1, 1909 = 48 years, 8 months.

37.3686% of the above principal sum chargeable to W. Va. on basis of land area as per B1.	$3,635,713.05	
Interest on same...		$10,616,282.10
36.1843% of the above principal sum chargeable to W. Va. on basis of total area as per B1.	3,520,488.64	
Interest on same...		10,279,826.86
21.7812% of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate as per B1.	2,119,164.03	
Interest on same...		6,187,958.97
24.5145% of the above principal sum chargeable to W. Va. on basis of population — estimated— with slaves as per B1.	2,385,095.71	
Interest on same..		6,964,479.47

33.5231% of the above principal sum chargeable to W. Va. on basis of population — estimated — without slaves as per B1	$3,261,571.80	
Interest on same...		$9,523,789.66

GROUP 2.

5% Registered Bonds Redeemable at Pleasure of General Assembly.

James River Co.....	$29,000.00
" " "	37,000.00
" " "	4,000.00
" " "	8,000.00
" " "	15,000.00
" " "	4,000.00
" " "	10,000.00
North Western Turnpike Road.....	12,200.00
Portsmouth & Roanoke Railroad Co.....	104,000.00
" " " " "	100,000.00
Richmond, Fredericksburg & Potomac R. R. Co....	121,000.00
Winchester & Potomac Railroad Co.....	8,000.00
	$452,200.00

Elapsed time from Jan. 1, 1861, to Sept. 1, 1909=48 years, 8 months.

37.3686% of the above principal sum chargeable to W. Va. on basis of land area as per B1.....	$168,980.81	
Interest on same...		$411,186.64
36.1843% of the above principal sum chargeable to W. Va. on basis of total area as per B1.....	163,625.40	
Interest on same...		398,155.14
21.7812% of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate, as per B1.....	98,494.59	
Interest on same...		239,670.17
24.5145% of the above principal sum chargeable to W. Va. on basis of population — estimated — with slaves, as per B1	110,854.57	
Interest on same...		269,746.12

33.5231%	of the above principal sum chargeable to W. Va. on basis of population — estimated — without slaves, as per B1	$151,591.46	
	Interest on same...		$368,872.55

GROUP 3.

JAMES RIVER ANNUITY, 6%.

James River Co... $350,000.00

Elapsed time from January 1, 1861, to September 1, 1909 = 48 years, 8 months.

37.3686%	of the above principal sum chargeable to W. Va. on basis of land area as per B1.....	$130,790.10	
	Interest on same...		$381,907.09
36.1843%	of the above principal sum chargeable to W. Va. on basis of total area as per B1.....	126,645.05	
	Interest on same...		369,803.55
21.7812%	of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate as per B1..	76,234.20	
	Interest on same...		222,603.86
24.5145%	of the above principal sum chargeable to W. Va. on basis of population — estimated — with slaves as per B1.	85,800.75	
	Interest on same...		250,538.19
33.5231%	of the above principal sum chargeable to W. Va. on basis of population — estimated — without slaves as per B1.	117,330.85	
	Interest on same...		342,606.08

GROUP 4.

6% REGISTERED BONDS REDEEMABLE IN 20 YEARS.

Staunton & Pakersburg, Loan No. 16. Act of March 16, 1838	$125,393.27	
37.3686% of this principal sum chargeable to W. Va. on basis of land area.....		$46,857.71
36.1843% of this principal sum chargeable to W. Va. on basis of total area.....		45,372.67
21.7812% of this principal sum chargeable to W. Va. on basis of assessed valuation of real estate		27,312.16
24.5145% of this principal sum chargeable to W. Va. on basis of population—estimated, with slaves.		30,739.53
33.5231% of this principal sum chargeable to W. Va. on basis of population—estimated, without slaves		42,035.71

No interest charged to West Virginia on this loan from Jan. 1, 1861.

GROUP 5.

6% Registered Bonds Redeemable in 34 Years.

James River & Kanawha Co., Act Mar. 23, 1860	$2,520,000.00	
Interest on same from Jan. 1, 1861, to Mar. 23, 1894		$5,024,040.00
Being 34 years after Mar. 23, 1860, the date of the act authorizing this issue. Elapsed time, 33 years 82 days.		
(Loan No. 91.)		
Registered Bonds issued for Redemption of Warrants, Act Mar. 17, 1856	2,761,100.00	
Interest on same from Jan. 1, 1861, to Mar. 17, 1890		4,839,287.93
Being 34 years after Mar. 17, 1856, the date of the act authorizing this issue. Elapsed time, 29 years 76 days.		
(Loan No. 93.)		
Registered Bonds, Act Mar. 18, 1858	530,300.00	
Interest on same from Jan. 1, 1861, to Mar. 18, 1892		993,163.51
Being 34 years after Mar. 18, 1858, the date of the act authorizing this issue. Elapsed time, 31 years 77 days.		
(Loan No. 90.)		
Registered Bonds (coupons attached) Acts Mar. 29, 1851 } May 25, 1852 }	3,050,464.33	
Interest on same from Jan. 1, 1861, to Mar. 29, 1885		4,437,408.78
Being 34 years after Mar. 29, 1851, the date of the first act authorizing this issue. Elapsed time, 24 years 88 days.		
Total interest		$15,293,900.22

Of the above amount of interest there is chargeable to West Virginia on various bases shown in Joint Exhibit B1 as follows:

Land area	37.3686%	$5,715,116.40
Total area	36.1843%	5,533,990.74
Assessed valuation—real estate	21.7812%	3,331,194.99
Estimated population—with slaves	24.5145%	3,749,223.17
Estimated population—without slaves	33.5231%	5,126,989.46

GROUP 6.

6% Coupon Bonds Redeemable in 35 Years.

Coupon Bonds, Act of Mar. 29, 1851 ..... $13,082,500.00

Elapsed time from Jan. 1, 1861, to Mar. 29, 1886—25 years 88 days. Being 35 years after Mar. 29, 1851, the date of the act authorizing this issue.

37.3686% of the above principal sum chargeable to W. Va. on basis of land area as per B1..	$4,888,747.09	
Interest on same...		$7,404,822.25
36.1843% of the above principal sum chargeable to W. Va. on basis of total area as per B1..	4,733,811.05	
Interest on same...		7,170,145.80
21.7812% of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate as per B1..	2,849,525.49	
Interest on same...		4,316,081.27
24.5145% of the above principal sum chargeable to W. Va. on basis of estimated population, with slaves, as per B1.	3,207,109.46	
Interest on same...		4,857,701.80
33.5231% of the above principal sum chargeable to W. Va. on basis of estimated population, without slaves, as per B1	4,385,659.56	
Interest on same...		6,642,812.35

GROUP 7.

6% Registered Bonds Redeemable in 35 Years.

(Loan No. 92.)

Registered Bonds in exchange for Coupon Bonds, Act of Mar. 18, 1856.....		$1,059,500.00	
	Elapsed time from Jan. 1, 1861, to Mar. 29, 1886—25 years 88 days. Being 35 years after Mar. 29, 1851, the date of the first act authorizing the issue of coupon bonds for which these bonds were exchanged.		
37.3686%	of the above principal sum chargeable to W. Va. on basis of land area as per B1.....	$395,920.32	
	Interest on same...		$599,687.31
36.1843%	of the above principal sum chargeable to W. Va. on basis of total area as per B1.....	383,372.66	
	Interest on same...		580,681.79
21.7812%	of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate as per B1..	230,771.81	
	Interest on same...		349,542.36
24.5145%	of the above principal sum chargeable to W. Va. on basis of estimated population with slaves as per B1..	259,731.13	
	Interest on same...		393,406.08
33.5231%	of the above principal sum chargeable to W. Va. on basis of estimated population without slaves as per B1	355,177.24	
	Interest on same...		507,681.79

GROUP 8.

5% Registered Bonds Redeemable in 35 Years.

North Western Turnpike Road Loan No. 1. Act of March 19, 1831.....	$5,000	
Interest on same from Jan. 1, 1861, to Mar. 19, 1866..		$1,304.17
Being 35 years after Mar. 19, 1831, the date of the act authorizing this issue. Elapsed time, 5 years 78 days.		

Of the above amount of interest there is chargeable to West Virginia on various bases shown in joint Exhibit B1 as follows:—

Land area	37.3686%	$487.35
Total area	36.1843%	471.90
Assessed valuation of real estate.....	21.7812%	284.06
Estimated population—with slaves.....	24.5145%	319.71
Estimated population—without slaves...	33.5231%	437.20

GROUP 9.

5% STERLING COUPON BONDS REDEEMABLE IN 35 YEARS.

Sterling Coupon Bonds. Act of March 29, 1851.....		$1,815,204.50	
	Elasped time from Jan. 1, 1861, to Mar. 29, 1886—25 years 88 days. Being 35 years after Mar. 29, 1851, the date of the act authorizing this issue.		
37.3686%	of the above principal sum chargeable to W. Va. on basis of land area as per B1..	678,316.51	
	Interest on same...		$856,186.17
36.1843%	of the above principal sum chargeable to W. Va. on basis of total area as per B1..	656,819.04	
	Interest on same...		829,051.57
21.7812%	of the above principal sum chargeable to W. Va. on basis of assessed valuation of real estate as per B1..	395,373.32	
	Interest on same...		499,048.99
24.5145%	of the above principal sum chargeable to W. Va. on basis of estimated population with slaves as per B1.	444,988.31	
	Interest on same...		561,674.14
33.5231%	of the above principal sum chargeable to W. Va. on basis of estimated population without slaves as per B1	608,512.82	
	Interest on same...		768,078.40

INTEREST ON WEST VIRGINIA'S PROPORTION OF THE DEBT FROM JAN. 1, 1861, AS HEREINBEFORE CALCULATED, ON BASIS OF LAND AREA.

37.3686%

		Total amount of Debt.	Amount chargeable to West Virginia on basis of Land Area.	Interest thereon from Jan. 1, 1861, chargeable to West Virginia.
Group	1.....	$9,729,326.36	$3,635,713.05	$10,616,282.10
	2.....	452,200.00	168,980.81	411,186.64
	3.....	350,000.00	130,790.10	381,907.09
	4.....	125,393.27	46,857.71	.....
	5.....	8,861,864.33	3,311,554.63	5,715,116.40
	6.....	1,059,500.00	395,920.32	599,687.31
	7.....	13,082,500.00	4,888,747.09	7,404,822.25
	8.....	5,000.00	1,868.43	487.35
	9.....	1,815,204.50	678,316.51	856,186.17
		$35,480,988.46	$13,258,748.65	$25,985,675.31

INTEREST ON WEST VIRGINIA S PROPORTION OF THE DEBT ON BASIS OF TOTAL AREA.

36.1843%.

		Total Amount of Debt.	Amount chargeable to West Virginia on basis of Total Area.	Interest thereon from Jan. 1, 1861, chargeable to West Virginia.
Group	1.....	$9,729,326.36	$3,520,488.64	$10,279,826.86
	2.....	452,200.00	163,625.40	398,155.14
	3.....	350,000.00	126,645.05	369,803.55
	4.....	125,393.27	45,372.67	.....
	5.....	8,861,864.33	3,206,603.58	5,533,990.74
	6.....	1,059,500.00	383,372.66	580,681.79
	7.....	13,082,500.00	4,733,811.05	7,170,145.80
	8.....	5,000.00	1,809.22	471.90
	9.....	1,815,204.50	656,819.04	829,051.57
		$35,480,988.46	$12,838,547.31	$25,162,127.35

INTEREST ON WEST VIRGINIA'S PROPORTION OF THE DEBT ON BASIS OF ASSESSED VALUATION OF REAL ESTATE.

21.7812%

		Total Amount of Debt.	Amount chargeable to West Virginia on basis of Assessed Valuation of Real Estate.	Interest thereon from Jan. 1, 1861, chargeable to West Virginia.
Group	1.....	$9,729,326.36	$2,119,164.03	$6,187,958.97
	2.....	452,200.00	98,494.59	239,670.17
	3.....	350,000.00	76,234.20	222,603.86
	4.....	125,393.27	27,312.16	.....
	5.....	8,861,864.33	1,930,220.40	3,331,194.99
	6.....	1,059,500.00	230,771.81	349,542.36
	7.....	13,082,500.00	2,849,525.49	4,316,081.27
	8.....	5,000.00	1,089.06	284.06
	9.....	1,815,204.50	395,373.32	499,048.99
		$35,480,988.46	$7,728,185.06	$15,146,384.67

INTEREST ON WEST VIRGINIA'S PROPORTION OF THE DEBT ON BASIS OF ESTIMATED POPULATION—WITH SLAVES.

24.5145%.

		Total Amount of Debt.	Amount chargeable to West Virginia on basis of Estimated Population—With Slaves.	Interest thereon from Jan. 1, 1861, chargeable to West Virginia.
Group	1.....	$9,729,326.36	$2,385,095.71	$6,964,479.47
	2.....	452,200.00	110,854.57	269,746.12
	3.....	350,000.00	85,800.75	250,538.19
	4.....	125,393.27	30,739.53	.....
	5.....	8,861,864.33	2,172,441.73	3,749,223.17
	6.....	1,059,500.00	259,731.13	393,406.08
	7.....	13,082,500.00	3,207,109.46	4,857,701.80
	8.....	5,000.00	1,225.73	319.71
	9.....	1,815,204.50	444,988.31	561,674.14
		$35,480,988.46	$8,697,986.92	$17,047,088.68

INTEREST ON WEST VIRGINIA'S PROPORTION OF THE DEBT ON BASIS OF ESTIMATED POPULATION—WITHOUT SLAVES.

33.5231%.

		Total Amount of Debt.	Amount chargeable to West Virginia on basis of Estimated Population—Without Slaves.	Interest thereon from Jan. 1, 1861, chargeable to West Virginia.
Group	1.....	$9,729,326.36	$3,261,751.80	$9,523,789.66
	2.....	452,200.00	151,591.46	368,872.55
	3.....	350,000.00	117,330.85	342,606.08
	4.....	125,393.27	42,035.71	.....
	5.....	8,861,864.33	2,970,771.64	5,126,989.46
	6.....	1,059,500.00	355,177.24	507,681.79
	7.....	13,082,500.00	4,385,659.56	6,642,812.35
	8.....	5,000.00	1,676.16	437.20
	9.....	1,815,204.50	608,512.82	768,078.40
		$35,480,988.46	$11,894,327.24	$23,281,267.49

ACCRUED INTEREST FROM JULY 1ST, 1860, TO DECEMBER 31ST, 1869, ON PUBLIC DEBT OF VIRGINIA, AS PER JOINT EXHIBIT AI $1,053,067.63

WEST VIRGINIA'S PROPORTION OF SAID ACCRUED INTEREST ON PUBLIC DEBT ON VARIOUS BASES SHOWN IN JOINT EXHIBIT BI:

Land area	37.3686%	$393,516.63
Total area	36.1843%	381,045.15
Assessed Valuation of Real Estate.	21.7812%	229,370.77
Estimated Population, with Slaves.	24.5145%	258,154.26
Estimated Population, without Slaves	33.5231%	353,020.91

WEST VIRGINIA'S PROPORTION OF THE DEBT OF VIRGINIA ON JANUARY 1ST 1861, CONSISTING OF PRINCIPAL AND INTEREST ACCRUED AND PAYABLE AT THAT DATE, WITH INTEREST ON THE PRINCIPAL FROM JANUARY 1ST, 1861, AS HERETOFORE CALCULATED, ON THE VARIOUS BASES SHOWN IN JOINT EXHIBIT BI:

1. Land Area—37.3686%:		
West Virginia's Proportion of Principal (see page 13)	$13,258,748.65	
West Virginia's Proportion of Accrued Interest to Jan. 1st, 1861	393,516.63	
West Virginia's Proportion of Interest from Jan. 1st, 1861, as hereinbefore calculated	25,985,675.31	
		$39,637,940.59
2. Total Area—36.1843%:		
West Virginia's Proportion of Principal (see page 13)	$12,838,547.31	
West Virginia's Proportion of Accrued Interest to Jan. 1st, 1861	381,045.15	
West Virginia's Proportion of Interest from Jan. 1st, 1861, as hereinbefore calculated	25,162,127.35	
		$38,381,719.81
3. Assessed Valuation of Real Estate—21.7812%:		
West Virginia's Proportion of Principal (see page 14)	$7,728,185.06	
West Virginia's Proportion of Accrued Interest to Jan. 1st, 1861	229,370.77	
West Virginia's Proportion of Interest from Jan. 1st, 1861, as hereinbefore calculated	15,146,384.67	
		$23,103,940.50

4. Estimated Population, with Slaves—24.5145%:		
West Virginia's Proportion of Principal (see page 14).	$8,697,986.92	
West Virginia's Proportion of Accrued Interest to Jan. 1st, 1861.....	258,154.26	
West Virginia's Proportion of Interest from Jan. 1st, 1861, as hereinbefore calculated.....	17,047,088.68	
		$26,003,229.86
5. Estimated Population, without Slaves—33.5231%:		
West Virginia's Proportion of Principal (see page 15).	$11,894,327.24	
West Virginia's Proportion of Accrued Interest to Jan. 1st, 1861.....	353,020.91	
West Virginia's Proportion of Interest from Jan. 1st, 1861, as hereinbefore calculated.....	23,281,267.49	
		$35,528,615.64

All calculations contained in this Exhibit, consisting of pages 1 to 17 inclusive, made by us from joint Exhibits A-1 and B-1 of the Record, and certified correct.

ARTHUR G. POTTER.

PRICE, WATERHOUSE & CO.,
For the Plaintiff.

The foregoing seventeen pages are a calculation of West Virginia's proportion of the debt of Virginia, including the bonds held by the Sinking Fund, the Board of Public Works and the Literary Fund as a part of the debt. The Master in his report has not allowed the bonds held by the Sinking Fund, the Board of Public Works and the Literary Fund as a part of the public debt of Virginia, as the same existed on January 1, 1861, and West Virginia's proportion of these bonds is now deducted from her proportion of the debt as given in the preceding pages of this pamphlet. The accrued interest and the interest from January 1, 1861, as heretofore calculated, on West Virginia's proportion of these bonds is also deducted.

The following five tables show West Virginia's proportion of the debt of Virginia on January 1, 1861, excluding the bonds held by the Sinking Fund, the Board of Public Works and the Literary Fund as a part of the debt; and consisting of principal and interest accrued and payable at that date with interest on the principal from January 1, 1861, as heretofore calculated on the bases shown in joint Exhibit BI:

	West Virginia's Proportion of Debt, including holdings of Sinking Fund, Board of Public Works and Literary Fund.	West Virginia's Proportion of Bonds held by Sinking Fund, Board of Public Works and Literary Fund.	West Virginia's Proportion of Debt, excluding Bonds held by Sinking Fund, Board of Public Works and Literary Fund.
1. Land Area— *37.3686%*			
Principal	$13,258,748.65	$957,056.38	$12,301,692.27
Interest to Dec. 31, 1860	393,516.63	28,346.98	365,169.65
Interest from Jan. 1, 1861	25,985,675.31	2,056,792.78	23,928,882.53
	$39,637,940.59	$3,042,196.14	$36,595,744.45
2. Total Area— *36.1843%*			
Principal	$12,838,547.31	$926,724.99	$11,911,822.32
Interest to Dec. 31, 1860	381,045.15	27,448.59	353,596.56
Interest from Jan. 1, 1861	25,162,127.35	1,991,608.14	23,170,519.21
	$38,381,719.81	$2,945,781.72	$35,435,938.09

	West Virginia's Proportion of Debt, including holdings of Sinking Fund, Board of Public Works and Literary Fund.	West Virginia's Proportion of Bonds held by Sinking Fund, Board of Public Works and Literary Fund.	West Virginia's Proportion of Debt, excluding Bonds held by Sinking Fund, Board of Public Works and Literary Fund.
3. Assessed Valuation of Real Estate— *21.7812%*			
Principal	$7,728,185.06	$557,843.66	$7,170,341.40
Interest to Dec. 31, 1860...	229,370.77	16,522.73	212,848.04
Interest from Jan. 1, 1861..	15,146,384.67	1,198,851.81	13,947,532.86
	$23,103,940.50	$1,773,218.20	$21,330,722.30
4. Estimated Population, with Slaves— *24.5145%*			
Principal	$8,697,986.92	$627,846.87	$8,070,140.05
Interest to Dec. 31, 1860...	258,154.26	18,596.14	239,558.12
Interest from Jan. 1, 1861..	17,047,088.68	1,349,294.48	15,697,794.20
	$26,003,229.86	$1,995,737.49	$24,007,492.37
5 Estimated Population, without Slaves— *33.5231%*			
Principal	$11,894,327.24	$858,568.34	$11,035,758.90
Interest to Dec. 31, 1860...	353,020.91	25,429.86	327,591.05
Interest from Jan. 1, 1861..	23,281,267.49	1,814,840.54	21,466,426.95
	$35,528,615.64	$2,698,838.74	$32,829,776.90

The foregoing calculations are made by me from Joint Exhibits A1 and B1 of the Record and are certified correct.

ARTHUR G. POTTER.

In the Supreme Court of the United States.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

No. 3, Original. October Term, 1910.

NOTES OF ARGUMENT OF COUNSEL FOR COMPLAINANT.

PREFATORY NOTE.

EXPLANATORY OF ARRANGEMENT OF THE RECORD AND OF REFERENCES MADE IN THE ARGUMENT.

The principal references in the argument of the case will be to—

1. The large volume of exhibits and evidence, returned by the Master with his report, entitled "Record."

This will be referred to by pages, as follows, "R. 20," "R. 55," etc.

The tabulated statements or schedules which constitute a valuable part of that volume, and embody in a condensed form the most important data in the case, have been, for convenience, also printed and bound together in a separate volume, where they will be found arranged for ready reference according to the paging and order in which they appear in the larger volume, and can be readily examined accordingly.

These schedules are designated "Plaintiff's and Defendant's Exhibit" "A-1," "B-1," etc.; or "Defendant's Exhibit" "D-1;" or Plaintiff's Exhibit" "E-3," etc. The great advantage of the method which, under the direction of the Master, was adopted in making up all of the "Joint Exhibits," and some of the more important of "Plaintiff's Exhibits," and of "Defendant's Exhibits," comes from the fact that in those exhibits, so certified by the accountants for both parties, the *figures* stated are *agreed* figures,—the only question left open being as to the proper or legal application or use to be made of those agreed amounts in making up the respective accounts to which they relate.

These tabulated statements present in concrete form the claims of the opposing parties, and contain the very gist of the case.

It is important therefore to an intelligent understanding of the numerous questions presented, to clearly understand the method adopted by the Master for presenting the claims of the parties, respectively, and the evidence in support thereof. A clear appre-

hension of this method can be had from a preliminary examination of the "Record," and the exhibits and schedules referred to, together with the master's report.

2. The Statutes, and extracts from Ordinances, and Constitutions of the two States, most material to the questions in the cause, have been compiled under the direction of the master in a separate volume, designated as "Appendix to the Record." This will be referred to as "App. p. 12, 26," etc.

3. West Virginia has caused two volumes to be compiled, printed and filed in the clerk's office of the Court, containing most of the record of the case down to the appointment of the Special Master; including also the arguments of counsel on the general hearings in this Court, and some papers and documents not a part of the record. The first volume of this compilation was edited by the Hon. Clarke W. May, the late attorney general of West Virginia; the second volume by Hon. W. G. Conley, the present attorney general of that State.

When for convenience this compilation is referred to it will be designated, "West Virginia's Compilation, Vol. 1," etc.

In the Supreme Court of the United States.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

No. 3, Original. October Term, 1910.

NOTES OF ARGUMENT OF COUNSEL FOR COMPLAINANT.

PRELIMINARY STATEMENT.

This suit is a result of the dismemberment of the Commonwealth of Virginia and the formation of the State of West Virginia out of her territory.

It is instituted for the purpose of having an accounting with West Virginia, and determining her equitable share of the indebtedness of the undivided Commonwealth.

That indebtedness,—independently of the bonds belonging to the sinking fund and the literary fund, held by the corporations known as the Commissioners of the Sinking Fund and the President and Directors of the Literary fund,—amounted to $33,897,073.82 on the 31st of December, 1860; of which $32,919,863.93 were principal, and $977,209.89 were accrued interest. The correctness of these figures is conceded by West Virginia.—See Master's Report, pages 1, 2, 3 and 29.

The specific relief sought by Virginia is to have West Virginia's equitable proportion of this common indebtedness fairly ascertained, and to secure the payment of the same by that State.

This large indebtedness—an enormous liability, having reference to the resources of the Commonwealth at the time it was contracted—came upon her with added force after the close of a long and disastrous war; but notwithstanding her impoverishment Virginia has, down to the present time, paid more than thirty-eight millions of dollars in interest, and has retired a considerable amount of the principal of the original debt, in addition to large payments made upon the portion of the debt, payment of which she has assumed and for which she has given er obligations. And yet there are some twenty-five millions of dollars of obligations, issued by Virginia as she exists to-day, outstanding and unpaid, upon which the interest is regularly met by the Commonwealth. So that Virginia has paid off and retired, or assumed and issued her own bonds for, over seventy-four millions of dollars, principal and interest, down to the present year, including the bonds which she has redeemed since 1865.

While the Commonwealth has made this large contribution to the payment of the principal and interest of the common debt, since the formation of the new State,—much of it made during the decades following the Civil War, at a painful sacrifice, from the scant means of an impoverished people,—West Virginia has not paid one dollar upon that common indebtedness, but has refused to pay, and denied her liability to pay, any part of the same. See Resolutions of West Virginia Legislature denying any liability for, and refusing to negotiate in reference to, the Virginia Debt.—App. 247, 248.

There is another fact which it is proper to call to mind in this connection:

The bulk of this large common debt was contracted with the sanction and by the votes of the representatives in the General Assembly of Virginia from the counties now constituting the State of West Virginia,—a large part of it having been actually put upon Virginia by the votes of those representatives over the votes

of a majority of the representatives of the counties constituting the Virginia of to-day; and but a small part of that indebtedness would have been contracted had the representatives from West Virginia counties in the General Assembly of Virginia opposed and voted against the Acts by virtue of which the debt was created.

These pregnant facts are specifically alleged in the complainant's bill, and are not denied or questioned in the defendant's answer.—See Paragraph III of the Bill, R. 4; and Paragraph III of the Defendant's Answer, R. 144.

It is also true that more than seven-eighths of the indebtedness of Virginia at the time of the formation of West Virginia was represented by equivalent sums expended on works of internal improvement, which were either designed, begun, and built for the purpose of penetrating and developing West Virginia territory, or are to-day parts of railway systems and lines of communication which serve the territory and people of West Virginia, and afford large regions of that State their best access to the Atlantic seaboard and to the markets of the world.—See Appendix I to this Note of Argument.

The foregoing statement of facts is made here, because they have an important bearing upon the broad equities of the case, and entitle Virginia to fair and just consideration in the application of rules of construction to the statutes, ordinances and provisions of constitutions which are relied upon as determining the rights and obligations of the parties.

They are tremendous facts, and have a mighty bearing upon questions which go to the very right of the cause.

This suit is brought by Virginia for her own protection and relief; and yet, to the extent that it shall result in her exoneration, it will inure to the benefit of the common creditors who have deposited their bonds in her keeping.

She actually to-day holds every bond which was issued by the Commonwealth prior to the formation of West Virginia, which is known to be in existence, and she also holds more than nine-tenths of the certificates which she issued to the common creditors of the two States, who confided those bonds to her keeping.—R. 102.

So that Virginia, and Virginia alone, has, and represents here every substantial right and interest, adverse to the defendant, in any way connected with the unsettled debt of the undivided State, or directly or indirectly involved in this suit.

Such are some of the more important facts which underlie this suit, and such generally are the relations of Virginia to, and her vital interests in, the litigation.

ARGUMENT.

There can be no question, as a principle of public law, public justice and public right, that, on the 20th day of June, 1863, when West Virginia became one of the States of the American Union, the public debt of Virginia, then existing, constituted, independently of any stipulation between Virginia and the new State, an equitable and a moral claim against the people and the property, both of West Virginia and Virginia; and that, as has been decided by the Supreme Court of Virginia in more than one case, and has been held by this court, both States, and the people of both States, were bound for the payment of those obligations.

Higginbotham v. *The Commonwealth*, 25 Gratt., 627;
Greenhow v. *Vashon*, 81 Va., 336;
Hartman v. *Greenhow*, 136 U. S., 672.

Independently of any convention between the two States, according to recognized authorities, the debt should have been ratably apportioned between the two States.

The entire debt of the Commonwealth was created in carrying out what was known as her "Internal Improvement Policy."

The history of that policy of Virginia, from its inception nearly a century ago until 1861 when it was rudely interrupted by war and revolution, will show that the enormous debt incurred by Virginia in carrying it out, was incurred mainly upon the expectation of the return which would reasonably come to the State and her people from the *prospective* enhancement of the values of real estate which would follow the development of the regions which those works of internal improvement, built in whole or in part by the money represented by the State debt, would create and stimulate.

That these expectations have been largely realized, though not always precisely, perhaps, in the way anticipated, is impressively shown by the remarkable increase of the assessed values of the real and personal property in the two States, and particularly in West Virginia, down to 1908, the latest year for which those facts are established in the cause.

As will be seen from Plaintiff's Exhibit E-3, R. 651, which is made up from the official records of the two States, the aggregate of the assessed values of the real estate, personal, and railroad property in West Virginia were

For 1867 (the first year for which the official figures could be obtained).....$126,060,743.00
For 1908 ..... 937,232,718.54

An increase of $811,171,975.54,
Or 643 per cent!!!

The assessed values of taxable property in Virginia for the same period advanced from.....$354,848,482.69, in 1867,
To ..... 661,796,631.00, in 1908,

An increase of.....$306,948,148.31,
Or about 84 per cent.

While this enormous difference in the increment of the assessed values of taxable property may doubtless be, in part, accounted for by the different standards of valuation adopted in the two States, by no means all of it is ascribable to that circumstance; and the facts and figures shown by the exhibit just referred to have an influential bearing upon the essential equity of the plaintiff's claim that to determine fairly the portion of the burden of the common debt which, as a matter of justice, should be borne by West Virginia, account should be taken of the great enhancement of values which have come to the territory which the internal improvements referred to were designed to develope and have in large measure created. The debt was contracted far

more in reliance upon future and prospective values, than upon the values existing at the date of its creation.

There were certain enactments and certain conventional agreements of the restored government of Virginia, at Wheeling, and the new State of West Virginia, which have to be considered in determining what the respective rights and liabilities of the parties are in the premises.

The first of these, was the so-called "Wheeling Ordinance," an ordinance adopted on the 20th day of August, 1861, by what purported to be a convention of the people of Virginia, "to provide for the formation of a new State out of a portion of the territory of this State."—(Appendix to the Record, pp. 119 to 122, inclusive).

The ninth section of that ordinance dealt with the debt and provided—

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period."

That ordinance purported to be an enactment of Virginia alone. It prescribed, *upon its face*, an arbitrary and what would seem to be an inequitable basis of settlement.

In so far as it provided for the assumption by the new State of a "just proportion" of the debt of the Commonwealth, its language was free from objection. But when it came to indicate the manner in which that proportion should be ascertained, its terms were not only artificial, but *on their face*, inequitable.

And yet the dominant purpose of the enactment, expressed in the clearest terms, was to require the new State to assume a "just proportion" of the public debt of the Commonwealth prior to the first of January, 1861. Upon elementary principles of con-

struction this will be taken, certainly by a court of equity, to be its controlling purpose; and that intendment will not be suffered to be defeated by such a construction of the language of the ordinance as will lead to a result inconsistent with it, when that language can be sensibly, reasonably, and fairly construed and applied so as to operate in harmony with that expressed paramount purpose.

Fortunately, in the interest of justice, that was not the only enactment upon the subject.

There was a later, a more significant, and a more effective enactment by the legislature of the restored government of Virginia, accepting the provisions tendered by West Virginia, resulting in a compact between the two States, and creating a contractual relation governing both Commonwealths in reference to the settlement of their common debt.

These later enactments of the two States were—

First, that of West Virginia, embodied in the eighth section of the eighth article of the first Constitution of that State (Appendix to the Record, p. 125), which is as follows:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

And, second, the act of the legislature of the restored government of Virginia, at Wheeling, passed May 13, 1862, giving the consent of the legislature of Virginia "to the formation and erection of the State of West Virginia within the jurisdiction of this State * * * * * under the provisions set forth in the constitution for the said State of West Virginia and schedule thereto annexed."—Appendix to the Record, p. 125.

Under section 3 of Article IV of the Constitution of the

United States the new State of West Virginia could not be formed without the consent of the legislature of Virginia.

That consent was given in this instance upon the terms, and in accordance with the provisions, set forth in the constitution adopted for the government of the new State, among the more important of which were the provisions and stipulations set forth in section 8 of Article VIII of that instrument, which required that the new State should assume "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first of January in the year one thousand eight hundred and sixty-one"; and that "the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years."

This proposal of the new Commonwealth, thus clearly expressed in its constitution, submitted to the legislature of Virginia and accepted by that legislature as one of the terms and conditions upon which it gave its consent to the partition of her territory and the erection of a new State out of that territory, and sanctioned by Congress, created a contractual relation between the old State and the new—a compact between them, which absolutely determined their rights, and which, whenever the provisions of the antecedent Wheeling ordinance shall come in conflict with the terms of such compact, shall prevail over the terms of that ordinance.

Now the insistence of Virginia has been, and is, that West Virginia should be charged with an equitable proportion of the debt, to be ascertained under the Wheeling Ordinance construed so as not to defeat the expressed controlling purpose of its enactment, and qualified and ruled by the provisions of Article VIII of the West Virginia Constitution, upon which the consent of the Legislature of Virginia and of the Congress of the United States to the formation of the new State, was predicated.

Agreeably to the decision of this court in its opinion, delivered by the late Chief Justice (R. 136), the view of Virginia is, and has been, that the Ordinance and the provisions of the West Virginia

Constitution should be read as being *in pari materia;* but that the constitutional provision, being the latest, must prevail, if, and whenever there is any conflict between them.

As a logical and inevitable consequence from this, the claim of Virginia was, and is, that, if the language of the Wheeling Ordinance is fairly and reasonably susceptible of such a construction as will, when fairly applied to the facts of the case, lead to an equitable result, and place upon West Virginia an equitable proportion of the debt, such construction should be given to that Ordinance; and that, if the language of the Ordinance is not reasonably and fairly susceptible of such a construction, then the Ordinance must be discarded, and the mandate of the West Virginia Constitution followed. And that, in any event, the provisions of that Constitution will govern in placing a contractual obligation upon West Virginia to pay an equitable portion of the common debt of the undivided State, and to pay interest upon the same from the date when that express contractual obligation accrued, until it shall have been discharged.

But the claim of Virginia was, and is, farther, that the provisions of the Wheeling Ordinance—fairly, justly and sensibly construed, and applied, according to its manifest purpose—places upon West Virginia a just and equitable proportion of the debt; *and that West Virginia cannot be heard to repudiate this result of her own express covenant and promise.*

On the other hand, West Virginia has insisted, and still contends, that there is no obligation upon that State to pay any part of the Virginia debt; but that, if there is any liability whatever upon West Virginia, it is a liability for a settlement and accounting which must be made under a construction of the language of the Ordinance, which would absolutely defeat its declared purpose, and, instead of placing a just proportion, or any proportion, of the debt upon West Virginia, would actually, as was contended for West Virginia, bring Virginia in debt to West Virginia.

With the issues thus made up, this court, in order to place in its possession the data necessary to enable it to intelligently and fairly decide the case, referred the cause to Special Master Charles

E. Littlefield, by its decree of reference, entered on the 4th of May, 1908, and directed the Master to take and report to the court seven separate accounts set forth in seven paragraphs of the decree.—R. 173, 174, 175 and 207.

After considering a great mass of testimony, statements, and accounts prepared by the accomplished expert accountants employed by the parties, respectively, and the elaborate arguments of counsel, and after a laborious and painstaking investigation and consideration of the case, the Master, on the 17th of March last, filed his report, in which he returns his findings upon each of the seven inquiries submitted to him, and with great fairness and great ability presents the grounds upon which those findings are based.

The cause is now submitted for final adjudication.

It comes before the court upon the pleadings and papers formerly considered by the court, upon the decisions and decrees heretofore rendered in the cause, and upon the Master's report, together with the evidence returned therewith and referred to therein, and upon the exceptions filed by the parties to that report.

Your Honors must have been already impressed with the fact that it is a cause of as much complexity as any which has ever come before you for decision, and with the novelty and difficulty of some of the problems which it presents.

Much of what appears at the threshold to be complex will disappear upon a careful examination of the bill and answer, the 9th section of the Wheeling Ordinance, the 8th section of Article VIII of West Virginia's Constitution of 1862-3, the decisions and decrees heretofore rendered in the cause, and the tabulated statements or accounts, the figures in which have, in almost every instance, been assented to by both parties.

Still a painstaking consideration of the Master's report, and of the exhibits and evidence referred to therein and in the arguments of counsel, will be necessary to any fair understanding of the issues in the cause, and to their decision according to the very right of the case.

We have, therefore, to crave the patient and indulgent attention of the court to a somewhat detailed and tedious discussion of the facts, figures, and principles upon which a righteous decision of the cause depends.

The chief points of difference are sharply presented by such of the exceptions to the Master's report as are specifically relied upon by the parties respectively, and by the "Joint Exhibits" or accounts which exhibit their opposing claims in contrast.

Upon the great majority of these the Master's findings are, and are shown by him to be, so plainly right that further discussion of them is rendered needless.

After full consideration, however, the counsel for Virginia deem it to be their duty, upon the case as it is presented, to earnestly urge objections to a few of the Master's conclusions, in reaching which we are persuaded that he is in manifest error. But it is our purpose to urge no objection to his report which rests upon a proposition which can be fairly regarded as debatable.

I.

The first paragraph of the decree directed the Master to ascertain and report to the court:

> "1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness."

In the view which we take of this branch of the case and for the principal purposes of our argument it will be only necessary to consider the amount of the public debt of the Commonwealth outstanding on the 31st of December, 1860, in the hands of the general public.

Fortunately there is no controversy as to the amount of that indebtedness then so outstanding.

As ascertained by the Master, the amount of that indebtedness is, as fixed by the records of the Commonwealth, as follows:

Aggregate amount of old Virginia debt in the hands of the general public January 1, 1861:

Amount bearing 6 per cent. interest	$30,842,659.43
Amount bearing 5 per cent. interest	2,077,204.50
Interest on 6 per cent. outstanding debt from July 1st to Dec. 31st, 1860	925,279.78
Interest on 5 per cent. outstanding debt from July 1st to Dec. 31st, 1860	51,930.11
Total outstanding indebtedness	$33,897,073.82

See "Plaintiff's and Defendant's Joint Exhibit A-1," R. 215, and Master's Report, pp. 1, 2 and 29.

The authority of law by which, the purposes for which, that indebtedness was contracted, and the dates and nature of the bonds or evidences thereof, are shown by the references and entries upon "Plaintiff's and Defendant's Joint Exhibit A-1;" by the copies of the bonds and certificates of indebtedness issued for much the greater part thereof—"Plaintiff's Exhibit A-2," R. 219 to 285; by the abstract of the statutes in reference to the State debt and the appropriation of the avails thereof to works of internal improvement—"Plaintiff's General Exhibit I," R. 900 to 988; and by other evidence in the case; none of which are any longer matters of controversy.

The only controverted questions which have arisen under this branch of the case have been in respect to the inclusion or exclusion of the sinking fund and the literary fund from the statement of the debt.

As to the sinking fund, frankness compels us to say that we are convinced that the finding of the Master in reference thereto is right.

As to the literary fund, we are content to rely upon the complainant's first exception to the Master's report.

II.

The second paragraph of the decree required the ascertainment of—

> "2. The extent and assessed valuation of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately."

The figures as to the area and assessed valuation of the real estate embraced in the territory of the two States, respectively, and as to the population thereof, with and without slaves, having been taken from authentic public records of the United States and of Virginia, incorporated in "Plaintiff's and Defendant's Joint Exhibit B-1," the agreed statement prepared by the expert accountants of the parties,—those figures have been adopted by the Master and made the basis of his findings under this paragraph of the decree.

We are unable to conjecture how these figures, thus authoritatively established and adopted, or the results deducible therefrom, can now be brought in question. R. 366, 367.

The figures furnished for West Virginia in "Supplemental Exhibit 7," and now relied upon by that State would be more advantageous to Virginia than those adopted by the Master, for the reason that the assessed valuation of the real estate embraced in the State of West Virginia, as given by that exhibit, is larger and the assessed valuation of the territory of Virginia is less than that adopted by the Master, taken from the assessments of Virginia. The figures submitted by West Virginia would make her share of the debt, on the basis of assessed valuation of real estate in the two States, $154,166.09 more than she would owe under the master's findings. But we are content to accept the values adopted by the Master, because we are satisfied that they are correct.

The Master's findings under this head are as follows:

The Extent and Assessed Valuation of the Territory of Virginia and of West Virginia June 20th, 1863, and the Population Thereof, with and without Slaves, Separately.

PARAGRAPH II OF DECREE.

1. EXTENT:

Land Area

Virginia	40,262	Square Miles =	62.6314%
West Virginia	24,022	Square Miles =	37.3686%
Total	64,284	Square Miles =	100%

Total Area:

Virginia	42,627	Square Miles =	63.8157%
West Virginia	24,170	Square Miles =	36.1843%
Total	66,797	Square Miles =	100%

2. ASSESSED VALUATION:

Real Estate:

Virginia	$296,085,460.31 =	78.2188%
West Virginia	82,449,252.04 =	21.7812%
Total	$378,534,712.35 =	100%

3. POPULATION:

Estimated—With Slaves:

Virginia	1,221,319 =	75.4855%
West Virginia	396,633 =	24.5145%
Total	1,617,952 =	100%

Estimated—Without Slaves:

Virginia	748,171 =	66.4769%
West Virginia	377,289 =	33.5231%
Total	1,125,460 =	100%

III.

The third account directed by the decree is one ascertaining—

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

This is one of the accounts which is called for under section 9 of the Wheeling Ordinance, which requires that in order to ascertain the proportion of the debt which the new State shall take upon itself, that State shall be charged with "all State expenditures within the limits thereof * * * * * since any part of said debt was contracted."

The divergent contentions of the parties are shown by the tabulated statements embodied in "Plaintiff's and Defendant's Joint Exhibit C-1," pp. 1 to 6, R. 371-377.

The total of said State expenditures in the territory constituting West Virginia, as shown by plaintiff's statements of this account (R. 371) was	$5,639,302.66
As shown by defendants' statements	1,251,288.92
Difference in the two results is	$4,388,013.74

In considering the questions which are presented by the controverted items in the schedules filed under this paragraph, it is important always to bear in mind the precise language of the decree, which, following the terms of the Wheeling Ordinance, directs the ascertainment of:

> "*ALL expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, since any part of the debt was contracted."

It is manifest that that language in explicit and comprehensive terms, embraces, without exception or qualification, all expen-

ditures of whatever character or description, and on whatever account, or for whatever purpose, or in whatever manner made, which were made by the Commonwealth of Virginia in any part of the territory now constituting West Virginia, after March 19, 1823, the agreed time at which any part of the debt in question was contracted.

The only questions to be considered, therefore, in determining whether any particular expenditure made during that period should be charged against West Virginia, are: First. Was it made by the Commonwealth? and, Second, Was the money expended in West Virginia?

Now, governed by these plain requirements of the decree, the accountants engaged on behalf of Virginia have embraced in this account all such items of expenditure, and only such items of expenditure, as were made by the Commonwealth within the territory of the new State during the period stated.

To a number of these items of charge counsel for West Virginia make objection, not on the ground that the expenditures they challenge were not made, or were not made in West Virginia territory, but in some instances because of the manner in which the expenditures were made; in others because of the character of the particular expenditure, or the purpose for which it was made; and in other cases, as for instance the expenditures made in West Virginia on the Covington & Ohio Railroad, and upon the Berryville and Charlestown Turnpike, upon the ground that Virginia has, since these several expenditures were made, in some way, by acts or transactions in reference to these subjects, lost her right to embrace those items of expenditure in this account.

As appears from Joint Exhibit "C-1," R. 371, the charges upon this account allowed by the accountants for plaintiff, and excepted to by the defendant, are classified as follows:

Items of Plaintiff's Charges Excepted to by West Virginia:

Expenditures in W. Va. upon railroads	$1,316,992.42
Expenditures in W. Va. upon turnpikes	430,252.89
Miscellaneous expenditures in W. Va	1,154,000.10
*Expenditures in bridges, river improvements, banks owned by joint stock companies, and loan to Town of Bath	1,486,768.33
	$4,388,013.74

We will consider these in the order in which they are stated in Exhibit "C-1," and are considered by the Master.

1. The expenditures upon railroads which West Virginia questions, are—

Expenditures on the Covington & Ohio R. R.	$1,146,460.42
Expenditures on the Winchester & Pot. R. R.	170,532.00
	$1,316,992.42

(1) The expenditures upon the Covington & Ohio R. R. This item of $1,146,460.42, is allowed by the master.

The Master very clearly shows the propriety of this item of charge, and little if anything need be said in support of his conclusion.

There is no question that those expenditures were made by the Commonwealth "since any part of the debt was created;" nor that they were made "within the territory now constituting the State of West Virginia."

But opposing counsel claim that in some way Virginia has lost her right to have those expenditures charged against West Virginia by reason of the public acts and transactions of Virginia and West Virginia in reference to this railroad. This ob-

NOTE:—The charge under this paragraph for amounts invested in Bank Stocks is withdrawn, as those stocks should be accounted for under Paragraph VII. and have been allowed by the Master under that Paragraph.

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jection has been stated so vaguely that we are at a loss to know upon what ground it is based.

The Covington & Ohio Railroad was owned and built by the Commonwealth under the Acts of February 15, 1853; March 13, 1856; March 20, 1858, and February 29, 1860. (Appendix 33, 34.) The work was unfinished at the time of the formation of the State of West Virginia, though over $2,787,000.00 had been then spent upon it.

How West Virginia should account for that property and the expenditures which it represented, was distinctly prescribed by section 9 of the Wheeling Ordinance (App. 119, 122), and was prescribed nowhere else.

After June 20, 1863, West Virginia owned the portion of the Covington & Ohio Railroad in that State as completely as Virginia owned the portion of that road within her limits.

As is shown by the subsequent legislation of the two States, both States were very anxious to secure the completion of that railroad from its intersection with what was then known as the Virginia Central Railroad at Covington, Virginia, to a point on the Ohio river, thus giving a through railroad connection from Richmond, Virginia, through the entire State of West Virginia to the Ohio river, at the mouth of the Big Sandy, or at the mouth of the Great Kanawha, with the right to build to both points.

Both States were, as is shown by that legislation, willing to give to the company which should complete that through line of railway, the right of way and property of each State, respectively, in the parts of the unfinished road located in each State, and the benefit of the large expenditures made in its partial construction. Virginia, though very little of the proposed new railway would be within her limits, made still more liberal concessions to the builders of the through road, in reference to the sale to the new company of the Blue Ridge Railroad wholly within Virginia, and to the sale of the stock of Virginia in the Central R. R. Co., and to the settlement of the indebtedness of the Central R. R. Co. to Virginia.

To effectuate the purposes of the two States, concurrent Acts

were enacted by their respective Legislatures for the incorporation of the Covington & Ohio Railroad Company, passed by Virginia February 26, 1866, (Appendix 35), and by West Virginia March 1, 1866, (Appendix 37), and to authorize the consolidation of the Covington & Ohio Railroad Company with the Virginia Central Railroad Company and other companies, and the formation of the Chesapeake & Ohio Railroad Company for the purpose of completing "a continuous line or lines of railroad from the waters of the Chesapeake to the Ohio river," passed by West Virginia February 26, 1867, (Appendix 40), and by Virginia March 1, 1867, (Appendix 43.)* See also section 9 of Act of Virginia Feb. 26, 1866 (App. 36), and section 9 of Act of West Virginia March 1, 1866 (App. 39.)

It will be seen that the interests which West Virginia had in the building of the proposed railroad were far greater and more vital than those of Virginia.

West Virginia at that time had no railroad within her limits, except the Pennsylvania across the Pan Handle, and the Baltimore & Ohio through the northern portion of that State.

The New river and Kanawha valleys, and the entire southern portion of West Virginia, were without a mile of railroad, and large parts of those sections were inaccessible to the outside world by any practicable line of communication.

The enterprising young State accordingly freely donated all the property rights which she had in the Covington & Ohio Railroad, situated within her limits, to the builders of that railroad, just as the older State, in larger degree, contributed even more generously to the same important object.

The legislation of the two States upon this subject, printed in the Appendix, pp. 35 to 49, will be read in vain to discover any provision which can be so wrested as to be construed to refer in any way to the liability of West Virginia to pay some part of the

*By Act of January 26, 1870, the Legislature of West Virginia amended the charter of the Chesapeake and Ohio R. R. Co., and confirmed the contract made by the commissioners on behalf of the two States with the Virginia Central R. R. Co., under authority already granted by Virginia, by the Act of February 26, 1866 (Appendix p. 35-36) and by West Virginia by Act of March 1, 1866 (App. 37-39 and 46.)

Virginia debt, or to release that State from any part of that liability.

Those concurrent enactments can be construed to do only what they did do, that is, to give the consent of the two States to the establishment of, and by their respective grants to secure, a through line of railway from the waters of the Chesapeake to the banks of the Ohio, and to grant the property rights of each State in and to the portion of the respective railroads situated in each State, to the consolidated company, for that purpose.

The Wheeling Ordinance prescribed the basis on which the proportion of the Virginia debt to be assumed by West Virginia was to be ascertained, and vested in the new State the ownership of the portion of the Covington & Ohio Railroad located in West Virginia, and there is not a line or a syllable of those concurrent Acts of the two States in reference to the Chesapeake & Ohio Railroad, which can be construed to repeal or to modify the provisions of that Ordinance.

It would require a far-off and capricious flight of the imagination to construe the language of those concurrent Acts so as to make them operate to prevent Virginia, when she comes to have a settlement with West Virginia as to the part of the common debt which West Virginia should pay, from insisting that West Virginia should, according to her own agreement, be charged in making up that account with the amount expended upon the Covington & Ohio Railroad within the limits of the new State, if the Wheeling Ordinance is to control to any extent in that accounting.

There is nothing in any of those concurrent Acts of the two States to suggest that either State was conceding anything to the other. Both were conceding a great deal to the Covington & Ohio and to the Chesapeake & Ohio Railroad Companies, and for obvious reasons.

The account of this matter, as claimed by the plaintiff and found by the Master, is distinctly responsive to the decree.

That claimed by the defendant would not satisfy the decree, and cannot be set up without going counter to both the decree and the Ordinance.

(2) The expenditures upon the Winchester & Potomac Railroad in West Virginia.....$170,532.00.

The Master rejected this item of charge—15/27th of it because it was a loan by Virginia to the railroad company, and 12/27ths of it because it was, in his view, an investment made by the State in the shares of the capital stock of this Company.—Master's Rep. 47; Joint Exhibit C-1, p. 2; R. 373.

We cannot be unmindful of the fact that there are circumstances connected with Virginia's dealings with the Winchester & Potomac Railroad Company, which sharply differentiate any charge on account of her expenditures in West Virginia upon that railroad from the other expenditures made by the Commonwealth in building works in West Virginia territory, which were built through internal improvement companies.

We are constrained to admit that the circumstance that Virginia commuted all of her claim against, and interest in, that company under the Act of February 24, 1846 (App. 30, 31), gives West Virginia a strong equity to have that charge eliminated from the account, even though it be true that the transaction was not consummated and Virginia was not paid the commuted price, until after the formation of the new State.

We, therefore, beg leave to withdraw our objection to the disallowance by the Master of this item of Virginia's claim.

We do not, however, at all assent to the reasons upon which, in part, the Master bases his rejection of so much of this item as was represented by the shares of stock which Virginia received therefor.

We will consider those grounds under the next head, when we come to discuss the question presented distinctly, as it is there, free from other complications, in connection with the large expenditures made by the Commonwealth through internal improvement companies, in building roads, turnpikes and bridges, etc., upon West Virginia soil.

(3) *Expenditures made by Virginia in West Virginia territory in the construction of works of internal improvement*

located in West Virginia but built through the agency of joint stock companies.

Passing over a number of items under this paragraph of the decree, as to which the findings of the Master, in so far as they are in favor of the contention of the plaintiff, afford no just ground of objection to the defendant, for the reasons clearly shown by the Master, the only items of charge against West Virginia under that paragraph of the decree, to the disallowance of which we deem it our duty to object, are the items specifically stated in complainant's second exception, as follows:

(1) For Bridges: Expenditures made by Virginia upon bridges in West Virginia territory, built by joint stock companies, owned partly by the Commonwealth—Items 57 to 65, inclusive, of Joint Exhibit C-1, p. 4; R. 375; Special Master's Report, p. 85—aggregating ..... $ 78,412.50

(2) Expenditures made by Virginia in the improvement of the navigation of West Virginia rivers by joint stock companies—Items 66 to 69, inclusive, of Joint Exhibit, C-1, p. 4; R. 375; Special Master's Report, p. 85—aggregating ..... $ 210,500.00

(3) Expenditures made by Virginia upon turnpikes wholly in West Virginia territory, built by joint stock companies:

(a) On Charlestown & Berryville turnpike, in West Virginia—Item No. 6 of Joint Exhibit, C-1, p. 2; R. 373; Special Master's Report, pp. 64, 84 ..... $ 11,932.52

(b) On turnpikes and roads mentioned in Items 70 to 147, inclusive, of Joint Exhibit,

C-1, pp. 4, 5 and 6; R. 375, 376 and 377; Special Master's Report, pp. 78, 79 and 85....	803,555.83	
Total expenditures made by Virginia, through joint stock companies, on turnpikes and roads in West Virginia territory.....	$815,488.35	815,488.35
Total aggregate of items, the disallowance of which is here excepted to		$1,104,400.85

This exception raises one of the most important questions in the case under the Wheeling Ordinance and the provisions of the first Constitution of West Virginia as it involves $1,104,400.85, principal sum, of the amount of the debt to be assigned to West Virginia.

With the utmost deference for the ability, learning, and fairness of the Master, we are convinced that he erred in his rejection of these items of the account against West Virginia.

We believe that there is no question as to the propriety of their being charged against West Virginia under Paragraph III of the Decree and under the language of the Wheeling Ordinance. If we fail to demonstrate this, it will be because of our inability to fairly present to the minds of the court the facts and considerations which should control in the decision of the question.

The principal grounds upon which this objection to the Master's finding is based are concisely stated in the formal exception taken thereto.—See Complainant's Exceptions, pp. 4 and 5.

The material facts as to all of these expenditures are, for the purpose of this inquiry, substantially the same, and the same principles should control in determining the proper disposition to be made of these items, in the accounting.

The money appropriated by the Commonwealth in each instance was unquestionably expended in West Virginia territory; for all of these improvements were physically located in West Virginia counties.

The chief ground relied on for excluding these item
the debit account against West Virginia is, *because of the*
in which the expenditures were made; that is, because the
not made by the State directly through the hands of her o
cers or immediate employees, but were made by the Stat
rectly through the medium of joint stock companies; th
were not made upon bridges, locks, dams and other impro
in rivers, and upon turnpikes, wholly owned by the State, b
such works of internal improvement as were only partly ow
the State.

The works and highways upon which these expenditur
made in every instance had their situs in West Virginia,
State money appropriated to them was expended in West V

The chief difference between these expenditures an
made directly by the State through its own officers and em
which are conceded by the defendant to be proper charges
this head, was, that in the one case the State received a certif
stock in a joint stock company (which stock usually proved
less), as the representative of the expenditure, while in th
case the State would receive merely a receipt or voucher fr
officers as an evidence of the outlay.

In either case the Commonwealth, and West Virginia
successor, received the benefit of the bridge, improvement o
gation, or turnpike on which the State money had been exp
and it is manifest from the history of these public works t
benefits which it was hoped that the public would derive fro
construction generally constituted the chief inducement a
sideration both to the public and to private investors.

There can be no question that any expenditure made b
ginia, by her several and independent acts, upon any work
ternal improvement, or other object, in West Virginia, dur
defined period, is a proper and necessary charge against We
ginia under the terms of the 3rd paragraph of the decree, a
der the Wheeling Ordinance.

This is conceded by the counsel for West Virginia.

Now, it is equally clear that any such expenditure made by Virginia in association, or in partnership, with other corporations or individuals, would be also a proper and necessary charge against West Virginia under the decree and Ordinance.

Here, in a number of cases, Virginia, instead of going into an ordinary partnership with her associates in the various enterprises in question, chose to form a limited liability company to do the same thing which could have been effected by an ordinary partnership: for a joint stock company is, in law, and in fact, nothing more than a limited liability company.

In the country from which we so largely derive our institutions and our laws, they are termed "limited liability companies."

How can it be even plausibly contended that, because Virginia, for obvious considerations of convenience and public interest, chose to expend her input in these public improvements and other enterprises in West Virginia territory, through the medium or agency of a limited liability company, such expenditure is any less an expenditure by the State than it would have been had it been made through an unlimited liability partnership?

There is no qualification of the expenditures which are to be charged, such as counsel for West Virginia have had to attempt to make, either in the decree or in the Ordinance. The words "direct" and "indirect" are not found in either decree or Ordinance. No such classification is justified by the language of either the decree or the Ordinance.

Opposing counsel are forced by the stress of their case to interpolate the word "direct" both in the decree, and in the Ordinance, an interpolation which, while deemed necessary for the purposes of their argument, is absolutely unwarranted by the decree or by the Ordinance.

But even if that word were in the decree and Ordinance, it would not justify their contention; for an expenditure such as the State made in the improvement of Coal river, or upon the Huntersville and Parkersburg Road, or upon any one of the turnpikes and roads built partly by State aid, was a *direct* expenditure by the State, though paid, for the purpose of building the road or

other internal improvement, to the treasurer of a corporation having its domicile and situs in West Virginia territory.

It is a conclusive answer to all of these objections to these items of expenditure that the account directed by paragraph 3 of the decree is not limited to such expenditures as were made directly by the State; nor to expenditures made upon bridges, locks, dams, and sluices, and upon turnpikes wholly owned by the State; nor to expenditures for which the State received no return, nominal or otherwise, in the shape of shares of stock. That account is required by the decree to include "*all expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

The question considered by the Master, and which he has decided in the negative, is, as stated by him:

"Whether the subscribing and paying for stock in an internal improvement company, whose improvements were located within the limits of West Virginia, was 'an expenditure made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia' etc."? (See Master's Report, p. 47.)

With the utmost deference, that is not an accurate statement of the question presented here.

The exact question is:

Whether the expenditures made by Virginia in works of internal improvement physically located in West Virginia lost their character as State expenditures in that territory, because those works were built by joint stock companies formed by Virginia and individuals and corporations for the purpose of building those very turnpikes, roads, bridges, &c., and the Commonwealth received stock of such companies for the money so expended by her through them upon said works?

The history of the internal improvement system, and of the legislation of Virginia in regard thereto, as shown by the records and statutes of the Commonwealth, significant portions of which are referred to by the Master in his discussion of this subject at pages 47 to 55 of his report, will show, beyond controversy, that the paramount and controlling motive of the Commonwealth in all

these expenditures of money upon works of internal improvement was, not any direct or pecuniary return for the money expended in the shape of dividends or interest thereon, but was the advancement of the local and general interests of the people by the development of the resources of the Commonwealth, and of the facilities and lines of communication between the different sections of the State and the markets of the country.

It was the "public utility" which would be served by the construction of these works of internal improvement which the General Assembly had in mind, and not the return which might be expected in the shape of dividends upon the stock which was issued for these investments.

This will be apparent from reading the extracts from the public records of the Commonwealth, which show the purpose, policy, and motive of Virginia in expending her money on works of internal improvement, built by internal improvement companies, printed with this Note of Argument as Appendix II.

Noticing further one of the grounds chiefly relied upon for the exclusion of these items of expenditure, namely, that the expenditures were "investments" made by the State with a view to realizing some profit from them, we would say: That, while it was true that the hope of ultimate financial gain, or of some profitable return from the investment, was in some instances at least one of the inducements which led Virginia to make those expenditures in works built through the agency of joint stock companies, that was in no instance the dominant or controlling motive.

But, if the hope of ultimate financial gain constitutes any reason for excluding these public expenditures from the debit account against West Virginia, then there are few, if any, of the expenditures, which were made by Virginia in West Virginia counties which would not, by the same token, be excluded upon the same ground.

There were, and in the nature of things there would necessarily be, very few, if any, expenditures made by the State of the character indicated, which were not, or would not be, made in

whole or in part in the hope that they would not prove absolutely unprofitable.

The fact is that nearly the whole of the expenditures admitted by West Virginia to have been properly chargeable under this item, amounting to $1,251,288.92, were expenditures made in part with a view to the direct profits which it was hoped would be realized by the State from them in the shape of tolls or other income from the works thus constructed, as well as the anticipated indirect profits from the development of the territory which those works of internal improvement would serve.

For example, of the expenditures made by Virginia on turnpikes and roads in West Virginia, which are admitted by the defendant, there were expended—

On the Northwestern turnpike	$469,148.53,
And on the Staunton & Parkersburg turnpike	264,043.07,
Or	$733,191.60,

of the total admitted items of $859,050.92.—See Plaintiff's and Defendant's "Joint Exhibit C-1, p. 2," R. 373.

Now it will be found that Virginia actually derived in tolls from these two investments the following sums:

From the Northwestern turnpike	$126,339.89
From the Staunton & Parkersburg turnpike	17,080.71
Or a total of	$143,420.60

See Plaintiff's and Defendant's Joint Exhibit F-1, R. 805.

So we see that, of the two grounds of objection to the allowance of these charges against West Virginia:

(1) that the expenditure may be regarded as an investment made by the State, or,

(2) that anticipated profits or income may have been a motive for the expenditure, neither constitutes any just criterion or ground for either the allowance or rejection of such expenditures.

The fact is, undoubtedly, that every dollar expended by Virginia in works of internal improvement was an "*investment.*"

Another pregnant fact is also unquestionably established by the record in this case, that by far the greater part of the money thus expended was expended in the hope of some direct return from the investment; and that every dollar that was expended was expended with the expectation of some indirect, ulterior, or ultimate return through the improvement and development of the territory in which the several works of internal improvement were constructed.

It is also true beyond a doubt that nearly all of these investments made by the Commonwealth in West Virginia territory, whether made in works wholly owned by the State, or made in works owned by the State in conjunction with other stockholders, proved, so far as dividends or direct earnings were concerned absolutely unprofitable and unremunerative; and that some of the investments made by the State in works wholly owned by the State proved more remunerative than the expenditures made through the agency of joint stock companies in the construction of similar works of internal improement.*

It is a significant fact that the view which is here urged as to the expenditures of the Commonwealth in works of internal improvement constructed in West Virginia territory and as to the classification of such of those expenditures as were made through the media, or agency, of joint stock companies is the view heretofore consistently taken by the representatives of West Virginia most familiar with the subject.

The eminent citizens of that State who constituted the Debt Commission appointed by the Governor of West Virginia pursuant to the resolutions adopted by the Legislature of that State

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NOTE:—It is an important circumstance in this connection that every expenditure made by the State on internal improvements whether built by the State or by joint stock companies, was, by the terms of the Act of February 5, 1816, and he Acts amendatory thereof, made exclusively for the purpose of building such works. Any earning or profit received from any such investment went into the Internal Improvement Fund, to be there used for building other internal improvements. So that the only hope of gain or profit, which actuated Virginia in making all of these expenditures or investmens, was to provide money to build roads, bridges, turnpikes and railroads to which every dollar thus received was dedicated.

See Appendix II, to this note of argument.

February 15th and 20th, 1871, in the elaborate report made by them on the 7th of August, 1871, reviewing the entire subject of West Virginia's liability for a portion of the Virginia debt, found that the expenditures made by Virginia in the construction of turnpikes and bridges, and in the improvement of rivers, built or improved by joint stock companies, were properly chargeable against West Virginia under the Wheeling Ordinance in like manner as were expenditures on roads constructed wholly on the State account.

Accordingly we find that in their report they charge West Virginia with $3,343,929.29 "for amounts expended and invested in her territory," the items of which they state in detail in Statement "F," exhibited as part of their report, which sum and the items of which it consists include large amounts expended in West Virginia through the medium of joint stock companies, as will be seen by an examination of that exhibit.—See Report of West Virginia's Debt Commission, West Virginia's Compilation of the record of *Virginia* v. *West Virginia*, Vol. 1, pages 471, 472, and Statement "F," 479 to 486, filed by the defendant in the clerk's office of this court.

The gentlemen composing that Commission were J. J. Jackson, J. M. Bennett, and A. W. Campbell. Mr. Bennett had been the first auditor of Virginia from 1857 to 1865. Messrs. Campbell and Jackson were active participants in the movement for the formation of the new State of West Virginia. Gen. Jackson was a member of the Wheeling Convention, and Mr. Campbell was one of the leaders throughout the movement for the establishment of the new State. They were doubtless familiar with the inside as well as with the outside of that transaction, and with the true intent and meaning of the Wheeling Ordinance.

There are some very large errors of omission in Statement "F," and patent errors on the face of their report; but still it serves a valuable purpose in showing what was the construction placed upon the Wheeling Ordinance in this regard by these very intelligent representatives of West Virginia in the very earliest stage of

this controversy,—at a time when most of the framers of that Ordinance were still alive.

Two years later, in December, 1873, a Committee of the Senate of West Virginia, of which Mr. J. M. Bennett was the chairman, came to again review the question of West Virginia's liability for the debt of Virginia.

In a carefully considered report, dated December 22, 1873, that committee unanimously adopted the figures above given as to the amount expended by Virginia in West Virginia territory and which they conceded to have been "contributed to the development of the territory of West Virginia."

This last mentioned report is printed as Exhibit No. 3 with the Answer of the Defendant, R. 166, 167, 168, 169.

When, years afterwards, West Virginia was urging the payment of her claim against the United States for the refunding of the direct tax, which was being withheld because the United States held certain bonds of the old State for the payment of which it was claimed that West Virginia was liable, Messrs. Alfred Caldwell, formerly attorney general, and E. W. Wilson, former Governor of West Virginia, in their brief filed before the attorney general of the United States again adopted the construction of the Wheeling Ordinance previously approved by the West Virginia Debt Commission, and by the Finance Committee of the Senate of West Virginia.——See quotation from brief of Messrs. Caldwell and Wilson, printed as Appendix No. III to this Note of Argument.

This construction of the Wheeling Ordinance in respect to the expenditures made by the Commonwealth of Virginia through the agency of joint stock companies in the territory of West Virginia adopted by the representatives, public officials and eminent citizens of West Virginia most familiar with the subject remained unchallenged for more than a generation, until after this suit was instituted, when a new and strange light seems to have dawned upon the representatives of that resourceful State, and for the first time in all the long agitation and discussion of this subject a new, and we respectfully submit, a forced and unnatural, con-

struction is attempted to be placed upon the Wheeling Ordinance, so as to limit the amount for which West Virginia is to be charged on account of expenditures made by Virginia in West Virginia territory, so that the account shall not embrace "ALL EXPENDITURES," but so that it shall include only a portion, and much the smaller portion, of those expenditures.

The decree requires the Master to report ALL expenditures—but the Master distinguishes between expenditures, classifying them as "direct" and "indirect," and construes the decree and the Wheeling Ordinance as referring to expenditures made by the State through its officials, which he classifies as "direct" expenditures and as excluding expenditures made by the State through the agency of joint stock companies, which he classifies as "indirect" expenditures; and he states the following reasons for his finding:

> "To hold these subscriptions thus made for investment to be expenditures by the State 'within the territory' it would be necessary to read into the decree the words 'either directly or indirectly' which I do not feel at liberty to do." Master's R. 62.

The language of the decree and of the Ordinance is explicit, and we agree that the Master was not at liberty to read anything into either; but in order to support the conclusion he has reached he has been obliged to read into the decree the word "direct," and by construction to hold that the court and the Wheeling convention when they used the word "All" meant something less than all; that they meant by "all" expenditures only such as the Master has classified as "direct."

We submit that this construction is not warranted, and that there is no authority for the Master under the language of the decree, which requires a report of ALL expenditures, to classify expenditures as "direct" and "indirect" and allow only such as he classifies as "direct." The effect of the Master's construction is to read out of the decree the word "ALL" and substitute for it the word "direct:" and then to give to that substituted word a narrow meaning not justified by the facts and circumstances of the case.

SUMMARY.

The Master has allowed under this paragraph of the decree as proper charges against West Virginia, items amounting to $2,811,559.98

To this we are convinced that there should, beyond peradventure, be added, for expenditures made by Virginia in bridges, improvement of rivers, turnpikes and roads, through the agency of joint stock companies organized by Virginia for that purpose, the items mentioned in the tabulated statement on pages 28 and 29 of this Note of Argument, aggregating..... 1,104,400.85

Giving a total of State expenditures in West Virginia—the aggregate amount chargeable against West Virginia under Paragraph III of the Decree..... $3,915,960.83

See Master's Report, pp. 47 and 83; R. 399, 401, 433, 459, 478, 488 and 512.

The findings of the Master as to the other items passed upon by him in response to the third paragraph of the decree, and not here specifically objected to by counsel for the complainant, are, we think, in the main shown to be correct upon the face of his report, and by the evidence in the cause, and are accepted on behalf of the complainant.

IV.

The fourth paragraph of the decree directs the ascertainment of—

> "4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

The differences in the computation of the total ordinary expenses of the State government between March 19, 1823, and January 1, 1861, as stated by the Master, and as claimed by the defendant, arise entirely from the difference in the classification of the several items of State expenditures during the prescribed period.

The defendant has so classified the greater part of these expenditures as to exclude them from this account. The Master has treated most of the State expenditures during that period as being ordinary, and has included them.

This inquiry is manifestly predicated upon the language of the Wheeling Ordinance, which provides that the new State shall be charged with "a just proportion of the ordinary expense of the State government since any part of said debt was contracted."—R. 6.

The decision of the issue thus presented turns upon the meaning which those words carry in that connection; and their correct interpretation is necessary to enable us to determine the items of expenditure which go into this account.

The defendant has construed that language most narrowly, and so as to exclude many items, not only of usual and ordinary public expenditures, but also many that are appropriate and necessary for meeting important and usual, if not essential, wants of the people of the State under the conditions of civilization obtaining in this country for more than a century.

Nor are the ordinary expenses of a State government merely those which are necessary and regular in their occurrence, but quite as largely such as are usual, though not periodical, and such as are appropriate, though not essential, to the needs and aspirations of an enlightened and progressive people, and as are lawful.

In the constrained and narrow meaning ascribed to those words, and the consequent classification of State expenditures, made by the defendant, the contrast has been between some selected usual regularly recurring expenditures of what are claimed to be of a purely governmental character on the one hand, and all other expenditures of the State government, however proper, lawful, appropriate, regular, or indeed necessary in a free American State, on the other hand.

Now we respectfully submit that the contrast implied here is not between the word "ordinary" on the one hand, and the word "regular," or even the word "annual," or any combination of those words, on the other hand.

The contrast is, and was manifestly intended to be, between "ordinary" and "extraordinary,"—all ordinary expenses of the State government not already embraced in the account being intended to be included, and all extraordinary expenses to be excluded from the computation of the expenses, a just proportion of which should be charged against the new State.

Nor is the inquiry limited by its terms to such expenses as may be argued to be purely governmental,—as, for instance, the "civil list," and such as are usually incurred by a government acting in its political capacity. There is no such limitation expressed or suggested by the language of the decree or of the Ordinance.

The account is required to embrace "the ordinary expenses," and therefore *all* of the ordinary expenses of the State government, during the prescribed period, not embraced in the preceding account, of whatever character, must be included in it, so that it is not necessary for us to enter upon the field of conjecture and speculation, which opposing counsel would have us traverse, in order to determine what expenses were, and what expenses were not, distinctly governmental.

The fact is that under the uniform practice of enlightened States and communities such expenses as are usual, though not regularly periodical, and as are necessary, or appropriate, and are lawful—that is, *within the legitimate powers of the State government*—are ordinary expenses, and such as are unnecessary, or abnormal, are to be considered as extraordinary expenses of a State government.

In a modern State, and particularly in a State of the American Union, caring for, conserving and promoting the economic and material, as well as the social, sanitary, physical, intellectual and moral welfare of its people, many expenditures which may not be regarded as strictly governmental, and some which may not be absolutely necessary, are proper, lawful, usual and ordinary.

It will be found that the terms "ordinary expenses of government" have been carefully considered by learned, trained, and able experts upon the subject of State revenues, expenditures, and finance, by experienced statisticians and accountants, and by courts of high standing, and that these authorities sanction the reasonable and natural construction and application of those terms which we claim to be their true meaning and intendment.

The following are some of the precedents and authorities bearing directly upon this subject, to which we have had access. They will be found to clearly and absolutely confirm the views above expressed.

We give, first, the classification as adopted by the United States government.

The ordinary expenditures of that government are classified and stated as given below.

For this we take as an example the statements for the fiscal year ending June 30, 1874, from the Report of the Secretary of the Treasury of the United States, as follows:

"For Civil Expenses	$ 17,627,115.09
For Foreign Intercourse	1,508,064.27
For Indians	6,692,462.09
For Pensions	29,038,414.66

For Military Establishment, including Fortifications, River and Harbor Improvements and Arsenals	42,313,927.22
For Naval Establishment, Including Vessels and Machinery, and Improvements at Navy Yards	30,932,587.42
For Miscellaneous Civil, *Including Public Buildings, Light Houses*, and Collecting Revenue	50,506,414.25
For Interest on the Public Debt	107,119,815.21
Total *Net* Ordinary Expenditures, Exclusive of the Public Debt (that is payments on the Public Debt)	$285,738,800.21"

Report of the Secretary of the Treasury of date December 7, 1874, page iv.

At page v of the same report, Hon. B. H. Bristow, the then Secretary of the Treasury, gives a similar itemized summary and classification of the ordinary expenditures of the National government for the first quarter of the fiscal year ending June 30, 1875. And on page vii of same report he gives an estimate of the ordinary expenditures of the government for the fiscal year ending June 30, 1876, amounting to $272,778,000.00, made up of the items as stated and classified in the statements of actual expenditures for the two preceding years.

In this statement there is estimated for,

Interest on the public debt	$98,000,000.00
On the Pacific Railway bonds	3,878,000.00

as part of the ordinary expenses of the government.

The report of the Secretary of the Treasury for 1904 (House Documents, 58th Congress, Vol. 31, p. 5) gives the total *ordinary* expenditures, exclusive of Postal Service:

	For 1903	For 1904
	at $506,099,007.04	at $582,402,321.31
including in these aggregates the following:		
For Indian Service..	$ 12,935,668.08	$ 10,438,350.09
For Pensions	138,425,646.07	142,559,266.36
For interest on Public Debt	28,556,348.82	24,646,489.81

The attention of the court is called to the items which make up the above aggregate of expenses for those years which are given on pp. 3, 4 and 5 of that report, which will be found to be very interesting as showing what expenditures of the government were classified as "ordinary."

The annual report of the Secretary of the Treasury for year ending June 30, 1908 gives the following statement of the ordinary expenses of the United States government:

"*Disbursements:*

Civil Establishments	$175,420,408.57
Military	175,840,452.99
Naval	118,037,097.15
Indian Service	14,579,755.75
Pensions	153,892,467.01
Interest on Public Debt	21,426,138.21
	$659,196,319.68
Postal Service	191,478,663.41
Total *ordinary* disbursements, including Postal	$850,674,983.09"

See also the classification of ordinary expenses of the National government tabulated for the ten years ending June 30, 1890, in the Eleventh Census. House Miscellaneous Documents, 1st Sess. 52d Cong., 1891-92, Vol. 50, Part II., "Wealth, Debt, and Taxa-

tion," pp. 418, 419. The more carefully these tables are examined the more confirmatory they will be found of the natural and reasonable construction of the words "ordinary expenses of the government of Virginia," adopted by the accountants for Virginia.

Examples to the same effect, as to the practice of the United States government in the classification of the expenditures which are ordinary expenses of government might be multiplied, but the above will suffice.

As to the expenses of State governments which are regarded and treated as "ordinary," we beg leave to refer to the volume of the 11th Census of the United States, just cited, where at pages 464 to 477 the annual and aggregate ordinary and other expenditures of each of the States of the American Union are stated for each year and for the decade ending with the fiscal year 1890.

It will be seen that in each instance the great mass of the expenditures of the State governments of a public character, including "charities and gratuities" (such as the maintenance of eleemosynary institutions and pensions), and including in every case "interest on State debt," are counted as ordinary expenditures of the State governments.

At pages 516 to 533 of the volume of the 11th Census just cited will be found a tabulated statement of the expenditures of 1,319 counties of the different States reporting in 1890, in which there is a compilation of such county expenses as are to be considered as "ordinary," which gives data very interesting and pertinent to our present inquiry. In every instance the "interest on county debt," as well as a number of other items of public expenditure of a more or less irregular occurrence, and not at all always politico-governmental in their character, such as expenditures coming under the heads of "Buildings, grounds, and *improvements*," "Roads, ditches, and *bridges*, charities and *gratuities*," and "*Miscellaneous*" are put in the category of ordinary expenses of government.

The same comments will be found to apply with emphasis to the returns and classification of the expenditures of cities having 50,000 or more inhabitants given at pages 556-557; and to the

tables giving the same statistics as to municipalities having 4,000 or more, but less than 50,000 inhabitants, at pages 580-590 of the same volume of the 11th Census.

Strongly confirming the reasonable classification for which we contend will be also found the practice of both the States and cities of our country on this subject.

In this connection we would call attention to the Report of the "Bureau of Inspection and Supervision of Public Offices" of the State of Ohio for 1906, which gives comparative statistics of cities of Ohio. This report give us a scientific and accurate classification of all public expenditures.

At pages 72-89 is printed a detailed schedule of ordinary expenditures of the cities of that State, each of which embraces the great mass of the expenditures of those cities for any public purpose, and in every instance counts interest upon the public debt as an "ordinary" expense.

A very valuable contribution to the law and literature upon this subject is the 46th Annual Report of the Comptroller of the City of Chicago, 1902. This particular report is of all the more significance because it is approved by Messrs. Haskins & Sells, Certified Public Accountants, of 30 Broad Street, New York, who were employed by the City of Chicago to supervise the preparation of all portions of the Comptroller's Annual Report relating to the receipt, accounting for, and disbursement of moneys for the year 1902. (See their certificate at page 43.) This is all the more interesting because Mr. Thomas Bird Dixey, the accomplished chief accountant for West Virginia, testified that he was at one time the manager of Messrs. Haskins & Sells. At pages 90 to 97 of this report will be found tabulated statements giving in considerable detail the items of the ordinary expenses of the City of Chicago for the year 1902, and the extraordinary expenses of that city for the year 1902, at page 98.

It will be seen that all interest paid, whether on bonded debt or upon miscellaneous accounts, and all cost of exchanges is charged as an ordinary expense of the city, and so also a vast number of items for salaries, maintenance of charitable and other institutions,

maintenance, repair, and renewal of buildings, etc., are treated as ordinary expenses.

Some items are by these skilful accountans for Chicago rather arbitrarily classied as "extraordinary," which are among the usual, appropriate, and necessary expenditures of city governments, such as the purchase of new boilers for fire boat, the extension or the erection of new bridges, and the enlargement of various public works, expenditures which, however expert accounts may regard them, are, according to judicial interpretation, as well as according to the uniform practice of the Federal, State, municipal and county governments, properly to be classed as ordinary expenses of a municipality or other local government.

Still the classification and system of accounting sanctioned by the City of Chicago supports the correctness of more than 95 per cent. in amount of the items which have been embraced by Virginia in the account of ordinary expenses of the State government.

Very many more examples and precedents from the well-considered and enlightened experience and practice of the National, State, county and municipal governments, in America, can doubtless be cited, but it would be merely cumulative authority for propositions which are almost axiomatic, and the precedents and authorities in the support of which are as to all of the items claimed by Virginia overwhelmingly preponderating, and as to more than nineteen twentieths in amount of those items practically unanimous.

We desire now to invite attention to the views of Doctor Bastable, a writer of recognized ability and authority upon any such question.

In his work on "Public Finance," in discussing the subject of "Public Expenditures," that eminent political economist says:

> Sec. 1. "State outlay like that of an individual may be distinguished into normal or 'ordinary,' and abnormal or 'extraordinary.' These terms almost explain themselves, but may be thus contrasted: Normal expenditure is that which recurs at stated periods and in a regular manner; it is accordingly capable of being regularly estimated, and provided for. Extraordinary expenditure has to be made at indefinite times and

for uncertain amounts, and it cannot be reckoned for with any approach to accuracy."

But he adds:

> "The distinction is not always applied in the same way, and indeed the boundary line is not sharply drawn." P. 130.

And again on page 132:

> "There is also in modern States a greater facility for foreseeing, and so to say discounting the future. The refined financial mechanism by which public borrowing is carried out enables 'extraordinary' expenditure for a short period to be transformed into 'ordinary' expenditure for a long one."

And again at page 133:

> "Abnormal expenditure also frequently occurs in a somewhat different way, as in the case of durable public works or other improvements. * * * Outlay of this kind is, in mercantile phraseology, 'chargeable to capital, not to revenue,' and is clearly abnormal. The method almost invariably adopted is to meet the abnormal outlay by an abnormal receipt, viz., borrowing, or to put it in another way, to turn the extraordinary expense of a given year into the ordinary one of interest on debt."

This distinguished author wrote with reference to British precedents. In the States of the American Union there are many subjects of public expenditure which are usual, appropriate, and often necessary, though not regularly recurring, which are doubtless unknown in Great Britain, but which are none the less ordinary.

The tendency of expert accountants seems recently to be to assimilate the accounts of expenditures of governments to those of public service and other like corporations; that is, to treat those which are "chargeable to capital" as "extraordinary," and those "chargeable to revenue" as "ordinary."

A little reflection will show that there are many expenditures of a State which are necessary, proper, and usual under the condi-

tions of modern civilization, and which therefore are "ordinary," but which add to the public, though not always to the fiscal, assets of the State.

As will be seen, the rule as sanctioned by judicial decision, and by the great majority of precedents, while affirming the main doctrine as laid down by Doctor Bastable, is in this particular somewhat different from that stated by him, and is in accordance with the reasonable and just contention of the plaintiff.

See also paper prepared by Professor T. S. Adams, of the Department of Economics in the University of Wisconsin, which contains an able, learned and non-partizan discussion of this subject, printed as Appendix IV of this Note or Argument.*

These conclusions are also supported by the decision of the Supreme Court of Alabama in the case of the *Intendant and Council of Livingston* v. *Pippin*, 31 Ala. 542, and by the decision in the case of *State, ex. rel. Branch* v. *Leapheart, State Treasurer*, 11 South Carolina, 458 and by a number of other authorities, which have been ably reviewed by the Master.—See Master's Report, pp. 87 to 113.

There were some items of expenditure which the Master has deemed it proper to reject on the ground that they were not ordinary expenses of the State government, which we think can and should be classified as ordinary expenses. Such is the item of $258,906.28, on account of constitutional conventions, a usual, regular and ordinary expenditure, though not one of periodical occurrence, in Virginia and other States of the American Union; also

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*NOTE.—This very instructive paper was obtained under the following circumstances:

Mr. Anderson, then Attorney General of Virginia, in 1909, wrote to Doctor Richard T. Ely, of the University of Wisconsin, (than whom there is no more learned and eminent master of the science of Economics in this country), for information as to the most trustworthy authorities upon the subject of public finance, particularly in reference to the proper definition and classification of such expenditures as are "the ordinary expenses of a State."

Doctor Ely referred Mr. Anderson's letter to Professor Adams, for whom he vouched, as being better situated to give the desired information.

Professor Adams, thereupon, prepared the able and elaborate paper which is printed as Appendix IV hereunto, a service which was generously rendered by him as a free contribution to the literature of this case.

expenditures for establishing boundary lines of the State, for making maps of its territory, and expenditures for the enlargement and improvement of the buildings and grounds of the deaf, dumb and blind institutions, and other charitable and educational institutions of the State, which we think the Master should have allowed as items of ordinary governmental expenditures, under the precedents and under the conditions of life prevailing in Virginia and the other States of the American Union, and in all other enlightened and civilized countries. If, as we are confident is true, the provisions of the Wheeling Ordinance should, under the circumstances under which it was enacted, be construed more strongly against West Virginia, whose citizens and representatives were its actual framers and enactors, then there can be no question but that all of these items of charge against her, rejected by the Master, should be allowed. We are content, however, to submit to the court the propriety of the Master's action in disallowing these several items, without further prolonging the discussion.

We are convinced that the conclusions reached by the Master under this paragraph of the decree, except as to the cost of constitutional conventions and the expenditures upon the instrumentalities and institutions of the State government rejected by him, are in general and in almost every particular, in substantial accordance with the legal and equitable rights of the parties and with the foregoing principles, and we therefore make no other exception to his findings under this head.

The reasoning of the Master and the authorities cited by him in support of his conclusions leave little, if anything, to be said in support of their correctness.

1. *As to the Ordinary Expenses of the State Government.*

The master finds the total aggregate ordinary expenditures of the Commonwealth during the agreed period, from March 19, 1823, to December 31, 1860, to have been..... $40,274,896.70

Of this sum the defendant concedes the correctness of items aggregating 18,207,784.29

The defendant contests items aggregating..... $22,067,212.41

The most important of these items of expenditure objected to by the defendant are the payments regularly made by the Commonwealth during all of that period on account of interest on the public debt, aggregating $18,574,747.84.—See Master's Report, pp. 87, 139.

The Master's findings on these different controverted items, and the reasons given by him in support thereof, are so clearly and fully stated by him, and so entirely supported by the record, and by reason and authority, that we are saved the necessity of any very elaborate argument in support of the correctness of those findings.

We will notice only two of the controverted items, the allowance of which by the Master, is objected to by the defendant.

(a)

The Master has allowed, as a proper item of ordinary expenditure of the State, the sum of $3,056,239.64 expended out of the State treasury, during that period, upon schools.—Master's Report, 132.

West Virginia certainly cannot justly object to this charge. There cannot be a shadow of a doubt that this sum was expended in the several counties of the Commonwealth during that period, and that they were annual ordinary expenses of the State government for the purpose stated—the most regular and the most ordinary of all the expenditures of the Commonwealth during that period, except the annual disbursements on account of interest.

The complainant had urged before the Master that so much of the expenditures made by the State on account of schools as were actually paid out in West Virginia counties, being distinctly allocated to those counties, should be charged against West Virginia under Paragraph III of the decree, as being "expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted," "all" of which expenditures were required by the decree and by the Wheeling Ordinance to be charged against West Virginia.—See Exhibit C-1. p. 3, R. 374.

There was no question but that expenditures, amounting to the identical sum of $830,865.37 as shown by that exhibit, had been made out of the State treasury distinctly in West Virginia counties on account of schools between March 19, 1823, and January 1, 1861.

The Master took a different view, his conclusion being that the expenditures made on account of schools should not be treated as distinctly expenditures made in West Virginia territory under Paragraph III of the decree, but as a part of the general, ordinary expenses of the State government; and that, instead of charging West Virginia with the sum of $830,865.37, shown by the record to have been actually spent in the counties of that State out of the treasury of Virginia on account of schools, he would ascertain the total amount expended in the State for schools as a part of the ordinary expenses of the State government, and assign to West Virginia her proportion of those aggregate ordinary expenses.

While we think the actual expenditures should have been charged against West Virginia, and not the computed expenditures, we are disposed to waive that point; particularly if the apportionment is made on the basis of the average population *without slaves*, which certainly ought to be the basis adopted, inasmuch as the slaves received no portion of that, or of any other items of the ordinary expenditures of the State government, but as a rule all of said expenditures were made on account of the white population; and, so far as expenditures on account of schools were concerned, they were absolutely confined to white schools and to the white population, and were under the law always actually apportioned upon the basis of free white population.—Appendix to Record, pp. 146 and 147.

Apportioning the total school expenditures on the basis of average white population, as the same is ascertained by the Master (Master's Rep., 141), we have 26.6631 per cent. of $3,056,239.84, or $814,793.53, as the amount assignable to West Virginia; or only $16,071.84—say, 2 per cent.—less than $830,865.37, the agreed proved amount which was actually expended by Virginia in West Virginia counties, on that account, between 1823 and 1861.—See Exhibit C-1, p. 3; R. p. 374.

This result is significant in two particulars of great interest in connection with the question of the rule by which ordinary expenses should be apportioned, which will be considered later on under this paragraph of the decree:

First, in strongly supporting the justice of our contention that the true basis for the apportionment of ordinary expenses is the average white population; and

Second, in showing that that average should be ascertained by decades in the manner approved by the Master.

Stronger confirmation of these two contentions could not be well given than this concrete illustration where the aggregate of proved actual expenditures in West Virginia counties is so nearly the same as the same expenditures in those counties ascertained by estimating them on the basis of total average white population computed by the method adopted by the Master.—Master's Rep., 139, 140 and 141.

We are now come to consider the largest item of this account, involving a question which, because of the amount which it involves, is one of the most important which has arisen in the case, and that is—

(b)

The interest paid by the Commonwealth upon the public debt between March 19, 1823, *and December* 31, 1860, *amounting to* $18,574,747.84.

There were no expenditures of the State government from 1823 to 1861, which were more regular, certain and ordinary than the annual interest on the public debt of the State.

If this was not an ordinary expense of that government, then there was no such expense.

As has been already shown all governments and all authorities, and all expert accountants and statisticians, so far as we have been able to ascertain, agree in classifying the interest on a public debt as among the ordinary expenses of government.

It is to be assumed that the framers of the Wheeling Ordi-

nance intended to do equity. At all events, a court of conscience will not put an unconscionable construction upon that enactment, particularly where a natural and reasonable construction can be given to it, and one which will tend to an equitable result.

Now, if the language of Paragraph IV of the decree, and the language of the Ordinance upon which that paragraph is predicated be so construed as not to require the new State to be charged with its just proportion of the regular and ordinary expenses of the State in the matter of the payment of interest on the common public debt, then West Virginia would be given credit in the account for all of her contributions to the treasury of the Commonwealth on account of said interest charges from 1823 to 1861, and yet she would not be charged with her aliquot just proportion of those same expenditures.

It is not to be presumed that such an unjust provision was intended to be made by the framers of the Wheeling Ordinance; nor will a court of equity give such a strained, unreasonable and unwarranted construction to the language used in that Ordinance, and used also in the decree of reference, as would lead to such inequitable and unconscionable results.

The decree, following the Wheeling Ordinance, requires West Virginia to be charged with a just proportion of the ordinary expenses of the government, and this requirement will not be satisfied, if the largest, the most important, and among the most regular, necessary, and ordinary of those items of expenditure are omitted from those accounts.

2. *As to the Basis of Apportionment of the Ordinary Expenses of the State Government:*

The decree directs that this shall be made on the average total population of Virginia, with and without slaves, as shown by the census of the United States.

In ascertaining the average population of Virginia during the period, the defendant argues that the average for the whole period should be ascertained, and the apportionment made accordingly.

The plaintiff has ascertained that average by decades.—(See Exhibit D-1, p. 2, R. 516).

The Master has adopted the method approved by the plaintiff's accountants.

The purpose of the court in requiring the average population to be struck was doubtless to get as nearly to the true population year by year, and for the very year in which the expenditures were made, as was possible.

It is manifest that this can be more nearly attained by taking the average for each decade, than by taking the average for the entire forty years in lump.

For instance, the average population for the decade from 1830 to 1840 could be fairly ascertained by taking the population as determined by the census year 1830 and in the census year 1840, and dividing the sum by two. so as to give approximately the average for each year from 1830 to 1840; and so as to each of the other decades. And this has been done accordingly in the account as stated and adopted by the Master.

In no other way can an approximation to the truth be reached, and it is the truth which the court, and which we all wish to attain.

Another important question in this connection is—

Whether the average population with slaves, or the average population without slaves, should be taken as the basis upon which to apportion the ordinary expenses of the State government between Virginia and West Virginia.

This is a question which was left open by the court in its decree of reference, which accordingly has not been passed on by the Master, but is necessary to be decided by the court.

We respectfully submit that the white population of the Commonwealth, and particularly of West Virginia, constituted the best and fairest basis for this apportionment. That is, the free population—the citizenship,—and not the total of the free and the slave population.

The care and policing of the slaves cost the State little or nothing. Those matters were regulated by the masters on the plantations.

The debt was contracted solely by the white population or their white representatives. It was expended by them or under laws of their enactment.

The taxes were levied exclusively upon the property of the free population, and the revenues were appropriated and expended as they directed.

The negroes owed no part of the debt, did not constitute a part of the citizenship of the State during any part of the period of time during which it was contracted, or the money realized from it was expended; nor did they constitute any part of the body politic.

As has been seen a large part of the ordinary expenses of the government, as classified by the Master, consisted of school expenditures, which were entirely confined to the white children.

Under these circumstances we would urge as a just criterion for the apportionment of the ordinary expenses of the State government between West Virginia and Virginia, the white population of the territory embraced in West Virginia, and of the territory still remaining to and constituting the present Commonwealth of Virginia at the period when the expenditures to be apportioned were made.

V.

The fifth inquiry directed is, that the special Master will ascertain—

> "5. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

As stated by the Master, "this paragraph is clearly in the alternative with the last clause of Paragraph IV."

A correct response to this inquiry may have an important bearing upon the equities of the case; but it is difficult to see how the valuation of property, real or personal, in the two States would furnish any just criterion for the apportionment of the ordinary expenses of government.

It will be noted that this paragraph fixes no date as of which the fair estimated value of the real and personal property in the counties constituting what is now Virginia and what is West Virginia shall be ascertained.

The second paragraph of the decree fixed the 20th of June, 1863, the date when the formation of the new State was consummated, as the date for ascertaining the assessed valuation of the lands embraced in the two States, and that date was presumably the one contemplated in the fifth paragraph.

It will be recognized as true that the accurate ascertainment of the value of the real and personal property in a State is an exceedingly difficult problem, at any time.

Because of the conditions of disaster, confusion, loss and destruction of values occasioned by the ravages of the then pending war, the difficulty of the solution of this problem is here greatly enhanced. And yet an approximation to a result fair and just under all the circumstances can, we trust, be reached as nearly as is

practicable, by proceeding along the lines of investigation and testimony which have been pursued on behalf of the plaintiff, and as to the real estate by the Master also. The only difference between the method adopted by the Master in this regard, and that pursued by the plaintiff is that the Master has applied that just method to the ascertainment of the value of the real estate in the two States, while the plaintiff has applied it to the ascertainment of the values of both personal and real property.

The land assessments afforded, if not a fair criterion, the only now accessible standard of value of the lands in the counties of undivided Virginia in 1860.

But those valuations were made in 1856, seven years before June, 1863, at which latter date at least four-fifths of the present territory of Virginia and one-fifth of the present territory of West Virginia had been ravaged and desolated by war, so that that valuation of 1856 afforded no just measure of values in 1863. It would suffice, however, to furnish a basis by which the depreciation occasioned by the war could be approximately determined.

The lands were assessed as of their cash specie value in 1856.

The personal property in Virginia counties was assessed annually, on the 1st of February of each year, as of its then cash value, in the currency which then constituted the medium of exchange and the standard of value.

After the war became flagrant, and particularly in February, 1863, that medium of exchange and standard of value, which was the only currency of the people, and the currency with reference to which as a standard of value all their transactions were conducted, was the depreciated currency of the Confederate States.

This was uniformly true in all the regions dominated by the Richmond governments.

There can be no question that the market values of all personal property, and indeed of all property, real and personal, in Confederate Virginia was, throughout 1863, fictitiously enhanced by reason of the depreciation of the currency in circulation in those regions, in which currency alone those values were measured.

This was true also as to West Virginia counties within the Confederate lines. where the assessments were made by officials under the Richmond government.

The personal property in West Virginia counties, outside the Confederate lines, where assessments were made by officers under the Wheeling government, was valued with reference to United States treasury notes (green backs) as a measure of value. The true value of this assesssed personal property in these West Virginia counties could be ascertained approximately, therefore, by applying the scale of gold to the assessment in each case.

It was impossible to get the assessed value of the personal property in a number of Virginia counties because they were so ravaged and so harried by war in 1863 that no assessments were made in them of the very small quantity of personal property which was then left there.

As to real estate, it was by no means an easy matter to get at its true value in 1863, and yet a way has been found by which, taking the assessed valuations of 1860 or 1861 as a basis, this has been reached as nearly as is now possible.

A number of witnesses of unusual intelligence, of the highest character, and most of whom had the best opportunities of ascertaining the facts as to the matters in respect to which they testified, were called on behalf of Virginia. Their testimony will be found at pages 739 to 786 of the record. By them the great destruction and deterioration in value of property, real and personal, in Virginia in June, 1863, is satisfactorily proved, and the fact that the lands had been diminished in value at least one-half, as compared with their value in 1860 or 1861, is established.

This general testimony is powerfully confirmed by the proof of a large number of facts and transactions, proof of actual sales of land in 1863 in Confederate money, and of the valuation by sworn and intelligent commissioners or appraisers of houses and lots in the city of Richmond in the spring, or in June, 1863.

For instance, Capt. Gordon McCabe testified (R. 784) that Westover, an historic estate on James river, for which the owner,

to his personal knowledge, had refused $75,000 in 1859, was sold in 1863 by the owner for $60,000 in Confederate money,—then worth not more than $15,000 or $20,000 in specie; and Major Wellford (R. 762) testified that he was offered the Moss Neck estate on the Rappahannock river, an estate worth at least $40,000 before the war, in the fall of 1863 for $100,000 in Confederate money, then worth about $7,000 in good money; and by Mr. John B. Lightfoot, Jr., a number of most informing and significant facts were proved, which are set forth in the tabulated statements at pages 653 to 664 of the record, which furnish the proof of a number of contemporary sales of lands in Richmond city, Henrico, Hanover and Chesterfield counties, in 1863, at prices showing a depreciation exceeding 50 per cent., as compared with the antebellum assessed values of the same properties.

These were not selected transactions, but Mr. Lightfoot took all of the transactions of the character indicated, which took place about that time, of which the records of those counties and of Richmond City furnished any evidence as to the lands then sold or valued in Confederate money, the assessed value of which in 1860 or 1861 could be ascertained.

The evidence of these concrete facts, taken together with the testimony of the eight witnesses, and the known facts of the history of those times, fully support the contention of the plaintiff that the real estate in Virginia, and in the ten or eleven counties of West Virginia which were usually dominated by the Confederate forces and were generally within the jurisdiction of the Richmond governments, had depreciated at least one-half, as compared with the assessed valuations of the same lands in 1860 or 1861.

The Master has accordingly adopted this valuation as to real estate, and in this he was clearly justified by the proofs, as well as by the history of those times, known and accepted of all men.

To our surprise, however, the Master did not apply the same rules of depreciation to the personal property in the two States.

While he properly finds that the value of the real estate in Virginia had been cut in half and reduced from $296,085,460.30 to $148,042,730.15, he finds that the fair estimated value of the per-

sonal property, including slaves, in Virginia counties had increased, notwithstanding the destruction of war, from $264,512,799 in 1861, to $403,696,228.59 in June, 1863. (See figures given in the Master's report, at pages 167 and 168).

In this finding of the Master he estimated the value of the personal property, other than slaves, in Virginia in June 1863, at $152,844,637.59, as compared with the estimated value of the same kind of property, as stated by him, in 1861, of $102,114,863,—finding that, notwithstanding the depreciation and destruction caused by the war, the personal property in Confederate Virginia was actually worth, in June, 1863, $50,729,774.59, (or nearly fifty per cent.), more than its fair estimated value in 1861.

An examination of the figures adopted by the Master, given on pages 167 to 169 of his report, will show that he gives, as the fair estimated valuation of all personal property, including slaves, in Virginia counties in June 1863.....$403,696,228.59;

Of all personal property, without slaves, in the same counties..... 152,844,637.59;

And that accordingly he computes the fair estimated value of the slaves in Virginia counties, in June, 1863 to have been.....$250,851,591.00;

While he finds that the fair estimated value of slaves in the same counties in 1861 was....$162,537,936.00, the *agreed* valuation of slaves in those counties in that year.

The master's findings, therefore, give us the astounding result, that a considerably smaller number of slaves in Virginia counties in June, 1863, (nearly six months after Mr. Lincoln's emancipation Proclamation had taken effect, by its terms, and had become actually effective in large portions of the territory embraced in those Virginia counties), were actually worth, in good money, $87,329,635 more than a considerably larger number of slaves were worth in 1861, prior to the beginning of the war, and when they had a specie market value.

These results are not only in conflict with the overwhelming proofs in the case, but they are contradicted by the recognized facts of the history of those times.

The slaves in Virginia counties, as well as in West Virginia counties, were all of them then more than three-fourths, if not more than nine-tenths free. As soon as any of that territory came within the Federal lines (and at least one-third of Virginia was at that time within those lines, or dominated by the guns of Federal gunboats), or as soon as the slaves went within the Federal lines, they became actually and absolutely free.

It is simply impossible that it can be true that the personal property, other than slaves, in Confederate Virginia, was worth anything like as much in June, 1863, as that personal property was worth in 1860 or 1861, before it had been subjected to the disastrous and destructive effects of the war which was then prevailing.

It is especially impossible that it can be true that the smaller number of slaves in Virginia in June, 1863, (395, 105. See Joint Exhibit, E-1, p. 7, R. 645), after Mr. Lincoln's Proclamation, were worth as much as, and still less that they could be worth more than the larger number of slaves (472,494, as per U. S. Census of 1860, and Report of First Auditor of Va., 1860-61, p. 75, and Exhibit West Va. 2, R. 823 and 824), in those counties prior to the beginning of the war, when the title of the master and the status of the slave were unquestioned.

The proof shows that slaves were such a precarious property at that time as to possess very little value. As an instance of this, Col. Branch testifies (R. 756), that he purchased a slave in July, 1863, for the equivalent of $225 in gold—"a servant who would certainly have brought $1,200 in 1860, previous to the election."

But no proof ought to be required to show that the slaves in Virginia counties were, in June, 1863, worth very much less than the slaves in the same counties were worth, in good money, in January, 1861, prior to the beginning of the war.

It will be remembered that Virginia at that time was the theatre of the war.

In 1861 large armies had encamped upon her soil.

In 1862 and 1863 armies numbering in the aggregate from 250,000 to 350,000 men had occupied her territory, and largely sub-

sisted upon what they could take from the limited resources of her people.

The Federal troops, in 1863, occupied the greater part of her tidewater counties and large portions of northern Virginia; and all of her coasts along the Atlantic ocean and Chesapeake bay, and the navigable waters of the Potomac, the Rappahannock, the York and the James were dominated by the gunboats of the United States, where not actually occupied by their troops. In all of these sections there were large numbers of slaves.

The *uncontradicted evidence* in the case shows that the depreciation in value extended not only to slaves but to all personal property, and was at least fifty per cent. as a *minimum*. There had been enormous consumption and destruction of every kind of personal property, and what remained had greatly depreciated in value.

Now, it may be that the Master is correct in holding that the plaintiff has failed to show definitely that the depreciation in value of personal property in Virginia counties was, in 1863, 75 per cent. of its value as compared with 1861.

But there can be no question, that the evidence in the cause (found at pages 739 to 786 of the record), corroborated as it is by the known and unquestioned and unquestionable facts of history, abundantly justifies the conclusion that that depreciation amounted to at least fifty per cent. in June, 1863, as compared with January, 1861.

We recognize that a similar depreciation existed in ten or eleven West Virginia counties which were generally held by the Confederate forces and controlled by the Richmond governments, during that period.

The chief importance of the question here discussed is in its bearing upon the question of an equitable proportion of the debt to be borne by West Virginia, and it is because of its bearing upon that aspect of the case that we have taken so much of the time of the court in its discussion.

VI.

By Paragraph VI of the decree the Master is directed to take an account ascertaining—

> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The Master finds (see his report, pp. 174-179) that the total payments made into the treasury of Virginia from the counties of West Virginia, for which the latter State is entitled to a credit in the accounting under this paragraph of the decree, amounted to $6,105,884.75.

The plaintiff is satisfied that the findings of the Master under this paragraph do substantial justice between the parties, and therefore waives any objection thereto.

The defendant objects to the Master's findings under this head because he fails to give West Virginia credit for items aggregating $807,646.89.

These items are as follows:

Item 7.—Dividends from banks in West Virginia counties	$786,666.98
Item 8.—Dividends and interest from Turnpike Companies in West Virginia counties	13,595.48
Item 9.—Dividends from Bridge Companies in West Virginia	6,028.51
Item 10.—Dividends from Interstate Turnpike Companies (proportion)	1,355.92
	$807,646.89

See Joint Exhibit, F., p. 1, R. 805; Master's Report, pp. 176, 180.

The Master's finding upon these items is evidently justified by the facts, and is consistent with the language of the decree and of the Wheeling Ordinance.

The amounts received by Virginia upon the accounts and items objected to by the defendant, particularly the dividends upon bank stock, were in no sense money paid into the treasury of the Commonwealth from the counties included in the State of West Virginia.

They were the profits earned by Virginia's own money which she had invested in fiscal institutions; or the returns made to Virginia upon the investments mentioned, and not moneys paid to Virginia from West Virginia counties, within the meaning or within the reason of the sixth paragraph of the decree and of the ninth section of the Wheeling Ordinance, on which that paragraph of the decree is based.

None of them could be regarded as contributions from West Virginia counties, but they were the legitimate earnings from the State's own money invested in the banking business, and in the properties created by its companies.

As to the banks, while they had their principal places of business in West Virginia, their assets were transitory and of a movable character, having their situs not at all necessarily in West Virginia.

It will be seen that the Master had already held, under Paragraph III, that West Virginia was not properly chargeable under that paragraph with the money paid out by the Commonwealth on account of stock subscriptions to banks, located in West Virginia, and had excluded that item from the debit account against West Virginia under that paragraph.

We are convinced that the Master's ruling upon this point was correct, and by analogous reasoning the conclusions reached by the Master under the sixth paragraph, that these dividends were not in any sense public payments, or payments from West Virginia counties, was inevitable.

VII.

The seventh paragraph of the decree directs an account ascertaining—

> "7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof."

This direction of the decree was doubtless given in response to the provisions of sections 1, 2 and 5 of the act of the Wheeling Legislature passed February 3rd, 1863.—Appendix to the Record, pp. 128, 129, 130.

There was a large amount of property, chiefly unappropriated or abandoned, and delinquent or forfeited lands, to which the Commonwealth had title, which passed to the new State by the said act of the Wheeling Legislature, and with the value of which property West Virginia was chargeable by the terms of that act upon such settlement as should be made between the two States.

After the decree of reference was entered it was ascertained by the accountants and counsel for Virginia that West Virginia had recognized the land warrants issued by Virginia prior to June, 1863, and had allowed them to be used, without additional payment to that State, in the acquisition of vacant and unappropriated lands within its limits to the extent of many thousands of acres, and that the new State received nothing for those lands. This was done although the entries were made and the warrants located upon those entries since the formation of the new State.

Under these circumstances, as the new State recognized the warrants of the undivided State, it was considered by counsel for Virginia that it would be inequitable to make any charge against West Virginia on account of those transactions.

It was also found to be impracticable, if not impossible, to find any satisfactory records of the disposition which had been made by the new State of large quantities of lands, delinquent and forfeited to the Commonwealth prior to June, 1863, for the non-payment of taxes, or for failure to enter the same upon the land books for taxation, and that inquiry, therefore, has not been pressed.

So that the only charges made by Virginia under the seventh paragraph of the decree are for money and bank stocks actually received by West Virginia from Virginia after the formation of the new State in 1863 and in 1864.

The fact as to the receipt by West Virginia from the Commonwealth of amounts aggregating $170,771.46, stated in plaintiff's exhibit G-1, R. 819, is assented to and certified by the accountants for both parties, and is reported by the Master at page 181 of his report.

The requirement of Paragraph VII of the decree was that the master should ascertain and report "the amount * * * * * of all money * * * * * which West Virginia received from the Commonwealth of Virginia" * * * * *.

Under these circumstances it is difficult to understand upon what ground the Master excluded these items, amounting to $170,-771.46, as to which the facts are unquestionable.

These sums of money were undoubtedly received by the new from the old State. At that time the officials of the restored government of Virginia consisted of West Virginians. That government was dominated by West Virginians, and the new State could appropriate and take out of the treasury of the State of Virginia, at Wheeling, whatever it chose; and it did undoubtedly receive from the "restored" government of Virginia $170,771.46, for which sum, we think, it is fairly chargeable.

It is proper here, however, to call attention to the fact that the Special Master has included in the charges against West Virginia, under Paragraph VII, the value of the stock which represented the amounts expended by the Commonwealth on turnpikes and bridges built by the following companies:

Sweet & Salt Sulphur Springs Co.	$ 7,578.00
White & Salt Sulphur Springs Co.	4,000.00
Fairmount & Palatine Bridge Co.	12,000.00
Making a total of	$23,578.00

The complainant has insisted, and still urges, that, under the terms of Paragraph III, of the decree, and under the language of the Wheeling Ordinance fairly construed, the expenditures made by the Commonwealth in the construction of these internal improvements should be charged against West Virginia under the third paragraph of the decree; and by her second exception she has objected to the Master's report for not charging West Virginia with items 60, 136 and 145, Joint Exhibit C-1, R. 375, 377,—which items cover the expenditures made by Virginia on said Sweet & Salt Sulphur and White & Salt Sulphur Turnpikes, and on said Fairmount & Palantine Bridge.

If the complainant's second exception is sustained as to those items, the corresponding items charged by the Master under Paragraph VII, of the decree, aggregating $23,578, covering the values of the expenditures in those works which were transferred to West Virginia, should be deducted from the aggregate charged against West Virginia under said seventh paragraph.

We submit herewith a statement showing the amount chargeable against West Virginia under this paragraph of the decree in accordance with the facts here stated, which are entirely sustained by the record.

Statement of Money, Property, and Stocks received by West Virginia from Virginia on and after June 20, 1863,—*Paragraph VII:*

(a) As found by the master (Master's Rep. 193).	$500,828.00
(b) Add for cash received by West Virginia from Virginia (Master's Rep. 181 and 193).....	170,771.46
Making a total of	671,599.46
Deduct for value of stock in the Sweet & Salt Sulphur Springs, and White & Salt Sulphur Springs Turnpike Companies, and the Fairmount & Palatine Bridge Company, the expenditures upon which are included in the total of $1,104,400.85 which complainant claims should be charged under Paragraph III (see Plaintiff's Exceptions, p. 12, and Joint Exhibit C-1, pp. 4, 5 and 6, R. 375, 376 and 377, and Master's Rep. 193).....	23,578.00
Balance chargeable to West Virginia.....	$648,021.46

VIII.

What is West Virginia's Share of the Debt?

Our rapid review of the master's report, brings us to the application of its findings—modified in the particulars covered by the few, but important exceptions, which we have taken to those findings—to the solution of the main question in the cause, namely:

> *What, upon the data thus ascertained, is the proportion of the Virginia debt for which West Virginia is liable?*

(1)

It cannot be too strongly emphasized that it is the just and equitable liability of the new State which is to be determined: for the Wheeling Ordinance imposed a just proportion of the debt upon her, and by the compact created by the provisions of section 8 of Article VIII of the West Virginia Constitution and the Acts of Virginia and of Congress, by which she was granted statehood, it was stipulated that an equitable proportion of that debt should be assumed by the new State.

Upon elementary principles there can be no question but that these provisions of the first Constitution of West Virginia constituted an essential stipulation and condition upon which the consent of the Legislature of Virginia to the creation of the new State was predicated. We have a right to assume that the consent of Virginia to her dismemberment would never have been given but for the fair and reasonable stipulation clearly expressed in that Constitution, that the new State should assume an equitable proportion of the common debt, and would provide for the payment of the accruing interest of the principal in thirty-four years.

It is equally, though no more, certain that the United States Congress would never have given its consent to the partition of Virginia and the erection of the new State out of her domain, but for the fact that the new State had undertaken to assume an equitable proportion of the then existing public debt of the Commonwealth,

and to pay the same with the interest thereon. No evidence is needed to establish this; but if it were required it would be furnished by the records of Congress, and by the statements of honorable and distinguished actors in that momentous transaction.

On the 31st of December, 1862, the Act providing for the formation of the State of West Virginia was passed by Congress.

When the bill giving the consent of Congress to the erection of the new State was under consideration in the House of Representatives, the following discussion took place:

> Mr. Olin: * * * * "I desire to ask what will become of the bonds, and other obligations which Virginia has issued or incurred, by the recognition of a new State?" * * * *
>
> Congressional Globe, Pt. I, 3rd Session, 37th Congress, p. 45.

> Mr. Hutchins: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable proportion of the debt of Virginia prior to January the first, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable.'" * * * *
>
> Idem, page 46.

And again, while the bill was still under discussion in the House, the following colloquy occurred:

> Mr. Crittenden: "Mr. Speaker, there is another question to which I invite your attention. The old State of Virginia, when she embraced east and west, owed a large debt. She owes it to this day. Who is to be bound for that debt? Is the new State? How is this debt to be divided?" * * * *
>
> "Mr. Blair, of Virginia: "In regard to the public debt, the Constitution framed by the convention of the people of the proposed new State of West Virginia, binds the new State to pay its just proportion of whatever public debt the State of Virginia owed prior to the Ordinance of Secession." * * * *
>
> Mr. Crittenden: "I only knew, Mr. Speaker, that in this bill there was no provision made for a division of the State

debt. The gentleman tells us there is provision made for it in the Constitution, and I am satisfied with that. That was only a question of mere expediency which I wished to suggest; but although a matter of expediency it was also a matter of justice. If it has been attended to, I have no more to say about it." * * * *

Idem, page 47.

Years afterwards when the subject of the Virginia debt was again under discussion in the United States Senate, statements of great significance and importance upon the very fact we are now considering, were given out by Senator John Sherman, and ex-Senator Waitman T. Willey. Senator Willey was one of the senators from (Restored) Virginia, was one of the makers of the new State, a member of the Wheeling convention, and was an active participant in all of the transactions which led to the formation of West Virginia, had been for years a very active, intelligent, leading and useful member of the Legislature of Virginia, and was as well acquainted with the facts as to the origin and history of the Virginia debt, and with West Virginia's relations to it as any citizen of either State. Under his leadership, and upon the views which he earnestly urged, the United States Senate passed the bill giving the consent of Congress to the creation of West Virginia. Even with his able advocacy of that measure it was only passed by a majority of six votes. Besides his intimate acquaintance with the essential facts upon which West Virginia's obligation for the payment of an equitable proportion of the debt rests, Senator Willey was a man of very high character.

Senator Sherman had been a member of Congress when the bill for the creation of West Virginia was passed. Being from Ohio, an adjoining State, he had taken a deep interest in its enactment and had actively supported it. No two men in the world knew more about the history of that transaction than those two eminent men.

We state here now upon the authority of these honorable senators that the bill admitting West Virginia would never have been

passed but for West Virginia's assumption of an equitable proportion of the debt of Virginia.

During the discussion of the subject in the 47th Congress, Senator Sherman read the following extract from a letter which he had received from Senator Willey:

> "I have a pretty distinct recollection that while the application for admission was pending before the United States Senate, you suggested to me this very matter, and that when I pointed out to you the clause in the Constitution which I have above quoted, you expressed your satisfaction and stated to me that it removed one of the difficulties which had been embarrassing you; and I say to you now, what I have said to the people of West Virginia, that but for that clause in her Constitution, the State would never have been admitted. I SAY FURTHER, THAT IN MY OPINION, NO HONEST MAN, OR HONEST PARTY, IN WEST VIRGINIA, OR OUT OF IT, WILL DENY THE OBLIGATION OF WEST VIRGINIA TO PAY AN EQUITABLE PART OF THE PUBLIC DEBT OF VIRGINIA." (Capitals ours.)

After quoting this extract, and after reading the 8th clause of Article VIII of West Virginia's Constitution, Senator Sherman said:

> "But for this stipulation in the Constitution of West Virginia, which was submitted to the Senate at the time of the passage of the bill to admit that State, it never would have been a State of this Union."—Congressional Record, Vol. 12, 47th Congress, p. 450.

No one can doubt, therefore, that West Virginia owes her existence to her promise to assume an equitable proportion of the debt of the old State, and to provide for the payment of the accruing interest thereon and of the principal of the same.

It is the corner-stone of her existence as a State.

The methods adopted for the purpose of ascertaining what West Virginia's share of the debt is, are merely means for reaching that end, and can be sanctioned only in so far as, fairly pursued, they shall lead to an equitable result.

It becomes important therefore to determine, what, independently of any conventional arrangement, would, under the circumstances which confront us here, be the equitable share of that debt to be borne by West Virginia?

The case presented is a peculiar one. It is *sui generis.*

History furnishes no counterpart, no precise parallel or precedent to guide us, by a clearly blazed path, to a correct conclusion.

Kingdoms, empires, and republics have been divided and subdivided, but never has a State been dismembered just as was Virginia in 1863.

And yet there are certain established rules of right and principles of equity which will enable us to reach a conclusion which will do substantial justice between these parties.

According to the authorities upon public, or international law, copious quotation from which will be found in the Appendix No. 1 to the reply brief for Virginia upon the motion to refer the cause to the master, printed in Vol. II of West Virginia's Compilation, pp. 163 to 167, the accepted doctrine seems to be, as the same is stated by Mr. John Bassett Moore in his Digest of International Law, as follows:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division are ratably binding on the different parts; for as Story says, 'the division of an empire creates no forfeiture of previous vested rights of property.'"
>
> 1 Moore's Digest Int. L., p. 334, citing
> Abdy's Kent, p. 96, and
>
> Lawrence's Wheaton, 52 (m) 20.

The debt should, therefore, be apportioned "ratably" between the old and the new State.

For reasons already abundantly appearing in this case it is exceedingly difficult, to determine accurately the true taxable values of the property in Virginia as at present constituted and in West Virginia, on the 20th of June, 1863. There is less difficulty in determining the relative values as to the real estate in the two

States, respectively, than as to the personal property in the two States.

The destructive and exhausting effects of the war then flagrant, the depreciation of the currency in general use in Confederate Virginia, were much more disastrous in their operation in what is now Virginia than they were in the greater portion of what is now West Virginia. The destruction of personal property was far more final and complete than of real property. When horses or cattle were carried off, or wagons or farming implements were worn out or destroyed, that was an end of them as property to their owners.

The lands might be, and were, greatly impaired in value by the destruction of fences and buildings, and by neglect, but these ravages of war could be, and in fact, in the forty-five years of peace, have been in great part remedied.

Moreover, land existed as property, and as a subject of taxation much more uniformly throughout the territory embraced in both States than did any other species of property.

It constituted therefore a more uniform, as well as a more permanent and stable measure of the wealth and taxable resources of the two States, at any time, and particularly at the date of the formation of West Virginia.

The court must have been influenced by these considerations in framing the second paragraph of the decree of reference, in directing the ascertainment of the "assessed valuation of the territory of Virginia and of West Virginia June 20, 1863," and in excluding from that account the value of the personal property therein.

Now taking up the Master's findings and applying them *seriatim*, as they should be applied, we will endeavor to ascertain what the result is, or should be, as to the part of the debt to be paid by West Virginia:

(1)

There need be no farther discussion under the first paragraph, by which the amount of the debt is ascertained.

(2)

Under the second paragraph it is ascertained that West Virginia had 36.1843 per cent. of the total area of the undivided State.

Apportioning the admitted $33,897,073.82 of the common debt on that basis would assign to West Virginia $12,265,418.88, of which $11,911,822.32 would be principal, and $353,596.56 would be interest.

West Virginia had 33.5231 per cent. of the total population, excluding slaves. On that basis West Virginia would owe $11,363,349.95, of which $11,035,758.90 would be principal, and $327,591.05 interest.

West Virginia had 24.5145 per cent. of the total population, including slaves. On that basis she would owe $8,309,698.16, of which $8,070,140.04 would be principal, and $239,558.12 interest.

West Virginia had 21.7812 per cent. of the total values of real estate upon the basis of the assessed valuation of 1863. Upon this basis she would be charged with $7,383,189.44, of which $7,170,341.40 would be principal, and $212,848.04 would be interest.

What part of the debt does West Virginia owe?

While taxable property seems, as a rule, to be the measure accepted by writers on public law for dividing a common debt between two states formed by the division of a State into two states, it may not be inequitable to bring population into the account here along with property; for population, such as that of these two States certainly constitutes an important factor of productive wealth.

Bringing the total population and the assessed valuation of the real estate into the account as factors, and combining the two and taking the average, we have $7,846,443.80 as West Virginia's portion of the debt, of which $7,620,240.73 would be principal, and $226,203.07 interest.

If, discarding the method defined in the Wheeling Ordinance, the apportionment should be made according to the fair value of the taxable property in the two States in June 1863, taking for those values the figures arrived at in our consideration of the

Master's findings and the evidence under paragraph V, we will have the following results:

Fair estimated value of the taxable property in Virginia and West Virginia Counties, June 20, 1863:

Fair estimated value of real estate in Virginia counties, as ascertained by the Master and accepted by the Plaintiff (Master's Report, p. 168)	$148,042,730 15
Fair estimated value of personal property, other than slaves, in Virginia counties—not exceeding one-half of $152,844,637.59, its Confederate inflated assessed valuation in 1863,	76,422,318.79
Fair esstimated valuation of slaves in Virginia counties, not exceeding in good money as a possible maximum, one-half of $162,537,936, the agreed value on January 1, 1861, of the slaves in Virginia*	81,268,968 00
Fair estimated value of all property, real and personal, in Virginia counties	$305,734,016 94

*Note.—(Explanatory of the item of $81,268,968.00).—Upon the hearing before the Master on the first of January, 1910, the following agreement was made between the counsel for the parties, and made a part of the record:

"*It is agreed*, between the counsel for Virginia and West Virginia that there were 490,865 slaves in the Commonwealth of Virginia on the 31st of December, 1860, and that the fair estimated valuation of such slaves was $344 apiece; that of them, 472,494 were within the territory of the present Commonwealth of Virginia, and that their fair estimated valuation at that time was $162,537,936; and that there were 18,371 of such slaves on the same date in the counties that now constitute the State of West Virginia, and that the fair estimated valuation of such slaves was at that time in the aggregate $6,319,624.

"(Upon request the foregoing agreement was read aloud by the stenographer, and there was no objection to it by counsel for either party).

"Mr. Anderson: The Commonwealth of Virginia does not admit that the facts here conceded to be true are either relevant, material, or responsive to any issue in this case or any direction of the decree. Counsel for Virginia further object to the consideration of these facts by the Master in this case for the reason that both parties have down to the present day construed Section 5 of the decree as referring to the fair estimated value

Fair estimated value of real estate in West Virginia counties as per Master's Report p. 168	$ 67,676,127 44
Fair estimated value of personal property, excluding slaves, in same counties (Master's Report, 168, 169)	24,739,894 21
Fair estimated value of slaves in West Virginia counties, as conceded by Defendant, (Master's Report 169-170)	6,319,624 00
Total fair estimated value of all property, real and personal, in West Virginia	$ 98,735,645 65
Fair estimated value of all taxable property in Virginia and West Virginia as of June 20, 1863,	$404,469,662 59
Of which there was in Virginia	$305,734,016 94
And in West Virginia	$ 98,735,645 65

or 24.4111 per cent. in the latter State.

Upon the basis of the fair estimated value of all property in the two States in June, 1863, according to the Plaintiff's statement of those values. West Virginia's share of the debt would be 24,4111

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of the real and personal property in Virginia as of the 20th day of June, 1863, and have taken their testimony, prepared their schedules and exhibits, and until to-day argued the case upon that basis; and they object to the introduction of this new issue into the case at this stage of the litigation."

* * * * * * * *

"The Special Master: Have you any objection to adding this to the agreement?

"*It is further agreed*, inasmuch as Paragraph 5 requires a report of the real and personal property by counties, it is agreed that the aggregate number of slaves stipulated for in the foregoing agreement was taken from the United States Census of 1860, and that in apportioning the number of slaves and the valuation thereof to the various counties, the same census, showing the slaves in the various counties as the basis for making that distribution, shall be used.

"Mr. Anderson: There is no objection to that. Let it be stated in the record that this agreement was made at the close of the argument, on the 1st day of January, 1910."

Stenographic Report of the Hearings before the Master, Vol. 20, pp. 3153-3154.

per cent. of $33,897,073.82, or $8,274,648,58; of which $8,036.100.90 would be principal and $238,547.68 accrued interest.

These estimates are more than liberal to West Virginia, for they include the slaves, both those still nominally in bondage, and those who were actually free, at a valuation equivalent to more than half what those slaves were individually or collectively worth in January, 1861.

We most earnestly and confidently insist that the slaves in Virginia and West Virginia in June, 1863, as a mass constituted no such description of property as to be any just basis upon which to rest any State indebtedness.

The tenure by which they were held was so precarious, both by reason of Mr. Lincoln's Emancipation Proclamation, and because of the facility with which they could secure actual freedom by escaping into the lines of Federal occupation, where they were not already within those lines, as very many of them were, that they constituted no fair basis for the ascertainment of the share of the common debt with which either State should be charged.

The above conservative figures seem clearly to demonstrate that, ascertaining West Virginia's share of the common debt, independently of the Wheeling Ordinance, her equitable share of that liability, computing it upon any basis which would be fair or just, would be $7,383,189.44, with interest on $7,170,339.47 from January 1, 1861,—*as a minimum*, if it be ascertained on the *assessed* values of real estate in the two States June 20, 1863; and that it would be $8,274,648.58, with interest on $8,036,100.90 from January 1, 1861, if the apportionment be made on the basis of fair *estimated* value of both real and personal property (including slaves) in the two States June 20, 1863, and estimating the slaves at a very large value considering all of the facts of the case.

These figures will be found not to vary very radically from the results which will be reached by applying the terms,—(and using the method prescribed by the Wheeling Ordinance, which West Virginia in her answer insists, determined the nature and extent of her liability), to the ascertainment of West Virginia's share of the debt, construing that Ordinance fairly with reference to the established facts and circumstances of the case.

(3.)

West Virginia's Just Share of the Debt Computed under the terms of the Wheeling Ordinance.

We ask the attention of the Court to the question of the amount of West Virginia's liability ascertained in accordance with the findings of the Master's report under paragraphs III, IV, VI and VII of the decree.

We beg leave to file at this point as part of this argument alternative statements prepared by Mr. A. G. Potter, the accomplished expert accountant under whose immediate direction the accounts for the plaintiff were made up in this case, showing the amounts due by West Virginia applying the figures as ascertained by the Master, under each of the paragraphs of the decree. (Appendix V to this Note of Argument).

Mr. Potter has also, at our request, prepared a statement showing what would be the result under the alternative directions of Paragraphs III, IV, V, VII and VI of the decree, if the Wheeling Ordinance is construed and applied in accordance with the contentions of West Virginia, which statement is filed as Appendix VI to this printed argument.

Examination of this statement will show that, if West Virginia's attempt, by *construction*, to defeat the expressed purpose of the Ordinance, and to repudiate the compact which was the condition of her statehood, should be successful, then, instead of West Virginia owing anything, the balance on the accounting would be in her favor, to the extent of from $769,073.57, as a minimum, to $3,123,618.76!!!

These astounding results are reached by ignoring or distorting the unmistakable requirements of the Wheeling Ordinance:

(1) By charging West Virginia with only *some* and a comparatively small part of the actual expenditures made by Virginia in West Virginia territory during the debt period, when the decree and the Ordinance requires the new State to be charged with ALL of those expenditures.

(2) By omitting to charge West Virginia with any share whatsoever of the largest items of the "ordinary expenses," and failing to charge her with a *just proportion* of such expenses as West Virginia concedes to have been "ordinary."

(3) By taking credit for large sums as having been paid into the treasury of Virginia from West Virginia counties, which were never in fact paid into the Virginia treasury, from those counties; and

(4) By omitting to charge West Virginia with money and the fair value of bank stocks which she received from Virginia on and after June 20, 1863.

These results are so unconscionable as to absolutely discredit the data upon which, and the methods by which they are reached.

We will submit alternative statements, showing the amount of West Virginia's liability upon the basis of the Master's report under paragraphs III, IV, VII and VI of the decree, modified as we consider it should be in respect to the so-called "indirect" expenditures made by Virginia in building roads, turnpikes, bridges, &c., in West Virginia territory, and by the addition of the money received by West Virginia from Virginia in 1863 and 1864.

These paragraphs, following the Wheeling Ordinance, direct West Virginia to be charged with three classes of debits:

(1) With all State expenditures in West Virginia counties;

(2) With a fair proportion of the ordinary expenses of the State Government during the specified period; and

(3) In addition to these items under the Ordinance, West Virginia is chargeable with the value of certain bank stocks and with the money which the new State received from Virginia on and after June 20, 1863.

West Virginia is to be credited under the Ordinance and Paragraph VI of the decree with all payments made into the treasury of Virginia from West Virginia counties during the same period.

As we have already seen, the chief points of difference arise in the determination of

(1) What expenditures were made by Virginia in West Virginia territory;

(2) What were the ordinary expenses of the State;

(3) What was West Virginia's fair proportion of those ordinary expenses; and

(4) What payments were made into the State Treasury from West Virginia counties?

These questions have been, already, fully discussed in a general way.

The points of divergence between opposing views will be clearly presented by the following concise tabulated statements, showing the results in dollars and cents:

STATEMENT I.

Stating West Virginia's liability, apportioning ordinary expenses on basis of total population, *including slaves*:

Debit Charges: ....

Paragraph III.—Actual expenditures made by Virginia in West Virginia counties:		
(a) Amount allowed by the Master ....$	2,811,559 98	
(b) Add amount actually expended by Virginia in West Virginia territory through public improvemnet companies	1,104,400 85	$3,915,960 83
Paragraph IV.—Proportion of ordinary expenses, on basis of total population including slaves, ascertained under this paragraph of the decree by the Master (Master's Report, p. 140)		8,147,455 92
Paragraph VII.—Money, property and stock received by West Virginia from Virginia:		
(a) As found by the Master..... (Master's Report p. 193)	$500,828 00	
(b) Add for cash received by West Virginia from Virginia (Master's Report, p. 181)	170,771 46	
	$671,599 46	
Deduct for value of stock, as charged by Master under Paragraph VII,		

of the Sweet & Salt Sulphur Springs and White & Salt Sulphur Springs Turnpike Companies, and the Fairmount & Palatine Bridge Co., the expenditures upon which are included in the above total of $1,104,400.85 (para. III)—See p. 12 Complainant's Exceptions, and Joint Exhibit C-1, pp. 4, 5, 6, R. 375, 376, 377	23,578 00	648.021 46
		$12,711,438 21
Credit West Virginia:		
Paragraph VI.—By receipts from West Virginia counties (Master's Report, p. 179)		6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be....		$ 6,605,553 46

STATEMENT II.

Stating West Virginia's liability, apportioning ordinary expenses on basis of population, *excluding slaves*:

Debit Charges:	
Para: III.—Expenditures made by Virginia in West Virginia counties, as shown in Statement I	$ 3,915,960 83
Para: IV.—Proportion of ordinary expenses, on basis of population without slaves (Master's Rep. 140)	11,452,862 66
Para: VII.—Money and stocks received by West Virginia from Virginia on and after June 20, 1863,—as shown in Statement I	648,021 46
	$16,016,844 95
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179).....	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 9,910,960 20

For reasons already shown to the Court, we consider this a fair, just and equitable basis of adjustment—far fairer than it would be to include the slave population as a factor in making this apportionment. It is the amount assignable to West Virginia under the Wheeling Ordinance, reasonably, and fairly construed and applied.

But, following a suggestion made by Mr. Justice Harlan during one of the former hearings of the case (See West Virginia's Compilation, Vol. II, p. 227), we have had an alternative statement prepared, apportioning the ordinary expenses of the State Government on the Federal basis, by which *three-fifths* of the slaves would be counted, as follows:

STATEMENT III.

.. Ascertaining West Virginia's liability, apportioning ordinary expenses on the basis of total white and three-fifths of the slave population:

Debit Charges

Para: III.—Expenditures made by Virginia in West Virginia counties, as shown in our Statement I, supra		$ 3,915,960 83
Para: IV.—West Virginia's share of ordinary expenses, averaged by decades, on basis of total white and three-fifths of slave population, as follows:		
Mar. 19, 1823 to Sept. 30, 1830..	$ 584,731 27	
Oct. 1, 1830 to Sept. 30 1840..	1,087,063 53	
Oct. 1, 1840 to Sept. 30, 1850..	2,017,673 93	
Oct. 1, 1850 to Dec. 31, 1860.	5,472,521 32	9,161,990 05
Para: VII.—Money and stocks received by West Virginia from Virginia on and after June 20, 1863,—as shown in Statement I, *supra*, ...		648,021 46
		$13,725,972 34

Credit West Virginia

Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$7,620,087 59

It is a significant circumstance that the amount which West Virginia would have to pay upon this basis is so nearly the same as the sum which would be assigned to her, if, discarding the Wheeling Ordinance, the apportionment were made on the basis of the assessed value of the real estate in the two States as of June 20, 1863 which gives West Virginia's share of the debt as being $7,383,189.44, the difference being only $236,898.15, or only about 3 per cent.

Following the Master's report, we will now submit statements of the amount of West Virginia's liability, under the directions of paragraphs III, V, VII and VI of the decree:

STATEMENT IV.

Giving West Virginia's liability, apportioning the ordinary expenses of the State on fair estimated value June 20, 1863 of real and personal property, *with slaves*—estimated values of personal property and slaves being those adopted by the Master but excepted to by Plaintiff:

Debit Charges	
Para: III.—Expenditures by Virginia in West Virginia territory, as shown in our Statement I, above	$ 3,915,960 83
Para: V.—Proportion of ordinary expenses of State Government on basis of estimated value of real and personal property, *including slaves*, counted at the figures reported by the Master for said personal property and slaves on June 20, 1863,—excesssive as we believe, and as we think we have shown those valuations to be (Master's report, p. 172)	6,078,367 96
Para: VII.—Bank stocks and money received by West Virginia from Virginia, on and after June 20, 1863, as shown by Statement I, above	648,021 46
	$10,642,350 25
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt as of January 1, 1861, would be	$ 4,536,465 50

STATEMENT V.

showing West Virginia's share of the debt on same basis as No. IV, except that the *slaves* are *excluded* from the computation of estimated values of real and personal property in June, 1863:

Debit Charges:	
Para: III.—Expenditures in West Virginia territory, as shown in our Statement I, above....	$ 3,915,960 83
Para: V.—Proportion of ordinary expenses, apportioned according to fair estimated value of real and personal property, *without slaves*, (Master's Report 172)	9,463,553 58
Para: VII.—Value of stocks and money received by West Virginia from Virginia on and after June 20, 1863, as shown in our Statement 1 (Master's Rep. 193)....	648,021 46
	$14,027,535 87
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt as of January 1, 1861, would be	7,921,651 12

These Statements IV and V are given, *not* because we consider that property values constitute the fairest or a fair criterion for the apportionment of the ordinary expenses of a State, or because we consider the Master's large estimates of the value of the personal property and slaves in Virginia in June 1863, as at all justified by the proofs, but merely to indicate that even upon those excessive valuations the indebtedness of West Virginia would be $4,362,964.50, on January 1, 1861, if personal property and slaves be

counted as being worth in Virginia in June 1863, very much more than they were in January, 1861, and would be $7,921,651.12, if slaves is excluded from the calculations, as they ought to be as a matter of fair dealing, in apportioning the ordinary expenses of the State.

STATEMENT VI.

Showing West Virginia's share of the debt, apportioning ordinary expenses on basis of property values, as of January 1, 1861:

Debit Charges:

Para: III.—Expenditures made by Virginia in West Virginia territory, as shown in our Statement I, above	$ 3,915,960 83
Para: V.—Proportion of ordinary expenses on basis of fair estimated property values, *including slaves*, on January 1, 1861. (Master's Rep 173)	6,805,289 57
Para: VII.—Value of money and Bank stocks received by West Virginia from Virginia on and and after June 20, 1863, as shown in Statement I, above	648,021 46
	$11,369,271 86

Credit West Virginia:

Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 5,263,387 11

STATEMENT VII.

Showing West Virgina's share of the debt, apportioning ordinary expenses on basis of property values, *excluding slaves*, as of January 1, 1861:

Debit Charges:	
Para: III.—Expenditures made by Virginia in West Virginia territory, as shown in Statement I, above	$ 3,915,960 83
Para: V|—Proportion of ordinary expenses on basis of fair estimated valuation of property, *excluding slaves*, as of January 1, 1861, (Master's Report 173)	8,586,648 25
Para: VII.—Value of stockss and money received by West Virginia from Virginia on and after June 20, 1863, as shown in our Statement I, above,	648,021 46
	$13,150,630 54
Credit West Virginia:	
Para: VI.—By receipts from West Virginia counties (Master's Report, p. 179)	6,105,884 75
On this basis West Virginia's share of the debt, as of January 1, 1861, would be	$ 7,044.745 79

These last two tables are given not because we consider the principle on which they are stated a correct one, but merely to show that even upon the inaccurate basis upon which they rest, West Virginia will owe a very large sum.

The more we consider the problems presented in this case the stronger our conviction is that the amount of West Virginia's liability, ascertained under the terms of the Wheeling Ordinance—if that ordinance be sensibly, reasonably, and fairly construed—is

justly and equitably ascertained in Statement II, hereinabove submitted by us. That statement, which is supported by strong considerations of reason and justice, ascertains that indebtedness to be $9,910,960,20, as of January 1, 1861.

In any case and upon any amount for which West Virginia shall be decreed to be liable, we most respectfully and most earnestly insist that interest should be decreed against her according to her moral and legal obligation under the terms of her contract.

With entire deference for the sincerity of the divergent views of our honorable opponents upon these questions, we are persuaded that less than this would not do justice to the complainant, and to the common creditors of the complainant and the defendant here.

(4)

The Liability of West Virginia for Interest.

Is West Virginia justly, legally, equitably, and contractually chargeable with interest?

In this connection, we must remember that the contract which we are considering was a Virginia contract.

Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due, the debtor is bound to pay interest unless relieved from this obligation by agreement. This is, and has been the law of the Commonwealth for more than one hundred years.

In Jones v. *Williams*, 2 Call, 106, decided in 1799, Edmund Pendleton, who was one of the great Judges of our country, delivering the opinion of the court said:

> "Interest is allowed because it is natural justice that he who has the use of another's money should pay interest for it."

Cited with approval in *Baker* v. *Morris*, 10 Leigh 284, *McVeigh* v. *Howard*, 87 Va., 599, and *Stuart* v. *Hurt*, 88 Va., 343.

In *Hatcher* v. *Lewis*, 4 Randolph 152, 157, the court laid down the rule in the following expressive language:

> "*The interest follows the principal as the shadow does the substance.*"

In *Chapman* v. *Shepherd*, the court said:

> "In contracts for the payment of money, interest is not given as damages at the discretion of the court, or jury, but as an incident to the debt, which the court has no discretion to refuse."

Chapman v. *Shepherd*, 24 Grott, 377, 384
Roberts v. *Cocke*, 28 Gratt, 207.
Tidball v. *Shenandoah National Bank*, 100 Va. 741.

"Interest is favored both by the legislative and judicial bodies of the State."

Tazewell v. *Saunders*, 13 Gratt. 354, 370.

In *McVeigh* v. *Howard*, 87 Va. 599, the Supreme Court of Appeals of Virginia said:

> "It is the settled rule that when no day is named in the bond or note given for the payment of a precedent debt, it is due and payable on the day of its date, and bears interest from that date, though no interest be reserved. Such an instrument like a bond or note payable, in Virginia, on demand, is payable presently, and bears interest from date. This doctrine is founded in good conscience and correct morals." * * *

Citing *Jones* v. *Williams* and *Hatcher* v. *Lewis*, quoted above.

Such is the law of Virginia as to interest.
The law of West Virginia in regard thereto is the same.

In *Shipman* v. *Bailey*, 20 W. Va. 140, 146, Judge Snyder, announcing the unanimous opinion of the Supreme Court of Appeals of that State, after citing a number of authorities upon the question, stated the rule as follows:

> "Other authorities of the same character might be cited, but, we think, we have given sufficient to establish the rule which seems to be, that in contracts for the payment of money interest on the principal sum is a legal incident of the debt and a part of the contract, and wherever there is a contract for the payment of a specified legal rate of interest, whether such rate is fixed by the contract itself or by the law of the place where the contract is made, the obligation of the contract extends to the payment of such interest as fully as it does to the principal sum, and courts have no more power to change the rate of interest thus fixed, than they have to dispense with the enforcement of the contract either in whole or in part."

That decision reaffirms another proposition, applicable to this case, already a part of the jurisprudence of West Virginia, by the

adjudications of the Supreme Court of Virginia rendered before the birth of the new State, namely, that the *lex loci contractus* controls in the matter of the interest chargeable against a debtor.

In *Pickins* v. *McCoy*, 24 West Va. 344-352, the court affirms *Shipman* v. *Bailey*, and adopts the language just quoted from that decision.

Independently of these West Virginia decisions, such parts of the common law and of the laws of the State of Virginia as were in force on the 20th of June, 1863, when the first Constitution of West Virginia went into operation, and as are not repugnant to said Constitution, were continued and declared to be the law of West Virginia. Section 8 of Article XI, of the first West Virginia Constitution. And see present West Virginia Constitution.

The effect of this provision was to adopt for the new State the body of the common and statute laws of the Commonwealth, so far as the same were in force within the boundaries of the new State on the 20th of June, 1863.

As a part of this body of laws, the law of Virginia as to interest became, and has continued to be, a part of the laws of West Virginia.

Such, then, was the law of Virginia before, at the time of and since the formation of West Virginia, as to the legal and equitable liability of a debtor or contractor to pay interest. Such has been the law of West Virginia since the hour of her birth. And such was, and is, the law of the contract evidenced by the public Acts of Virginia and West Virginia set forth in complainant's Bill.

This is the rule in Virginia as to debts due by the Commonwealth.

The question was presented in the celebrated case of *Higginbotham's Executrix* v. *Commonwealth*, 25 Gratt. 627.

That was a suit against the Commonwealth to recover the amount due Higginbotham's Executrix on certain past due dividends on stocks which had been guaranteed and assumed by Vir-

ginia by the Acts cited in the opinion of the Court.—26 Gratt. 630, 631.

There was no express contract by the State to pay interest upon said dividends. The petitioner's claim was for the amount of the dividends "with its accruing interest."

The unanimous decision of the Supreme Court of Virginia was that "judgment should be entered for the petitioner for the amount of her demand with interest."—Idem, p. 641.

The framers of the Wheeling Ordinance must be presumed to have drawn that instrument with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest court.

To Virginia and West Virginia lawyers of that day, as since that time, Judge Coalter's apt formula that, "the interest follows the principal as the shadow does the substance," was as familiar as any other accepted rule of equity or of law.

Under the law of Virginia in force at the time of these transactions, interest upon the portion of the debt which West Virginia was to take upon herself, was an esssential incident of the debt, and its payment as much a part of the obligation as was the payment of the principal.

But, even if the *lex loci contractus* had not brought us to this conclusion, the language of the ordinance itself, fairly construed, leads to the same result.

That language is that:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861," etc.

Now, that debt was an interest bearing debt. It was represented by obligations of the undivided State, some of them payable at a future day, some of them at a future day and thereafter at the pleasure of the Commonwealth, but all of them interest bearing obligations, obligations in which the payment of the stipu-

lated interest was made as much a part of the debt as was the payment of the principal.

The interest was an integral part of the debt, and as many of the bonds were payable thirty-four years after date, and over $10,000,000 of them at the pleasure of Virginia, with interest from date, the interest as to much of the debt constituted much the greater part of it.

It was the manifest intention of the enactors of that ordinance, unless we are to ascribe to them the sinister purpose of perpetrating flagrant wrong and injustice, that the new State should take upon itself, and relieve what remained of the old State of a part of the burden of debt which rested upon both States. They knew that that burden consisted as well of interest, as principal, and as much, of interest as of principal.

It was not proposed that the new State should, as soon as she became a State, pay in cash a sum to be ascertained in the manner indicated in the Ordinance. The framers of the ordinance understood too well that under the conditions then existing, it would be impossible for the new State to raise and pay any considerable sum in cash.

Why the new State was dependent upon the old State for the money necessary to enable her to begin business and she did not have and in the nature of things could not command a sufficient amount in cash to pay off one-tenth or even one-twentieth of the then Virginia debt.

The stipulation was not that the new State should pay a sum in cash on account of its share of a common indebtedness; but that it should take upon itself a just proportion of that debt, to be ascertained as in the Ordinance prescribed.

Are we to understand that a court of conscience is to be asked to construe that stipulation to mean that the new State shall take upon itself only a proportion of a part of that debt? That it shall assume a share of the principal only of the debt, but shall be exonerated from any part of the interest which was, and is, as integral a part of the Virginia debt, and of the obligations which

represent it, as the branches are a part of the tree from whose trunk they spring?

In their elaborate arguments in this case, opposing counsel have heretofore devoted very little attention to this important question, although it was plainly in their minds when they prepared their draft of decree, and although their attention was challenged to it by the argument for Virginia. In so far as they have discussed it, they have ignored the facts and principles upon which West Virginia's legal, "equitable," and "just" obligation to assume and pay the interest as well as the principal of her share of the debt, rests.

But West Virginia's equitable and legal liability to pay interest upon her share of the debt of Virginia does not at all depend alone upon the Wheeling Ordinance, or upon the law of Virginia and West Virginia, which makes the interest an essential part of the debt; but it rests still more and beyond the possibility of question upon the express terms of the Constitution under which West Virginia became a State.

The fact, the character and the legal effect of the compact created by that important transaction have already been fully discussed.

West Virginia's solemn covenant in regard to the equitable proportion of that debt which she assumed was that her Legislature should "provide for the liquidation thereof by a Sinking Fund, sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This was precisely in accordance with the plan which had long theretofore been adopted by the Commonwealth for the payment of her debt.

This plan was embodied not only in the statutes but also in the Constitution of Virginia, in force when West Virginia became a State.

It was embodied in that Constitution in the following terms:

> "29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand

eight hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

Section 29 of the Constitution of Virginia, in force from January 1, 1852, Code of Virginia for 1860, p. 47; Appendix to the Record, p. 200.

It was expressed and given further effect by the second section of the following Act passed by the General Assembly of Virginia:

"Chap. 17. An act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.
Passed March 26, 1853.

"2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed."

Acts of General Assembly of Virginia, session of 1852-3, p. 29; Appendix to the Record, pp. 200, 201.

Its effect was, therefore, well understood to be to conform the undertaking of West Virginia in regard to the time and manner of the payment of her share of the debt to the plan and scheme of payment which had been adopted by the Commonwealth, and which experience had approved.

That scheme was, the creation from the annual revenues of the State, of a fund equivalent to seven per centum of the principal of the debt. Of this, six per centum went to pay the annually accruing interest, and one per centum was invested and set apart to retire the principal sum due, within thirty-four years, and this arrangement was defined as a sinking fund.

It was found, and if the calculation is made it will be shown to be true, that one *per centum* of any sum invested and compounded at six *per centum* interest per annum, will in thirty-four years produce an amount equal to such sum.

This was the theory and the plan which Virginia had adopted for the liquidation of her debt.

It was a plan with which Messrs. Willey, Van Winkle, Hall, Brown, Haymond, and other members of the first West Virginia Convention, who had been previously members and some of them able members of the General Assembly of Virginia, were doubtless entirely familiar: And it is the same plan which we find incorporated in the scheme of settlement which constitutes a part of the foundation upon which West Virginia's existence as a State rests.

By this clause of West Virginia's Constitution, therefore, it was required, not that the new State should pay a lump sum in cash, to be ascertained in the manner prescribed, but that she should *assume* "an equitable proportion of the public debt of the Commonwealth" existing on the 31st of December, 1860, and should "provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The framers of the West Virginia Constitution thus manifestly adopted, and engrafted upon that instrument, the plan which for nine years or more had been a part of the organic and statutory

law of Virginia for the extinguishment of her public debt, and the Legislature of Virginia accepted and approved that plan.

That plan included, (as the West Virginia Constitution also expressly included), an undertaking on the part of the State to pay the accruing interest, and to liquidate or redeem the principal of each bond representing the debt, within thirty-four years.

In simple language, the stipulation of West Virginia expressed in her Constitution, and accepted and acted upon by Virginia, was, that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the princippal thereof within thirty-four years.

That such was her express undertaking, appears from the language of her first Constitution, interpreted according to the reasonable and natural meaning of that language.

That such was the purpose, meaning, and effect of that language, is conclusively shown when we read it in the light of the plan established by the Constitution and statute of Virginia, then in force, for the establishment of a sinking fund for the liquidation of her public debt which plan was adopted by the new State as to its share of that debt.

And so, we find that both by the express terms of the Wheeling Ordinance fairly construed, and by the express terms of the Constitution under which Virginia and the National Congress consented that West Virginia should become a State, this new State has become expressly obligated to pay interest upon the share of the principal of the common public debt for which she is liable.

These positions are not at all in conflict with the general rule of American and of public law, as clearly defined by this court in *United States* v. *North Carolina*, 136 U. S., 211, as the law governing that case, that,

1. "Interest, when not stipulated by contract or authorized by statute, is allowed by the courts as damages for the detention of money or property;"

2. "Interest is not to be awarded against a sovereign unless its consent has been manifested by an act of its legislature, or by a lawful contract between executive officers;"

3. "By decisions in North Carolina that State, unless by or pursuant to an explicit statute is not liable for interest, even on a sum certain which is over due and unpaid."

See also *South Dakota* v. *North Carolina*, 192 U. S., 286.

The question presented in the case at bar is taken out of the reason and the decision of this court in the North Carolina cases by the following circumstances:

(1) The obligation to pay interest is determined by the *lex loci contractus*, and under the settled law of Virginia which was the law of the contract between West Virginia and Virginia, and under the law of West Virginia also, interest is not and never has been allowed as damages for the detention of money, but in those jurisdictions interest is allowed as an essential incident of a contract, whether express or implied, for the payment of money, and as a matter of right and justice.

This court, in its opinion in *United States* v. *North Carolina*, expressly rested that decision upon the fact that under the law of North Carolina no interest was payable on such a contract.

(2) The payment of interest is here an obligation imposed by statute—first by the Wheeling Ordinance, and second by the Constitution under which West Virginia became a State.

(3) The express contract of West Virginia upon which her existence as a State was conditioned requires her to pay interest on the part of the debt which she assumd.

This is a very much stronger case for a decree for interest than *United States* v. *State of New York*, 160 U. S. 600,, righteous as was the allowance of interest there.

Paraphrasing the language of this court in that case, p. 621, "It would be a reflection upon the" honorable motives of the members of the Conventions which framed the Wheeling Ordinance

and the West Virginia Constitution "if we did not place a liberal interpretation upon those acts and give effect to what, we are not permitted to doubt, was intended by their passage."

Another question which arises in connection with the consideration of this subject, is, from what time is West Virginia justly and equitably bound to pay that interest?

Answer to this is furnished by the Wheeling Ordinance and by the section of the first West Virginia Constitution above quoted.

The settlement by the terms of both instruments was to be made as of the arbitrary date of January 1, 1861, or to be precisely accurate, as of December 31, 1860. That, accordingly, is the date from which fairly equitably, and legally, (because it accords with the express terms of both the ordinance and the Constitution), the interest should be computed.

As already shown, the debt, a proportion of which as of that date, West Virginia was to assume and pay, was an interest bearing debt, and the interest was as integral a part of it as was the principal.

A farther kindred inquiry to the last is: To what time should West Virginia be required to pay such interest?

Our response to this is, that she is justly, equitably and legally bound to pay this interest,

(1) *By the terms of the Wheeling Ordinance;* certainly, for the period during which the debt of the Commonwealth existing on the 31st of December, 1860, would continue to be an interest bearing debt: And we have seen that that was not only until the obligations representing the debt became due, but under the just rule of the law of Virginia as to interest, in force during the whole period of the creation of the debt, until that principal should be fully paid.

(2) By the terms of the section of her Constitution above quoted, accepted by Virginia and by the Congress, West Virginia undertook to pay all the accruing interest on, and the principal of, her share of that debt in thirty-four years.

She has failed and refused to pay that share, or any part of it.

The interest accruing thereon from December 31, 1860, has continued to accrue, as to her, until it now amounts to vastly more than the principal. It was that interest which West Virginia agreed to pay, and it was that principal for the payment of which West Virginia's Legislature was to make provision, so that the same should be paid within thirty-four years.

We are unwilling to anticipate that the learned counsel for the defendant will argue that West Virginia, by the language of that provision of her Constitution, is only bound to pay interest for thirty-four years from December 31, 1860, or from June 20, 1863, because we are unwilling to assume that our distinguished opponents would contend that a State, any more than an individual, should be allowed to take advantage of her own wrong, or profit by her own procrastination, and neglect of duty.

Here, West Virginia has not only not paid a just, or any other proportion of the common public debt, nor provided for the payment of the accruing interest thereon, and for the payment of the principal, but she has persistently failed and refused to do either of these things, and has by the votes of her Legislature, again and again repudiated any and all liability whatever for any part of that indebtedness.

(See Resolutions of Legislature of West Virginia, App. 247, 248.)

With all deference for the distinguished counsel for the defendant, we venture to believe that a court of equity will not allow any defendant, and particularly a State, which should be an exemplar of fair and honorable dealing in all of its transactions, to make gain out of its own palpable dereliction of duty.

And so, our response to such contention, if it shall be urged, is, that equity will not suffer any party to take advantage of his own wrong.

Conclusion

It is, true that the amount which West Virginia is thus equitably bound to pay, including the interest fairly and justly due thereon, will, as of this date, aggregates a very large sum; but

that constitutes no argument for her exoneration from the payment of the same.

Fortunately for West Virginia this indebtedness, even if the very largest sum which under any of the alternative statements in the case could by possibility be found to be due by her, should be decreed against her, would, in the affluence which the record shows she now enjoys, wealth largely resulting from the construction of the very improvements upon which the expenditures made by Virginia in roads, turnpikes, railroads and bridges, and in the improvements of the navigation of her rivers were made,—impose upon her a burden easy to be borne, and light, as compared with what Virginia, during the period of her greatest impoverishment, has assumed and borne.

Virginia not only assumed two-thirds of the original debt and two-thirds of the accumulated interest upon it down to January 1st, 1871, and in addition thereto the accumulated interest upon over $8,000,000 of bonds issued by her on account of unpaid and accumulated interest prior to January 1st, 1871, but she paid off in full large amounts of interest accruing after December 31st, 1860, and before January 1st, 1871; and she has paid off, also, in full very large amounts of the principal of the original debt; and has, also, paid off large amounts of the principal of the two-thirds of the debt assumed by her in 1871.

In addition to this Virginia has paid, as of this date, over $38,000,000 of interest.

It must be remembered that these payments, made by Virginia, have been distributed through a period of more than forty-five years.

Large portions of these payments were made by the people of Virginia out of limited resources, in the period of their greatest poverty and distress.

If interest were to be computed upon the payments thus made by Virginia during the last forty-eight years on account of this common debt,—which would have to be done in order to equalize West Virginia with Virginia in regard to these transactions,—the average period upon which interest should be so computed upon

the payments so made by Virginia in order to thus equalize her with West Virginia, would be considerably more than twenty years; and the amount assumed and paid by Virginia, including the upwards of $25,000,000 of her recognized and regularly met obligations still outstanding, and including the payments she has heretofore made on the whole debt, and on the two-thirds she has specifically assumed, would aggregate considerably over $100,000,000, as of this date.

Large portions of West Virginia would to-day be a wilderness, but for the building of the works of internal improvement whose construction was secured by the expenditures above referred to, and the building of other works of internal improvement which have resulted from the construction of the great lines upon which Virginia expended so many millions of dollars of her substance.

The people of West Virginia are to-day enjoying the fruits of the enterprise and liberality of the Commonwealth in those expenditures,—not only those expended within the limits of West Virginia, but also in the expenditure of millions of dollars on works outside of the territorial limits of West Virginia, but which were built in large part for the purpose of developing the resources of the territory now constituting that State.

Too much emphasis cannot be laid upon these facts and considerations.

Nor can it be forgotten that almost the entire indebtedness which is the subject matter of this investigation was created by the votes of the representatives of West Virginia, and that very little of it ever would have been created but for the support they gave to the Acts by which this large indebtedness was imposed upon the Commonwealth,

The complainant desires and asks only that a decree which is in accordance with the legal and equitable rights and obligations of the parties shall be entered.

Such a decree, she is satisfied, will impose upon the new State the duty of paying a very large sum on account of this long ignored obligation, but a sum, every dollar of which West Vir-

ginia justly owes and the complainant is righteously entitled to recover.

Her earnest plea is that West Virginia is bound both by the terms of the Wheeling Ordinance, and of her first Constitution to pay a just and equitable part of this debt with interest until the same shall be fully paid, and that she shall not be suffered to repudiate either obligation.

She respectfully asks that a decree may be entered for such sum as is thus equitably due, with interest thereon from the 1st day of January, 1861, until the obligation shall be fully discharged.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of Counsel for Complainant.

APPENDIX NO. 1.

TO NOTES OF ARGUMENT FOR THE COMPLAINANT.

Statement showing the principal expenditures made by Virginia prior to June 20, 1863, on railroads, canals, and other internal improvements designed and built for the purpose of opening up and developing West Virginia territory, or which are to-day parts of railway systems and lines of communication which serve the territory and people of West Virginia and afford them outlets to the markets of the world:

1. On railroads which constitute parts of the Chesapeake and Ohio Railway:		
On the Virginia Central R. R.		$2,484,134.00
On the Blue Ridge R. R.		1,744,723.00
On the Covington & Ohio R. R.		3,206,461.83
Total on Chesapeake & Ohio R. R.		$7,435,318.83
II. On Railroads which now constitute parts of the Norfolk & Western Railway:		
On Norfolk & Petersburg R. R.	$1,341,341.00	
On Southside Railroad	1,833,500.00	
On Virginia and Tenn. R. R.	3,755,000.00	
		$ 6,929,841.00
On Winchester & Potomac R. R.		$ 270,000.00
On Alexandria, Hampshire & Loudoun R. R.		1,017,248.00
On Marietta & Cincinnati R. R.		202,611.00
Amount expended on Railroads		$15,855,018.83
III. Canals:		
On James River & Kanawha Canal	$10,400,000.00	
On Chesapeake & Ohio Canal	250,000.00	
		$10,650,000.00

IV. Bridges in West Virginia 81,412.00
V. On Turnpikes and Roads chiefly in W. Va... 2,849,579.71
VI. On Navigation Companies in West Virginia.. 210,500.00

Total on works built to develop or serving West Virginia $29,646,510.54

For above figures see message of Governor Walker to the General Assembly of Virginia March 8, 1870, Report of West Virginia Debt Commission, West Va.'s Compilation Vol. 1, page 474, and Joint Exhibit C-1, R. 374 to 377; Reports of Auditor of Public Accounts of Virginia 1861, of 2d Auditor, 1872, Journal of House of Delegates of Virginia 1871-2, Document VI.

The above amounts do not include considerable sums expended on roads and turnpikes wholly in what is now Virginia, but which connect with roads or turnpikes lying wholly in West Virginia and constitute lines of travel which serve West Virginia as well as Virginia.

APPENDIX NO. II.

containing extracts from the public records and statutes of the Commonwealth showing the nature, motive, and object of her expenditures through joint stock internal improvement companies:

Report of the Committee on Roads and Internal Navigation to the General Assembly, submitted December, 1815 (Board of Public Works Reports, Vol. 1, p. 43):

"Whatever difference of opinion may have at any time existed as to the expediency of controlling the voluntary direction of the wealth and the labor of individuals by the application of legal constraint, there never has existed a doubt but that it is the duty as well as the interest of every good government to facilitate the necessary communication between its citizens.

"Next to the enjoyment of civil liberty itself, it may be questioned whether the best organized government can assure to those for whose happiness all governments are instituted, a greater blessing than an open, free and easy intercourse with one another by good roads, navigable rivers, and canals. Their tendency, by extending commerce to promote the agriculture and manufacture of a nation and thereby to augment its wealth and population, is too obvious to require much illustration.

"The planter and farmer realize their share of this benefit, in the augmented value of their lands; the manufacturer and the merchant, in the increased and diversified demands for their industry and capital. Nor are the higher interests of society less indebted for their advancement to the multiplication and improvement of these channels of useful intercourse. They afford the means of exploring the natural resources of a country and invite the genius of speculation to fit them for the uses of man. Lands too remote from markets to tempt cultivation; forests, hitherto

regarded as inaccessible; beds of minerals and fossils unknown or neglected, are brought within the reach of ordinary enterprise and rendered subservient to the convenient comfort of the citizen or to the defense and safety of the State. They confer on an extended empire the promptitude and energy of action, which are considered peculiarly characteristic of one of narrow dimensions; since without contracting the limits of its territory they reduce the distance and expedite the communication between the seat of its government and its remotest extremities.

"Whether the public force is to be spread out for defence or combined for attack, they alike contribute to the rapidity and vigor of its operations.

"In a republic, especially, where public opinion exerts a controlling influence, and public virtue should be the spring of all public action, they may be considered an important auxiliary, if not a necessary ingredient of public liberty. They tend to difuse more equally the knowledge which experience acquires and the leisure which wealth alone can purchase; they strengthen the cords of social union and the quick and generous feeling of patriotism, which is ever ready to exclaim at the contemplation of an extended scene of public improvement. 'I love my country because she is worthy of my affection.'

"The duty, which is obligatory upon all governments, is peculiarly incumbent upon one, whose territory like that of Virginia, nature has done so much both to unite and separate—to whom she has presented so many advantages to improve and so many obstacles to overcome.

"No State of the Union is intersected by so many navigable rivers or divided by so many chains of lofty mountains; none perhaps abound with such happy varieties of climate and soil, so many resources for internal commerce. In her coal, iron, lead, tin and salt, she is unrivalled. Her tobacco and grain command the highest prices abroad. The fertile banks of her rivers and the moist valleys of her mountains yield abundant crops of flax and hemp. Her lowlands would supply her with cotton for her own consumption, and the fleeces of the flocks which pasture on her hills are not surpassed in quality.

"Notwithstanding these advantages, the principal part of her commerce and almost the whole of her navigation, pass out of her hands to enrich the coffers of her neighbors. There is scarcely a village to the west of the Blue Ridge and very few above tidewater, from the Roanoke to the Potomac, which derive any part of their supply of manufactured commodities, either foreign or domestic, from the seaports of Virginia.

"While many other States have been advancing in wealth and numbers with a rapidity which has astonished themselves, the ancient Dominion and elder sister of the Union has remained stationary.

"A very large proportion of her western territory is yet unimproved, while a considerable part of her eastern has receded from its former opulence.

"How many sad spectacles do her lowlands of wasted and deserted fields present? Of dwellings abandoned by their proprietors. of churches in ruins? The genius of her ancient hospitality benumbed by the cold touch of penury, spreads his scanty board in naked halls, or seeks a coarser but more plenteous repast in the lonely cabins of the West. The fathers of the land are gone, where the outlet to the ocean turns their thoughts from the place of their nativity and the affections from the haunts of their youth. Beyond the Alleghanies an unexpected revolution threatens the Atlantic States in general, the accomplishment of which will create new interests and views in that flourishing and important section of America, and probably, for them, the hope of reuniting it by commercial ties to the markets of the East.

"If it be true, as your committee confidently believe, that in a connection between the Roanoke, the James, and the Potomac, with the waters of the Kanawha or Ohio, this Commonwealth possesses the best means of arresting the progress of this revolution, it is a duty which she owes not only to her self, but to the Atlantic States and to the Union at large to call those means into action

* * *

"Your committee are far from intimating that the General Assembly of Virginia has been totally unmindful of those natural advantages or wholly regardless of their improvement.

"The Commonwealth required time to recover from pecuniary losses which she sustained during the War of the Revolution. It found her citizens laboring under very heavy private debts, and left her government encumbered with a public debt of much greater magnitude. .. .. ..

"Yet in circumstances so inauspicious the statesmen of that day and especially the illustrious man to whom, under heaven this nation was indebted for the establishment of its freedom, did not disdain to enquire into the humblest means of giving to that freedom value. From his zealous exertions sprung the Potomac and James River canal companies. To the first of these the Commonwealth is indebted for a water communication 338 miles: and upon it and the contemplated works of the Shenandoah she relies for the further improvement of a navigation of 390 miles. She has shared with a sister State the benefits of the labor already performed on this river; in that which remains to be accomplished on the south branch of the Potomac and Cacapehon and the Shenandoah, she has an extensive interest.

"The James River Company have opened a navigation of 300 miles.

"The Appomattox and Dismal Swamp canal naturally followed into existence those which were indebted for their origin to the patriotism of General Washington. The former opened a navigation of 100 miles. The latter was designed merely to connect waters already navigable, but in its present use and remote consequences is not inferior in importance to any public work in the Commonwealth.

"The expense of the first of the preceding work does not exceed $1,500 per mile upon the navigation already opened; that of the second is about $1,200; the average expense will be annually diminished in the history of future improvements on the branches of those rivers as the principal obstructions to their navigation were removed before their waters could be brought into partial use.

"The actual cost of those public works does not exceed one-third of the expense usually attendant upon the structure of turnpike roads; which in the absence of navigation are the only substitute

for them. It is due to the latter, however, to remark that the addition recently made to them of parallel lines of rails, immovably set in the earth at proper intervals for the wheels of wagons, has more than equalized the advantages of such roads with the best ascending navigation which the resources of Virginia afford above their principal falls; and that the additional cost which this improvement gives to the structure of the turnpike, although great in itself, is inconsiderable when compared with its effect in reducing the expense of loads carried. The turnpike roads of the Commonwealth except a few short pieces of particularly mountainous, and a road recently begun from Fredericksburg towards the Blue Ridge, are confined principally to the county of Loudoun, the adjacent counties of Fairfax, Fauquier, Frederick, and to the vicinity of the seat of Government,

"There is but one to which the funds of the Commonwealth have contributed any aid.

"All of these public works are alike in one respect. They purpose to defray the expense of their first cost and of their subsequent repairs, out of the tolls collected upon them; and these are equitably levied upon those who use them in sums proportionate to the benefit which they respectively derive from such use. Where it is absolutely certain that such works can subsist upon this basis alone, the revenue of the Commonwealth, although it may expedite their progress, is not indispensably necessary to their creation."

"Private wealth will of itself take the direction which personal interest prompts. But there are many such works essential to the prosperity of the Commonwealth, the persons immediately interested in which have not capitals sufficient to commence their foundation, and there are many others of like utility which if completed would require the lapse of many years to make them profitable to the individual subscribers to their stock. The population and commerce which infallibly follow their direction, spread out upon their borders and swell their tolls, cannot be expected to precede their existence.

"Although almost all the turnpike roads within the Commonwealth of Virginia have been made without any other legislative

aid than their respective acts of incorporation, yet it is probab
that neither the Potomac nor James River would have been re
dered navigable above tidewater with such assistance alone. Mar
land and Virginia subscribed more than one-half of the capit
stock of the former, and Virginia alone more than one-third
the latter. The tolls hitherto collected on the one would not ha
justified a subscription to its stock with a view to mere profit; a
though those of the latter have for some time realized the mo
sanguine expectations of its friends and its stock is 80 per cen
above par, yet the revenue of the company apart from the appreci
tion of its stock, would not net to its members 6 per cent. per annu
upon the sums which they have actually expended upon that riv
from the commencement of their labors to the present period.

"Your committee, however, confidently believe there is not
individual within the Commonwealth alive to a sense of her tr
interests who would have desired for the sake of a higher pro
to the treasury upon the stock of the public in either of these work
to withdraw the funds which were required for their completi
and permit this noble resource to return to a state of nature.

"Those who reside near to their banks directly participate
in the benefits thus afforded them of a cheaper mode of transpor
ing the productions of their labor to market; and those even wh
accidentally possessed the superior advantages of tidewater, or wh
were compelled by their distance from both to resort to the com
mon highways in order to reach the same markets, have great
profited by those improvements of navigation which augment th
extent and value of that market, could not fail proportionately
enhance the price for their produce. So true it is that wha
ever contributes to increase the population and wealth of the tow
must contribute to the growth and improvement of the countr
And this effect is wrought not solely on the vicinity of those town
it is seen not merely in the wealth which collects in their suburb
but is discovered in the augmentation of their means of consump
tion and the enlargement of their commercial capitals.

"In this necessary and reciprocal relation of commerce an
agriculture, the country below tidewater in Virginia has an immed

iate and even local interest in the progress and perfection of all those public works exclusive of its general interest in whatever advances the growth and prosperity of the Commonwealth. The inhabitants of the lowlands will therefore partake of the benefit of every application of public revenue to the improvement of the connection between their market towns and the country above them. It should be peculiarly their policy to turn the commerce to the west from its northern direction into the bosom of their own territory. In the efforts which are contemplated to improve the roads passing immediately through their own country they have an interest more sensible to the eye but less so to the understanding.

"Although much has been done for the improvement of the interior of Virginia, more yet remains to be accomplished."

"If nature has divided the territory of the Commonwealth by numerous chains of lofty mountains it is only to incite the genius of mankind to climb them, and the period is not unthinkable—nay, it rests with the legislature to determine whether it be remote, when the roads which cross those natural and formidable barriers shall not be surpassed by those which run along their base * * *

"Should the General Assembly determine to patronize by the application of the public revenue all such works as are likely to be of great public utility, it becomes important to decide whether an improvement may not be made in the mode heretofore pursued of extending to them patronage.

"Your committee are fully satisfied that much loss has been sustained by all the canal companies which have been incorporated hitherto for want of skill in their conduct. Their directors have served, it is true, without compensation. They have generally been public spirited private gentlemen, but neither professional engineers nor capable from experience and observation of guarding against the errors and frauds of agents who pretended to be so.

"No single company could afford to purchase or could fully employ in a country where a few public works were begun, the services of a distinguished engineer; and yet without the previous surveys, plans and estimates of such an officer, no very arduous public work could be confidently begun or successfully conducted. To

supply the defect of such an officer would be the obvious interest of the Commonwealth, and if he were not sufficiently compensated by the general utility of his labors, he might demand of each company such an interest in its stock as would be equivalent to the value of the service rendered to the company by such officer.

"Whatever funds the legislature may be inclined to appropriate for internal improvements, a difficulty must occur in settling the relative importance of its principal objects; and if the appropriation were also required to designate some particular object it would be often impracticable from the variety of opinion—always existing in an Assembly representing many local interests—to procure an union in the choice of any one.

"The first of these difficulties may be obviated by organizing a proper body to collect and prepare for the General Assembly the facts and information necessary to cast upon every application for a portion of the fund light enough to guide the sound discretion of the Legislature in the selection of subjects."

"And these facts will be entitled to the higher confidence if reported under the sanction of official responsibility."

"To allay such local jealousies as might obstruct an agreement in favor of any single object of internal improvement, a fund may be previously segregated and set apart for the accomplishment of all by one appropriation. If the term by future application to any, be at the same time prescribed, a like participation in the benefit of the fund would be assured to every interest which it is calculated to promote; and the speedy enjoyment of that benefit will be secured to each by apportioning the magnitude of the fund so set apart to the number and importance of the objects for which it is designed to provide.

"It may be sound policy for the Commonwealth, in order to accomplish some great commercial or political purpose, to throw open to general use, without the charge of toll, a particular canal or road; but it can never be to its interest, for many reasons, to become the sole proprietor of all the public works within its territory.

"Experience testifies that they will be more economically improved and better repaired if their management be left to the individuals who subscribe to their stock, with a view to private gain, than if confined to public officers or agents.

"The Commonwealth should subscribe so much to their stock and on such terms as will suffice to elicit individual wealth for public improvement—and the control which she retains over the conduct of the individual subscribers should extend no further than to prevent or correct such abuses upon the community at large, as might be apprehended from the too eager incentive of gain.

"By yielding to the individual subscribers the profit of the State on its shares of the stock of any company where required to secure such individuals against temporary loss, a much smaller subscription of the public money will suffice to draw forth private enterprise.

"The Commonwealth can never be a loser if a public work judiciously begun be finally perfected—and the public security against such loss will be found in the discretion which the legislature retains over the choice of the object for which its patronage is sought.

"As the market rate of interest decreases in every commercial country with the growth of its capital, the maximum profit of the stock of each company may be reduced after the lapse of a limited period of time.

"The principles laid down in the preceding part of this report the committee has embodied in the resolutions which are subjoined to it; but they would not have performed their duty to the House if before they recommended the application to objects of internal improvement of all the public stock of the Commonwealth as well as the premium which may be hereafter received from the incorporation of new, the extension of the capitals or the duration of the charters of the existing banks, they had not enquired into the actual state of the debts and of the annual revenue and expenditure of the Commonwealth."—

"That inquiry resolves itself into the establishment of the following propositions:

"1st. That for fifteen years prior to the commencement of the

119

late war, the ordinary revenue of the Commonwealth has not only been adequate to meet the ordinary expenditures charged upon it, but to enable the Commonwealth to arm from time to time a large part of her militia—to lay the foundation of her literary fund, to erect several very costly public edifices, and to complete the purchase of the stock subscribed by the Commonwealth to the Bank of Virginia; objects which occasioned a disbursement from the ordinary revenue of a sum exceeding one million of dollars.

2ndly. That since the commencement of that war the revenue of the Commonwealth more than doubled by additional taxes and farther augmented by considerable loans from the bank, has not only sufficed for the ordinary possible expenditure, but enabled the legislature to assume the State's quota of the direct tax of 1814 and to apply to the defense of the United States a sum exceeding eighteen hundred thousand dollars, exclusive of the interest paid upon those loans.

"3rdly. That the Commonwealth has at present a claim upon the United States of unquestionable justice for more than seventeen hundred thousand dollars of the above amount, together with the interest on such portions of it at least as were obtained on loans, which claim when satisfied will furnish a sum competent to discharge all the debts of the Commonwealth, to provide for the expenditures of the current fiscal year and to leave at the end of that year a balance in the treasury of three hundred and fifty thousand dollars to be applied to any other object of internal interest.

"4thly. That the present taxes may be reduced to the amount levied before the late war, provided the United States shall reimburse the sums advanced for the defense of the Commonwealth; and even should the payment of those sums be withheld, which a just confidence in the good faith of the General Government forbids your committee to expect, a repeal may yet be effected of such proportions of the war taxes as are not absolutely pledged for the payment of the interest, and the redemption of the principal of the public debt.

"From all of which it evidently appears that the fund which it is proposed to apply to the purposes of internal improvement

may be spared from the revenue of the Commonwealth without any embarrassment of her finances, any violation of her engagements or pressure upon her citizens.

"Should the appropriation recommended by the committee receive the sanction of the legislature, the fund for internal improvement will consist of the following stock:

"5,547 shares of stock of the Bank of Virginia on which a dividend is now received, which computed at par is worth five hundred and fifty-four thousand, seven hundred dollars	$554,700.00
"2,400 shares of the stock of the Bank of Virginia whereupon no dividend will accrue until after the first day of May, 1818.	240,000.00
"3,344 shares of the stock of the Farmers' Bank of Virginia	333,400.00
"250 shares of the stock of the James River Company, also estimated at par	50,000.00
"125 shares of the stock of the Appomattox Company	12,500.00
"70 shares of the stock of the Dismal Swamp Canal Company	17,500.00
"70 shares of the stock of the Potomac Company.	31,111.11-1-9
"100 shares of the stock of the Little River Turnpike Company	10,000.00
"Making a total of	$1,249,211.11-1-9

"Of which, the sum of $938,100 is now productive of an annual revenue exceeding $98,000; and $240,000 will become alike productive after the first day of May, 1818.

"In the present state of the fund the progress of the public works to which it may be expected to give rise will be until the first day of May, 1818, at the rate of $245,000 per annum. After that period it will be further augmented by the addition of $60,000.

"So that the total value of the internal improvements of ten years will be $2,777,500, and this calculation is grounded on a sup-

position that a portion of the stock which is now unproductive will continue to be so; and that no augmentation of the fund will have been made by the creation of new banks. * * * * *

"Be it therefore resolved"

* * * * * *

"8. That the president and directors of the Board of Public Works be authorized to subscribe in behalf of the Commonwealth to such public works as the General Assembly may from time to time agree to patronize such portions of the revenue from the fund for internal improvement as may be directed by law; but that no part of the fund shall be subscribed towards the stock of any canal or turnpike company until three-fifths at least of the whole stock necessary to complete such canal or turnpike shall have been otherwise subscribed; nor until of the stock so subscribed one-fifth shall have been paid in by the respective subscribers or the payment thereof effectually secured." (B. P. W. Reps., Vol. I, p. 55 and 59(11) .)

APPENDIX NO. II.

1st Annual Report Board of Public Works, for year 1816, Vol. 1, pt. 1 p. 81.

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"The appeal which the board has thus made to the public spirit of the country has not been in vain. Great efforts have been made to fill the subscriptions for opening the navigation of the Roanoke."

* * * "There are several objects within the scope of the system devised by the General Assembly for the improvement of the interior of Virginia which in the present state of her wealth and population it is beyond the reach of her unassisted ability to ac-

complish; but which being equally interesting to her sister States and the Government of the United States, it may not be impossible to further by their co-operation."

"The failure of the stock of those companies which have already been incorporated to yield an immediate income to the subscribers is to be imputable to their tardy progress in building the works which they had begun; and delay which arose from their having commenced their labors with inadequate funds; and which discouraged new adventurers from uniting with them or hazarding their fortunes in similar enterprises.

"The foundation which the General Assembly have now laid for future works of this desscription is calculated to remove this impediment to their progress, and to assure to the Commonwealth a speedy return for such sums as the General Assembly may authorize the Board of Public Works to subscribe out of the funds for internal improvement.

"It is not in the power of the Board in the infancy of their institution to include in this report a detail of the report and condition of any public work commenced under the auspices of the act of their incorporation. With a view, however, of early arousing the enterprise and patriotism of their fellow citizens in general to embark their private fortunes in the career of internal improvement opened to them by the liberality of the General Assembly, the Board of Public Works adopted at their extraordinary session the accompanying resolution:

> " 'In a country so diversified as the territory of Virginia by rivers and mountains, possessing such a variety of staples and so many markets for their exploitation, the board could be expected to recommend to the General Assembly but a very small number of those public works which the future policy of Virginia may be inclined to patronize, and the fund for public internal improvements hereafter competent to aid:
>
> " 'To open the navigation of those rivers, penetrate deeply into the interior of the country; to unite by commercial and political ties the widely extended territory of the Commonwealth, are in the estimation of the board objects of the first

magnitude in the scale of improvements contemplated by the General Assembly.'"
Resolution "B" p. 87, idem.

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"That the making of an artificial road from Staunton to some point on the Ohio River in the county of Wood or Tyler is an object of great importance to the interests of this Commonwealth."

"That the making of an artificial road from some point on Jackson's River to some other point on the navigable waters of the Kanawha River and the extension of the navigation of those rivers as high up the same as practicable, are objects of great importance to the interests of this Commonwealth."

"Resolved, That the making of an artificial road from Salem in the county of Botetourt, to Winchester, is an object of great importance to the interests of this Commonwealth."

"Resolved, That the improvement of the navigation of the Monongalia River is an object of great importance to the interests of this Commonwealth."

"Resolved, That the making of an artificial road from Winchester to a point near the eastern base of the Alleghany Mountain, on the road which the Government of the United States is extending from Fort Cumberland to Wheeling, is an object of great importance to the interest of this Commonwealth."

2d Annual Report Board of Public Works, Vol. I. pt. 2, p. 29, 1817 (In re improvements on Kanawha River.)

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"The report made pursuant to this instruction is now respectfully submitted marked 'N' and will enable the legislature to decide between the different modes of forming the connection;"—

"Much of the richest territory of the State is on the Kanawha and Ohio Rivers, a great proportion of which was granted in large tracts to individuals for military service, many of which tracts have been kept entire, and the greatest part of them remain unsettled to this day; this circumstance, combined with the sparse population of the counties through which the improvement was to be made, induces the belief that the usual contributions from individuals cannot be expected in that quarter of the country. It is therefore respectfully suggested that the salutary restriction that requires three-fifths of the stock to be taken by individuals be dispensed with or modified in this instance, or that the co-operation of capitalists may be drawn to the aid of this work by combining a more immediate and profitable employment of capital with its execution."

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3rd Annual Report Board of Public Works, Vol. 2, pt. 1, p. 13, 1818.

"The president and directors of the Board of Public Works beg leave to submit to the legislature whether it is not expedient to appropriate such a portion of the income of the fund for internal improvement not exceeding one-fourth of the annual income, to the aid of turnpike companies, as that, while it shall produce an immediate advantage to many considerable districts of country which cannot otherwise receive any direct benefit from the fund, shall not obstruct the execution of other more important and extensive works. This policy seems to be recommended by the consideration that extensive districts cannot otherwise participate directly in the benefits of the fund, and that all the advantages arising from works on a small scale will be speedily realized.

"If the legislature should adopt this policy, then the board recommends to the patronage of the legislature"—

"The latter of these companies" (referring to the Leesburg Turnpike Company) "has also completed a considerable portion of the road, and a subscription by the Board of Public Works of $33,600, payable in four annual instalments, equal to two-fifths of the stock of the company, of which three-fifths are already taken by individuals, would enable them to complete the road. A statement of the situation of this company is subjoined."

Report of Swift Run Gap Turnpike Co., to Board of Public Works. B. P. W. Reps, Vol. 2, pt. 1, p. 56, 1818.

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"That experience has too fully and universally evidenced the great advantages resulting from good roads, for the transportation to market of the surplus products of a country, to render it necessary for them to enforce it by any remarks on their part, especially when addressing a body whose very name and the object of whose creation must satisfactorily indicate the growth and diffusion of liberal and enlarged views upon the propriety of internal improvement and the extinction of those prejudices which have but too long retarded a measure deeply involving the best interests of the Commonwealth. * * * *

Report of Leesburg Turnpike Co., to Board of Public Works. B. P. W., Reps. Vol. 2, pt. 1, p. 60, 1818.

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"It is further resolved that it be made known to the said president and directors that upwards of one-fifth part of said road is now completed, and that this board are of the opinion that unless the said president and directors of the Board of Public Works shall aid in the completion of said road by subscribing two-fifths of the stock aforesaid, every exertion to produce the desired object must prove abortive, and the public be deprived of a great and important internal improvement."

4th Annual Rep. Board Public Works. Vol. 2, pt. 1, p. 11, 1819.

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"In reviewing the progress and condition of the various improvements now in process of execution under the patronage of the legislature, the Board of Public Works are inspired with a just confidence that the valuable and highly important objects for the attainment of which the fund for internal improvement was created, will be fully attained by a patient perseverance in the application of the daily increasing capital of the fund to those objects."

Supplement to same, idem p. 4, Statement of Thos. W. Randolph, pres. B. P. W.

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"The subject is now mature for the decision of the legislature; and upon that depends what Virginia shall be twenty years hence; whether as now, or with a great and flourishing commerce, populous and wealthy cities, reoccupied plains on the east, and peopled mountains on the west, a connection founded on mutual interests with the great population of the Western States for the most part driven originally by want of profitable employment from her own territory; and the mighty influence such advantages cannot fail to create for the preservation of order, free principles and union in the confederacy."

5th Annual Rep. Board of Public Works, Vol. 2, pt. 5, p. 13, 1820.

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"A review of the state of the fund and of the report of the principal engineer, together with the other reports accompanying

this, affords gratifying proof that whilst the territory of the Commonwealth abounds with objects of valuable internal improvement in every district, the fund appropriated for that purpose is adequate, upon the principles upon which it is founded, to give effectual aid to such improvements to the full extent of the demands which can probably be made upon it; and that several public works of great importance to extensive districts of the State are under the patronage of the legislature rapidly advancing to completion which, without such patronage, might have languished for years, and perhaps have been wholly abandoned."

9th Annual Rep. Board Public Works Vol. 4, p. 168, 1824. (In re improvements on Kanawha River).

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"Your committee cannot close this report without calling the attention of the legislature to the growing importance of the salt trade upon the Kanawha River. At a very early period of this great undertaking, this subject engaged the attention of the legislature; and whilst the magnitude of those manufacturies, yielding at this time about one million bushels of salt per annum, promised a large revenue to the Commonwealth, a reciprocal advantage was expected to accrue to them in the increased facilities of their carriage to their markets upon the Ohio River.

"We cannot, if we would, disguise it from ourselves that Virginia, if not deteriorating, is certainly not advancing with the same rapidity as many of her sister States of this Union. Her population is passing to the West, contributing by their wealth and industry to raise up new and as yet unknown interests in that important part of the United States. It is in this point of view, as your committee conceive, that this subject becomes most deeply interesting, and regarding this great chain of improvement as a social link uniting the East and West, it deserves the highest consideration of Virginia."

10th Annual Rep. Board Public Works, Vol. 4, p. 190, 1825.

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"But few of the stocks of the canal and turnpike companies acquired by the application of the income of the fund, under the acts of the General Assembly and the resolutions of the board, as yet pay any dividend, and the revenue derived from that source is at present very inconsiderable. The appropriations made to companies with which this board has thus become connected, though unproductive of revenue, have not failed in producing a good effect."

" A spirit of improvement, it is believed, has been excited in some sections of our State where none existed before; and the assistance afforded in several instances has led to the undertaking of improvements which otherwise would not have been commenced and could not have been accomplished. The board, however, entertains the expectation that in addition to the benefit thus conferred, a revenue will in time be derived which will enable it to extend the sphere of its utility."

14th Annual Rep. Board Public Works, Vol. 6, p. 10, 1819.

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"Although it was not the original purpose of the legislature in creating the fund for internal improvement that the aid to be extended to joint stock companies should be afforded upon the principle of mere money making, yet its productiveness cannot fail to be gratifying not only as yielding income, and thus enlarging the capability of the fund for extended usefulness, but particularly as affording conclusive proof of the beneficial application of its income in the execution of important work."

"There are other companies with whom the fund for internal improvement stands connected whose prospects, though not so bright, are nevertheless encouraging. There are yet some others whose reports scarcely justify the faint expectations of even

deferred income from the capital expended, but whose work nevertheless affords important facilities to the trade of extensive and fertile districts of the State, and thus contributes to the general weal.

"This view of the condition and prospects of the companies who have been arduously engaged in making extensive and valuable improvements in our country, and to whom the aid of this fund is extended, is presented not only to excite attention to the certain and contingent advantages of such improvements, but also to repress, as fas as practicable, that spirit of impatience which so frequently manifests itself throughout the country by murmurs at the tardiness and the expense with which the works are prosecuted, and that the unprofitableness of the public investments. These murmurs seemed to indicate the idle expectation that these great public works ought to be conducted as rapidly as the ordinary operations of a farm, and a belief that the public investments are made upon the principles of common stock jobbing."

"This spirit of impatience opposes all its energies to that public spirit which should animate every community in its march to high prosperity. The latter ought to be cherished as being of inestimable value, while the former ought to be suppressed as tending to desolation only. Although it is far from being desirable that the stocks subscribed by the Board of Public Works, under the direction of the General Assembly, should be unproductive of income, yet if the enhancement of real and other property in the country be equal in amount to the investment made, the community has surely lost nothing, and if the enhancement be indefinitely greater, so also is the common benefit. That such enhancement does occur in every commmunity where the improvements of the country are vigorously prosecuted, is abundantly and irrefragibly demonstrated by the experience of Pennsylvania, New York, and New England, where lands naturally less valuable command a price from four to ten times greater than they do in Virginia; and although their public stocks should yield them no income, yet the communities are otherwise benefited by them in a ratio of arithmetical progression. Public spirit and due perception of common and mutual interest is the great desideratum in Virginia. Were it to awaken, it would readily find subjects of improvement munificently spread before them. Surely, no country possesses greater capabilities than Virginia."

15th Annual Rep. Board of Public Works, Vol. 6, p. 113, 1830

* * * * * * * *

"This prosperous state of the fund, combined with the increased solicitude of the public on the subject of internal improvements, a solicitude created by the real necessities that exist for the construction of various improvements throughout the State, and which has been heightened by the example of some of the neighboring States who have been guided by an enlightened and liberal policy on this subject, has urged on the Board of Public Works an inquiry into the capacity of the fund of internal improvement to complete the works already commenced and to construct such others as the interests of the public may render necessary. In administering the fund to the wants of so extensive a country, presenting great varieties of situation, soil, and products, with a population in some instances separated by mountains and forests, any uniform rule founded upon the principles of justice and equality seems to be impracticable.

"If the principle of only applying the funds in combination with individuals in the form of stock companies, according to the provisions of the eleventh section of the act creating the fund, should be adopted and adhered to, the consequence would be that the energies of the fund will be exhausted upon local objects of partial benefit and extent, to be found most generally in such parts of the State where the population has already acquired sufficient surplus wealth to enable them to embark in such enterprises, and where the end to be gained is the advancement of individual interest rather than the public good. On the other hand, if only the income that arises upon the capital stock or investments of the fund is to be applied as it annually accrues, the amount is totally insufficient to effect any extended scheme of improvement commensurate with the great interests of the State.

"The act creating the fund contemplated the 'rendering navigable and uniting by canals of the principal rivers, and of more intimately connecting, by public highways, different parts of the Commonwealth.' The objects embraced by it are so extensive and important in their nature as to be excluded from the reach of individual enterprise and capital; besides it may happen that improvements are required essential to the best in-

terests of the country, but from which no direct income will be realized, although the State would be abundantly remunerated by the stimulous it would give to industry by the development of new sources of wealth, by enhancing the value of lands, and by the increase of population, thereby adding to the moral and physical ability of the State to sustain itself in time of war and peace."

26th Annual Rep. [illegible] Works, Vol. 12, p. 9.—1841.

* * * * * * *

"In connection with the subject of railroads, the board respectfully begs leave to submit the following remarks:

"It is well known that the capital of all our railroad companies proved to be entirely insufficient to complete the formation of the roadbeds and superstructure and to provide depots, work-shops, engines and all other necessary appendages for carrying on the business of the roads. It is equally well known that much of the capital was wasted in consequence of the necessarily imperfect knowledge of the subject which was possessed by engineers at the time of the introduction of railroads into the United States; and partly owing to neglect and want of economy, method and proper supervision in the transaction and management of their affairs at the outset and for some time after.

"The result has generally been that the companies have found the aid so liberally extended to them in the shape of loans very inadequate to their real necessity. They are mostly still involved in heavy debts, exclusive of those to the State, and the urgent demands upon them for the payment of principal and interest which they are compelled to meet promptly in order to keep their works in operation, absorb their profits to such an extent as to deprive them, in a great measure, of the ability to keep the roadbeds and the motive power, and so forth, upon them in the perfect order they should be to insure regularity, safety and expedition.

"*It must be remembered that these improvements were not fostered by the legislature through contributions in subscription and loans merely as investments of so much money in*

profitable stocks, but that they were actuated by a higher consideration, that of promoting the prosperity of the State at large by contracting to build up the local prosperity of its different sections." (Italics not in original.)

"That the most beneficial results have been experienced by every railroad that has been established is not a matter of conjecture. Industry has received from them a new impetus. The cultivation of the soil in every part of the country within the range of their influence has been greatly extended; arts, trades, and commerce flourish to a greater extent, and a greater reduction has been effected in the expense of transporting the produce of the farmer and the goods of the merchant to market, and a speedy and cheap transportation between the citizens of our own State with each other and with the citizens of other States has been established. * * * * *

EXTRACTS FROM ACTS OF ASSEMBLY OF VIRGINIA WITH REFERENCE TO EXPENDITURES FOR INTERNAL IMPROVEMENT, THROUGH JOINT STOCK COMPANIES.

CHAP. XVII.

An Act to create a fund for Internal Improvement.

[Passed February 5th, 1816.]

1. *Be it enacted by the General Assembly*, That a fund shall be, and the same is hereby created, to be denominated "The Fund for Internal Improvement," and to be applied, exclusively, to the purpose of rendering navigable, and uniting by canals, the principal rivers and of more intimately connecting by the public highways, the different parts of this Commonwealth.

* * * * * * * * *

3. *And be it further enacted*, That, for the purpose of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct, to be ap-

plied to any object of internal improvement, it shall be and the same is hereby vested in a corporate body, to be styled, "The President and Directors of the Board of Public Works" in which name they shall have a common seal, and perpetual succession, subject to the limitation hereinafter provided, shall be capable of suing and being sued, pleading and being impleaded, and shall have and enjoy all the rights and privileges of a corporation.

4. *And be it further enacted*, That the Governor of the Commonwealth shall be ex-officio President of the Board of Public Works; that the directors a majority of whom shall constitute a Board for the transaction of any business devolving on the corporation, shall consist of the Treasurer and the Attorney General of the Commonwealth, for the time being, and of ten citizens thereof; of whom three shall reside westward of the Alleghany mountain; two between the Alleghany and the Blue Ridge; three between the Blue Ridge and the great post road, which, passing through the territory of the Commonwealth, crosses the principal rivers thereof at, or about the head of tidewater, and the residue between that road and the sea coast.

* * * * * * * *

8. *And be it further enacted*, That the President and Directors of the Board of Public Works shall hold an annual meeting in the City of Richmond, or at such other place as may be designated by law, to begin on the first Monday in November of every year, and to continue until the business of the board is transacted—But, that the President of the Board may, at his own pleasure, or shall, at the request of any three Directors thereof, convene an extra meeting of the Board, for the transaction of any extraordinary business which may devolve on the corporation.

* * * * * * * *

10. *And be it further enacted*, That the fund for internal improvement, subject to the order of the President and Directors of the board, shall be deposited in the Treasury of the Commonwealth and kept distinct and apart from all other public money: It shall

be paid out or delivered by the Treasurer of the Commonwealth to the order of the board, certified and subscribed by the Secretary, and countersigned by the President; that the Treasurer shall keep a fair and regular account of all such disbursements, and carefully preserve the certificates upon which the same shall have been made, and shall render an account thereof, to the General Assembly, at the same time at which he renders his annual account of the disbursements of the ordinary revenue; that once in every year the Board of Public Works shall depute a committee of their body to examine the accounts of all disbursements made by order of the board, during the year next preceding the annual meeting of the board, and to compare these accounts with the Treasurer's books, and the certificates giving authority for the payment of the several sums of money, or stock, entered therein; that their reports shall certify to the board, that the same have been fully accounted for, or otherwise, as the case may be.

11. *And be it further enacted*, That the President and Directors of the Board of Public Works, shall be, and they are hereby authorized to subscribe in behalf of the Commonwealth, to such Public Works as the General Assembly may, from time to time, agree to patronize, such portions of the revenue of the fund for internal improvement, as may be directed by law but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike, or other Company, until three-fifths at least of the whole stock, necessary to complete such canal, turnpike, or other public work, of such company, shall have been otherwise subscribed; nor until, of the stock subscribed, one-fifth thereof shall have been actually paid in by the respective subscribers, or the payment thereof effectually secured by bond with approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such fifth part; such bond to be taken payable to the President, Directors and Company authorized to complete such public work, and to be recoverable against the obligor or his securities, on motion ofter ten day's notice, in any court of record within the Commonwealth having jurisdiction thereof; and such deed of trust to be proceeded

upon whenever the trustee therein named shall be required to do so by such President, Directors and Company

* * * * * * * * *

13. *And be it further enacted*, That the President and Directors of the Board of Public Works shall vest in some productive fund the unappropriated dividends accruing upon any of the stock committed to their charge, until the same shall be specially applied by law to some object of internal improvement; and shall have power subject to the control of the General Assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the Commonwealth, in the stock of any canal, turnpike or other company subscribed for under the provisions of this Act, for the purpose of investing the proceeds of sale in the stock of some other similar company, subject to the like conditions as have been before expressed in this Act.

14. *Be it further enacted*, That the President and Directors of the Board of Public Works shall have power to appoint, in behalf of the Commonwealth, so many directors of every Public Work, as shall bear to the whole number of the directors of such work the proportion of the Commonwealth's shares of stock in such work, which may be subscribed in pursuance of this Act, to the whole number of shares subscribed thereto; *provided, however*, that whenever it shall be found expedient by the Legislature to authorize the subscription of any part of the fund hereby created to any company already incorporated, the provisions of this section shall not be construed as applying to such company unless it be otherwise directed by the Act authorizing the subscription.

15. *Be it further enacted*, That it shall be the duty of the President and Directors of the Board of Public Works, to keep a fair and accurate record of all their proceedings, which shall be at all times open to the inspection of the members of the General Assembly, and of the President, Directors and other officers of any company interested therein; that they shall report to the General Assembly, at or near the commencement of every annual session thereof, the exact state of the fund for internal improvement; the progress and

condition, noting especially the net income, of all the public works within the Commonwealth; the surveys, plans and estimated expense of such new works as they may recommend to the patronage of the General Assembly, together with such other important information as they may have it in their power to collect, in relation to the objects committed to their trust.

16. *And be it further enacted*, That the public faith shall be and the same is hereby solemnly pledged to fulfill the appropriation made by this Act; and that the said appropriation shall continue in force until the first day of January, of the year one thousand eight hundred and sixty-six, except at such times as the United States of America may be involved in war, or the safety of this Commonwealth may, in the opinion of the General Assembly require; when the General Assembly may withdraw (during the period of actual hostilities, or of such imminent danger), the whole or any part of the said fund for the purpose of defense; provided such withdrawal can be made without a violation of any engagement entered into under this Act.

17. This Act shall commence and be in force from and after the passage thereof.

APPENDIX III.

Extract from brief filed on behalf of West Virginia, with the Attorney General of the United States, by Hon. Alfred Caldwell, former Attorney General, and Hon. E. W. Wilson, former Governor of West Virginia, upon the question of the right of the United States to set off any claim against West Virginia on bonds of the Commonwealth of Virginia acquired by the United States before the formation of West Virginia, against the claim of West Virginia against the United States for a refund of the Direct War Tax.

* * * * * *

"Upon the adoption of the ordinance of secession, by the Virginia Convention, in April, 1861, the Wheeling Convention which, June 11, 1861, had assembled for the reorganization of the government of Virginia after adopting an ordinance for such reorganization, proceeded to, and did, August 20, 1861, adopt 'An ordinance to provide for the formation of a new State out of a portion of the territory of this State.'

Section 3 of said ordinance provided for changing the boundaries of the proposed new State, so as to include other counties therein named, among which were Jefferson and Berkeley, upon a favorable majority vote by the people of said counties, respectively.

Section 9 of said ordinance is as follows:

'The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period.'

From this proposition West Virginia has never receded. She proposed to be, was taken, received and admitted as a State of

the Union, by the Congress of the United States, with this provision as of the basis of settlement with the State of Virginia. The government of the United States is the creator of the new State, and is therefore precluded absolutely, and under any possible contingency from avoiding the provisions of this ordinance, in order to retain West Virginia's money. The Supreme Court of the United States has decided this ordinance to be binding as between Virginia, West Virginia and the United States. *Virginia* v. *West Virginia*, 11 Wall, 39.

* * * * * * * * *

The public debt of Virginia, January 1, 1861, was incurred almost exclusively in works of public improvement, railroads, turnpikes, canals, bridges, etc., and amounted to $31,779,067.32.

Of this sum there was incurred for public improvements in West Virginia, $2,784,329.29; for all other expenditures in West Virginia $559,600.00, making a total of $3,343,929.29.

The commission, summarizing from the various tabulated statements, strike the following account between the two States.

West Virginia to the State of Virginia,		Dr.
For the amounts expended and invested in her territory, as set forth in statement F..		$3,343,929 29
		Cr.
By one-fourth of the estimated value of the public buildings and other assets, as given in statement G	$968,750 00	
By three-thirteenths of the United States surplus fund, as per statement, ...	446,032 92	
By three-sevenths of the literary fund, as per same.....	647,079 92	
By the amount collected in West Virginia after January 1, 1861, as per statement E.....	328,706 22	2,390,569 06
Balance		$953,360 23

Under the resolutions creating and defining the duties of this commission, its report was made subject to the approval and ratification of the Legislatures of West Virginia and Virginia.

Under resolutions introduced into the Senate of West Virginia, the finance committee thereof made further examination of

the matter, in 1873, and reported to the Senate the result of its labors. Hon. J. M. Bennett, a member of the commission heretofore mentioned, was Chairman of this Senate Committee. Its report appears in the appendix. We quote the following:

> 'The report of the debt commissioners hereinbefore referred to, shows that all State expenditures within this State, prior to January, 1861, amounted to $3,366,929.29, and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which has been so contributed to the development of the territory of our State.
>
> 'The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there would be as much interest on our contributions, as upon the receipts from Virginia.
>
> 'The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the debt commissioners aforesaid.
>
> 'From the amount of the foregoing expenditures must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia from the counties included in this State during the same period." * * * * * *

(Extracted from pamphlet presenting West Virginia's claim for the refund of the U. S. Direct War Tax, pp. 5 and 6.)

NOTE.—There were palpable errors in the *ex parte* statement of the account between the two States, contained in the reports referred to and approved in the above brief, in crediting West Virginia with items for which she could claim no credit under the Wheeling Ordinance under which those statements of that account were attempted to be made, and in failing to charge West Virginia with its "just proportion of the ordinary expenses of the State government" and other items of charge expressly required to be made by that Ordinance.

With these corrections made, the account would show as large a balance due from West Virginia as Virginia has now shown in this suit to be due by the new State.

APPENDIX IV.

Paper prepared by Professor T. S. Adams of the University of Wisconsin, defining what are the "ordinary expenses" of a State.

UNIVERSITY OF WISCONSIN.

MADISON.

DEPARTMENT OF POLITICAL ECONOMY.

T. S. ADAMS. Nov. 5, 1909.

Honorable Wm. A. Anderson,
Attorney General of Virginia,
Richmond, Virginia.

My dear Sir:

Some time ago Dr. Ely referred to me a letter from yourself concerning the question of ordinary and extraordinary expenditures. While I of course had some general knowledge of the distinction between these two terms, as used in the budget of various countries, my knowledge on the subject was not of that specific and certain character which your problem demands. It was necessary for me to do some reading and make some examinations of authorities before I could make the reply which I herewith enclose. It is very imperfect and I particularly regret that I have not had time to go through the material in our library containing the public accounts of the various States and cities of this country. I am doubtful also whether what I have written will be of any material assistance to you, but I enclose it, hoping that it may contain a suggestion or two.

Our collection of public documents in the University Library is particularly good; and if you can wait a month or so and will express the desire to have it, I will endeavor to get some student to run through this material with a view to collecting as large a

number as possible of illustrations bearing upon the use of the terms 'ordinary' and 'extraordinary' in American public accounting.

Very truly yours,

TSA/EB (Signed) T. S. ADAMS.

ORDINARY AND EXTRAORDINARY EXPENDITURES.

Ordinary expenditures are usual expenditures. What is usual in one country is not usual in another, and what is usual in a given country at one time may be unusual at another time. We should therefore except to find, and, as a matter of fact, we do find, all sorts of expenditures included in the extraordinary budgets of various countries. Precedent can be found for almost anything. In France, for example, since 1833, the substance of the extraordinary budget has consisted of expenditures for the establishment of great public works, but prior to 1789 the costs of establishing and improving public works were carried in the ordinary budget.

The best treatment of this general subject is found in Wagner's 'Finanzwissenschaft,' Vol. 1, p. 135-142. Great authority is to be accorded to this treatment, inasmuch as Wagner bases what he has to say not only upon economic theory and study of the law, but upon the experience of the greater European nations. According to Wagner, there is a three-fold distinction between ordinary and extraordinary expenditures:

1. The first distinction turns upon the time at which the expenditure becomes necessary. Extraordinary expenditures from this viewpoint arise out of unexpected demands. Wagner notes, however, that in a great state the great number of trivial or small items of expense which are unforseen assume, in the aggregate, a certain regularity which makes it possible to provide for them by a contingent or reserve fund. Although Wagner refers to these items as 'diese kleinen Posten ausserordenlicher Ausgeben,' he really suggests that they should, in the aggregate, be regarded as regular of ordinary expenses; while the individual items are not foreseeable, their aggregate is.

II. The second and most important distinction turns upon the durability or permanence of service for which the expenditure is made and rests upon a contract similar to that made in private economics between circulating and fixed capital.

Under ordinary expenses here, Wagner mentions interest on the public debt and his language suggests that payments on the principal of the public debt when made periodically or annually in accordance with the terms of the loan should also be included among the ordinary expenses (although he protests that there is no general economic principle which requires the regular payment of a public debt).

(It will be noted that under the first distinction which turns upon the certainty or accuracy with which an expense may be anticipated, interest payments are even more clearly and logically included among the ordinary expenses, because no expense is more certain or more specifically fixed with respect to time than that of interest payment).

The extraordinary expenditures under this head are those regular or intermittent expenditures for things whose use or service extends over far more than one fiscal year or period. Wagner distinguishes three special groups here:

1. Capital outlays giving rise to a lasting use, either for—

(a) quasi-private industries and undertakings capable of yielding profit to the State (e. g., forests, railroads, mines, postal and telegraph systems;

(b) or for the establishment and betterment of what may be called the 'immaterial capital of the state' (e. g., expenditures for the introduction and execution of great public reforms such as the land cadastre, reconstruction of judicial system, enfranchisement of serfs, etc.)

2. Irregular productive and remedial expenditures to correct conditions which threaten the life or property of the State, (e. g., war, famine, floods, insurrection, etc.)

"The fact that Wagner nowhere mentions expenditures for hospitals, insane asylums, prisons, etc., is significant and indicates a belief on his part that they are 'ordinary' expenses."

III. The third distinction is the purely legal one and corresponds for the most part to the well-known difference between standing and annual appropriations.

Wagner mentions here as the most characteristic items of ordinary or standing expenses, payments of interest on the public debt and the payments of such parts of the principal as are regularly retired in accordance with the terms of the loan. Legislative expenses (i. e., those necessary for the assembling and functioning of the legislature) furnish another characteristic item.

(It seems difficult to imagine how any claim can be made for the inclusion of interest payments among the extraordinary expenditures. Borrowing, with its necessary corrolary of regular interest payments, is the specific device by which irregular things are made regular, unbearably heavy burdens divided into those which may be borne with ease; and as surely as the principal of the loan is to be classed among extraordinary receipts, so surely must the interest payments be classed among the ordinary expenditures. Interest is the instrument by which extraordinary difficulties are converted into ordinary problems. (øSee foot note.)

øThe last point is well brought out in the article entitled Budget sur Resources Extraordinaires in Say's Dictionnaire des Finances, Vol. I, p. 723:

'Ce n'est que de notre temps qu'il a été institué une théorie pour la défense des Budgets Extraordinaires systématiques. Les budgets ordinaires sont, dit-on, les budgets de la vie normale et annuelle du pays, son compte industriel d'exploitation, et ont l'impôt et les revenus des biens de l'Etat pour fonds d'entretien; les budgets extraordinaires répondent à leur compte industriel de premier establissement, indefiniment continué comme se continue indefiniment l'expansion de l'activité d'un peuple qui vit de siécles et non d'annéss et son fonds de service est l'emprunt, dont le budget

ordinaire ne se ressent que par l'obligation ou il est d'en payer les intérêts pour la part de jouissance qui lui en revient.'

The country which has, perhaps, made the widest use of the extraordinary budget is France. The experience of France is discussed in a most illuminating way in Chapters 9 and 10 of René Stourm's 'Le Budget.' We find here a number of definitions of an official character. One of these definitions, made in 1862 and often quoted in French law and financial debate, is as follows:

'The credits of the ordinary budget ought to provide for the obligatory and permanent services of the State, assuring the payment of the debt, the execution of the laws, the administration of justice, collection of revenues, and the public defense,' p. 176.

The public debt included in the ordinary budget covers the consolidated, perpetual bonds and annuities, all kinds of terminable bonds and annuities, and 'la debt viagere' (Pensions, life annuities, etc.)'

The definition of 'extraordinary' expenditures made by the same author in 1862 is as follows:

(The extraordinary expenditures comprehend those for great public works, new constructions, abnormal military demands required for the protection of our exterior or foreign interests; in a word, all those expenditures corresponding to monetary needs and destined to disappear ought not to figure among the permanent charges.) Stourm, p. 196.

See foot note.ø

øThe comment of the then Minister of Finance, M. Magne, upon this definition is exceedingly illuminating, p. 196, Stourm.

'En général, on ne prend pas assez garde aux différents rôles de L'Etat. En même temps qu'il est tenu de solder, avec ses ressources ordinaires, ses dépenses courantes . . . . en même temps, il est propriétaire, il a un actif immobilier et mobilier, qu'il est tenu, non seulement d'entretenir, mais de perfectionner, dans l'intérét de tous et de chacun. Lorsque L'Etat se procure une ressource, par voie extraordinaire, par

voie d'emprunts, et que cette ressource, est appliqée à cette nature de dépenses, il ne fait qu'un placement, qu'une transformation de valeur, il augments la fortune immobiliére et mobiliére de chacun. Ainsi donc, on a raison de ne pas confondre ces deux natures de dépenses, les unes, qui sont fongibles, qui disparaissent, le laissent à l'avenir ni charges, ni résultats; celles, au contraire, qui se consolident, qui s'incorporent au sol, qui augmentent la fortune de l'Etat . . . .' Corps legislatif, 6 avril 1869.

Finally it may be interesting to summarize the great French minister de Freycinet's discussion of this subject.

M. de Freycinet's divided extraordinary expenditures into three classes, Necessary, Optional, and Illegitimate.

A. "The necessary expenses are those which result from events which it is not within the power of nations to prevent or at least the financial consequences of which it is impossible to avoid, as, for example, the war of 1870 and the enormous fiscal burdens which it has entailed upon the country."

B. "The optional expenses represent essentially expenses for public works. I characterize these expenses as optional because they do not inevitably impose themselves upon a country. The government is never forced absolutely to assume these expenses and especially is never obliged to assume them at any particular time."

C. "I call all those expenses illegitimate which ought to find no place at all in the extraordinary budget. When the extraordinary budget comes to be but a covert means of increasing the ordinary budget, I consider that the expenditure is badly placed and that the extraordinary budget ought to be abolished. The extraordinary budget should not serve as a revenue for those expenses that one does not wish or dare to classify in the ordinary budget but which by their nature belong there." Stourm, p. 204.

There have, for instance, been included in the extraordinary budget at times expenditures for books for the library, gratuities to the employees of the central administration, relief to widows,

expenditures for the celebration of July 14th, and for carpenter's work, subscriptions to telephone companies, provision of oil for light houses, etc.

The preceding paragraph merely emphasizes my opening statement to the effect that precedent may be found for almost anything in this connection. But, while this is true, the great weight of usage favors the inclusion among the extraordinary expenditures, of the costs of war and public calamity (which, because of their size, have to be defrayed by public loans) and also the costs of introducing or establishing great public works of an industrial character. Capital outlays for hospitals, asylums, prisons, educational institutions, and the like, are exceedingly doubtful. But it may be said with certainty that according to the prevailing usage, only such (i. e., for hospitals, asylums and the like) capital outlays as necessitate public loans can be placed among extraordinary expenditures. Interest payments on the public debt, regular payments on the principal prescribed in advance either by law or contract, and pensions, belong, by the overwhelming mass of precedent, among ordinary expenditures.

I append a few scattering illustrations which may be of interest.

(1) The budget of the German Empire is regularly divided into ordinary and extraordinary receipts and expenditures. The ordinary expenditures are divided into permanent and temporary. The regular expenditures for industrial undertakings, (post, telegraph, railroads, government printing offices, etc.) as well as most of the expenditures for the public debt and for pensions, appear under the permanent ordinary expenditures.

(2) The budget of Algeria regularly contains the following caption: Depenses extraordinaires, subdivided into the two following heads: (a) Emploi des fonds d'empreunt, (b) Emploi de L'excédent des fonds de reserve. Among the other and presumably the "ordinary" heads, we find debt, public works, agriculture, colonization, and diverse works of benevolence and public utility (poor relief, etc.)

(3) The budgets of Austria and Hungary regularly contain the item extraordinary expenditures. Just what this covers I do not know, but it has been reduced to very small compass in recent years, particularly in Austria. Expenditure for public debt, however, including regular payments on the principal of the debt, is included in the ordinary budget.

(4) Payments of interest and the regular payments on the principal of the public debt are classified in the ordinary expenditures in Belgium.

(5) In Egypt, according to a brief resume of the budget given in Fenn "On the Funds," edition of 1898, p. 323, the following expenditures appear in ordinary budget: Pensions, tribute, debt payment, expenses of the army of occupation, expenditures for the "suppression of the corvee," and "unforseen expenditures."

(6) According to the same authority, the Russian budget includes under ordinary expenditures, payments on the State debt—interest and capital—payments on the railway debt—interest and capital—and also "unforseen expenditures."

(7) Professor F. R. Clow, an exceedingly able and careful writer in the Quarterly Journal of Economics, Vol. 10, pages 461-4, cites as instances of extraordinary expenditures payments for the purchase of land, for the construction of permanent works, and the redemption of public debt. Under the ordinary expenditures, he includes interest payments on the public debt. According to Professor Clow, the accounts of the City of Cleveland, at the time he was writing, included under ordinary expenditures everything except repayment of loans, refunds, investments, and similar items."

APPENDIX V.

Claim against West Virginia computed from the Master's findings of March 17, 1910, under Wheeling Ordinance.

A.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" IV.	Proportion of Ordinary Expenses on Population Basis, with slaves, (p. 140)	8,147,455.92
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$11,459,843.90
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 5,353,959.15

B.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" IV.	Proportion of Ordinary Expenses on Population Basis, *without* slaves, (p. 140)	11,452,862.66
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$14,765,250.64
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 8,659,365.89

C.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis June 20, 1863, *with* slaves, (p. 172)	6,078,367.96
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$ 9,390,755.94
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 3,284,871.19

D.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis June 20, 1863, *without* slaves, (page 172)	9,463,553.58
" VII.	Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
		$12,775,941.56
" VI.	Receipts from West Virginia counties, (p. 179)	6,105,884.75
		$ 6,670,056.81

E.

Par. III.	Expenditures in West Virginia counties, (page 83)	$ 2,811,559.98
" V.	Proportion of Ordinary Expenses on Fair Estimated Valuation Basis Jan. 1, 1861, *with* slaves, (page 173)	6,805,289.57

" VII. Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
	$10,117,677.55
" VI. Receipts from West Virginia counties, (p. 179).....	6,105,884.75
	$4,011,792.80

F.

Par. III. Expenditures in West Virginia counties, (page 83).....	$ 2,811,559.98
" V. Proportion of Ordinary Expenses on Fair Estimated Valuation Basis Jan. 1, 1861, *without* slaves, (page 173)	8,586,648.25
" VII. Money, Stock, Property, etc., received by West Virginia, (p. 193).	500,828.00
	$11,899,036.23
" VI. Receipts from West Virginia counties, p. 179).....	6,105,884.75
	$ 5,793,151.48

Note: See A. By using Proportion of Ordinary Expenses on Defendant's method of arriving at *Average Population with* slaves, the amount of claim as in A. is reduced by $644,967.61. (See page 141).

Note: See B. Same *without* slaves the amount of claim as in B. is reduced by $714,326.68. (See page 141).

The Master has adopted the plaintiff's method, so these figures are of comparative interest only.

APPENDIX VI.

Showing Results Under West Virginia's Construction and Application of Wheeling Ordinance.

VIRGINIA vs. WEST VIRGINIA.

RESULT OF WEST VIRGINIA'S ACCOUNTING UNDER THE WHEELING ORDINANCE.

	Using Total Population Basis for Division of Ordinary Expenses	Using Population *without* Slaves for Division of Ordinary Expenses.	Using Fair Estimated Valuation of Real and Personal Property for Division of Ordinary Expenses.	Using Fair Estimated Valuation of Real and Personal Property on Gold Basis for Division of Ordinary Expenses.
Paragraph III of Decree Joint Exhibit "C" I—Page 1.				
Expenditures by Va. in W. Va. as computed by West Virginia . . .	$1,251,288 92	$1,251,288 92	$1,251 288 92	$1,251,288 92
Paragraph IV of Decree Joint Exhibit "D" I—Page 1.				
Ordinary Expenses of Government, $18.207,-684.29, as computed by West Virginia. Joint Exhibit "D" I—Page 4	3,391,763 84	4,854,733 07		
Paragraph V of Decree Joint Exhibit "E" I				
Defendant's method of determining Fair Estimated Valuation of Real and Personal Property, per Joint Exhibit "E" I—Page 4 including Slaves and Income as Personal Property	. . . . .	. . . . .	2,499,987 88	
Defendant's Alternative Method Defendant's Exhibit "E" III—Page3, using Gold Basis for Assessments, and including Slaves as Personal Property . .	. . . . .	. . . . .	. . . . .	3,773,269 45
Paragraph VII of Decree Defendant's Exhibit "G" I—Page 1. Value of Money, Stock, Property, and Credits acquired by West Virginia	176,120 00	176,120 00	176,120 00	176,120 00
Paragraph VI of Decree Joint Exhibit "F" I	$4,819,172 76	$6,282,141 99	$3 927,396 80	$5,200,678 37
All moneys paid into the Treasury of Virginia from West Virginia counties, West Virginia claim	7,051,215 56	7,051,215 56	7,051,215 56	7,051,215 56
Excess of Receipts by Virginia over payments made by her as computed by West Virginia	$2,232,042 80	$ 769,073 57	$3,123,818 76	$1,850,537 19

SUPREME COURT, U. S.
FILED
FEB 7 1910
JAMES H. McKENNEY
Clerk

SUPREME COURT OF THE UNITED STATES.

October Term, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA,

vs.

STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF THE BONDHOLDING CREDITORS OF VIRGINIA TO REPLY TO PART III OF BRIEF FOR DEFENDANT.

Hughes Gorman,
Counsel for the Bondholding Creditors of Virginia.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

Original, No. 3.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF ON BEHALF OF THE BONDHOLDING CREDITORS OF VIRGINIA TO REPLY TO PART III OF BRIEF FOR DEFENDANT.

Part III of defendant's brief was not filed until after the close of the argument at the bar, and leave was allowed to reply thereto.

For brevity sake I will refer to it hereafter as Senator Spooner's brief.

Taking up his points in the order in which they are presented in his brief the first one is:

> "This court has never decided that it is a settled rule of public law that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them."

It is not altogether apparent whether the Senator intends to lay stress on the word "decided," and thereby imply that the declaration made by Justice Field, in Hartman *vs.* Greenhow, was merely *obiter dictum,* or whether he means to assert that the rule as stated by Justice Field is not in accordance with the statement of the rule as usually made by writers on public or international law and by other accepted authorities.

If he means that the declaration of Justice Field was not pertinent and material to the judgment of the court, whose opinion and judgment he was announcing, a brief reference to the case will determine that.

In Hartman *vs.* Greenhow, 102 U. S., on page 674, it is said:

> "The principal question for determination, as thus seen, is the validity of the statute of the State requiring the tax levied upon its bonds to be deducted from the coupons for interest, originally attached to them, when the coupons are presented for payment, so far as it applies to coupons separated from the bonds and held by different persons.
>
> "To fully understand this question, it will be necessary to make a brief reference to the legislation of the State upon her indebtedness."

And then, after discussing a question of jurisdiction that lay in the way, the opinion proceeds (on page 676):

> "We proceed, therefore, to consider the legislation of the State upon her indebtedness. A brief sketch of it will perhaps enable us better than in any other way to exhibit the question for our determination, and indicate the solution it should receive."

So it is manifest that a consideration of all the legislation of the State upon her indebtedness was recognized as essential to a proper determination of the matter in hand.

The holder of the coupon for interest presented it to the

tax collector in payment of taxes due by him, and the tax collector declined to receive it.

If the holder had a right to insist that his coupon should be received in payment of his taxes, that right accrued to him only under the act of March 30, 1871, known as the "Funding Act."

By that act the State had undertaken to apportion her public debt into two parts. One part, amounting to two-thirds of the entire debt, was estimated to be the proper share to be borne by Virginia, and for this amount Virginia gave to the original bondholder her new bond with six per cent interest, evidenced by the coupons attached to the new bond, and provided that these coupons should be received by the State in payment of any taxes or dues to the State, and this was written on the face of the coupon.

The other part of the debt, amounting to the remaining one-third, was estimated to be the proper share to be borne by West Virginia as her just or equitable share of the public debt, and for this amount the bondholder received from the State a certificate setting forth the amount of the bond not funded, with interest thereon, and that payment thereof would be provided for in accordance with such settlement as might be subsequently had between the two States, and that Virginia would hold the bond so surrendered, so far as it was not funded, in trust for the holder or his assignees.

Suppose this court in its consideration of all the statutes and the history of the case had found that in 1861 the two States had by a solemn, valid compact, made between them, agreed that West Virginia's share of this public debt should be ascertained in accordance with the plan prescribed in the ninth section of the Wheeling ordinance. It must then have held that the act of 1871, which had estimated West Virginia's share to be one-third of the whole debt, and had proceeded to make a settlement on that basis, was in violation of the obligation of the contract made between the two States in 1861, and that said act was, for that reason, void

and of no effect, and instead of reversing the judgment of the Court of Appeals of Virginia it would have affirmed it, although not on the grounds stated by the lower court.

It did, however, reverse the judgment of the Court of Appeals of Virginia, and it did so for the reasons stated by Justice Field. These reasons embraced the plan of ascertainment of West Virginia's share, in accordance with the doctrines of public or international law, as stated in the opinion of the court, and without the statement of that doctrine the decision would have been meaningless and pointless.

Hence we conclude the statement of that doctrine, in the opinion of the court, was not *obiter*, but relevant, material and essential to the decision announced.

II.

Senator Spooner's second point is thus stated:

> "It can hardly be accurately said that it is a settled rule of international law, that where a State is divided into one or more States, the debt of the parent State, retaining its personality with diminished territory and resources, is, in the absence of special agreement, to be ratably apportioned between them."

To this version of the rule we readily assent, and we do not remember to have seen the rule so stated by any writer. Indeed, one obvious objection to the rule as stated and oppugned by the Senator, is the serious difficulty that lies in the premise of "dividing a State into *one* State," and this difficulty is not removed by the alternative of "or more States." But, assuming that what is meant is "dividing a State into 'two or more States,'" and that Justice Fields' statement of the rule, in this form, is challenged, we are prepared to vindicate Justice Fields' accuracy, and to maintain that in this form his statement of the rule is supported by reason and authority.

Whether or not a rule of law exists, and what is its exact form of expression, can be ascertained only by resort to those sources of information that are usually relied on as authoritative and controlling.

Senator Spooner appears to rely on Captain Edwin F. Glenn, U. S. A., as one of such sources, who, in his "Handbook of International Law," does indeed state, as his view, that

> "Treaties of alliance, of guaranty, or of commerce, are not binding upon the new State, nor is it liable for the general debt of the parent State."

This statement, so far as it embraces treaties of alliance, of guaranty, or of commerce, is to be found in all the writers; the additon, "Nor is it liable for the general debt of the parent State," is Captain Glenn's own original discovery. He cites as his authority Hall's Int. Law, 96-97, and he also cites Kent Comm., 25, where this addition does not appear; but he accounts for its non-appearance by the comment on Chancellor Kent's version of the rule that "this is true in the one case of the State so splitting up into parts as to completely lose its identity," which, he intimates, was overlooked by Chancellor Kent.

With Captain Hall's work, as the result of the lucubrations of a young army officer emulous of the fame of General Halleck, we are disposed to be liberal; but, for all practical purposes, we are inclined to prefer as our guide that "Digest of International Law of the United States, Taken from Documents Issued by Presidents, and Secretaries of State, and from Decisions of Federal Courts, and Opinions of Attorneys General, Edited by Francis Wharton, in Three Volumes, Washington, Government Printing Office, 1886," where, in volume 1, page 19, the rule is thus stated:

> "In the event of a State being divided into two or more independent sovereignties, the obligations which had accrued to the whole before the division

> are ratably binding on the different parts; for, as Story says, 'The division of an empire creates no forfeiture of previously vested rights of property.' And so, *eo converso,* where several separate States are incorporated into one sovereignty, the rights and obligations that belonged to each before the union are binding upon the new State; but, as General Halleck points out, of course the rule must be modified to suit the nature of the union formed and the characters of the act of incorporation in each particular case."

And again quoting from authorities it is said:

> "In the separation and rearrangement of nations in Europe, special provisions are usually made for the payment of public debts; and the principle seems admitted that, in case of a division of a State, each new State is bound for the whole debt contracted by the former; and in case of a union of States, it seems equally clear that as the whole must defend the part in war, which is the international process of attachment it must practically pay the debt, although the foreign power may look only to the people and land of the State which made the contract. The formation of the new States so alters the nature of all securities the creditor looked to, that the new State has a general obligation to see that he does not suffer by the change."
>
> *Ibid.*, p. 22.

We may be excused from following with acute nicety the views of Mr. Hall and the other English and Continental writers so profusely quoted by Senator Spooner when we find those of Wheaton, Kent, Halleck, and other American writers adopted by the Secretary of State, the Attorneys-General of the United States, and the Federal courts, so admirably compiled, arranged and digested by Dr. Francis Wharton, and found to be so entirely in accord.

A clever review of this work of Dr. Wharton appeared in the *Edinburgh Review*, and was reprinted in the *Littell's Living Age* for August 27, 1887. The reviewer said:

> "So that whilst the book contains definite propositions of international law and conduct, as laid down by American judges and statesmen, and, in this sense is essentially a digest of international law, it is at the same time, a collection of public documents and extracts of the highest historical value. But at present we are wholly without such a work as that before us, and the student of international law in this country, has only the ponderous and comprehensive work of Sir Robert Phillimore, or the more concise and elementary work by Mr. Hall, together with other works of a similar character, or monographs on some special subject."

From which we may infer that Dr. Wharton's digest is regarded even in Great Britain as the best work on the subject of international law.

Mr. Hannis Taylor is referred to by Senator Spooner as an author "quoted in the brief of counsel for the bondholding creditors." It is hardly noteworthy, but it would have been perhaps more accurate to have said "quoted in the brief of counsel for West Virginia, and commented on in the brief of counsel for the bondholding creditors," because the only ground that counsel for the creditors had for referring to Mr. Taylor was to show that he appeared to have been misapprehended by the counsel for West Virginia (*Vide* my brief, page 21).

It is apparent from the copious quotations from Mr. Hall's work, to be found in the brief of Senator Spooner, that we may do Captain Glenn an injustice in imputing to him the "discovery" of the view by which the text of Chancellor Kent is sought to be amended, for we find on page 14 of the Senator's brief the exact language used by Captain Glenn employed by Mr. Hall.

And it is but just to Mr. Hall to point out that he does concede all that is said by Kent, Wharton, and the other writers in the paragraph quoted on page 15 of the Senator's brief, as follows:

> "No doubt the debt of a State from which another separates itself ought, generally to be divided between the two proportionately to their respective resources, as a matter of justice to the creditors, because it is seldom that the value of their security is not affected by the diminution of the State indebted to them. *But the obligation is a moral, not a legal one.*"

We may not linger long over the distinction between the "moral" and the legal sanctions of international law. Captain Glenn's definition will suffice us for the present:

> "Public international law consists in certain rules of conduct which modern civilized nations regard as binding on them in their relations with one another and enforceable by appropriate means in case of infringement."

III.

Senator Spooner's third point is that the public debt of Virginia as of January 1, 1861, was "inherently a *special*, and not a *general* debt."

He insists on page 32 of his brief:

> "And this distinction between a *general* and a special or local debt is a substantial one. It rests upon sound principles, and is essentially just. Obviously, there is no such distinction when we consider the relation of a State and its creditor. There the purpose for which the loan was effected is immaterial; but in respect of the apportionment of the debt of a State between itself and a new State erected out of its territory, the distinction is not only apparent but important."

He further defines:

> "A general debt, using the phrase as the publicists use it, with reference to debt succession, one would say is a debt, the object and result of which inures to the benefit of all the people subject to the dominion

> of the State, the expeditures of which are not susceptible of localization, and which cannot be said to benefit one section more than another, or one class of citizens more than another.
>
> "Such a debt is not, in its nature, apportionable except by special agreement or ratably upon some basis recognized by international law."

We might rest our case upon the exception here stated on the ground that the public debt of Virginia is apportionable between Virginia and West Virginia on "some basis recognized by international law," and that basis is the one stated by Justice Field in Hartman *vs.* Greenhow.

But can it be contended that the public debt of Virginia, as it existed on the first of January, 1861, was a *special or local debt,* as distinguished from a *general debt?*

We have seen that this debt originated from the report of a commission, of which Chief Justice Marshall was the chairman and made the report. That it originated in the execution of a broad, general, comprehensive plan of public internal improvements, designed to benefit the entire State as a unit in interest, and embraced a system of works, such as railroads, canals, turnpikes, bridges, &c., &c., extending throughout the State from the east toward the west. That these works usually began in their construction in the eastern parts of the State for the manifest reason that the material to be used in their construction could be supplied only from the eastern parts—from tide water and through the navigable rivers emptying into the ocean.

Some of these works had been completely constructed at the outbreak of the war, conspicuously the great Northwestern turnpike, extending from Winchester, in the Shenandoah Valley, to the Ohio River, and the turnpike extending from Staunton to the Ohio River. These were the two great lines of trade and travel extending through the present State of West Virginia and connecting with the lines of railway to the coast.

Surely these great works of internal improvement were in no sense "local" or "special." They were as general in their usefulness and their advantage to the entire State and to its population as the atmosphere that covered them.

In Æsop's fable of the Belly and the Members it was objected by all the other organs that the belly was the sole receptable of all the food procured by the efforts of the other members—that in modern phrase the belly was the recipient of "local" and "special" favors—but the reply of the belly was conclusive, and has been accepted in all the ages as adequate and complete.

It has been argued here that inasmuch as the proceeds of the bonds that constitute and evidence the public debt of Virginia were expended in the eastern parts that those parts alone should be required to pay them.

The fact as stated is not true, as appears from the schedules annexed to paragraph 1 of page 30 of the master's report. But suppose the fact was as is stated, would it justify the conclusion claimed?

Suppose these works had been begun on the Ohio River and extended eastwardly through the Alleghanies toward tide water and their construction had been arrested by the war, and that country was disfigured as is eastern Virginia by the unfinished remains of these arrested works, would the claim be tolerated for a moment that West Virginia should now be required to pay the entire debt because all the money had been expended within her limits?

As well might it be claimed that the receiving end of a pipe line, extending through hundreds of miles, should alone be charged with the cost of all the oil and gas placed in it, although that oil and gas was thus distributed through a thousand square miles, bringing light and warmth to thousands of homes.

If a State, in the exercise of its lawful powers, expends a sum of money in one county, and for the benefit of that county and its inhabitants alone, that may be said to be a

local or special debt, and, in case of a partition of the State, that county, or at most that part of the State within which, on the partition, that county falls, should alone be required to pay that debt, but where a State expenditure, although made in one locality only, enures to the benefit of the whole State, or was intended to do so, such expenditure, if it forms part of the public debt, should be borne by the entire State, and not by the part in which it was made.

On page 33 of his brief Senator Spooner supposes the case of the expenditure of $10,000,000 within the limits of the present State of West Virginia *for the benefit of its people,* and that thereafter the State of West Virginia was formed and admitted into the Union with no provision as to the apportionment of this debt, and he asks, "Can there be any doubt, upon principles of international law and of common justice, that the new State should take that entire debt upon its shoulders?" We reply that there can be none. But note, that is because the expenditure was made, not for the benefit of the whole State of Virginia, but only for the benefit of the people of the proposed new State of West Virginia.

But let the supposition be made more in accordance with the facts of this case as charged in the bill and admitted in the answer.

Here all the people of the old State of Virginia were represented in the legislature by their delegates and senators. Those from the western parts urge the creation of a public debt, the proceeds of which shall be applied to the construction of works of internal improvement, whereby a closer and more profitable union between the eastern and the western parts may be effected.

The eastern delegates and senators oppose this, but the western combine with the Piedmont and Valley delegates and senators and carry it through the legislature. The public debt is contracted, and the internal improvements are begun. The war arrests their further construction by the old

State. West Virginia is erected into a new and independent State, and then these works are, by private enterprise, completed in accordance with the original plan. Who now shall bear the burden of the debt contracted? It was contracted for the benefit of the whole people and State, but was constructed only within the territory of the old State. It is charged in the bill, and is not denied—indeed is admitted in the answer—that the western delegates and senators, by their votes, had effected the creation of the debt. Can there be any diversity of opinion as to what equity, good conscience and the principles of public law would dictate? The James River and Kanawha Canal would have proved of great value to the territory now forming West Virginia, but today it is useless and abandoned.

Senator Spooner, on page 35 of his brief, refers to four companies, and even states the fact that they were projected at an early date, 1816. But he fails to note that this was nearly eight years before any part of the public debt of Virginia was created.

Senator Spooner's fourth and last point which we shall notice is that the ninth section of the Wheeling ordinance and the eighth section of the eighth article of the West Virginia Constitution, taken together, form a compact, a special agreement between the two States.

IV.

I have endeavored to show in my former brief, filed in October last, that this alleged contract had no existence in fact, because—

1. The ninth section of the Wheeling ordinance formed no valid feature or term in an ordinance the sole object of which was to provide for the creation of a new State out of part of the territory of Virginia. The convention that framed that ordinance had no power to prescribe to the new

State the plan or method by which she should ascertain the amount of her share of the old public debt of Virginia.

That was altogether a matter of internal and domestic concern, which fell within the exclusive power and control of the new State.

2. The constitution framed by the people of West Virginia made another and different provision for ascertaining that amount, and this constitution altogether superseded and supplanted the provision of the ordinance, just as the constitution of Kentucky superseded the provision of the northwest ordinance of 1787 as to slavery.

Strader *vs.* Graham, 10 Howard, 82.

Scott *vs.* Sanford, 19 Howard, 393.

3. The ninth section of the ordinance was never recognized by any subsequent convention or legislature of either State, and was ignored by the convention that framed the constitution of the State.

4. It was not recognized by Congress in the debates or proceedings had on the admission of the State into the Union, and when enquiry was made in both the Senate and the House of Representatives as to the provision made for the payment of West Virginia's share of the public debt the reply was uniformally made that adequate provision was made in the constitution under which the State was seeking admission.

5. When Virginia, by the act of her legislature, consented to the creation of the new State she did so in express and significant terms, only under the provisions of her constitution.

6. The only ground on which in the proceedings had in this case such alleged compact or agreement was sought to

be maintained was that the State of Virginia had offered the ninth section of the ordinance as a proposition to West Virginia, and that West Virginia had accepted that proposition when she framed her constitution. But, as we have shown, the acceptance was a wide departure, both in form and substance, from the proposition, and hence was a rejection of it.

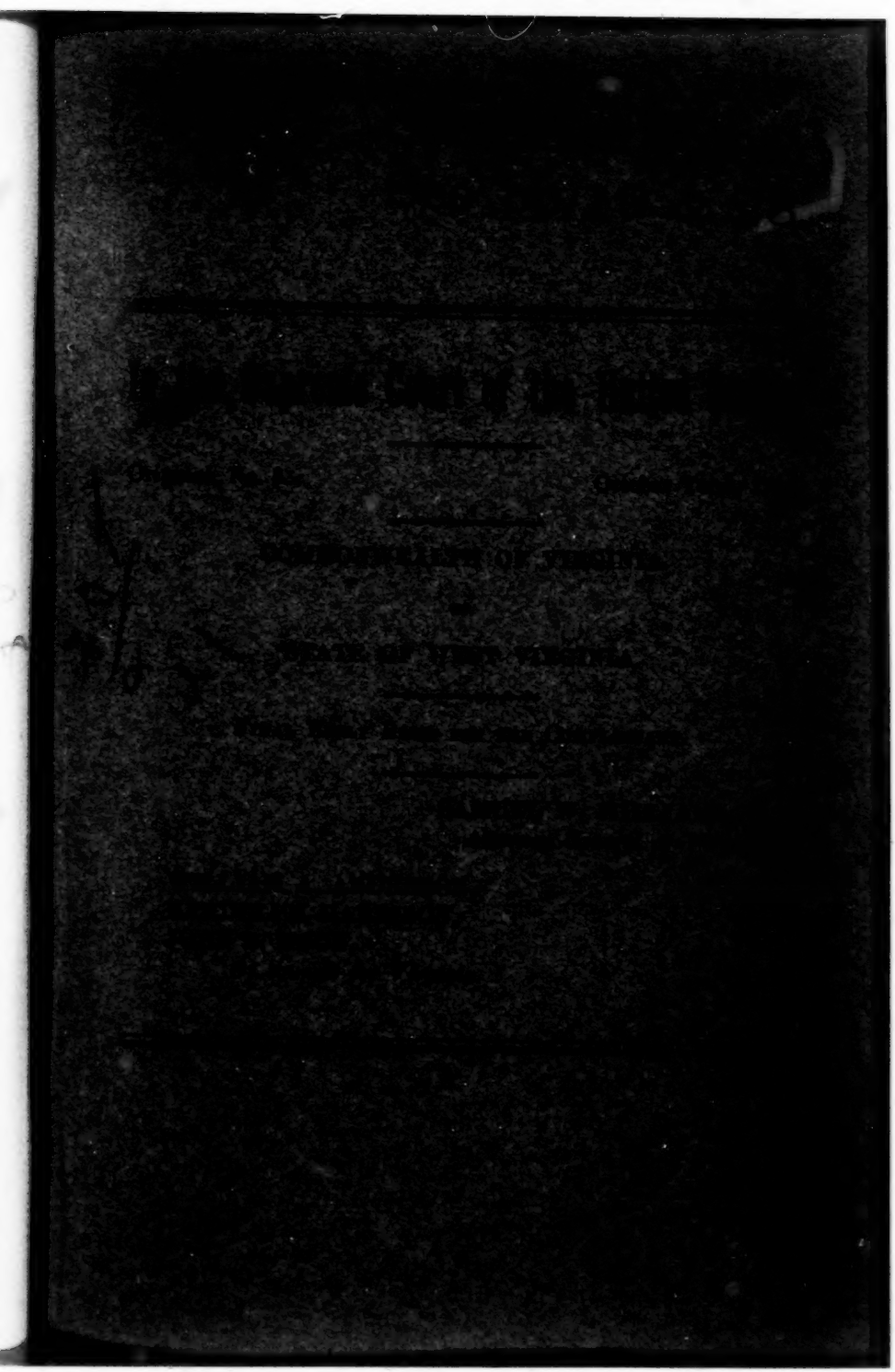
On page 61 of his brief Senator Spooner says: "The question is, What was intended by the framers of the ordinance?"

What the framers of the ordinance intended is immaterial. What was intended by those to whom the ninth section of the ordinance was offered as a proposition for their acceptance? What was intended by the Congress that admitted West Virginia into the Union under her constitution? What was intended by Virginia in her legislative consent to the erection of this new State within her territory?

On page 49 of his brief the Senator insists that the ninth section of the ordinance was claimed in the bill, in paragraph 18, to be one of the grounds on which Virginia asked relief in this case. An examination of that paragraph will refute this notion. That paragraph charged several instances in which West Virginia had fully recognized and admitted her liability for a proportion of the public debt. One of these was in this ninth section, where "a just proportion of the public debt shall be taken upon herself" and another, and immediately following, is the provision in her constitution where she says the new State shall assume an equitable proportion of the public lebt. Nowhere is the plan of ascertainment proposed by the ninth section recognized by Virginia except in the identification of the section as the one that proposed that plan.

HOLMES CONRAD,
Counsel for the Bondholding Creditors of Virginia.

FEBRUARY 1, 1911.



In the Supreme Court of the United States.

Original, No. 3. October Term, 1910.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

FINAL REPLY BRIEF FOR THE COMPLAINANT.

In view of the elaborate discussion of the case in the Master's Report, in the briefs heretofore filed, and in the recent exhaustive oral arguments of the cause, a succinct reply to some of the points presented in the two latest briefs for the defendant will suffice.

I.

POINTS NOW RELIED ON FOR THE DEFENDANT WHICH DO NOT GO TO THE MERITS.

The contention of counsel for the defendant in this branch of their argument is,

That Virginia has no right to maintain this suit—

1. Because she has no such interest in the subject matter of the litigation as gives her a standing to maintain it, denying that she has any equity either for exoneration, or for contribution.

2. Because she sustains a dual relation to the controversy in that she asserts, as is alleged, several independent causes of action, and sues in a dual capacity, namely, both in her own right, and as trustee for the depositing creditors—that therefore her bill is *multifarious*.

3. Because any duty or liability of West Virginia to make a settlement or to pay anything is not to Virginia, but to the creditors of the undivided State.

4. Because Virginia has been guilty of "laches."

A brief response will dispose of each of these points:

(1)

The statement that Virginia has no interest in this suit in her own right is founded in a singular misapprehension of the facts.

(a) VIRGINIA'S EQUITY FOR EXONERATION.

If a liability rests upon the Commonwealth to pay any part of the common public debt of the undivided State, that circumstance plainly entitles her to have West Virginia contribute to the payment of that common indebtedness to the extent of West Virginia's equitable liability therefor, in exoneration of Virginia.

The view of opposing counsel that no such liability rests upon Virginia is based upon a misapprehension of the meaning and effect of the Funding Act of March 30, 1871, under which over three-fourths of the common debt was funded. Virginia's liability under that Act is defined in the third section thereof.—I West Va's Compilation, pp. 14-15; R. pp. 17-19.

That the contention of counsel for West Virginia, that Virginia was released from all liability for the one-third of the $38,110,355.37 (including accrued interest capitalized and funded), of her old bonds, funded under that Act, by reason of the issue by her of the $12,703,451.79 of "Deferred Certificates" under the terms of the third section of that Act, is conclusively refuted by the decision of the Supreme Court of Virginia in the case of *Greenhow* v. *Vashon*, 81 Va. 342-343. In that case Judge Richardson, delivering the opinion of the court and quoting with approval the dictum of Judge Staples in *Antoni* v. *Wright*, 22 Gratt. 864-5, says:

"It is said that the creditor has released one-third of his debt. I do not so understand it, and I will hazard the assertion, the creditor does not so construe the law. If this was the intention of the framers of the act they have adopted an obscure and equivocal mode of expressing a plain and simple agreement. The creditor surrenders his bond and obtains a new one for two-thirds of his debt, and coupons for the interest. For the remaining one-third the bond is held in trust by the State, and a certificate is given him stating that payment will be provided for in accordance with such settlement as may be made with West Virginia. If that State is faithful to the obligations resting upon her, the creditor will receive the other third also. On the other hand, if she repudiates these obligations there is no agreement or understanding absolving the State from the payment of the whole debt as before the passage of the funding bill."

The following are the terms of the certificates issued under the Act of 1871:

"Copy of Certificate under Act of March 30, 1871.

"Commonwealth of Virginia.

"No. ———.

"Treasurer's Office, Richmond, Va.

"This is to certify that there is due unto ———— heirs, executors, administrators or assigns $———, being one-third of bond surrendered under the provisions of an Act approved March 30th, 1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. ——, with interest, amounting to $———. . Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the State of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns."

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"————————,

"Treasurer of the Commonwealth of Virginia.

"————————,

"Second Auditor of Virginia."

(R. 56-57; I West Va. Compilation 49).

Nor is it true, as gravely contended by West Virginia's counsel, that the subsequent, more or less abortive and ineffectual Funding Acts of March 28, 1879 (R. 21-26; and I West Va. Compilation 17-22), and of February 14, 1882 (R. 26-38; and I West Va. Compilation 22-40), released Virginia from any obligation or liability resting upon her under the Act of 1871 in reference to the third of the antecedent debt of the Commonwealth represented by the bonds deposited with her under that Act and expressed in the third section of the Act of 1871, and in the certificates issued thereunder.

Nor did the Act of February 20, 1892 (R. 38-47; 1 West Va. Compilation 32-40), under which a final adjustment of the two-thirds of the debt distinctly assumed by Virginia has been effected, release Virginia from any duty or obligations resting upon her in respect to the third of the bonds unfunded under the Act of 1871, or the certificates issued therefor.

It is true that each of said Funding Acts, subsequent to that of 1871, by its terms repealed the antecedent Funding Act or Acts: but while such repeal operated to stop any farther funding under such antecedent Acts, as it was designed to do, it could not, of course, operate to impair or affect the contract rights and obligations created by the Acts so repealed, or relieve Virginia from any contractual liability resting upon her under the provisions of those Acts. That such repeal could have any such effect is one of the extraordinary hallucinations into which defendant's counsel have fallen.

Neither the Acts of March 28, 1879, nor February 14, 1882, nor February 20, 1892, called for or required the surrender of any of the certificates issued under the Act of March 30, 1871; or for the substitution of other certificates therefor; or in the slightest degree modified or affected the status of those certificates of 1871, or any contract rights of the holders thereof, or any obligation or liability, contingent or otherwise, of Virginia in respect thereto.

It manifestly results from this, that Virginia has the right to invoke the equitable jurisdiction of this court for her exoneration from any liability resting upon her as to the portion of the common debt represented by the unfunded third of the bonds de-

posited with her under the Act of 1871, and evidenced by the certificates issued by her under that Act, to the extent of West Virginia's ratable equitable liability therefor.

(b) VIRGINIA HAS AN EQUITABLE CLAIM AGAINST WEST VIRGINIA FOR CONTRIBUTION—IN VIRGINIA'S OWN RIGHT.

If Virginia has paid any portion of the common debt resting upon both States, in full, she has an equity, in her own right, to reimbursment by West Virginia, to the extent of the ratable liability of the new State upon the obligations so paid off and redeemed by Virginia. This is the equity of contribution asserted in Paragraph XVI of the Bill (R. 13; 1 West Va. Compilation 10).

All the evidence in support of this claim has not been put into the cause any more than the evidence as to what the share of the recovery payable on any of the other obligations of the Commonwealth will be; and for the further reason that the court has not directed any such inquiry. There are, however, data, evidence, and authentic statements in the record which show that Virginia, since January 1, 1861, has paid off or taken up obligations for interest and for principal existing prior to January 1, 1861, amounting to a very large sum.

For instance, in payment for the Blue Ridge Railroad $625,348.08, Special Master's Report, pp. 47 and 84, and the record returned therewith, p. 487; Appendix to that Record, p. 45, Section 14 of the Act of March 1, 1867. And it also appears from the record that Virginia acquired $118,518.12 of her bonds for her claims against the Winchester & Potomac Railroad, of which $45,000.00 was paid in old bonds, and $66,130.90 in new registered bonds issued for interest upon the old debt. Special Master's Report, pp. 64 aad 84, Record, pp. 462 and 489, and Appendix p. 31.

In addition to this, the statement published as a part of Exhibit No. 3, filed with the bill, the Act of February 14, 1882, shows that Virginia paid on account of interest on old bonds held by the general public from January 1, 1861, to July 1, 1863, $3,662,434.55, and between July 1, 1863, and July 1, 1871, $3,594,289.11. The same public record shows that during the same period, and

before any funding of the share of the debt assumed by Virginia, she redeemed of the common debt dollar bonds to the amount of $3,710,449.67. R., pp. 27-32, 1 W. Va. Compilation, pp. 23-26.

Summarized, the following payments were made by Virginia upon the whole undivided debt in the period mentioned, as shown by said Act of February 14, 1882:

Paid, on account of interest, from Jan. 1, 1861, to July 1, 1871, on bonds held by the general public	$ 7,255,723.66
Dollar bonds redeemed during same period	3,710,449.67
Total sums paid	$10,966,173.33

The statement here referred to was made for the purpose of justifying the readjustment of the State debt proposed by said Act of February 14, 1882. That attempted readjustment proved so unsuccessful and abortive, that, while it was accepted by some of the creditors, chiefly those classes who were given by that Act the largest percentage of their claims in the new bonds tendered, the great mass of the bondholders of the State refused to accede to its terms. To such a large extent was this true, that "not less than twenty-eight million dollars of the public debt" remained, on the 20th of February, 1892, "unfunded under said Act approved February fourteenth, eighteen hundred and eighty-two," as appears from the recitals in the Act of February 20th, 1892. R. 39, 1 West Va. Compilation 32.—See Act of February 20, 1892, printed as Exhibit No. 4 with the bill: R. 38, 1 West Va. Compilation, p. 32.

In addition to the bonds issued under the Acts of February 14, 1882, and February 20, 1892, there were over $2,400,000 of bonds, held by certain educational corporations, which were recognized, assumed and provided for by the ancillary Acts of March 3, 1882, and February 23, 1892, and all of which obligations have since been redeemed and taken up by the Commonwealth, and the contracts represented thereby novated, by the issue of new obligations therefor, pursuant to the provisions of the Act approved February 23, 1892.

See copy of last mentioned Act and statement of bonds retired thereby in the Appendix to this brief.

The claim of Virginia, in her own right, for contribution, is not on account of any bonds issued by her after January 1, 1861, or on account of any bonds issued by her for the two-thirds of the original debt which she assumed, but on account of bonds outstanding prior to January 1, 1861, which were in the hands of the general public on that day, and interest thereon, which have been redeemed by Virginia and paid in full since January 1, 1861—obligations and interest thereon which constituted a part of the $33,897,073.82 of indebtedness ascertained by the Master to have been so outstanding on the 1st of January, 1861.—Masters Rep. 17.

The evidence as to what part of the debt Virginia had so paid off and so held was not called for by the decree of the court; nor was it of any interest to West Virginia for the precise amount of Virginia's interest in her own right to be determined. If she had paid *any portion* of the original debt of the undivided State she would have an equity for contribution against West Virginia and to participation in any recovery ratably and equitably to the extent that she was entitled to such reimbursement from West Virginia.

The record shows that she has paid millions of dollars, not counting such of the bonds held by institutions of learning as were outstanding prior to January 1, 1861, and as she redeemed, or retired under the provisions of the Act of February 23, 1892.

Upon this state of facts the equity of Virginia, in her own right, to contribution is fully sustained.

Either this, or the associated equity of exoneration, would be sufficient to support the jurisdiction of the court. But in addition to these there is her right to invoke the equitable jurisdiction of the court for an accounting with West Virginia in order to such a settlement between them as the complainant has a right to have.

(2)

The contention of West Virginia's counsel, that Virginia cannot maintain this suit because her bill is multifarious in that she,

as they charge, asserts several independent causes of action, and sues in a dual capacity, namely both in her own right and as trustee, has been heretofore fully argued, and effectually disposed of by this court upon the demurrer.—See briefs and oral arguments for complainant, 1 West Va. Compilation 233 to 236, 331 to 332, 333 to 336, 393 to 396; and decision of this court, Idem 434.

In absolute rebuttal of any such defence of multifariousness as is asserted here, see the admirable statement of the rule as now well established in this country given by the distinguished counsel for West Virginia, Mr. Hogg, in his work on Equity Procedure, Vol. I, Sec. 136, quoted at pp. 395-6, 1 West Va. Compilation.

The statement that Virginia is suing here in a dual capacity, namely, in her own right, and as trustee, is incorrect.

Virginia alone is the complainant. She sues distinctly and solely in her own right, and for her own relief and protection.

It is true that she also sustains a fiduciary relation to the bonds and evidences of the common indebtedness which have been confided to her by the creditors of the undivided State; but that circumstance was merely a proper, if not a necessary, incident of the contract she made with the common creditors for funding the two-thirds of their obligations which Virginia undertook to take care of.

It was an arrangement of convenience, if not of necessity, *which did not at all prejudice or affect any right of West Virginia.* Nor did it impair any right of Virginia.

To be sure the bill asks that all proper accounts may be taken to determine the balance due from the State of West Virginia to Virginia in her own right and as trustee: but such an accounting is not prejudicial to West Virginia. It would be merely incidental to an ascertainment of the amount which West Virginia owes.

It must be remembered that Virginia assumed the position of trustee as an essential part of the scheme for the settlement between the public creditors and herself. *She was not a mere volunteer, as were New Hampshire and New York in New Hampshire* v. *Louisiana, and New York* v. *Louisiana*, 108 U. S. 76. In those cases, neither New Hampshire nor New York had the remotest personal interest in the subject matter of the trust. The arrange-

ment in those cases was simply a device to evade the Eleventh Amendment to the Federal Constitution.

Here Virginia has a substantial personal interest in the trust subject. She is not only not a mere volunteer, but the creation of the fiduciary relation and her acceptance of it was a proper and essential part of the plan of settlement.

The trust devolved upon Virginia here was therefore not only a trust coupled with an interest, but a trust evolved from a common duty and a common obligation.

Virginia's position in this regard is radically different from that of the two plaintiff States in *New Hampshire* and *New York* v. *Louisiana*.

In the case of *United States* v. *Nashville, &c., Ry.* 118 U. S. 125, certain coupons were sued upon by the United States in its own name, the defense was interposed that they were held by the United States in trust for the Chickasaw nation of Indians, in pursuance of a treaty with them, and that the claim was barred by statute limitations on account of the United States having no interest except as trustee, and that the suit therefore could not be maintained. The court held, however, "they (the coupons) were held by the United States for a public use in its highest sense," and the suit was sustained.

It is also essentially different and stronger than the position of South Dakota in *South Dakota* v. *North Carolina*, for Virginia did not here buy herself into, or voluntarily accept, a controversy against another State. She merely, as was her right, and her duty to do, for her own protection, and at the same time in discharge of her duty to the common creditors, as a proper and essential incident of the settlement with them, accepted the fiduciary relation defined in the Funding Act of 1871 in reference to the bonds confided to her under that Act.

Even if she had been, by the terms of that Act, released entirely by the common creditors, upon the condition that she would by suit or otherwise secure a settlement with West Virginia for their benefit and her exoneration, she would, we think, clearly have a standing to maintain this suit: but as she was not so released there can be no question as to her right to maintain it, even if she had no personal claim for contribution, or for an accounting, on other equitable grounds.

Each of the grounds discussed under the last two general headings were fully argued, and considered, upon substantially the same state of facts which is now presented, when the cause was heard upon the demurrer, and was then unanimously decided by the court, adversely to the contentions of the defendant. No reason has been shown for overruling that decision in these regards, and we confidently rely upon the same.

See decision of the court upon the demurrer.—R. 132-137; 1 West Va. Compilation, 429-434.

(3)

THE DUTY AND OBLIGATION OF WEST VIRGINIA ARE TO MAKE A SETTLEMENT WITH VIRGINIA, AND NOT WITH THE BONDHOLDERS OF THE UNDIVIDED STATE.

So far, in all the acts and dealings of the two States upon this subject from the birth of West Virginia down to the filing, at the present term, of Parts I and II of the brief for the defendant, both States have acted upon the basis that any settlement would be, and would have to be, between the two States.

West Virginia, through her Governors, Debt Commissioners, and Legislature, has always heretofore recognized this. Her answer in this case, and her entire line of defence down to the present term has been distinctly upon this basis.

It is true that the preamble to the Virginia Funding Act of 1871 (R. 18; 1 West Va. Compilation 14) acquiesces in a settlement between West Virginia and the bondholders, if West Virginia shall so prefer; but that suggestion was in direct conflict with Section 19, of Article X of the then Constitution of Virginia, which commanded that,

> "Sec. 19. The General Assembly shall provide by law for adjusting with the State of West Virginia, the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia shall be applied to the payment of the public debt of the State."

This declaration of that preamble was also in conflict with and rendered nugatory by Section 3 of that very Act, which ex-

pressly contemplates and provides for a settlement between the two States (R. 19; 1 West Va. Compilation 15).

No such line of defence is relied on or suggested in the Defendant's Answer. On the contrary that answer assumes and recognizes that any such settlement must be between the two States.—See particularly Paragraphs VIII, and XI,—R. 148, 149 to 154, and II West Va. Compilation 8, 10 to 15.

The entire defence of West Virginia, from the institution of this suit to the filing of the latest brief by her counsel, has been conducted upon this basis, and it is too late for the defendant in the very last stage of the litigation to adopt a different and inconsistent line of defence.

Apart from other influential considerations the compact arising under Section 8 of Article VIII of the first Constitution of West Virginia, and the Acts of the Legislature of Virginia and the United States Congress giving consent to the creation of the new State upon those terms, was a compact between the two States, which Virginia has the right to invoke the jurisdiction of this court to enforce.

(4)

This belated attempt to assert "laches" as a defence against Virginia is without merit.

It is based upon the singular assumption that Virginia is to blame, because she exhausted friendly negotiation before bringing her suit, and did not institute it until after her repeated overtures to West Virginia for an amicable adjustment had all been successively rejected.

Like other defences, unless disclosed by the bill, the defence of "laches" must be asserted in the answer or other defensive pleading.

Here it has never been set up by the answer, or other pleading, and is negatived by the allegations of the bill. It will not be allowed to be set up by amendment of answer long after the filing of same: or after the reference to a Master and the filing of his report.

Dixon v. *Dixon*, 1 Md. Ch. 171;
Thornton v. *Hantze*, 91 Ill. 199;
Webb v. *Fuller*, 83 Me. 405, 22 Atl. 384;
See also 16 Cyc. 176 and 177, and citations.

We ask leave, however, to briefly consider this defence as presented in defendant's brief, because of its relation to other equitable features of the cause.

The defence of "laches," in equity, is only permitted to defeat an acknowledged right on one or both of the following grounds:

(1) That it raises the presumption that the claim has been abandoned or satisfied.

(2) That the party pleading it has been seriously prejudiced by the culpable failure of the plaintiff to assert his claim.

Demuth v. *Old Town Bank*, 85 Md. 315, 37 Atl. 260, 268.
Coles v. *Ballard*, 78 Va. 139, 147;
Wisler v. *Craig's Adm'r*, 80 Va. 22, 30;
Cottrell v. *Watkins*, 89 Va. 101, 19 L. R. A. 754;
Johnson v. *Atlantic Gulf & West India Transit Co.*, 156 U. S. 618, 648;
Selbag v. *Abistbal*, 4 Maule & S., 462;
Morse v. *Seibold*, 147 Ill. 318, 35 N. E. 369, 371;
Hall v. *Otterson*, 52 N. J. Equity 522.

Not one of the grounds upon which such a defence must rest as shown by the authorities cited exists here.

(a) Any presumption of satisfaction of her share of the debt by West Virginia or of abandonment of her claim is absolutely rebutted by the proof that the new State has never paid, and has failed and refused to pay, a dollar on account of the Virginia debt, and that Virginia has persistently urged a settlement.

(b) Nor is there any evidence in the case showing, or tending to show that West Virginia has suffered prejudice from Virginia's forbearance to sue.

No evidence helpful to her has been lost. *The substantial proofs of the debt and of West Virginia's liability for it, are all matters of irrefutable record*, all of which have been kept and

preserved with wonderful accuracy and fidelity, so that the absolute verity of every item of the account and every entry upon those voluminous records, covering the transactions of forty years, has compelled the candid assent of the accountants and the counsel for West Virginia.

On the contrary West Virginia has profited enormously by her long delay in making a settlement with Virginia.

While Virginia has been struggling to meet her just obligations on account of this common debt, and has paid and assumed at least $75,000,000 as of the present year, most of her payments having been contributed years ago "from the scant resources of an impoverished people," West Virginia, husbanding her resources, and compounding her wealth, has not paid one cent.

Instead of her position and ability to pay having been impaired by this long delayed settlement, for the postponement of which she is largely responsible, she has profited so greatly by it, that her taxable resources have increased from a total assessed valuation of $126,060,743 in 1867, to $937,232,718.54 in 1908, an enhancement of 643 per cent.!—See Plaintiff's Exhibit E-3, R. 651.

It appears from this same authentic exhibit that the taxable resources of Virginia increased during the same period from $354,848,482.69 to $661,796,631, or only about 84 per cent.

That comparative schedule of taxable resources, fairly interpreted, demonstrates another thing, namely, that instead of being prejudiced by this lapse of time, West Virginia could, in her present prosperity and affluence—largely the result of the development of her territory by lines of railway which had their inception in the works which represent millions of dollars of Virginia's debt,—pay twenty million dollars to-day, with less inconvenience and less burden upon her people, than she could have paid two million dollars in 1867.

It may not be amiss to call attention to a somewhat conspicuous instance of *laches*, furnished by the defendant in this case, in this: That, although this litigation had been actively progressing and vigorously contested for five years before the cause was, in the spring of 1910, set down for a final hearing, during which long period every defence which the able and resourceful counsel for the defendant could suggest, was set up, no attempt was made

by them until this the very last stage of the litigation, when the issues had all been made up and the case submitted for decision to assert any one of several new and novel alleged grounds of defence which are presented for the first time in the brief filed and the oral arguments made for the defendant at the present term.

Moreover, the defense of laches cannot be interposed against a State. In *Armstrong* v. *The Morrill*, 14 Wal. 144-5, the court citing *Stoughton* v. *Baker*, 4 Mass. 526, holds that no laches can be imputed to the government and that time does not run against a State.

In *Metropolitan R.* v. *Dist. of Columbia*, 132 U. S. 11, the court through Mr. Justice Bradley says: "No restrictive laws apply to the sovereign unless so expressed. And especially no laws affecting a right on the ground of neglect or laches, because neglect or laches cannot be imputed to him. And it matters not whether the sovereign be an individual monarch, or a republic, or a State. The principle applies to all sovereigns. The reason usually assigned for this prerogative is that the sovereign is not answerable for the delinquencies of his agents. But whatever the true reason may be such is the general law—such is the universal law, except where it is expressly waived." See also *Wever* v. *Commissioners*, 18 Wal. 70. In *Gibson* v. *Chouteau*, 13 Wal. 99. *Lindsay* v. *Miller*, 6 Peters 673. *United States* v. *Knight*, 14 Peters 315. *United States* v. *Thompson*, 98 U. S. 489. *Gaussen* v. *United States*, 97 U. S. 584. *United States* v. *Nashville, &c., Ry.*, 118 U. S. 125, *supra*.

It is submitted that the transactions referred to in the cases relied on by the defendant related to such transactions as the protest of negotiable paper, or some entirely private matter where there was no public interest or duty whatever involved.

In *Bannock County* v. *Bell*, 101 American State Reports, 152-3, Note 2, it is stated as the universal rule that statutes of limitation should not run against a State nor can laches be imputed to it, although private parties may be interested along with the State in the matter sued on. See authorities there cited.

In the opinion of the court on the demurrer in this cause (V. 1. p. 433 of West Virginia Compilation) the lapse of time is referred

to, but the demurrer is overruled and an order afterwards entered for an accounting upon the defendants answer which in no manner refers to the matter. This of itself should preclude the question of laches.

II.

UPON THE MERITS.

BASIC PROPOSITIONS ON WHICH THE CASE OF VIRGINIA RESTS.

West Virginia is liable for an equitable proportion of the Virginia debt:

(1) Under the benign principles of Equity and International Law;

(2) Under the conventional agreements and enactments—the constating Acts of the two States, and of the National Congress,—by virtue of which West Virginia came into being.

There is no essential conflict between these postulates. They have already been exhaustively discussed in their various aspects in the principal briefs, and in the oral argument of the cause. So that we deem it sufficient to briefly notice some of the salient points upon this branch of the case.

(1)

Some of the authorities which support the view that West Virginia owes an equitable share of the Virginia Debt under the rules of Equity and Public Law are collated in Appendix No. 1 to the brief of Virginia, printed at pages 163 to 167, Vol. II, West Virginia's Compilation. Others are cited in the briefs for complainant filed at the present term. For others we are indebted to Part III of defendant's brief—Mr. Spooner's contribution thereto. We will not undertake to review these authorities in detail.

An examination of them will show that they are not agreed as to the rule which should obtain in the case of the formation of a new State out of the territory of a pre-existing State. Some of the authorities sanction an apportionment of the antecedent public debt of the original State according to the relative population and areas of the two States. Others according to the taxable resources or revenues, or, what amounts to substantially the same thing, according to the taxable values of the two States.

In a case like this, it would, we respectfully submit, be fair to consider all of these as factors in the consideration and solution of

the problem. It would not be satisfactory to take total taxable values alone, for the reason that it is extremely difficult to determine accurately the relative values of taxable property—particularly the value of personal property in the two Virginias in June, 1863. Land constituted then, and at all times perhaps, the most reliable, stable, and just measure of values. The record shows that both lands and personal property were very greatly depreciated in value in June, 1863, in "Confederate Virginia" and in "Confederate West Virginia;" and that there was by no means any such depreciation in what may be termed "Federal West Virginia."

The Master finds that the depreciation in the value of real estate in "Confederate Virginia" and "Confederate West Virginia" amounted to 50 per cent. as compared with its value in 1860 or 1861, before the War.—Master's Report, pp. 155-6.

The Master was led into the error of accepting the inflated Confederate assessments of personal property in Confederate Virginia. The proofs tended very strongly to show,—a proposition which is undoubtedly a historic truth,—that the personal property in Virginia, including slaves, had depreciated in value in the aggregate at least 50 per cent. as a minimum, as compared with the aggregate value of the personal property in the same territory in 1860 or 1861, before the War.

We will not repeat the argument upon these points presented at pp. 57 to 64 of our principal brief.

They are here referred to and relied upon by way of introduction to the following proposition, namely, that:

Under the circumstances of this case, a fair basis for determining the equitable proportion of the Virginia Debt to be borne by West Virginia, would be to combine territorial area, population, and assessed values of land.

It must be conceded that the circumstances here presented are exceptional.

This case is not only exceptional, but peculiar,—*sui generis.*

As stated in our principal brief: "History furnishes no counterpart, no precise parallel or precedent to guide us, by a clearly blazed path, to a correct conclusion."

Kingdoms, republics, and States have been divided—either by force, by violent revolution, or by conquest; or with their voluntary

consent. Never as here by a consent which rested upon a fiction legalized only by post-natal recognition.

Here, too, it is an unquestioned historic fact, alleged in the bill and not controverted in the answer, that very little of the public debt of Virginia would ever have been contracted, but for the votes in the General Assembly of Virginia of the representatives from the counties now constituting West Virginia, in favor of Acts creating that indebtedness.

Here, too, it appears that the debt was in large measure contracted in reliance, not upon the then existing, but upon the future enhanced values primarily of the lands in the Commonwealth. From the first active inauguration of her Internal Improvement System, it, and the public debt contracted in its furtherance, were mainly designed to develop primarily and chiefly the territory of the Commonwealth, but especially the vast mineral and timber resources then locked up in the mountain fastnesses of West Virginia.

The more important, and by far the most costly, of the turnpikes, canals, and railroads munificently aided by the State, and which would never have been otherwise undertaken, all pointed towards, and were designed ultimately to penetrate, or to effectually serve, West Virginia.,

It is true that the completion and the extension into West Virginia of the most important and costly of these great projected channels of commerce, were prevented by the War; but by reason of the large sums already spent upon them by Virginia, and her subsequent generous concessions of the works represented by those expenditures to the companies which afterwards extended the Chesapeake & Ohio and the Norfolk & Western Railways into and through West Virginia, large portions of central and southern West Virginia have been given an access to the Atlantic Seaboard and the markets of the country, without which great and rich sections of that opulent young State would, when this suit was brought, have been practically as inaccessible and as undeveloped, as when they were a primeval wilderness.

The schedule printed as Appendix No. 1, pp. 109-110 of our opening brief, affords a conclusive confirmation of the view here presented: for, directly or indirectly, the large expenditures there

stated, and which represents 29/33rds of the public debt of the Commonwealth, went into lines of transportation which now efficiently serve West Virginia, and over which her vast output of coal, lumber and oil moves in increasing volume to the ports and cities of the Atlantic Seaboard, and to the markets, furnaces and factories of the West, Northwest and the Southwest.

Under these circumstances, it is right that territorial areas—the very areas which have been so enormously enhanced in value, in great part at least, by these internal improvements, which in their origin and development represent ultimately large portions of the Virginia debt—should be potential factors in the solution of the problem of West Virginia's share of that indebtedness.

And so, too, should population be: for there can be no productive development, without population; and in these States—particularly in such a State as West Virginia, with such a virile population as during the last one hundred years has inhabited the territory in her present limits—this is especially true.

If we could get fairly at the taxable resources of the two States in June, 1863, they too should be brought into the account: but, by reason of the confusion, destruction, and disturbance of values incident to the War, it is impossible to ascertain reliably or definitely the true taxable values in good money of the two States at that time.

By the terms of its decree the court seems to have wisely considered land as the most reliable, as it certainly is the most stable and uniform, subject of taxation, and form of property to be found in the two States at that or at any other period. But, if the assessed value of land be taken by itself, it would leave out of the account population and extent of territory, both of which should, we submit, be considered under the circumstances existing here. Not only should population be considered because, under such conditions, it is an element, and a creator of economic values; but areas should come into the account. It is manifest from the great enhancement of values in West Virginia shown by Complainant's Exhibit E-3, R. 651, that the mineral and lumber resources—the products of the lands of that State—are realizing the hopes and expectations of the projectors of the Internal Improvement System of Virginia, and that that enhancement has been far more

rapid, and far greater per square mile of territory in West Virginia, than it has been in Virginia.

Is it not right, therefore, that territorial areas should, under such circumstances, be brought into the account?

Now, stating the account accordingly, we have the following result:

West Virginia has 36.1843 per cent. of the total area of the undivided State, upon which basis she would be assigned the following amount of the Virginia debt.—See Master's Report, p. 37; Principal Brief for Virginia, p. 76.....	$12,265,418.88
West Virginia had, in June, 1863, 24.5145 per cent. of the total population of the undivided State, upon which basis she would be assigned (See Master's Report, p. 37, and Principal Brief for Virginia, p. 76)	8,309,698.16
The assessed value of the lands in West Virginia in June, 1863, was 21.7812 per cent. of the total assessed values of lands in undivided Virginia, on which basis, there would be assigned to the New State this amount of the common debt (see p. 37 of Master's Rep.; p. 76 of Principal Brief for Complainant)	7,383,189.44
Combining these and taking the average we have, as the amount of the debt chargeable to West Virginia, as of January 1, 1861, the sum of...	9,652,768.83

Such will be the result if the apportionment of the debt is made upon the basis thus stated, arrived at by combining the three bases as indicated.

Against any such adjustment of the debt, indeed against any assignment to West Virginia of any substantial part of it upon an accounting upon the principles of Equity and International Law, the present leading counsel for West Virginia has in the last ten days, in his oral argument and printed brief, for the first time presented a new international law theory, and a novel proposition in equity jurisprudence for the guidance of the court.

By the application of this newly discovered theory he proposes to relieve West Virginia from any appreciable burden on account of the public debt of the Commonwealth, if the court shall decide this case upon the principles of equity and public law.

The precedents indicated by Senator Spooner do not at all support the rule he advocates as applied to this case; as, for instance: Where a new State constituting or embracing a province or other integral political sub-division of the original State has been cut off from such original State.

The original State owed a debt which bound all of its parts alike. This was a general or national debt, which upon its partition into two States would have to be apportioned ratably among the new States into which it was subdivided.

But such original State, or some of its subordinate provinces, owed special or local debts contracted by such provinces or by the original State in behalf of such provinces; or the avails of which debt were distinctly expended within and for special exclusive and local benefit of such provinces respectively, by or on behalf of which the money represented by such special debt was borrowed.

Now, when such province, having charged upon it such a debt contracted distinctly for its several and separable benefit, is cut off from the original State, and formed into, or becomes part of an independent State, there can be no question that Mr. Spooner is right in the view, that, in such a case, such a debt would continue to be a charge upon such a seceding or withdrawing province; and that such a seceding or withdrawing province would not be liable for any of the special or local debts of the original state, which were similarly local to the provinces or subdivisions thereof which adhered to, or continued to be parts of, the original State.

And so here, county or city debts due by, or contracted in the name and on behalf of, and which were specially charged upon, counties or cities which were and continued to be parts of Virginia after her dismemberment, could not, of course, bind West Virginia.

The distinction and classification which the learned counsel seeks to make find no support in the facts of this case.

The only debt, of which West Virginia is here called upon to bear an equitable share, is the public debt of Virginia existing

prior to January 1, 1861, a debt as well known to the makers of West Virginia as it is to the counsel in this cause, and distinctly recognized in the fundamental constating acts to which West Virginia owes her existence.

The debt, a just and equitable portion of which the makers of West Virginia provided that the new State should assume, was the "public debt of the Commonwealth," statements of which were embraced in the Annual Reports of the Second Auditor of the Commonwealth; and the amount and character of which were known in approximate accuracy of detail to the representative citizens of West Virginia who framed those enactments, a number of whom had also been repeatedly members of the General Assembly, and officials of the unsevered Commonwealth. The learned Counsel, in order to maintain this new contention, in effect, classifies the whole public debt of Virginia as a special and local debt.

The indisputable fact is, that Virginia in 1861 *did not owe one dollar of special or local debt.*

Opposing counsel treats the words "special" and "local" as synonymous, which is not true of them. A debt, as, for instance, one contracted for the building of a capitol, or a penitentiary, for the common use and benefit of all the people of an entire State may, by the terms of its creation, be a special debt, and yet it will be the debt of and binding upon all of the people in every part of such State.

The distinction, for it to avail anything for West Virginia, would have to be between a distinctly *local* and a *general* debt. A local debt might not, and, under circumstances readily conceivable, would not bind a new State detached from the original Commonwealth, if such new State did not embrace the political sub-division or province of the original State upon which such local debt was charged.

The entire records of the Commonwealth from 1820 and prior thereto have been carefully scrutinized by accountants and counsel in this cause, and not one dollar of special, or local, debt has been discovered.

The only debt of Virginia which existed in 1860, or 1861, was what was then well known, and what was correctly defined in

the Wheeling Ordinance and in Article VIII of the first West Virginia Constitution, both written and enacted by West Virginians, as "the public debt of the Commonwealth." It was a general debt, binding the Commonwealth and every part of it alike and as a unit. To be sure, much of it was evidenced by bonds which recited the Acts by authority of which those bonds were issued; but they constituted none the less parts of the public debt of the Commonwealth because so ear-marked.

It was created in carrying out a great general public system of Internal Improvement, in part suggested by Washington, and by Chief Justice Marshall, but formally inaugurated by the creation of the Board of Public Works and the General Internal Improvement Fund in 1816, for the common benefit and general ultimate improvement and development of every portion of the State.

There were a large number of counties in Virginia, as now constituted, in which not a mile of railroad or canal had been built, and yet they shared, more or less remotely and unequally, it may be, in the common benefit to the whole State, and were bound along with the counties through which these public improvements passed for the debts contracted in their construction.

The Acts of the General Assembly of Virginia of March 26, 1853, "Establishing a Sinking Fund," and providing for the payment of the semi-annual interest on and redemption of the public debt, printed at pp. 200 to 205 of the appendix to the record, and chapter 44 of the Code of Virginia of 1860, Idem. pp. 196-199; and the statutes relating to the same subject, Idem. 188, and especially the Act of April 9, 1838, referred to by Mr. Spooner, Idem 191 to 195, show conclusively that the public debt of Virginia was a general, and in no sense a local, or a special debt.

Virginia's public debt was just as much the general debt of the whole Commonwealth, as is the debt of the United States the general debt of the nation. Nor can the burden of such a State debt be apportioned or distributed among the different counties or sections of the State in proportion to the benefits realized by each from the expenditure of the money borrowed, any more than the burden of the National debt can be similarly apportioned among the different States and sections of the American Union.

We would not devote so much space to this artificial, and,

frankness compels us to say, fanciful classification, but for the confidence and earnestness with which an advocate for whose ability and candor we have the greatest respect, seriously pressed it upon the consideration of the court.

If the doctrine of International Law and Equity are applied to the determination of West Virginia's share of the Virginia debt, she will be required to pay her ratable proportion of the public debt of the Commonwealth as the same existed on the 31st of December, 1861, and was recognized in the VIII Article of her first Constitution, to be computed upon such basis as will place upon the new State a just and equitable share of that burden.

The considerations which should be potential in such determination have been already fully discussed, both orally and in the printed briefs.

(2)

WEST VIRGINIA IS LIABLE FOR A JUST AND EQUITABLE PART OF THE PUBLIC DEBT OF VIRGINIA UNDER THE ENACTMENTS OF THE TWO STATES AND OF THE NATIONAL CONGRESS BY VIRTUE OF WHICH THE NEW STATE CAME INTO BEING.

The views of counsel for Virginia as to the respective rights and obligations of the two States under the constating Acts pursuant to the terms of which the new State was ushered into being, if the settlement should be made thereunder, have been fully stated in their principal or opening brief filed at the present term, and will not be reiterated.

The principal consideration and arguments there presented in support of the positions taken have not been answered, if indeed they have been at all discussed, by opposing counsel.

There are, however, a few important points in connection with this alternative aspect of the case which it is of interest to consider.

The view of Virginia is, and has been, that the important thing in this case is, that the result which shall be attained by the final decision of the cause shall be a just, an equitable, and a righteous result.

The matter of the method, or process of reasoning, by which such a result shall be reached is, and has been, one of no moment.

While the Wheeling Ordinance, the West Virginia Constitution (under the provisions of which the consent of the Legislature of "Restored Virginia" and of the Congress was given to her existence as a State), the Acts giving that consent, and the Act of said Restored Legislature of February 3, 1863, transferring to the new State the property and rights of the old State therein defined, were all parts of one great transaction—the dismemberment of Virginia,—it is, and has always been, our view, that the rights and obligations of the two States in reference to the portion of the debt of undivided Virginia to be borne by West Virginia, and the method of its ascertainment, were absolutely controlled by the eighth section of Article VIII of that first West

Virginia Constitution, and the compact necessarily arising from Virginia's consent to her statehood upon those terms.

It is a necessary corollary from this, that the proportion of the debt which West Virginia must pay, must be an equitable proportion, and that, if pursuing the method prescribed by the Wheeling Ordinance, an inequitable result is reached, that method, and that Ordinance must be discarded.

Now, a careful comparison of the results arrived at by fairly applying the method of the Wheeling Ordinance to the facts and figures admitted to be true, will show a remarkable agreement in the results reached by such a computation, with the results produced by an application of the standards, or measures, of West Virginia's liability sanctioned by Equity and Public Law.

After all it is a result which is equitable and just which we desire to attain, and it is of little concern by what process such a result shall be reached.

Now, applying the method prescribed by the Wheeling Ordinance to the facts of the case as the Master has done, but correcting the palpable error into which he was led in his exclusion of the expenditures made by the State in works in West Virginia territory built through the agency of public service corporations, which expenditures amounted to the agreed sum of $1,104,400.85, we have, taking the figures of the Master's Report in all other particulars, the following as the amount due by West Virginia under the Wheeling Ordinance fairly and equitably construed and applied:

(a) Stating the account on the basis of the Wheeling Ordinance, apportioning the ordinary expenses of government on the basis of the white population.—(that is, of the population excluding slaves, who did not then constitute a part of the body politic), as is shown at page 85 of our opening brief, we have as West Virginia's share of the debt on the 1st of January, 1861 ..... $9,910,960.20

(b) Upon the same basis, stated under the Wheeling Ordinance, but following the suggestion

made by Mr. Justice Harlan (II West Virginia Compilation, p. 227), and apportioning the ordinary expenses of the State government on the Federal basis, by which *three-fifths* of the slaves will be counted, we have as West Virginia's share of the debt on January 1, 1861 ..... $7,620,087.59

(See pages 85, 86 and 87, of our opening brief.)

Counsel for both States were agreed that population is the fairest criterion for apportioning the ordinary expenses of the State government. (Brief for Defendant, II West. Va. Compilation, p. 129: Oral argument for Complainant, Idem, pp. 227, 228). The only difference between counsel is, that those for West Virginia insisted that the total population should be taken as the factor, while counsel for Virginia urged that the white population alone should be considered, for the reasons stated in the brief for Virginia (II West Va. Compilation, pp. 157, 158), which seem to us to have great weight, and which we now quote and reaffirm:

"As to the criterion on which the apportionment of the expenses of government should be made, if this is to be the population, we respectfully submit that in this case it should be the free population—the citizenship—and not the total of the free and the slave population. The care and policing of the slaves cost the State little or nothing. Those matters were regulated by their masters on the plantations. Of course, none of them could vote; but upon the "mixed basis" of representation which was partially adopted in Virginia, they counted to some extent in fixing the basis of representation in the General Assembly: that is, five negroes counted as much as three white men, where the mixed basis prevailed.

"The debt was contracted solely by the votes of the white population or their representatives. It was expended by them or under laws of their enactment. The taxes were levied exclusively upon the property of the free population; and the revenues were appropriated and expended as they directed, and exclusively for their benefit.

"The negroes owed no part of the debt, did not constitute a part of the citizenship of the State during any part of the period when the debt was contracted, or the money

realized from it was expended; nor were they any part of the body politic.

"Under these circumstances we would submit as a just criterion for such apportionment the white population of the territory embraced in West Virginia, and of the territory still remaining to the Commonwealth, at the times when the expenditures to be apportioned were made."

Now, we beg leave, by way of comparison with the amounts thus arrived at under the method prescribed by the Wheeling Ordinance fairly and equitably construed and applied, to give the results reached, if, discarding the Ordinance, we state the account upon the principles of Equity and Public Law reasonably applied to the facts of the case.

Ascertained in accordance with the principles of Equity and Public Law, fairly applied to the facts of the case, we have, as we have already seen, as West Virginia's share of the debt on the 1st of January, 1861:

(a) Computing the same on the combined basis of territorial area, population, and assessed valuation of lands in the two States.....	$9,652,768.83
(b) On the basis of assessed valuation of the lands in the two States taken as the only factor.....	7,383,189.44

And per contra ascertained under the Wheeling Ordinance:

(c) Apportioning ordinary expenses according to white population	$9,910,960.20
(d) Apportioning ordinary expenses according to the Federal basis, counting three-fifths of the slaves	7,620,087.59

The approximation of these results is something more than a coincidence, and goes far to show that an equitable result can and will be attained by pursuing either method, fairly applying the same to the facts of the case.

In view of the long lapse of time since the assumption by West Virginia by the terms of the 8th Section of Article VIII

of her first Constitution of an equitable proportion of the then debt of the Commonwealth and the stipulation thereby made for the payment of the accruing interest thereon, the matter of interest is obviously the most important item in the account between the two States.

That question is so fully considered, and Virginia's equitable right to a decree for interest is so conclusively shown in the treatment of that subject found at pages 94 to 107 of our opening brief upon the present hearing, that we are content to refer the court to that discussion as fairly presenting our views.

Part III of defendant's brief in its complete form was not received by counsel for Virginia until the 2nd and 3rd instant.

It would be impossible in the time permitted for filing this brief to reply to, or even to notice the numerous points made therein; nor is any such reply necessary, for the distinguished counsel has failed to meet the positions taken by the Master, supported as they are by reason and authority, or to answer the arguments submitted in our opening brief in any important particular.

Especially is this true as to the question of classifying the annual interest on the State debt as one of the ordinary expenses of the State.

Defendant's counsel claim that the weight of authority is against such classification.

The Master's report and the opening brief for complainant show that the uniform and practically universal rule of the national, State, city, town and county governments in this country, and as is shown also to be the case as to the governments of Europe, so far as there is any information given on that subject, is to classify interest on a public debt as an ordinary governmental expense; and that this rule is sanctioned by publicists, political economists, and the courts.

Particularly should this rule control in this case, or else palpable inequity would be done; for the season that under the Wheeling Ordinance West Virginia is to be credited with all the taxes which she must have paid into the State Treasury during the debt period on account of that interest. Being given this large credit it would be right that she should also be charged with her just proportion of the annually recurring interest paid out of those

very taxes, as the Master has done; and palpably unjust and inequitable to exonerate her from such a charge.

With this concise response to the elaborate briefs of the learned counsel for the defendant, we respectfully submit this cause to the consideration and judgment of the court.

SAMUEL W. WILLIAMS,
Attorney General of Virginia.

WILLIAM A. ANDERSON,
RANDOLPH HARRISON,
JOHN B. MOON,
Of counsel for Virginia.

February 4, 1911.

CHAP. 344.—An ACT for the retirement of bonds held by schools and colleges, and the issuing of registered certificates therefor, and providing for the payment of interest thereon.

Approved February 23, 1892.

Whereas, the friends of education have voluntarily contributed many millions of dollars for the establishment of schools and colleges in different parts of the State of Virginia, a large portion of which has been expended in the purchase of lands and the erection of suitable buildings thereon, and the residue held as permanent endowments, about two millions of which are in State bonds; and

Whereas, it appears from acts passed by the general assembly in eighteen hundred and sixty-seven, and at various other times since then, to be the settled policy of the State to encourage these efforts for the education of her citizens, and to co-operate with the generous donors of her bonds, by paying full interest thereon so long as they shall be held as endowments for educational purposes; and

Whereas, it is proper that all obligations of the State held by schools and colleges be of the same character, and on the same footing; therefore,

1. Be it enacted by the general assembly of Virginia, That the schools, colleges, and other educational organizations hereinafter named, shall, through their duly authorized officers or agents, on or before the first day of July, eighteen hundred and ninety-two, surrender to the second auditor all evidences of the State's indebtedness which they hold as endowments for educational purposes.

2. That said auditor shall make and keep a record of all bonds and other evidences of the State's indebtedness so surrendered to him, and shall, in the presence of the auditor of public accounts and treasurer, cancel all such evidences of debt, and issue to those by whom they have been surrendered registered certificates of debt for the respective amounts of the bonds and other evidences of debt surrendered by them.

3. That these certificates shall be non-transferable and redeemable at the pleasure of the State, and shall set forth that the State of Virginia is due the respective schools, colleges, and other educational organizations of learning to which they are issued the sums named therein, and that interest thereon shall be paid semi-annually at the rates and for the amounts now paid by the Commonwealth, as set forth in the report of the second auditor for the fiscal year ending September thirtieth, eighteen hundred and ninety-one, including in addition thereto interest on the amount herein named held by the Randolph-Macon's woman's college, at the rates set forth in the bonds it holds, so long as they are held as endowments for educational purposes.

4. That the second auditor shall, upon the first day of January and July of each year, draw his warrant upon the auditor of public accounts in favor of the following holders of the said certificates for the respective amounts due them at the aforesaid rate of interest upon the following sums, to-wit:

Washington and Lee University, upon the sum of two hundred and thirty-six thousand seven hundred and fifty-eight dollars and twenty-three cents.

The Virginia Military Institute, upon the sum of twenty thousand dollars.

Emory and Henry college, upon the sum of six hundred dollars.

Leesburg academy, upon the sum of two thousand and five hundred dollars.

New London academy, upon the sum of six thousand and five hundred dollars.

Randolph-Macon college upon the sum of nineteen thousand seven hundred and eight dollars.

University of Virginia, upon the sum of one hundred and forty-eight thousand and six hundred dollars.

Richmond college, upon the sum of forty-four thousand and seventeen dollars and nineteen cents.

Hall's free school, upon the sum of four thousand and eight hundred dollars.

Seminary and high school, Alexandria, Virginia, upon the sum of fifty-nine thousand and nine hundred dollars.

William and Mary college, upon the sum of thirty-five thousand and nine hundred dollars.

School commissioners of Prince William county, upon the sum of one thousand and four hundred dollars.

Hampden-Sidney college, upon the sum of ninety-six thousand and three hundred and fifty-three dollars and thirty-three cents.

Union theological seminary, upon the sum of one hundred and thirty-seven thousand and six hundred and ninety-five dollars.

Miller manual labor school, of Albemarle, upon the sum of one million and forty-four thousand and eight hundred and sixty-eight dollars and forty-nine cents.

Virginia agricultural and mechanical college, upon the sum of three hundred and forty-four thousand and three hundred and twelve dollars.

Hampton normal and agricultural institute, upon the sum of one hundred and seventy-two thousand and one hundred and fifty-six dollars.

Randolph-Macon woman's college, upon the sum of forty-nine thousand and six hundred dollars.

The Dawson fund, thirty-four thousand one hundred and eighty-seven dollars and sixty-one cents.

5. This act shall be in force from its passage.

STATEMENT OF BONDS EMBRACED IN THE FOREGOING ACT.

Washington and Lee University, upon the sum of..	$ 236,758.23
Virginia Military Institute, upon the sum of	20,000.00
Emory and Henry College, upon the sum of	600.00
Leesburg Academy, upon the sum of	2,500.00
New London Academy, upon the sum of	6,500.00
Randolph Macon College, upon the sum of.....	19,708.00
University of Virginia, upon the sum of	148,600.00
Richmond College, upon the sum of	44.017.19
Hall's Free School, upon the sum of	4,800.00
Seminary and High School, Alexandria, Virginia, upon the sum of	59,900.00
William and Mary College, upon the sum of	35,900.00
School Commissioners of Prince William Co., upon the sum of	1,400.00
Hampden-Sidney College, upon the sum of	96,353.33
Union Theological Seminary, upon the sum of	137,695.00
Miller Manual Labor School of Albemarle, upon the sum of	1,044,868.49
Virginia Agricultural and Mechanical College, upon the sum of	344,312.00
Hampton Normal and Agricultural College, upon the sum of	172,156.00
Randolph-Macon Woman's College, upon the sum of.	49,600.00
The Dawson Fund, upon the sum of	.34,187.61
	$2,459,855.85

Office Supreme Court, U. S.
FILED.
MAR 11 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE DEFENDANT

BY

C. W. MAY,
MOLLOHAN, MCCLINTIC AND MATHEWS, AND
CHAS. E. HOGG.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25634

SUPREME COURT OF THE UNITED STATES.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF FOR THE DEFENDANT.

STATEMENT OF THE CASE UPON DEMURRER.

On January first, 1861, Virginia was indebted on account of the issuance of bonds at various times prior thereto in the aggregate amount of $31,800,712.90, upon which past due interest including the interest maturing on that date amounted to $1,045,183.01.

On July first, 1863, a date ten days subsequently to the admission of West Virginia as a State into the Union, the bill shows a public indebtedness of the plaintiff, including principal of said bonds and the interest accrued and unpaid thereon, amounting in the aggregate to $39,098,922.00. Of this sum, $5,954,716.08 is interest, and the residue, $33,141,212.92, is principal, representing the entire indebtedness against the State of Virginia at the time of the formation and admission into the Union of West Virginia. This indebtedness was held by private owners of bonds which Virginia had issued and sold upon her own account.

In 1871 the Legislature of Virginia passed an act providing for the funding and payment of her public debt, in

which, among other things, there is recited that the people of Virginia being anxious for the prompt liquidation of her portion of the said debt, which was estimated by said act to be two-thirds of the entire indebtedness incurred by the State of Virginia, and also suggesting that the authorities of West Virginia might prefer to pay that State's portion of the said indebtedness to the holders thereof, and to enable the State of West Virginia to settle her portion of the said debt with the holders thereof, allotted to West Virginia by her own *ex parte* and *gratuitous* act the payment of the other third of said debt. The act provides for the surrender of the old and the acceptance of the new bonds of Virginia for two-thirds of the amount of said aggregate indebtedness, and the issuance to the owners or holders of the other one-third of the amount due upon the old bonds, certificates bearing the same date as the new bonds representing the funded debt of Virginia, setting forth the form of the bond which is not funded, and the payment thereof to be provided for in accordance with such settlement as might thereafter be had between the States of Virginia and West Virginia.

In 1879 a further act was passed by the Legislature of Virginia regarding her said debt, which provides, among other things, for the issuance of certificates on West Virginia to the holders of the old bonds who had not already received such certificates, and that the State of Virginia would aid the holders of certificates issued by Virginia, in negotiating with the State of West Virginia for an amicable settlement of all the claims of such creditors holding the certificates issued by Virginia against the State of West Virginia, and that the acceptance of such certificates for West Virginia's one-third issued under the acts of the Legislature of Virginia, should be taken and held as a full and absolute release of Virginia from all liability on account of said certificates.

In 1882 another act was passed by the Legislature for the express purpose of ascertaining and declaring Virginia's equitable share of the debt created before and actually exist-

ing at the time the State of West Virginia was formed, the design of which act was to make a full settlement of said debt, and thus present a true state of the account between Virginia and her creditors, which embodies a recital to that effect, and which provides for the issuance of certain certificates by the Commonwealth of Virginia, covering the one-third of her indebtedness claimed to be payable by the State of West Virginia, and there is recited in the form of said certificate that the Commonwealth of Virginia has discharged her equitable share of her debt evidenced by such certificate, leaving a balance with interest to be accounted for by the State of West Virginia, without recourse upon the Commonwealth of Virginia. These certificates were accordingly issued by Virginia and received and accepted by the holders of that part of the original debt represented by said certificates, all of the old bonds surrendered to the Commonwealth of Virginia and cancelled, and Virginia thereby relieved from all liability on her own account to the holders of the West Virginia deferred certificates.

The only obligation left upon Virginia after the issuance of these deferred certificates purporting to represent West Virginia's portion of the debt of Virginia gratuitously fixed *ex parte* by the State of Virginia, and accepted by the holders of that part of the original debt of Virginia in settlement thereof, was to use her offices and endeavors to effect payment thereof, or its adjustment in some way, by the State of West Virginia. By this arrangement, effected alone by the State of Virginia with her creditors, she was relieved from all substantial liability—in fact from any pecuniary liability—as to the one-third of her indebtedness created by her prior to the formation and admission into the Union of the State of West Virginia.

This suit was instituted in part for the recovery of that portion of the debt of Virginia created prior to and existing on June 20, 1863, the date of the admission of West Virginia into the Union and is the gravamen of the complainant's bill.

Another claim asserted by said bill is an alleged indebtedness evidenced by the bonds of Virginia and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of said State, as created under her laws, amounting, the former to $1,462,993.00, and the latter to $1,543,669.00, as of the date of January first, 1861.

This cannot be treated as a debt within the meaning of that term to be asserted against the State of West Virginia, because these Commissioners were simply agents for the management and control of a part of the internal fiscal affairs of the Commonwealth of Virginia, and the use of which was and is available only to the State of Virginia for the advancement of her own peculiar State interests.

Another and further claim made by the said bill is for the collection or payment for all property, real, personal and mixed, owned by or appertaining to the said State of Virginia, and being within the boundaries of the State of West Virginia, which passed to and became the property of the latter State, and was taken and appropriated to her own use by the State under the provisions of an act passed by the State of Virginia, in February, 1863, the bill alleging that the property passing to the State of West Virginia under and by virtue of the said act, consisted of a number of items alleged to amount in the aggregate to several millions of dollars, the exact amount of which complainant, it is alleged, is unable to definitely ascertain and state.

These three classes of claims made by the complainant in her bill constitute the sum total of the demand made by her against the defendant in this suit.

The first effort of Virginia to fund her said debt was the Act of the General Assembly approved March 30, 1871, in which she declared her portion thereof to be two-thirds, and provided a plan for its funding and payment, and as to the residue thereof this Act declares:

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as

provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one, and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia."

(Plaintiff's Bill, pp. 14, 15.)

Under the terms of this statute Virginia still remained liable for the payment of her entire debt including the one-third, unfunded, for which deferred payment certificates were to be issued, payable upon final settlement between Virginia and West Virginia.

The next effort of Virginia to adjust her bonded indebtedness created prior to the formation of West Virginia as a State, was the Act of her General Assembly, approved March

28, 1879, whereby she provided an abatement of the rate of interest and divided her then outstanding indebtedness into two classes, as follows:

> "Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.
>
> "Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds."
>
> (Plaintiff's Bill, pp. 17, 18.)

This act also further declares as to the liability of West Virginia touching the said indebtedness of the complainant, as follows:

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange, and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued, under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of said certificates."
>
> (Plaintiff's Bill, p. 19.)

Under these acts of the Legislature of Virginia, nearly if not quite all of her said indebtedness was funded on the basis prescribed by these enactments, thus relieving her of all liability upon the one-third part of her original antebellum obligations.

A third expression of Virginia touching her said debt, so far as the same relates to West Virginia, is that embraced in an Act of her Legislature approved February 14, 1882, which is entitled as follows:

> "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon."
>
> (Plaintiff's Bill, p. 21.)

This act contains an extended preamble setting forth what purports to be an account between the state and her creditors, showing the aggregate of principal and interest in two distinct totals in separate columns, declaring the assumption of two-thirds thereof as her equitable portion, fixing the total amount of this equitable portion as of July 1st, 1882, at $21,035,377.15, and then provides for the funding of this debt by the issuance of bonds drawing interest at the rate of three per cent.

This act also further provides as follows:

> "For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:
>
> "No. .....
>
> "The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by ....., dated the .... day

of ....., and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth,

"Done at the capitol of the State of Virginia, this ..... day of ..... eighteen .....

"....., *Second Auditor.*

"....., *Treasurer.*"

(Plaintiff's Bill, pp. 28, 29.)

A further act of the General Assembly of Virginia was passed, approved February 20, 1892, which bears the following title:

> "An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882."
>
> (Plaintiff's Bill, p. 31.)

This act provided for the issuance of nineteen millions of dollars in bonds in lieu of twenty-eight million dollars of outstanding obligations of Virginia, not funded under the act approved February 14, 1882, hereinbefore mentioned, and prescribed the form of the new bonds to be issued under this act and the coupons thereof.

This act also provides that in taking up these outstanding bonds before issuing new bonds in lieu thereof there shall be deducted "one third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as are issued under the act approved the thirtieth

day of March, eighteen hundred and seventy-one, as do include West Virginia's portion."

This act further provides as follows:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:
>
> "No. ..... The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for .....dollars, dated ..... day of ....., and No. ....., leaving a balance of ..... dollars with interest from ..... to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.
>
> "Done at the capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.
>
> "....., *Second Auditor.*
> "....., *Treasurer.*
>
> (Plaintiff's Bill, pp. 35, 36.)

By virtue of this act of legislation Virginia made a further considerable reduction of the principal of her debt and received a more favorable rate of interest and better terms as to its payment.

After the lapse of about two years from the approval of the act last named a joint resolution was adopted by the legislature of Virginia, entitled as follows:

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same."
>
> (Plaintiff's Bill, p. 39.)

This resolution was approved March 6, 1894, and in its preamble refers to the acts by their titles, passed by the General Assembly of Virginia relating to her debt, concluding the preamble of this resolution as follows:

> "Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state."
> (Plaintiff's Bill, p. 40.)

The resolution then creates a commission "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia."

> "But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.
>
> "All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account."
> (Plaintiff's Bill, pp. 40, 41.)

A further act was passed by the Virginia legislature, approved March 6, 1900, reciting the previous acts of said legislature relating to the public debt of said state, and also reciting that,

> "Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to wit: One-third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund, and * * *
>
> "Whereas, it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt * * * and take upon deposit the certificates aforesaid, or have the same otherwise held or placed on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder. If at least two-thirds in amount of said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the

advice and approval of the attorney general of Virginia, to take such action and institute such proceedings on behalf of the state as may, in the judgment of said commission and attorney general, be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subject to any expense on that account."

(Plaintiff's Bill, pp. 41, 42.)

In accordance with the provisions and requirements of said act approved March 6, 1900, said commission entered into an arrangement with the duly authorized representatives of the holders of the deferred certificates issued by Virginia, without recourse upon her and received by her creditors in settlement of one-third of the original debt, whereby said commission reduced to its possession and control more than five-sixths of the entire amount of these certificates outstanding and the said commission now holds said certificates in trust for the present owners thereof, the amount of which certificates has, no doubt, largely increased since the institution of this suit, as indicated by a statement contained in the report of said commission submitted to the General Assembly of Virginia, thus placing in the possession of said commission nearly or quite all of said certificates.

The ownership of these certificates held by said commission is still in the original holders of the old debt of Virginia, and their possession by said commission is solely for the purpose of giving color to the institution of a suit in this court by the state to promote the collection of an alleged debt payable—not to the plaintiff—but to various private persons represented by the committee who assembled these certificates and turned them over to the said commission.

That this is the extent of the interest which the said commission created by the State of Virginia has in the said

certificates, a demand for the payment of which constitutes the gravamen of the bill filed in this suit, is clearly apparent from the agreement entered into between the said commission and the committee representing the holders of said certificates, and the parts of said agreement relating to this feature of the case are here copied and are as follows:

> "The said Virginia commission hereby stipulate and agree by and with the advice and approval of the attorney general of Virginia, that, in their judgment, it is needful and proper, in order to protect the interests of the state and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States, asking for an adjudication and settlement by that court of the matters aforesaid unsettled and undetermined between the two states, arising and growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the act of the General Assembly of Virginia of March 6, 1900, referred to in the said contract of December 14, 1904; and the said Virginia commission acting by and with the advice and approval of the attorney general of that state, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said act of the General Assembly of Virginia and the joint resolution of the General Assembly of March 6, 1894, also referred to in said contract of December 14, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia, as to the deferred certificates placed subject to the control of the commission

as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said commission, notwithstanding the institution and pendency of such suit.

"And the Virginia commission do further undertake and agree that, in accordance with the terms and conditions of the said joint resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said commission with that State, either by means of an adjudication or a recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agree on behalf of the depositors of said deferred certificates so placed to the control of the said commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates, and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

"It is further understood and agreed that if from any cause the said commission shall fail or be unable to bring about such adjustment or settlement, or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said commission to restore to the control of the said Depositing Committee all such deferred certificates as may have been

placed subject to the control and disposal of the said commission as aforesaid."

(Plaintiff's Bill, pp. 84-86.)

We have thus given in brief outlines the material facts appearing upon the face of the record of the bill and its exhibits, and which declare the true and legal status of this suit at its very threshold.

The Propositions Raised by the Demurrer.

The case as made by the bill and its exhibits presents several vital points for consideration arising upon the demurrer interposed by the defendant, which may be thus particularized:

I. Is this a controversy between two states within the meaning of section 2, art. 3 of the Constitution?

II. Does the complainant have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her standing in a court of equity?

III. Have not the real owners of these certificates such a substantial interest and right of ownership therein as to make them indispensable parties, and whose presence would oust the court of jurisdiction in respect to this feature of the bill?

IV. Does the fact that the commissioners of the Sinking Fund and Literary Fund of Virginia have in their possession certain small portions of these certificates thus issued by the plaintiff to herself give her any cause of action against the defendant in respect thereto?

V. Does the claim for property transferred by the plaintiff to the defendant contained within the boundaries of the territory out of which West Virginia was erected into an independent state, create any right of action on the part of Virginia against her for the value of this property?

VI. If this does afford the plaintiff a cause of action must it not be asserted at law, and not in a court of equity?

VII. Does the bill disclose any authority from Virginia directing a suit for the recovery of the value of property transferred by her and used by the defendant?

Relation of Virginia to the Old Debt.

In determining whether the bill and its exhibits present a controversy between two states within the meaning of section 2, article 3, of the Constitution, the relation of Virginia to her old debt will not be overlooked. Before the formation of West Virginia it must be conceded that Virginia was morally and legally bound for the whole debt which she had created by the issuance and sale of her bonds. At that time her entire territory was intact and all her resources unimpaired, in so far as they were not affected by the ravages of war, for which, of course, her creditors were not responsible.

In 1862, of her own accord, she parted with a portion of her territory, and gave her free consent to the creation of a new and independent state out of the territory by her thus surrendered. This, however, did not impair her liability upon this debt, nor any part thereof, to her creditors holding the bonds which she had issued, or in any manner lessen her obligation for their payment.

This must be conceded upon the well recognized principles of international law.

Higginbotham *v.* The Commonwealth, 25 Gratt. (Va.) 627.
Taylor, Int. Pub. Law, pp. 203, 204, Sec. 166.
Halleck, Int. Law Vol. 1, p. 76.
Hall, Int. Law, Sec. 27.

Mr. Taylor in his recent and very able and clear treatment of the effect of a dismemberment of a state upon its obligations, presents the subject in two aspects: First, when a portion of its territory and population have been taken by conquest to form an integral part of another state; second,

when the severed territory is erected into a new and independent state. We are interested in the latter feature of the subject, upon which this distinguished author says:

> "A narrower and more technical rule prevails when the parent state is deprived of a portion of its territory which is erected into an entirely distinct political community. The cogent reason in such case is that as a man who loses an arm or leg in battle is not thereby relieved of any part of his obligations, so a state that is so dismembered as to suffer no loss of identity remains bound as before for its entire general indebtedness. 'Such a change,' says Hallock, 'no more affects its rights and duties than a change in its internal organization, or in the person of its rulers. This doctrine applies to debts due to as well as from the state, and to its rights of property and treaty obligations, except so far as such obligations may have particular reference to the revolted or dismembered territory or province.' In other words, as the old state continues its corporate life without interruption, it retains all general state property, and all general benefits resulting from treaties, with full liability for all general obligations with which the new creation taken from its side may disavow all legal connection."

The high moral obligation and legal duty on her part to meet her indebtedness still remained, with the right to treat, upon terms fair and just, with her creditors, for its adjustment and settlement. Accordingly, therefore, Virginia proposed to treat with her creditors with reference to the debt she had contracted, and submitted to them through her legislative department a proposition for its adjustment and ultimate liquidation. The terms of settlement were those which she herself proposed, and were met by her creditors in a broad spirit of liberality and compromise.

As the basis of settlement Virginia offered to pay two-thirds of her old or original debt by the issuance of new bonds by her, resting this proposition upon the consideration that one-third of her territory had passed to the new

state after the debt had been contracted, proposing to issue contemporaneously with such new bonds certificates payable by West Virginia, for the other third of the debt, which Virginia did not feel inclined to pay for the reason just stated, and these certificates were accepted by the creditors without recourse upon Virginia, in payment or settlement of this one-third of her debt, thereby releasing Virginia from the payment of the one-third of her old original debt.

Thus Virginia adjusted and settled her former indebtedness contracted prior to June 20, 1863, on the basis and upon the terms fixed by herself and by negotiations to which she and her creditors alone were parties.

As a part of the consideration of this settlement with her creditors, Virginia agreed to aid them in collecting these certificates from West Virginia, amicably if she could, but by an action if necessary.

By this composition with her creditors Virginia extinguished her old debt—the one for any part of which West Virginia was, or could have been made, liable to the owners or holders thereof—and created a new debt of her own, in the creation of which West Virginia had no part or agency.

This new debt Virginia herself recognizes as her own, for which she alone is liable, and does not by this suit, or in any other manner, seek to make West Virginia liable, or for any part thereof.

This new debt, founded upon the consideration of a liability attaching to the old one, constitutes a valid and subsisting obligation of Virginia, and her promise to aid the holders of the certificates issued by her against West Virginia is a mere collateral agreement, and does not add to or detract from the validity of the new debt.

Thus it will be perceived that Virginia has discharged her obligation to her creditors arising from the debt which she contracted before the division of her territory, and in that debt she is no longer interested pecuniarily, and that

the only persons who are so interested are the owners of the certificates representing the one-third of the original debt.

The only claim which the holders of these certificates have upon Virginia, so far as these certificates are concerned, rests upon her promise to aid in their collection, which is but collateral, and can only be construed to mean that she will exert her moral influence to constrain West Virginia to recognize so much of the old debt as may be represented by the aggregate of these certificates.

The Status of West Virginia with Reference to the Old Debt of Virginia.

Initiatory to the formation of the new state, on August 20th, 1861, Virginia, through the convention which had restored the government of the State of Virginia, promulgated an ordinance to provide for the formation of a new state out of a portion of that state, in which, among other things, is the following declaration as to the debt of Virginia:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of the said debt was contracted and deducting therefrom all the moneys paid into the treasury of the commonwealth from the counties included within the said new state during said period."

This is Virginia's own declaration made as aforesaid as to how West Virginia's part or share of the old debt shall be ascertained and determined. And if the same were obligatory, the means of reaching a proper conclusion on this basis have always been within the possession and exclusive control of Virginia. They are to be found in her own

archives of state, which have at all times been in the custody of her own officers.

The Constitution of the new state at the time of her admission into the Union contained with reference to said debt, the following provision:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

The constitution containing this clause was framed and adopted subsequently to the adoption of the ordinance aforesaid by the State of Virginia.

The ordinance and legislation of Virginia looking to and providing for the erection of a new state out of a part of her own territory, were adopted and passed without the privity or consent of her creditors.

Then upon the division of the territory of Virginia, if the obligation of West Virginia, as claimed by some, to the creditors of Virginia became a joint liability as to which the two states were bound, and it appears to have been so regarded by Virginia, as the course she has pursued with reference thereto would seem to indicate, this suit as to said debt cannot be maintained.

Because, when the creditors of Virginia accepted new bonds in payment of the old bonds and surrendered the latter for cancellation and such cancellation was effected, all liability upon the part of West Virginia ceased and determined, and the issuance of certificates by the State of Virginia, mere *ex parte* memoranda, to be paid by West Virginia, was a mere gratuity which could not operate as a modus to give vitality to any part of the old debt which Virginia had fully discharged by her own composition with her creditors.

Here was an act of one claiming to be jointly liable with another whereby that one pays in new evidences of debt two-thirds of it, with an agreement of release as to the entire liability which must by the very act itself operate as a discharge of the other debtor. This must be the effect upon the well recognized principle of the law of contracts that the discharge of one joint obligor relieves the other from liability, in the absence of a valid stipulation to the contrary to which the parties in interest are privy.

It may be contended, however, that the principle here relied on does not apply to the transactions of sovereign states in matters of public concern. Nevertheless, when governments come into courts of justice for the determination of a controversy, they submit themselves to the ordinary rules of law which govern in such cases, and the same principles which would apply to private persons are also applicable to them. When they become suitors they no longer occupy the lofty attitude of sovereigns, so as to place themselves above and beyond the ordinary standards of right and wrong, but in the very nature and condition of things, these standards must be invoked or the courts themselves could not act as judicial tribunals.

If this were not so, the court's proceedings would necessarily be discretionary and capricious, without any established rules to govern their action. This is the principle which obtains and governs in cases of this character, even though the proceedings be by suit in equity.

United States *v.* Bank of the Metropolis, 15 Pet. 377; 10 L. ed. 774.

United States *v.* Flint, 4 Sawy. 42 Fed. Cas. No. 15,121.

United States *v.* Union Nat'l Bank, 10 Ben. 408, Fed. Cas. No. 16,597.

Rhode Island *v.* Massachusetts, 12 Pet. 657, 738, 743.

9 L. ed. 1233, 1266, 1267.

This is Not a Controversy Between Two States.

As already shown, Virginia has been released from the payment of one-third of her debt contracted before the formation of West Virginia, and has arranged for the payment of the two-thirds thereof by new bonds issued by her, and that she has no substantial interest in the third thereof for which she issued her own certificates without recourse upon herself, to be paid by West Virginia, the old bonds having been surrendered and canceled.

The record discloses that she has no interest in these certificates, as they impose no obligation upon her, and leave the creditors without any right of action or demand against her upon the failure or refusal of West Virginia to assume their payment. It also appears from the record of the bill and its exhibits that upon the failure of the commission into whose hands these certificates were placed to collect these certificates, that they are to be surrendered to the committee representing the owners thereof, and in the event that suit should be brought by Virginia against West Virginia, that the owners are to defray all expenses including the fees of counsel, and that no decree can be entered in this cause that will inure to the benefit of the plaintiff.

No one can examine the bill and its exhibits in this suit without being satisfied beyond all doubt that it is in legal effect commenced and now prosecuted, so far as said certificates representing the old debt are concerned, solely by the owners thereof and for their benefit and not for the State of Virginia. No decree as to these certificates can inure to the benefit of Virginia. Her only relation to them is her assurance to their holders that she will aid them by bringing suit in reference thereto at the expense of the owners. She is the merest nominal plaintiff carrying on the suit in her own name with an immunity from all costs of any character whatsoever.

This suit is governed, so far as the demand respecting the old debt of Virginia is concerned, by the well settled principles already laid down by this Honorable Court in the following cases:

New Hampshire *v.* Louisiana, and New York *v.* Louisiana, 108 U. S. 76, 27 Law. ed. 656.

See also in this connection *Re* Hartung, 98 Wis. 140, 73 N. W. 988; People *v.* General Electric Ry. Co., 172 Ill. 129, 50 N. E. 158.

To create a controversy between two states, it seems to us that there must be an assertion of a substantial right of one state as such which is denied or repudiated by the other, and which relates to the interests of each as states, and that the determination of the issue thus raised will promote or secure some substantial right of the one or the other of these states as states.

This may be illustrated by some of the decided cases, in each of which it was held that the contention involved a controversy between states.

New Jersey *v.* New York, 5 Pet. 285, 8 L. ed. 127; Rhode Island *v.* Massachusetts, 12 Pet. 657, 9 L. ed. 1233; Florida *v.* Georgia, 11 Howard 293, 13 Law. ed. 702; Virginia *v.* West Virginia, 11 Wall. 39, 20 L. ed. 67, were cases in equity and all involved state boundaries; Pennsylvania *v.* Wheeling Bridge Company, 9 How., 657; 13 L. ed. 294; S. C. 11 How. 528, 13 Law. ed. 799; S. C. 13 How. 518, 14 Law. ed. 249; S. C., 18 How. 429, 15 Law. ed. 436, was a case in equity involving the free and unobstructed navigation of the Ohio river which caused a special damage to the plaintiff state for which there was no adequate remedy at law.

These cases just cited present an exercise of jurisdiction in cases directly affecting the property rights and interests

of a state and that over lands and their inhabitants claimed by the states themselves.

Missouri *v.* Illinois, 180 U. S. 206, 45 L. ed. 497, involved a case in which the health and comfort of the inhabitants of a state were threatened.

South Dakota *v.* North Carolina, 192 U. S. 289, 48 L. ed. 488, was a suit in which the plaintiff sought the enforcement of the payment of a debt belonging exclusively to the plaintiff and no one else had any interest therein, and the jurisdiction was sustained by a majority of the court.

In the suit now before the court what interest can Virginia claim against West Virginia in certificates that do not belong to her and in which she can assert no interest? She cannot maintain a suit to vindicate her integrity in the matter of the issuance of these certificates. This is entirely too flimsy to constitute the basis of a controversy, and besides this, the act or its motives has not been assailed or questioned by West Virginia.

The conclusion is irresistible that Virginia has no interest in this suit so far as it is designed to enforce payment of the debt represented by said certificates, that it is being prosecuted for their owners and that as to such matters there is no controversy between the two states, and that the bill as to this matter must be dismissed.

II.

THE COMPLAINANT HAS NOT SHOWN SUCH INTEREST IN THE DEFERRED CERTIFICATES AS GIVES HER ANY STANDING IN A COURT OF EQUITY.

Does the Commonwealth of Virginia have such an interest in the subject matter of litigation or in the result thereof, so far as the deferred certificates are concerned, as to give her any standing in a court of equity in relation thereto?

As we have already seen, the former owners of the old debt are the present owners of these certificates; that they were placed in the hands of a committee whose members these owners had chosen, and this committee delivered the certificates to a commission selected under a joint resolution of the General Assembly of Virginia, who were empowered to collect these certificates for the owners at the sole expense of such owners.

The right of Virginia to maintain a suit as sole plaintiff therein, must be determined by the well settled rules of equity practice as recognized and enforced by the English Court of Chancery, and as understood and applied by this Court.

Virginia has no interest in these certificates, nor can her interests be in any manner affected by a decree in relation to these certificates.

She is not a guarantor because their issuance is based upon the condition of her non-liability in any event, and as a consideration of her release from all liability upon these certificates, and the portion of the debts represented by them, she issued new bonds for her old debt, and was acquitted from all obligation as to these certificates. In what way can she be interested in this suit so far as it relates to these certificates? Does her interest at most exceed that of

a mere committee representing the holders thereof? Has she any connection with them except by her agreement to aid their holders in an effort to enforce their collection? Has she not constituted herself a mere medium for the institution of this suit in her own name for the use and benefit of the holders and owners of these certificates?

If she has any connection with this part of the suit it is as its mere promoter, by virtue of her promise to the holders of the certificates—an agent for them—only an instrumentality for the institution of this suit.

This is not such interest as to support a suit in equity. The plaintiff's interest must be as substantial and certain as that of the defendant.

A person having no interest, legal or equitable, in land, beyond a mere possession, cannot maintain a bill in respect thereto.

Smith *v.* Hollenbeck, 46 Ill. 252.
Smith *v.* Brittenham, 109 Ill. 540.

> "A complainant in chancery must have an interest in the subject matter of the controversy. Unless a complainant has some interest in the property in controversy his bill cannot be maintained."
> Smith *v.* Hollenbeck, *supra.*

In Smith *v.* Brittenham, *supra,* the court in its opinion, discussing the insufficiency or want of interest in the plaintiff to maintain the suit, says:

> "It is a well recognized rule that in equity the party having the beneficial interest in the subject matter of suit must sue in his own name for any invasion of his rights in respect thereto, although the legal title thereto may be in another. (Frye *v.* Bank of Illinois, 5 Gilm. 332; Elder *v.* Jones, 85 Ill. 384; Moore *v.* School Trustees, 19 *id.* 83.) It is also settled that no one, in the absence of statute authorizing it, can maintain a suit in chancery with respect to real estate to which he has neither the legal nor equitable

title. (Bowles *v.* McAllen, 17 Ill. 30; Horace *v.* Harris, 11 *id.* 24.) If such an interest in the plaintiff is indispensable to the commencement of this suit, as will be conceded, the conclusion would seem to follow that where a party having such interest commences a suit, and before any hearing or disposition of the cause upon the merits, voluntarily transfers his interests to another, and the same is made to appear of record, as is the case here, the whole proceeding will become so defective for want of proper parties, that no valid decree can be entered in the cause until the complainant's assignee, by supplemental bill or otherwise, makes himself a party complainant to the suit—and this, indeed, is the well recognized doctrine and practice in such cases. Mason *v.* York & Cumberland R. R. Co., 52 Me. 82."

"Where the wrong complained of is one in which the State has no direct interest, any more than it has in an ordinary controversy between individuals, the State is not a proper party plaintiff, and the suit should be instituted by the particular individual who will be injured."

10 Enc. Pl. & Pr. 903, 904, and the very numerous cases cited in Note 1.

"The rule is fundamental that no person can maintain a suit respecting a subject matter with reference to which he has no interest, right or duty, either personal or fiduciary."

Hogg's Equity Procedure, sec. 37, p. 40, citing Baxter *v.* Baxter, 43 N. J. Eq. 82, 10 Atl. Rep. 814; Ashby *v.* Ashby, 39 La. Ann 105, 1 So. Rep. 282.

In Ashby *v.* Ashby, *supra*, the syllabus of the case is as follows:

"An action can only be brought by one having a real and actual interest which he pursues. So, where one claiming to be a judgment creditor of another seeks to annul a mortgage executed by the latter in favor of his children on the ground of fraud, and the record shows that the judgment on which the suit is

> founded is not in favor of the plaintiff, but in favor of her minor children for whom she was tutrix, and who had attained their majority before the action of nullity was brought, and they did not join in the action, the suit must be dismissed."
>
> "Where a bill is filed for relief, it must be prosecuted in the name of the real party in interest."
>
> Oakley v. Bend 13th Edw. Ch. (N. Y.) 482.

The doctrine here cited is supported by numerous authorities, among which are the following:

> Field *v.* Maghee, 5 Paige (N. Y.) 539; Rogers *v.* Traders' Ins. Co., 6 *id.* 583; Sedgwick *v.* Cleveland, 7 *id.* 267.

It can not be contended that because the State of Virginia has constituted herself an agent or representative of the holders of the certificates mentioned in the plaintiff's bill that this gives her any right to maintain the suit in her own name.

From the opinion delivered in Oakley *v.* Bend, *supra,* we take the following:

> "A person who is a mere agent to sue for and collect money under a power of attorney, can not be a party to a bill for an accounting in his own name, nor be joined as a co-plaintiff with his principal. King of Spain *v.* Machado, 4 Russ. 225, 240, recognized in Clarkson *v.* Depyester, 3 Paige, 337, as good ground of demurrer. As a general rule, if an agent institutes a suit under an authority from his principal, he must do so in the name of his principal. Lee *v.* Thomas 2 Ves. 313. And see Calvert, Parties, 229, 232, for the authorities on the subject."

The doctrine set forth in these authorities and cases is so firmly settled that further discussion or citation would seem superfluous, and an annoyance to, and tax upon the time and patience of the court required for their notice or examination.

III.

THE REAL OWNERS OF THE DEFERRED CERTIFICATES HAVE SUCH A SUBSTANTIAL INTEREST AND RIGHT OF OWNERSHIP THEREIN AS TO MAKE THEM INDISPENSABLE PARTIES, WHOSE PRESENCE WOULD OUST THE COURT OF ITS JURISDICTION.

The practice in this court in cases in equity is regulated by the former practice of the courts of chancery in England. And in cases of original jurisdiction it will frame its proceedings according to those which had been adopted in the English courts in analogous cases, and follows the general rules of that court in conducting a cause to a finality.

California *v.* Southern Pacific Railroad, 157 U. S. 229, 249, 39, L. ed. 683, 690.

The only instance wherein the court will deviate from or refuse to follow this practice is when it impairs the case by unnecessary technicalities, or defeats the purpose of justice.

California *v.* Southern Pacific Ry. Co., *supra;* citing Florida *v.* Georgia, 58 U. S., 17 How., 478, 15 L. ed. 181.

The general rule as to parties in equity as followed in English chancery practice, was well settled at the time the jurisdiction of the Supreme Court of the United States was created, and is thus laid down by Mr. Daniell:

> "It is the constant aim of a court of equity to do complete justice by deciding upon and settling the rights of all persons interested in the subject of the suit, so as to make the performance of the order of the court perfectly safe to those who are compelled to obey it, and to prevent further litigation. For this

> purpose all persons materially interested in the subject ought, generally, either as plaintiffs or defendants, to be made parties to the suit, or should have served upon them a copy of the bill, or notice of the decree, to have an opportunity afforded of making themselves active parties to the cause if they should think fit."
>
> 1 Daniell's Ch. Pl. & Pr. (4th Am. Ed.) 190.

This rule under some circumstances, not important to be considered here, may be dispensed with when its application becomes extremely difficult or inconvenient.

Equity Rule 48.

This court, in Caldwell *v.* Taggart, 4 Pet. 190, 7 L. ed. 828 says:

> "The general rule is that however numerous the persons interested in the subject of the suit, they must all be made parties plaintiff or defendant, in order that a complete decree may be made; it being the constant aim of a court of equity to do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject of the suit; to make performance of the order perfectly safe to those who have to obey it, and to prevent future litigation."

In Barney *v.* Baltimore, 73 U. S., 6 Wall., 280, 18 L. ed. 825, speaking with reference to the subject of parties, the court decides as follows:

> "Courts of chancery will refuse to make a decree where, by reason of the absence of persons interested in the matter, the decree would be ineffectual, or would injuriously affect the interests of the absent parties."

In Shields *v.* Barrow, 58 U. S., 17 How., 130, 15 L. ed., 159, the subject of parties to suits in equity received a very thorough consideration at the hands of the court, whose opinion was delivered by Mr. Justice Curtis, and in which he

classifies parties to a bill in equity as follows: Formal parties; second, necessary parties; third, indispensable parties. Those under the second class include all persons having an interest in the controversy, and who ought to be made parties in order that the court may act upon that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice by adjusting all the rights involved in it. If the interests of this class of parties are separable from those of the parties before the court, so that the court can proceed to a decree and do complete and final justice without affecting other persons not before the court, then the latter are not indispensable parties.

Those coming under the third class are those persons who not only have an interest in the controversy, but an interest of such a nature that a final decree can not be made without either affecting the interest, or leaving the controversy in such condition that its final determination may be wholly inconsistent with equity and good conscience.

This well considered opinion, which has been followed in many subsequent cases, contains several illustrative cases of the rule here announced as to the classification of parties to a bill in equity.

One of the points in the syllabus of the last case cited states the rule as follows:

> "Persons having rights which must be affected by the decree cannot be dispensed with."

In the case before the court the holders of the deferred certificates, who own both the legal and equitable title thereto, are not made parties. The only plaintiff seeking relief is the State of Virginia, who has brought the suit in her own name without any title to this part of the subject matter of the suit, and without any direct or substantial interest in the result thereof. The purpose of this suit is to settle the liability of West Virginia on these deferred certificates to the owners and holders thereof, and any decree which is rendered in this case must relate solely to their rights. The court can

not enter any decree with reference to these certificates which must not necessarily affect the interests of these outstanding owners and holders, who are not before the Court either as plaintiffs or defendants.

The purpose of the bill is not only to fix a liability on the State of West Virginia for the payment of these certificates, but also for an accounting to determine the extent of this liability. So it is clearly and at once perceivable that the holders of these certificates are vitally interested as to both of these purposes of the suit.

Therefore, as these persons have no opportunity to be heard, and as the decree can not bind them, the court cannot, for that very reason, afford any relief to the nominal plaintiff, the Commonwealth of Virginia, in this suit.

Suppose it be contended that these bonds are now held by the Commission created by the State of Virginia, apparently possessing powers to act as a corporate body, to negotiate with reference to these certificates, and that this commission holds the bonds in trust, as it evidently does, for the bond holders. Would not the Commission at least, acting in its fiduciary capacity, be an indispensable party to this suit? Could the State of Virginia, divested of all interest in these certificates, sue in her own name both for this commission and the beneficiaries, who are the owners of these certificates? This Commission being a creature of the legislature of Virginia, endowed with corporate capacity to act in furtherance of the objects of its creation, is evidently interested in carrying into effect the steps which it has taken to secure the payment of these evidences of indebtedness.

But defect of parties may ordinarily be remedied by an amendment of the bill in such a manner as to cure this defect, and thus avoid the effect of a demurrer for want of parties. This is the general or ordinary rule—the one usually observed by the courts. Indeed, a court ought not to dismiss a bill and deny relief where the only obstacle to the granting of relief is the want of essential parties, when the bill may be relieved from this objection by amendment.

This case, however, constitutes an exception to this rule. It must be clearly apparent that the relationship of the owners or holders of the certificates, to the suit, if brought into the case, must be that of plaintiffs; and as they are numerous, a few could join, suing on behalf of themselves, and all others similarly situated, and thus avoid the inconvenience of large numbers appearing on the record as plaintiffs in the suit. They would be the real plaintiffs, with the State of Virginia as a mere nominal party, thus creating a suit by individuals against a state of the Union, which is prohibited by the Constitution.

If an amendment were thus permitted so as to bring the Commission as the Trustee into this case as a party plaintiff, or this Commission together with the owners as co-plaintiffs with the State of Virginia, there would be presented a case in which the real parties in interest as individuals are the plaintiffs, in which a state with no interest and as a mere nominal party would be joined, thus allowing an individual to do by indirection associated with the state as a nominal party what he would be prohibited from doing in his own name. An evasion of this sort will not be permitted by the court, and the bill in this regard is not amendable, and the court on this consideration alone has no jurisdiction of that part of the bill seeking to establish the liability of West Virginia on these deferred certificates, and the extent of such liability.

If, however, the State of Virginia should ask to amend her bill by making the Commission as Trustee and holder of these certificates a party defendant, in order to give these owners and holders representation in the suit, if this could be done in the absence of the real parties in interest, then the court would have no jurisdiction under the principles laid down by this court in numerous cases which are cited and reviewed in the opinion announced in California *v.* Southern Pacific Co., 157 U. S. 229, 39 L. ed. 683. So, we perceive that as to this feature of the bill now under consideration, the court has no jurisdiction in any aspect of the case, nor can any amendment be made so as to give this court jurisdiction.

IV.

THE FACT THAT THE COMMISSIONERS OF THE SINKING FUND AND LITERARY FUND OF VIRGINIA HAVE IN THEIR POSSESSION COMPARATIVELY SMALL PORTIONS OF THE SAID CERTIFICATES ISSUED BY THE PLAINTIFF DOES NOT GIVE THE PLAINTIFF ANY CAUSE OF ACTION AGAINST THE DEFENDANT.

The commissioners of these two funds are mere state agencies or instrumentalities created by the Commonwealth of Virginia, to care for and preserve certain of her own financial resources, available for specific purposes, and which belong exclusively to Virginia. A few of the old bonds of Virginia issued prior to 1861 were by her converted into immediately available money by being deposited with these commissioners, and were therefore never sold and the title transferred from her so as to create a liability against the State herself, and hence at no time was there ever any right of action or liability on account of these old bonds so deposited with the said commissioners which could properly be asserted against the old state. In other words, these few old bonds deposited with these commissioners did not create any debt against the State of Virginia. At no time or under any circumstances could these bonds have been made or become a legitimate subject matter of controversy or suit against the Commonwealth of Virginia. To make them such, would present the grotesque spectacle of a sovereign state suing herself, for an accounting and payment to herself of her own funds, already under her absolute control.

Again there can be no liability in favor of the State of

Virginia against the State of West Virginia on these bonds so held. The moneys in the sinking fund which purchased these bonds previous to the first day of January, 1861, were raised by the revenues of the entire State before the division, and they were therefore the property of such entire State, and being in the ownership of the State itself, the debtor, they were a dead asset both as to that portion of the State which passed into the new State and the State of Virginia as she remained, and Virginia claiming to be such owner has no more right to institute and prosecute a suit thereon against West Virginia than would West Virginia if a similar bond had fallen into her possession. If there is any liability in respect to said bonds it is a liability of the State of Virginia to the State of West Virginia for a portion thereof.

Then if this were the status of Virginia as to the old bonds held by the commissioners of her Sinking Fund and Literary Fund, prior to 1861, and which remained unchanged at the time of the formation of the State of West Virginia, could their refunding and the issuance of the deferred certificates as to the one-third of them alter this status with reference to her right of suit thereon, or any part of them? The very propounding of the question must evoke a negative answer.

The idea of debt necessarily implies an obligation payable by the debtor to some third party—a creditor existing independently of the debtor, and over whom, as to the obligation asserted, the debtor can have no control, and in the use or disposition of which the debtor has no right or interest whatever.

How then—upon what principle—upon what ground or reason—can Virginia claim that the old bonds placed by her with her Commissioners of the Sinking and Literary Funds, were or are now any part of her *ante bellum debt?* We are wholly unable to perceive any. In fact, there is none.

If it be contended that the commissioners of the Sinking and Literary Funds are distinct entities from the State, persons clothed with an existence distinct and separate from the Commonwealth, with the right to assert a liability against Virginia on account of these old bonds acquired by them prior to the erection of the territory contained within the boundaries of West Virginia into a state, then and in that event this court cannot entertain jurisdiction of this suit, because these commissioners are necessary parties thereto, and the commission having been created and existing under and by virtue of the laws of Virginia, must be a citizen of Virginia, and if a distinct entity, it must necessarily be a corporation having its domicile in Virginia, where it was created.

Thus, we perceive that in any aspect of the case, the court has no jurisdiction of this suit so far as the certificates belonging to these commissioners are concerned. In fact, this feature itself of this cause constitutes no ground of controversy between the parties to the bill.

V.

THE CLAIM FOR PROPERTY TRANSFERRED BY THE PLAINTIFF TO THE DEFENDANT CONTAINED WITHIN THE BOUNDARIES OF THE TERRITORY OUT OF WHICH WEST VIRGINIA WAS ERECTED INTO AN INDEPENDENT STATE CREATES NO RIGHT OF ACTION ON THE PART OF VIRGINIA FOR THE VALUE OF THIS PROPERTY.

In February, 1863, the General Assembly of the State of Virginia passed the following Act, declaring:

> "That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the President and Directors of the Literary Fund, or the Board of Public Works thereof, or any person or persons for the use of this state, to the extent of the interest and estate of this State therein; and shall also include the interest of this state, or of the president and directors, or of the said board of public works, in any parent bank or branch doing business within the said boundaries and all stocks of any other company or corporation, the principal office and place of business whereof is located within the said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any other person or persons for the use of this state.

> "That if the appropriations and transfers of property, stocks and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state provided that no such property, stocks and credits shall have been obtained since the organization of the state government."

The bill of complaint relating to this property makes the following allegation:

> "Your oratrix is informed, believes, and so charges that the property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate, to several millions of dollars, the exact amount your oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this act, the State of West Virginia realized and received into her treasury, from the sale thereof, about six hundred thousand dollars, and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

It will be observed that all the property mentioned in this act was located within the territory comprised within the boundaries of West Virginia, and was designed for the use of the latter in the formation of a state government and in promoting the purposes of its establishment. The parent state parted with certain of her own territory and resources to create a new state within her own boundaries and to exercise over a part of her own people the powers of government, to be thereafter created by them, and to assume all the burdens and responsibilities incident to a state, and to erect for themselves all public institutions necessary to conduct the operations of the government of the new state, thus proposed to be created. Virginia in this act proposed new duties and

obligations for a part of her own citizens, and at the same time declared in her own halls of legislation what should be done by the new state which then had no existence, but which she, by her own act and that of the general government, designed to bring into existence, by parting with the very property which she intended should be used by the new government and a part of the people of Virginia would share in the benefits and advantages thus afforded.

Now can Virginia by her own act create an obligation to be assumed by a state not then in existence and which she by her own acts aids in creating? Can she, in this act, declare that a creature not then in being, shall account to her for property which she herself really bestows upon a part of her own citizens, and who, in the true sense of the term, are the real owners thereof, and when she has thus freely bestowed her own bounty upon her own citizens, make a demand thereafter upon the new government when it has been established, and that too when this new government is to extend to a large part of the citizens of Virginia full protection in the enjoyment of all their absolute and social rights? If so, upon what legal or moral principles can such a claim be predicated? The parent thus transfers all the burdens of her own government to a new state, created in her own boundaries, divesting herself of all responsibility for the conduct and safety of a large part of her former population and imposes upon another sovereignty these very obligations which she herself had borne, and that, too, by her own act, and now seeks indemnity and compensation from this sovereignty for performing a duty of which she herself has been relieved by her own act and concession.

By this act Virginia simply declared to a part of her own citizens that they could organize themselves into a government in a part of her own territory and thus become an independent state. These citizens of Virginia were the promotors and she co-operated with them to the end that a new state might be formed.

It will not be overlooked that the territory of Virginia was divided in 1863 while she retained her own identity and institutions, and out of the territory which she surrendered, and within it, a new state arose.

This is not the case wherein one state is treating with another, whereby one state cedes a part of her territory to be added to the domain of the latter. In such case she could stipulate the terms of the cession, which would constitute a compact between the two states enforceable as a binding obligation. Their attitude towards each other would be that of two independent and competent contracting parties.

Here the attitude of Virginia is very different. She, on the one side, proposes that a new state may be organized if the National Government will assent to its admission into the Union. She cannot propose conditions in advance of the creation of the new state, and enforce them against it as the price of property within its own territorial limits. This would constitute a mere *nudum pactum*. It would be without consideration because whatever is within the boundaries of the new state belongs to it, both upon reason and authority.

> "The new State on its part carries with it only local obligations, and whether contracted for local objects or secured by a lien on local revenues, and such local duties as arise out of agreements to maintain the channel of a river or to levy no more than certain tolls along its course. As a compensation for such burdens the new state is entitled to property within it of a local character, or to such, not within it, as belongs to state institutions localized there, and to the privileges arising from treaties specially contracted for the benefit of its territory, such for instance as contain demarcations of its boundaries, and such as secure to its inhabitants, or a part of them, the right to navigate streams running through other countries from its frontiers." Taylor, International Public Law, p. 204, citing Hall's Treaties on International Law (4th Ed., Oxford.) Sec. 27.

So if the new state is entitled to property within it of a local character, or to such not within it, as belongs to state institutions localized there, upon what principle can Virginia base a claim for the value of property within the territory of the new state of West Virginia? She cannot found it upon the doctrine of public international law. Neither can she found it upon an act of her own legislature, nor can she do so upon any act or agreement upon the part of West Virginia, for West Virginia did nothing, nor has she done anything to authorize it, as the new state was not a party to the agreement. Virginia has no claim and can have no claim for property, real or personal, localized or pertaining to or belonging to institutions localized in the territory out of which West Virginia was formed. She cannot base this claim upon treaty or compact, because at the time she declared by her own act of assembly that this property was to be taken by the new state when it came into being, there was no representative to act on behalf of the proposed new state so as to accept a cession of property upon terms proposed by the owner. This act of assembly could not be construed as a treaty between the state of Virginia and the proposed new state, as this was a mere *ex parte* act emanating from Virginia alone, and a treaty in its humblest and narrowest aspect, "is a mere agreement between states for the settlement of their current interests or controversies, made either with a tacit admission of the existence of the common law of nations, or with the express stipulation that some principle of that law shall be changed or modified in a particular case." Taylor, International Law, p. 93.

Hence the making of a treaty necessarily presupposes and assumes the presence and participation in its negotiations of two sovereign powers capable of acting. Another reason why it could not be referable to treaty is that one state cannot enter into a treaty with another state without the consent of Congress. In February, 1863, when this act of assembly was passed, upon which Virginia rests her claim

as presented by this feature of the bill, West Virginia had not been fully created and organized. Now, then, shall Virginia passing the title of property by her own act and imposing terms both unfair and unfounded upon the principles of public law, assert a claim to the value of this property when conditions have changed and the new sovereignty finds herself in possession of this property which is within her own territory, and actually necessary for the legitimate purposes of the new government? But it may be said or contended that if West Virginia is liable for her equitable portion of Virginia's public debt, is she not also liable for the public property of Virginia localized in the territory of the new state, or belonging to any of the public institutions localized there? This admits of a plain and satisfactory answer in the negative.

West Virginia's attitude as to the public debt of Virginia was provided for by the ordinance of Virginia and the constitution of West Virginia, and in the absence of such provision, it can scarcely be contended that the State of Virginia could assert any liability against the State of West Virginia as to any part of said debt.

Furthermore, there is nothing in the record to show that Virginia, either by her Act of Assembly or by any act on the part of her governor, has authorized any demand upon the state of West Virginia for compensation for property situated in the territory now comprising the State of West Virginia.

The bill sets up a further claim for property predicated upon the Act of the General Assembly of Virginia passed on the 4th day of February, 1863, and which, according to the bill, is in the following language:

> "1. That the sum of One Hundred and Fifty Thousand Dollars be and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the United States.

> "2. That there shall be, and hereby is, appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated that may come into the treasury, up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of the State to make a statement of all the moneys that up to that time have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state."

After reciting this act the bill avers:

> "And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid."

The same reasons and principles apply to this item demanded by Virginia from West Virginia, because of personal property located within the territory comprised within the State of West Virginia, that is applicable to the demand of a similar character made in the bill by reason of the Act already quoted passed by the General Assembly of Virginia on February 3, 1863.

It does seem to us that this claim of Virginia, which she rests upon the two acts passed by the General Assembly of February third and fourth respectively, in the year 1863, is not only without foundation upon any principles of law or equity, but is most unjust and unreasonable.

It is quite apparent that Virginia demands that West Virginia shall pay one-third of the old debt of Virginia upon

the sole ground that she parted with one-third of her territory, and therefore, on that ground alone, West Virginia should be made to bear that proportion of her *ante bellum* debt to the holders thereof, while Virginia should meet and discharge the other two-thirds of this obligation.

Has it occurred to the authorities of Virginia that when she parted voluntarily with one-third of her territory, she at the same time retained all of her institutions, or nearly so, intact, with the means in her own control of continuing the operations of her state government, while the territory she parted with had to be erected into a state government, all the institutions necessary to its operation to be constructed, and great expense incurred in order to bring the territory into the status of an independent state and put her machinery of government into operation? In this aspect of the case, Virginia cuts off about one-third of her domain, containing a large percentage of her citizenship, sets them adrift without the means of government, and now demands not only that the new government erected out of this territory shall bear the burden of one-third of her public debt, but also pay to her compensation for "all lands, buildings, roads, and other internal improvements, or part thereof, situated within said boundaries, and vested in this State (Virginia), or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this State (Virginia), to the extent of the interest and estate of this State (Virginia) therein," and all other property within the boundaries forming said new state, as well as all money properly belonging to the institutions of the state of Virginia localized in these boundaries.

On the other hand Virginia refuses to recognize any liability for the one-third of this debt on the very arbitrary basis assumed by her for its adjustment, still retains intact all property and institutions of every kind and character within her own domains, demanding compensation also for every article of property of any value with which she parted,

and that too by her own act of legislation. She cannot in equity and good conscience make this two-fold demand. She must forego her claim upon West Virginia for the liquidation of any part of her public debt, or she must concede to West Virginia the absolute ownership in all the property localized within her boundaries. But she cannot now deal with the one-third of her old debt, because she is practically released from any liability thereon by reason of the acts and course pursued by her with the creditors themselves. The only parties that are now asserting any demand against West Virginia as to the one-third of the old debt of Virginia are the creditors themselves—the true and legal owners and holders thereof. The right to look to West Virginia for the payment of this one-third, if the right exists anywhere, necessarily resides in the creditors, and not in the State of Virginia. She, therefore, has left the demand as to one-third of the debt against West Virginia, so far as she herself is concerned, in the hands of the creditors, and no act of hers can now affect their substantial rights. She cannot, therefore, do anything at this time to release West Virginia from any part of the demand which the creditors are asserting against her through the medium of this suit nominally instituted by Virginia.

She is therefore referred to the only alternative in *foro conscientiae aut legis*, and that is, a relinquishment of her own demand for compensation for property left by her within the boundaries of the territory out of which the state of West Virginia was created. She can only, therefore, stand upon that feature of her bill which relates to her old public debt, and as to this feature of the case, as we have already shown, she is without standing in a court of equity.

VI.

THE PLAINTIFF CANNOT ASSERT THE CLAIM WHICH SHE SETS FORTH IN HER BILL IN A COURT OF EQUITY.

In considering the proposition that the plaintiff cannot assert the demand contained in the bill in a court of equity, we must keep in mind the relation which Virginia bears to that part of her *ante bellum* public debt which is sought to be made the subject of controversy in this suit. She disclaims at this time all liability to her creditors on account of the so-called equitable proportion thereof which she insists shall be borne by the state of West Virginia, at the same time averring that she has adjusted and settled two-thirds of the original debt by agreement and contract between herself and its owners.

It is patent upon the face of the bill and its exhibits, as hereinbefore stated, that the prosecution of this suit by Virginia is solely in the interests of the owners and holders of the deferred certificates issued by Virginia herself without recourse upon her, and set apart as a liability of West Virginia to the holders of the old obligations, which have been surrendered to the state of Virginia and by her cancelled in accordance with her own acts of legislation.

She therefore cannot come into a court of equity to assert a right of contribution against West Virginia. There are two clear and cogent reasons for this:

(*a*) First, the decree which she seeks to obtain cannot inure to her benefit, but only to that of the holders of the deferred certificates.

(*b*) Second, she must have paid everything for which she and the new state were jointly liable so as to relieve the new state from all liability before she can seek contribution from her joint obligor.

That this is the principle upon which rests the equitable right of contribution is the recognized and well settled doctrine of the courts.

Springer *v.* Foster, 21 Ind. App. 15, 60 N. E. 720.
Kirkpatrick *v.* Murphy, 3 N. J. Law 506.
Grove *v.* O'Brien, 1 Md. 438.
Rooker *v.* Benson, 83 Ind. 250, 256.
Zook *v.* Clemmer, 44 Ind. 15.
Pegram *v.* Riley, 88 Ala. 399, 6 South. 753.
Screven *v.* Joiner, 1 Hill Ch. 252, 26 Am. Dec. 199.

The rule is universal that the party seeking contribution must have paid more than his share in order to maintain a suit for contribution.

9 Cyc. 699; 3 Am. & Eng. Dec. in Eq. 163.

The demand made by Virginia which she claims arises out of the acts of her General Assembly, passed February 3rd and 4th, respectively, in the year 1863, whereby she transferred certain real and personal property belonging to her to be used by the new state when created and organized, if it has any validity, which is not conceded here, is purely a legal demand and one which cannot be asserted under any circumstances in a court of equity.

If it be an equitable demand, upon what principle or doctrine of equity does it rest? It is not secured by any lien; it is not in the nature of a trust; it rests upon no equities to be asserted in order to enter a decree or to make the claim available. It is simply a money demand for the value of property which the plaintiff claims was used and appropriated by the defendant for which payment should be made.

This court has declared in Scott *v.* Neely, 140 U. S. 106, 117, 35 L. ed. 358, that,

> "All actions which seek to recover specific property, real or personal, with or without damages for its detention, or a money judgment for breach of a simple

contract, or as damages for injury to person or property, are legal actions and can be brought in the federal courts only on their law side."

This principle is based upon the seventh amendment to the Constitution of the United States, which declares that,

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

In the federal courts this right cannot be dispensed with except by the assent of the parties entitled to it, nor can it be impaired by any blending with a claim, properly cognizable at law, of a demand for equitable relief in aid of the legal action or during its pendency. Such aid in the federal courts must be sought in separate proceedings, to the end that the right to a trial by jury in a legal action may be preserved intact.

Scott *v.* Neely, *supra,* in the opinion of the court.

Pursuing this provision of the organic law of the United States, the sixteenth section of the judiciary act of 1789, enacted that such suits "shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law;" and this prohibition is carried into the revised statutes of the United States.

Section 723.

This provision of the revised statutes "is simply declaratory of the rule obtaining and controlling in equity proceedings from the earliest period in England, and always in this country. And so it has been often adjudged that whenever, respecting any rights violated, a court of law is competent to render a judgment affording a plain, adequate and complete remedy, the party aggrieved must seek his remedy in such court, not only because the defendant has a constitutional

right to a trial by jury, but because of the prohibition of the Act of Congress to pursue his remedy in such cases in a court of equity."

> Scott *v.* Neely, *supra*, citing Hipp *v.* Babin, 60 U. S. 19 How., 271, 278, 15 L. ed. 633, 635; Lewis *v.* Cox, 90 U. S. 466, 470, 23 L. ed. 70, 71; Killian *v.* Ebinghaus, 110 U. S. 568, 573, 28 L. ed. 246, 248; Buzard *v.* Houston, 119 U. S. 347, 351, 30 L. ed. 451, 453.

As already stated, the demand asserted by Virginia for money and property localized within the boundaries of West Virginia is simply for a debt predicated upon the transfer of property by Virginia and appropriated by West Virginia after her creation and organization as a state.

The demand made by the bill in this respect is for the money mentioned in the Act of February 4th, 1863, and the value of the property designated in the Act of February 3rd of the same year.

On the common law side of the court this demand may be made the subject of an action of debt, or even of an action of assumpsit on the implied promise, if any legal liability exists, which is not here conceded, on the part of West Virginia to repay Virginia the money which she used and to compensate her for the property appropriated and used, the amount of which would depend upon its value.

Therefore, the demand in the case now before the court is the alleged debt due the complainant for this property which in no respect differs from any debt upon contract; it is the subject of a legal action only in which the defendant is entitled to a jury trial in this court.

But it may be contended that there is no precedent for the trial of an action at law in this court, in which a jury may be empaneled as in ordinary trials in actions at law instituted in the Federal Circuit Court. It may also be contended that this is an exceptional case to be tried in a court exercising

exceptional original jurisdiction, and that therefore the ordinary distinction between law and equity ought not to be observed and followed. If there were no precedent for this, there is no assignable reason why such a precedent should not now be made.

But this court has already declared that it will not entertain a suit in equity brought by a state where an adequate remedy at law exists.

In Georgia *v.* Brailsford, the fourth case entered upon "the original docket" of the Supreme Court, a definition was first given of the original jurisdiction of this court. During the pendency in the circuit court for the district of Georgia between Brailsford and others and Spalding, to which the State of Georgia was not allowed to be made a party, this state, in February, 1792, filed its bill in equity in this court seeking the aid of its original jurisdiction for an injunction, in behalf of the state, to stay the payment to others of a certain debt in controversy in the said circuit court, which the State of Georgia claimed had been vested in her by the Act of Confiscation passed May 4, 1782.

The judges of the Supreme Court were divided in their opinion on the question of granting an injunction upon the ground that Georgia had a complete and adequate remedy at law.

Therefore, in 1793, a motion was made to dissolve the injunction and dismiss the bill, and upon this motion the following order was indicated by the chief justice: "The bill, however, was founded in the highest equity; and the ground of equity for granting the injunction continues the same, that the money ought to be kept for the party to whom it belongs. We shall therefore continue the injunction until the next term, when, however, if Georgia has not instituted her action at common law it will be dissolved."

Acting upon this statement of the court Georgia brought an action on the common law side of the original jurisdiction, perfecting her pleadings therein during February, 1794, a jury was empaneled for the trial of the case, and the

court charged the jury in effect that the act of the state of Georgia did not vest the title to the debt in the state at the time of its passage, and that by the terms of the act the debt was not confiscated but only sequestered, and the right of the obligees to recover it revived on the treaty of peace.

The record then recites that "the jury retired for a few minutes, and, on their return to the bar, by their foreman, Reynold Keen, say they find a verdict for the defendant."

Taylor, Jurisdiction and Procedure of the United State Supreme Court, pp. 52, 53.

Mr. Taylor, in his very estimable work just cited, considering the matter now under discussion, says:

> "No more emphatic assertion could have been made of the immemorial distinction between law and equity, or of the fact that the equity side of the original jurisdiction cannot be invoked when there is a plain and adequate remedy at law."
>
> *Idem*, 53.

This same distinguished author, quoting from Carson's History of the Supreme Court, page 169, note 7, further says:

> "It has been asserted that this is the only instance of trial by jury in the Supreme Court. This is an error. The minutes of the court disclose that in the case of Oswald *v.* New York, a jury was sworn and witnesses called, and a verdict found for the plaintiff of $5,315.06. This was in February, 1795. Two years and a half later a writ of enquiry of damages in the case of Catlin *v.* South Carolina was executed at the bar of the Supreme Court, and a verdict was given for plaintiff for $55,002.84. Although judgments were entered there is no record of any steps to enforce them."

At the time of the formation of the Constitution of the United States the distinctions existing between law and equity were well defined, and these distinctions were familiar to the framers of this instrument, and they considered it a

wise policy to carry them into the federal tribunals, and they have ever since been observed and enforced.

Therefore, Virginia's claim for a judgment against West Virginia for money and property located within the boundaries of the latter must be asserted at law.

It may be contended, however, that equity does have jurisdiction of that part of the bill which relates to the public debt of Virginia created prior to the formation of West Virginia, and that the court having jurisdiction of this feature of the case on equitable ground, which however is not conceded by West Virginia for the reasons hereinbefore stated, and though the other part of the demand may be legal in its nature, the court will entertain jurisdiction of the entire bill and grant full relief if the bill can be sustained upon any equitable ground whatsoever.

Be this as it may in some of the state courts, no such rule is observed in the federal courts.

It has long been a settled doctrine of the federal courts that legal and equitable claims cannot be blended together in the same suit.

In Scott *v.* Armstrong, 146 U. S. 499, 36 L. ed. 1059, the court, speaking through Mr. Chief Justice Fuller, in the course of its opinion says:

> "Section 914 of the Revised Statutes, in providing that the practice, pleadings and forms, and modes of proceeding in civil causes in the circuit and district courts shall conform, as near as may be, to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record in the state within which such circuit or district courts are held, in terms excludes equity causes therefrom, and the jurisprudence of the United States has always recognized the distinction between law and equity as, under the Constitution, matter of substance, as well as of form and procedure, and, accordingly, legal and equitable claims cannot be blended together in one suit in the circuit courts of the United States, nor are equitable defenses permitted."

In support of this doctrine thus so clearly announced, the learned Chief Justice cites a number of decisions of this court, together with some decisions of the circuit courts.

The same principle is announced in Scott *v.* Neely, 140 U. S. 106, 35 L. ed. 358, and from this case we here quote points five and six of the syllabus as follows:

> "5. Remedies in federal courts at law or in equity, are not according to the practice of State courts, but according to the principles of the common law and equity.
>
> "6. A federal court has no jurisdiction of a suit in equity in which a claim, only cognizable at law, is united with a claim for equitable relief."

These principles have been fully adhered to in all of the federal courts, and are always applied in strict conformity to the well marked distinctions here laid down.

Now what is the status of the case at bar from any standpoint of its consideration? If it be conceded that the bill states a claim in equity relating to the *ante bellum* debt of Virginia, it cannot admit of argument that the claim for compensation for property used by West Virginia within the territory constituting her own boundaries formerly belonging to Virginia, is a pure legal demand, which has been united in the bill, and therefore the court will not entertain jurisdiction of this suit.

But we earnestly insist, upon reason and authority, that the plaintiff has no standing, even in a court of equity, with reference to that part of the bill relating to her public debt created prior to the formation of West Virginia; that as to this feature of the cause there is no ground for the assertion of any claim by the plaintiff against the defendant either at law or in equity; that this part of the bill is without merit, and that upon no consideration can this part of the plaintiff's claim be entertained by this court. This then leaves the naked legal claim of the plaintiff undisposed of, and the court being without jurisdiction in equity will not hear the cause as to this feature of the bill. The entire bill is without equity, and the demurrer interposed by the defendant ought to be sustained.

VII.

THIS COURT HAS NO JURISDICTION TO SETTLE OR DETERMINE THE PRINCIPLE UPON WHICH WEST VIRGINIA SHALL BE MADE LIABLE FOR ANY PORTION OF THE OLD DEBT OF VIRGINIA, BECAUSE THIS WAS MATTER OF CONTRACT BETWEEN VIRGINIA AND WEST VIRGINIA UPON THE ADMISSION OF THE LATTER INTO THE UNION.

The constitution of the new state, as prepared and formulated, looking to its admission into the union contained the following provision as to the old debt of Virginia:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

On May 13th, 1862, the Legislature of Virginia passed an act entitled "An Act giving the consent of the Legislature of Virginia to the formation and erection of a new state within the jurisdiction of this state."

The first clause of said act is as follows:

> "*Be it enacted by the General Assembly*, That the consent of the Legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia to include the counties of Hancock, Brooke, * * * according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and

> the schedule thereto annexed proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861."

The third clause of said Act is as follows:

> "*Be it further enacted* that this Act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with a certified original of the said Constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."

It was thus provided by said Constitution that the Legislature should ascertain the same as soon as it was practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years; that is, it provided for the ascertainment of such equitable proportion by the Legislature of the State of West Virginia independently of the State of Virginia, and further made provision as to how the State of West Virginia should pay the same, and having provided that the Legislature of West Virginia itself should ascertain such equitable proportion, and Virginia having consented that it should ascertain such portion, it is respectfully submitted that neither Virginia nor any court can intervene and perform this legislative duty.

When West Virginia framed her constitution and inserted in it the provision concerning the public debt of Virginia created prior to 1861, and the State of Virginia through her Legislature accepted the Constitution of West Virginia as the basis of her consent, this created a compact between the two States and was absolutely binding both upon Virginia and West Virginia.

It is matter of history that the vote on the adoption of the Constitution of the new State was held on the first

Thursday in April, 1862; that this vote was taken and the Constitution ratified by the people; that the act of the Virginia Legislature was passed on the 13th of May, 1862, shortly after the vote on the adoption of the said Constitution was taken. This act was directed to be sent to the senators and representatives of Virginia in Congress, with instructions to obtain the consent of congress to the admission of the State of West Virginia into the Union. Accordingly on the 31st day of December, 1862, Congress acted on the matter, reciting the proceeding of the convention of West Virginia, and that of Virginia, and the act of the Legislature of the State of Virginia requesting that the new State should be admitted into the Union, and it then passed the act for the admission of said State.

These matters are fully recited in the opinion of this court delivered in the case of the Commonwealth of Virginia against the State of West Virginia, decided in 1870, and reported in 11 Wall. 39-65.

The action of the proposed new state in adopting her constitution by popular vote, the consent of Virginia through her Legislature given to the formation of the new State composed of the counties recited in the act giving her consent, and the deliberate consent of Congress, as required by the Constitution, consenting to the formation of the new State and admitting her into the Union, constitute a compact between Virginia and West Virginia, the terms of which, with reference to the said debt, form a part of this compact and are inviolable under the Constitution of the United States.

Biddle *v.* Green, 5 Wheat. 1, 5 Law. Ed. 547.

By this compact between Virginia and West Virginia, the former State referred to the Legislature of the latter the matter of ascertaining "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and therefore this "proportion" cannot be otherwise ascertained or determined than by the consent

of the State of West Virginia; nor can its liquidation be otherwise provided for than by a sinking fund sufficient in amount to pay the accruing interest and redeem the principal of whatever sum may thus be ascertained as the equitable proportion that West Virginia agreed to assume. Virginia referred this matter absolutely to the judgment of the Legislature of West Virginia and tacitly agreed to abide by the action of this legislative body.

This stipulation or compact between Virginia and West Virginia, with reference to the public debt of the former, is a valid and binding contract, and Virginia can do nothing, either by legislation or otherwise, to impair its obligation. West Virginia has the undoubted moral and legal right to stand upon its terms; and if in the exercise of its judgment exercised upon a basis just and equitable, it should be ascertained by the Legislature of West Virginia that the State owes nothing to the bondholders of the old debt of Virginia, then there is no obligation whatever subsisting which can be enforced by the holders of any part of the old debt of Virginia, and especially has Virginia herself no cause of action against this State.

VIII.

THE EFFECT OF THE COMPACT BETWEEN VIRGINIA AND WEST VIRGINIA ARISING FROM THE ADMISSION OF THE LATTER INTO THE UNION AS A STATE UPON THE CLAIM OF VIRGINIA TO PROPERTY LOCALIZED OR PERTAINING TO INSTITUTIONS LOCALIZED WITHIN THE BOUNDARIES OF WEST VIRGINIA.

We have already presented to the court our considerations relating to this feature of the case upon grounds independently of that which is here presented, and have shown that Virginia cannot sustain this part of her claim in this suit. It seems to us, however, that there is a further and conclusive reason why this part of her demand is without foundation.

In the initiatory convention held by Virginia on the 20th of August, 1861, having as one of its objects the consideration of the matter of the formation of a new State out of a part of the territory within her then existing boundaries, the representatives in that convention did not consider any condition touching the formation of a new State other than the one that the new state should take upon itself the payment of "a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," and this was made the ultimate condition as expressed in the Constitution of West Virginia ratified by popular vote in April, 1862. This condition was, with some modification in the language employed to express it, inserted in the Constitution which West Virginia adopted. And Virginia, in May, 1862, signified her consent through her Legislature that the new state should be formed with the consti-

tution which she had theretofore in April, 1862, adopted as her organic law, and with no other or additional burdens or liabilities touching the new state soon to be brought into existence, and needing only therefor the consent of Congress which was given in December, 1862.

When Virginia had given her consent properly expressed, as was done in this case, she could not revoke it, and the only other body whose action was essential to the creation of a new state that could impose other or further conditions touching her admission into the Union, was the Congress of the United States. Congress did give her consent in December, 1862, and it only remained for West Virginia to provide against slavery within her boundaries, and when this measure was adopted in the manner provided by the act of admission, West Virginia then became an independent and sovereign State of the Union.

After Virginia gave her consent to the formation of West Virginia in May, 1862, and the act of Congress was passed in December of the same year, providing for her admission as a state, all property localized in West Virginia, or belonging or appertaining to institutions localized there, passed to and became absolutely the property of West Virginia.

Therefore the acts of the Legislature of Virginia subsequently passed on the 3rd and 4th days of February, 1863, respectively, seeking to create a liability against West Virginia by an *ex parte* act, are without any force or effect to create any debt against West Virginia because of the matters in any of them to which the acts respectively relate. All of the property formerly belonging to Virginia located within the boundaries of West Virginia became and constituted a part of her public domain, and over which her territorial sovereignty extended as fully and efficiently as if no part of this property had ever belonged to the old state.

This necessarily results from the relation of the states to each other and to the general government. If it were otherwise and the property and sovereign interests belonging to

West Virginia, after her admission as a state into the Union, could be made the subject of disposal through a legislative act of Virginia efficient for the purpose for which such act was passed, then it would be within the sole power of Virginia to annihilate, by her own acts, all the instrumentalities and means necessary to uphold the integrity of West Virginia as a state. It would defeat her own avowed purpose as well as that of the national government.

Furthermore, if force and effect be given to these acts of legislation passed by the General Assembly of Virginia in February, 1863, it would necessarily impair the obligation of a contract existing between Virginia and West Virginia growing out of the terms of admission of the latter as a State into the Union. Because the only liability which she in any wise agreed to assume, and thereby did assume, was an "equitable proportion" of the public debt of Virginia.

It is now respectfully submitted that the State of Virginia has no claim against West Virginia with reference to her public debt, nor any valid demand against her for property localized within the boundaries of West Virginia; that it clearly appears upon the face of the bill that it is without equities to support it; and therefore the demurrer filed by the State of West Virginia ought to be sustained, and the plaintiff's bill dismissed.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

BRIEF ON DEMURRER.

The bill in this case sets up at least two separate and distinct causes of action, one in behalf of Virginia in her own right to have an accounting with the State of West Virginia for the value of certain property and money alleged to have been transferred to and received by the defendant State under two acts passed by the legislature of Virginia on the 3d of February, 1863, and the 4th of February, 1863; and the other in the name of Virginia as trustee, suing for the use and benefit of the owners of certain certificates set out and described in the bill and exhibits.

The first act under which it is alleged property was transferred provided as follows:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the prop-

> erty of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof situated within said boundaries, and vested in this State, or in the president and directors of the Literary Fund, or the board of public works thereof, or in any person or persons for the use of this State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State."

And by the fifth section it was enacted:

> "That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

It is then charged in the bill that the property which was transferred to the State of West Virginia under this act was received and enjoyed by that State, and consisted of a number of items the value of which amounted in the aggregate to "several millions of dollars," the bank stocks alone having realized to the State about "six hundred thousand dollars."

(R., pp. 4, 5.)

The second act is as follows:

> "1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.
>
> "2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; *Provided, however,* That when the said States of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."
>
> (R., pp. 5, 6.)

It is alleged that the sum of one hundred and fifty thousand dollars, "together with other sums belonging to the State of Virginia," were received or collected by the State of West Virginia after its formation.

Again it is alleged that:

> "The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia."
>
> (R., p. 10.)

It is alleged in the bill that on the 20th day of August, 1861, the Commonwealth of Virginia, in convention assembled, at the city of Wheeling, adopted an ordinance "to provide for the formation of a new State out of the portion of the territory of this State," and that the ninth section of the ordinance was as follows:

> "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State Government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."
>
> (R., p. 4.)

It is then alleged that the new State was admitted into the Union on the 20th day of June, 1863, under a constitution which contained the following provisions:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."
>
> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.
>
> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and

> the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."
> (R., p. 6.)

It is shown by the bill that the State of Virginia has settled with the holders of the old public debt by issuing new bonds for two-thirds of the principal and interest, which was decided by the State herself to be her equitable proportion of the debt, and issuing certificates for the other one-third which was assumed by the State of Virginia and by her creditors to be the proportion for which West Virginia was liable, and it is stated that—

> "By each of the acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your oratrix, should be surrendered to and held by your oratrix, who either by the express terms of the settlement provided for by said acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, *in trust*, for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your oratrix to each creditor whose old Virginia bond was so surrendered to her."
> (R., p. 8.)

And it is also alleged that—

> "All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent. of the aggregate of those liabilities, have been taken up and are now actually held by your oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto."
> (R., p. 9.)

It is averred in paragraph one of the bill that on the 1st day of January, 1861, the State was indebted "in about the sum of $33,000,000," and that in addition to this "there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the commissioners of the sinking fund and the literary fund of the State," the former amounting to $1,462,993.00 and the latter to $1,543,669.05, as of the same date.

(R., p. 1.)

The several acts of the legislature under which the debt was adjusted and the contracts under which the certificates issued by the State have been deposited with a commission, *in trust* for the purpose of bringing this suit, are exhibited with and made part of the bill, and it is alleged that "this suit has been instituted at the request and direction of the said commission and in strict conformity with the provisions of the said act of March 6, 1900," which act wil be hereafter referred to in this brief.

In the preamble to the act of March 30, 1871, which was the first one passed by Virginia to provide for the funding and payment of two-thirds of the debt, it was recited, among other things, that—

> "Whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof *and not to this State, as the constitution of this State provides;* now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complicaions or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virgina by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore be it enacted," etc., etc.
>
> (R., pp. 13, 14.)

The third section provided that—

> "Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia holds said bonds, so far as unfunded, *in trust* for the holder or his assigns."
>
> (R., p. 15.)

It appears from one of the exhibits attached to and made part of the bill that the certificates issued to the creditors under the provisions of this act were as follows:

> "This is to certify that there is due unto —— —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled, 'An act to provide for the funding and payment of the public debt,' namely, bond No. —, with interest, amounting to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded *in trust* for the holder hereof or his assigns."
>
> (R., pp. 47, 48.)

The fourth section provides, among other things, that—

> "The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, *cancel the same,* and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law."

This act provided for funding two-thirds of the public debt and interest in bonds bearing interest at the rate of 6 per cent.; but subsequently, on March 28, 1879, another act, prescribing a plan of settlement, was passed, which provided for the issue of twenty-year bonds bearing interest at the rate of 4 per cent. and ten-year bonds bearing interest at the rate of 5 per cent.

The sixth section of that act provided that—

> "The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, *cancelling* and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act. * * * But in *cancelling* and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so *cancelled* shall be filed for reference."
>
> (R., pp. 18, 19.)

And in the seventh section of that act it is provided that—

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and

payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the State of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held *as a full and absolute release of the State of Virginia from all liability on account of said certificates.*"

February 14, 1882, another act was passed entitled "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory, resources," etc., etc. This act again provided for refunding only two-thirds of the old debt and interest at 3 per cent., and it was enacted that—

"For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:

"No. —.

"The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for — dollars, held by —— ——, dated the — day of ——, and numbered —, leaving a balance of — dollars, with interest from —— —, to be accounted for by the State of West Virginia, *without recourse upon this commonwealth.*"

In section 8 it was provided that—

"All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be *canceled* by the

> treasurer in the presence of the board of the commissioners of the sinking fund as the same are required (acquired), and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled, from time to time, shall be certified by said board and filed with the treasurer for preservation."
>
> (R., p. 29.)

This act also provided that after its passage "no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this State, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided."

(R., p. 30.)

February 20, 1892, an act was passed to refund at least $23,000,000 of the outstanding debt which had not been presented in exchange for new bonds under the act of February 14, 1882. Like the others, this act provided for only two-thirds of the principal and interest of the debt, then outstanding, and by the sixth section it was enacted that—

> "For all balances of indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:
>
> "No. —.
>
> "The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for — dollars, dated — day of ——, and No. —, leaving a balance of — dollars, with interest from —— —, to be accounted for to the holder of this certificate by the

State of West Virginia, *without recourse upon this Commonwealth.*"

(R., p. 35.)

In the ninth section it was provided that—

> "All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be *cancelled* by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the General Assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation."
>
> (R., p. 37.)

In the tenth section it is enacted, among other things, that—

> "All bonds of the State issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be *cancelled* by said commissioners and preserved in the office of the treasurer of the Commonwealth."
>
> (R., p. 37.)

March 6, 1894, the legislature of Virginia passed a joint resolution, the preamble to which, after reciting the titles of the acts to which we have heretofore referred, declared:

> "Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit: one-third of the amount of said obligations, of which certificates this State holds a large amount,

through the agency of the commissioners of its sinking and literary fund; and

"Whereas the present State of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original State; now, therefore, be it resolved," etc.

(R., p. 40.)

This resolution provided for the appointment of a commission of seven members, which was—

"authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia.

"But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the State through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the State of West Virginia in full settlement of the one-third of the debt of the original State of Virginia which has not been assumed by the present State of Virginia. *But said commission shall in no event enter into any negotiation thereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof.*

"All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof, shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the State to any expense on this account. And their action shall be subject to the approval or disapproval of the General Assembly, and shall not be binding on the State untill approved by the General Assembly. The governor is requested to communicate this joint resolu-

tion to the governor and legislature of West Virginia."

(R., pp. 40, 41.)

Commissioners were appointed under this resolution, but, no adjustment having been made, the act of March 6, 1900, was passed, entitled—

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises."

The preamble to the act, after reciting the titles of acts previously passed, is as follows:

> "Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the State of West Virginia, to-wit: one-third of the amount of said obligations, of which certificate this State holds a large amount, through the agency of the commissioners of its sinking fund, and
>
> "Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had; and
>
> "Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt *which she assumed,* yet it is possible that complications will arise with respect to said certificate which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now therefore, be it enacted," etc.

The first section provided—

> "That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited *will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.*"
>
> (R., p. 42.)

The second section provided that—

> "If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings, on behalf of the State, as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate

holders, as provided in the joint resolution aforesaid, and the State shall not be subject to any expense on that account."

(R., p. 42.)

The holders of a large amount of certificates issued by Virginia for what she claimed was West Virginia's just proportion of the debt, had deposited their certificates with a committee for collection or adjustment, and on the 20th of July, 1898, the depositing committee, through its chairman, made the following proposition to the Virginia commission:

"Whereas your commission was constituted as set forth in said joint resolution and act of assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proposition of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882, and February 20th, 1892.

"And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the board of education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control

of your commission upon the agreement and contract aforesaid, then your commission should be authorized, by and with the approval of the attorney-general of Virginia, to take action in the premises as might be needful to protect the interests of the State and bring about and carry into effect a settlement as aforesaid.

"And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the advisory board named in said agreement and as should become effective thereunder; it being further stated in said agreement that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

"And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to wit, $8,565,095.70 and a majority of all the other certificates aforesaid, to wit, $1,782,475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, bankers of New York city, N. Y., the depository named by said committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

"In view of the premises the undersigned, the committee aforesaid, do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission, acting for the State of Virginia under the said joint resolution and act of assembly aforesaid, that your commission will enter into negotiations

with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect—the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said attorney-general take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon *shall be accepted in full satisfaction of all the claims of the certificate holders thereunder* and the undersigned committee will surrender to your commission, in exchange for such amount the certificates aforesaid so deposited.

"If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said committee under said agreement of July 28th, 1898."

(R., pp. 54-56.)

This proposition was accepted by the Virginia commission, with the approval of the attorney-general, on the 18th of September, 1902.

On the 3d of December, 1902, the advisory board of the depositing committee promulgated the following plan of settlement, which was approved by the committee:

"Under an agreement of July, 1898, a committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the

same agreement an advisory board was constituted whose functions were also specified in the agreement.

"In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the committee and advisory board, which among other things, contained the following provision:

" 'The committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their *pro rata* of such an amount in State bonds, or cash as may be agreed upon between the committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume on account of her proportion of the debt of the original State.'

"Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her attorney-general, to take such action and institute such proceedings as might, in the judgment of the commission and attorney-general, be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the commission upon an agreement on the part of the holders of such certificates that if the commission would secure a settlement with West Virginia with respect to said certificates, *they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder.*

"On the 18th of September, 1902, the committee held on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof (*) as

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the committee accordingly on that day entered into a contract with the Virginia commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the commission upon the agreement and arrangement on the part of the commission that they would enter into negotiations with the State of West Virginia for the purpose of effecting a settlement with respect to said certificates, and would by and with the advice and approval of said attorney-general, take such action as they might deem needful in the premises; *the amount realized on such settlement to be accepted in full of said certificates* as above stated, which contract was duly approved by the attorney-general of Virginia on September 29th, 1902.

"In view of this act of the Virginia assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the committee and the advisory board by way of supplement and addition to the original plan:

"I. The above named committee shall pledge or deposit the certificates now or hereafter received under the agreement of July 28, 1898, with the Virginia commission, in conformity with the act of March 6, 1900, *for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the attorney-general of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided;* such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902, shall continue in force for the period therein specified; and the committee may enter into such further agreements with the said commission as may be deemed needful to bring about a settlement in the premises.

"II. In the event that no settlement shall be effected by the Virginia commission either under the

agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the committee and the said commission within such time as may be limited therein, the committee may, after any and all such agreements with the said commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the committee may deem judicious.

"III. The committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

"The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows; one member thereof to be appointed by the committee, one member by the advisory board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

"New York, December 3d, 1902."

This agreement was signed by the members of the advisory board and the chairman of the committee.

On the 14th day of December, 1904, an additional agreement was made between the depositing committee and the Virginia commission, which was extended indefinitely as to time by contracts made September 9, 1905 and November 24, 1905. The said contracts are as follows:

> "Memorandum of agreement, made this 14th day of December, 1904, between the depositing committee of the securities known as the Virginia deferred certificates as constituted under the contract of July 28th, 1898, and of which John Crosby Brown is chairman, and Robert L. Harrison, secretary, acting under the plan of settlement approved on December 3rd, 1902, by the advisory board referred to in the said contract, hereinafter referred to as the depositing committee, party of the first part, and the commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900, and of which John B. Moon is chairman, and Joseph Button is secretary hereinafter referred to as the Virginia commission, party of the second part:
>
> "Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the depositing committee aforesaid to the said Virginia commission, and were placed subject to the control of the said commission upon the agreement and arrangement on the part of the said commission acting for the State of Virginia under the said joint resolution and act of assembly aforesaid, that the said commission should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, *in accordance with the said contract of July 28th, 1898*, and in accordance with such plan of settlement as was then proposed or might thereafter become

effective, and that the said commission would, by and with the advice and approval of the attorney-general of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it was *agreed that the amount realized thereon should be accepted in full satisfaction of all the claims of the certificate-holders thereunder,* and that the said committee would surrender to the said commission, in exchange for such amount, the certificates so placed subject to the control of said commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th day of September, 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and

"Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, attorney-general of Virginia, by his endorsement at the foot thereof on the 29th day of September, 1902; and

"Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd day of December, 1902, by the advisory board referred to in the said contract of July 28, 1898, as appears by the plan of settlement made and approved by the said committee and the advisory board and bearing date December 3rd, 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notifica-

tion whatsoever was given to the said committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed settlement as set forth in the said plan so published and more than thirty days having elapsed after the said publication was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the committee having been duly made to the only depository under the said contract, to wit, Messrs. Brown Brothers & Company, of 29 Wall street, New York, the said plan of settlement thereupon became effective and final; and

"Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said attorney-general under the said act of the General Assembly of Virginia March 6, 1900:

"Now therefore this agreement witnesseth: that the aforesaid depositing committee does hereby authorize and direct their said depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia deferred certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission *in pursuance of the said joint resolution and act of the General Assembly of Virginia;* and to this

end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such certificate to the said Virginia Commission in such form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said commission:

"But this agreement shall continue in force only until the said 18 day of September, 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said depositing committee, unless a settlement shall have been before that time negotiated with West Virginia in pursuance of said contract of September 18th, 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable basis which has been agreed to by said commission and the authorities of West Virginia aforesaid. *Provided, however*, That it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon or at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said commission in the premises, as may hereafter be agreed upon by the parties and then indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

"In testimony whereof the signatures of the chairman of the said depositing committee and of the Virginia Commission, attested by the respective secretaries thereof, are hereunto affixed on the day and year first above written.

"JOHN CROSBY BROWN, *Chairman.*

"ROBERT L. HARRISON, *Secretary.*

"JOHN B. MOON,
"Chairman of Virginia Commission.

"JOSEPH BUTTON, *Secretary.*"

"The foregoing agreement is hereby approved as having been entered into by my advice and approval.

"WILLIAM A. ANDERSON,
"Attorney-General of Virginia.

"Dated December 14, 1904."

"The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st, 1905, and they shall remain in full force until that date just as if December 1st, 1905, instead of September 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, enlargement and modification on or before December 1st, 1905, in all respects as therein specified.

"Given under our hands this 9th day of September, 1905.

"JOHN CROSBY BROWN,
"Chairman Depositing Committee.

"ROBT. L. HARRISON, *Secretary.*

"JOHN B. MOON,
"Chairman Virginia Commission.

"JOS. BUTTON, *Secretary.*"

"The above extension of the contracts above referred to is hereby approved this 9th day of September, 1905.

"WILLIAM A. ANDERSON.
"Attorney General of Virginia."

"Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for

and subject to the control and disposal of said commission; thus placing subject to the complete control and disposal of the commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large mapority of the total of $2,778,239.80 of the other certificates so outstanding.

"Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the attorney-general of Virginia, made to the governor and attorney-general of West Virginia, and to the finance committees of the legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the legislature of West Virginia would, at least, appoint a committee or other public functionary with authority to take up the questions involved for the purposes of discussion and negotiation, but the commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all; thus leaving to the Virginia Commission and attorney-general of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the court having jurisdiction of controversies between States.

"Now, therefore, it is hereby stipulated and agreed by and between the depositing committee, named as the party of the first part in the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said commission acting in this behalf by and with the advice and approval of the attorney-general of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

"1st. Neither the said foregoing contract of Decem-

ber 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the 1st day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

"2nd. The certificaie or certificates heretofore given by Brown Bros. & Co., the depository of the said committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said commission and shall remain in full force and effect without regard to time limit; and the said Brown Bros. & Co. shall issue and give to the said commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of the said commission for the purpose of carrying out this agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the commission; and the said Virginia Commission are hereby given and *invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.*

"3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the attorney-general of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, *that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that court* of the matters aforesaid unsettled and undetermined be-

tween the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the act of the General Assembly of Virginia, of March 6th, 1900, referred to in said contract of December 14th, 1904; and the said Virginia Commission acting by and with the advice and approval of the attorney-general of that State, do hereby undertake and *agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid,* as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said act of the General Assembly of Virginia and the joint resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said commission, notwithstanding the institution and pendency of such suit.

"4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said joint resolution and act of the General Assembly of Virginia, *they will account for, pay over and deliver such amount, either in cash or securities,* as may be realized from West Virginia through any settlement made by the said commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, *to the said depositing committee in full settlement and satisfaction of all claims under said certificates;* and the said depositing committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said commission

and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, *in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned,* and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

"5th. It is further understood and agreed that if from any cause the said commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said commission to restore to the control of the said depositing committee all such deferred certificates as may have been placed subject to the control and disposal of said commission as aforesaid.

"RICHMOND, VA., *November 24th,* 1905."

This contract was signed by all the members of the depositing committee and the Virginia Commission, and approved by the attorney-general on the day of its date.

It appears from one of the exhibits attached to and made a part of the bill that the total amount of certificates issued by Virginia on acount of West Virginia's alleged proportion of the public debt was as follows:

Under the act of 1871	$15,281,970.47
Under the act of 1879	564,258.87
Under the act of 1882	1,775,603.48
Under the act of 1892	605,320.78
Total	$18,227,153.60

(R., p. 90.)

It appears that on January 4, 1906, certificates to the amount of $13,173,435.41 had been deposited by the committee with Brown Brothers and Company, and that they have been withdrawn by the Virginia Commission and are now in its custody or under its exclusive control.

For the owners of the whole amount of certificates issued, whether they have or have not been deposited with the committee or with the commission, Virginia sues as trustee in this case under the contracts and statutes to which we have referred.

The prayer of the bill is as follows:

> "Forasmuch, therefore, as your oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her governor and attorney-general, with a copy of this bill, your oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right *and as trustee as aforesaid;* that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by

the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your oratrix in the premises as the nature of her case may require or to equity may seem meet."

The bill has been demurred to on the following grounds:

First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

Fifth. That it does not appear by said bill that the attorney-general has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinite and uncertain that no proper answer can be made thereto.

Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant.

The first question to be considered in the case is whether this court has jurisdiction to hear and determine the causes of action, or any of the causes of action, alleged in the bill, for if no cause of action is alleged upon which the plaintiff is entitled to a judgment or decree in this court, it will not decide any of the other questions presented by the demurrer. Jurisdiction is the power to hear and determine a cause between the parties to the action who are before the court, and to render a final judgment or decree and enforce its execution by judicial process. Judicial tribunals cannot take cognizance of controversies merely for the purpose of ascertaining and declaring what the legal or equitable rights of the parties are. They must render judgments or decrees which remedy the wrongs complained of, or enforce the rights asserted in the case; in other words, their powers are remedial, not merely declaratory.

Jurisdiction is defined by Bouvier as "the authority by which judicial officers take cognizance of to decide causes. Power to hear and determine a cause (3 Ohio, 494; 6 Pet., 591). The right of a judge to pronounce a sentence of the law on a cause or issue before him acquired through due process of law. It includes power to enforce the execution of what is decreed. (8 Johns., 239; 3 Met., Mass., 460; Thach., 202" (2 Bouvier Law Dic., 26).

In defining jurisdiction, Black says:

> "The power and authority constitutionally conferred upon or constitutionally recognized as existing in a court or judge to pronounce the sentence of the law or to award the remedies provided by law upon the set of facts proved or admitted, referred to the tribunal for decision and authorized by law to be the subject of investigation or action by that tribunal, and in favor or against persons (or a *res*) who present themselves, or who are brought before the court in some manner sanctioned by law as proper and sufficient. Jurisdiction is a power constitutionally conferred upon the judge or magistrate to take cognizance of and determine a cause according to law and to carry a sentence into execution (6 Pet., 591; 9 Johns., 239; 2 Neb., 135)."
>
> Black's Law Dictionary, page 63. See also Anderson's Words and Phrases, page 3877-813; also Am. & Eng. Ency., vol. 17, page 1041; *Daniels v. Tearney*, 102 U. S., 418; *Applegate v. Lexington*, etc., 117 U. S., 267; *Simmons v. Saul*, 138 U. S., 454; *Holmes v. Oregon*, 5th Fed., 534; 9th Fed., 232; 6 Sawyer, 385; *Grignon v. Aston*, 2 How., 385; *U. S. v. Arredondo*, 6 Pet., 691; *Decatur v. Paul.*, 14 Pet., 599; *In re Bogart*, 2 Sawyer, 401; 3 Fed. Cases, No. 596, *Le Roy v. Clayton*, 2 Sawyer, 499; 15 Fed. Cases, No. 8258, *Riggs v. Johnson County*, 6 Wall., 187; *McNitt v. Turner*, 6 Wall., 366; *Cornett v. Williams*, 20 Wall., 240.

The bill, so far as it relates to the old debt of Virginia, although it sets up all the provisions of the compact, seems to be framed upon the theory that West Virginia is liable for one-third of the debt as it existed prior to the first day of January, 1861, upon the alleged ground that the formation of the new State diminished the territory and population of the original or parent State to that extent. It is evident, however, that no such rule can be applied here, for this is not a case in which West Virginia's "just proportion" of the debt is to be determined upon such rules or principles as a court may decide to be fair and equitable, but is to be ascertained and paid according to a method agreed upon by the parties; and that method must be observed, whether the action is prosecuted at law or in equity. The liability of the defendant State, if any exists, is founded entirely upon a compact entered into between the two States with the consent of Congress, and the adjustment must therefore be made according to its terms. No rule, or supposed rule, of international law can be applied in such a case.

By the ordinance of the Wheeling convention, which represented the State of Virginia, consent was given to the formation of a new State out of a part of her territory, and it was provided, as we have already seen, that it should take upon itself a just proportion of the public debt of Virginia existing prior to the first of January, 1861, which, according to the ordinance, was to be ascertained by charging to the new State all the State expenditures within the limits thereof and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of the State of Virginia during that period from the counties included within the new State.

It was also provided that all private rights and interests in lands within the proposed new State derived from the laws of Virginia prior to the separation should remain valid and secure under the laws of the proposed State and should

be determined by the laws then existing in the State of Virginia. At the time of the passage of this ordinance there was, of course, no State of West Virginia, and therefore no second party to the proposed compact or agreement. Subsequently the people inhabiting the counties proposed to be included in the new State held a sovereignty convention and adopted a constitution preparatory to admission into the Union. This was the first time the new State, or proposed new State, had the capacity to assent to, or dissent from, the proposition submitted by Virginia, and it assented to it with the qualification, or addition, that its equitable proportion of the debt should be ascertained by its own legislature as soon as practicable, and that the legislature should provide for its liquidation by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years. But this did not complete the compact, for Congress had not yet given its consent, which was necessary under the Constitution of the United States.

Afterwards application was made by the proposed new State for admission to the Union under the Constitution containing the provisions above recited; and, on the 31st day of December, 1862, an act was passed by Congress providing for its admission upon certain conditions, none of which had any reference to the indebtedness of the old State (12 Stat., 633). This act of Congress recited that the "Legislature of Virginia, by an act passed on the 13th of May, 1862, did give its consent to the formation of a new State within the jurisdiction of the said State of Virginia, to be known by the name of West Virginia," etc., etc. The Virginia act of May 13, 1862, was passed while the application of West Virginia for admission into the Union was pending, and its first section provided that the consent of the legislature of Virginia is given to the formation and erection of the State of West Virginia within the jurisdiction of that State, to include certain counties which are mentioned in the act, "according to the boundaries *and under the provisions*

set forth in the Constitution for the said State of West Virginia and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

It was further provided that—

> "This act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with a certified original of the said constitution and schedule, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."
>
> *See Constitution and Statutes of Virginia and West Virginia, 1861-66, page 3, Acts of Extra Session, May, 1862.*

The schedule attached to the constitution of West Virginia and referred to in the act declared that "when the General Assembly of the State of Virginia and the Congress of the United States shall severally give their consent to the formation and erection of the State of West Virginia as proposed, the commissioners hereby appointed shall forthwith issue their proclamation," etc., etc.

Finally, on the 20th day of June, 1863, the State of West Virginia was admitted into the Union under the constitution framed by its convention, approved by the State of Virginia and the Congress of the United States. And thus the consent of that body was given to all the provisions of the agreement and it became a legal and constitutional compact between the two States.

Virginia v. West Virginia, 11 Wall., 39.
Green v. Biddle, 8 Wheat., 1-86.
Virginia v. Tennessee, 148 U. S., 503.

West Virginia having agreed to the proposed compact, upon the conditions that her own legislature should ascertain the amount of the debt and provide for its liquidation

in a certain manner and the reconstructed State of Virginia having been authorized by Congress to elect delegates to frame a constitution, proceeded to do so, and in 1867 adopted a constitution, the 19th section of article 10 of which contained the following provision:

> "The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia proper to be borne by the States of Virginia and West Virginia, and shall provide that such sum *as shall be received from West Virginia* shall be applied to the payment of the public debt of the State."

In 1902, after Virginia had settled with her creditors, a new constitution was adopted, which omitted this section and contained no provisions upon the subject of a settlement with West Virginia.

It appears plainly from the foregoing that essential parts of the compact as agreed to by West Virginia were that the legislature of that State should ascertain what was her just proportion of the debt; that it should provide for its liquidation by the establishment of a sinking fund; that the State of Virginia assented to this condition by consenting to the admission of the new State "under the provisions set forth in the constitution of the said State of West Virginia and the schedule thereto annexed," and that Congress admitted the State under that Constitution, thereby consenting to the compact with the conditions constituting a part of it.

The two States have therefore, by compact between themselves, and with the consent of Congress, as required by the Constitution, designated a tribunal to ascertain and settle West Virginia's share of the debt. This tribunal still exists and is unquestionably competent to discharge the duties imposed upon it. And, moreover, but most important of all, it is the only tribunal existing, or that can be established, possessing the power to provide for the payment of West Virginia's share of the debt, when the same has been ascer-

tained, in accordance with the terms of the compact. It cannot be coerced by any judicial or other civil process known to the Constitution or laws of this country. No court can compel it either to adjust the debt or to provide a sinking fund, or impose taxes, issue bonds, or appropriate money.

Conceding, for the sake of the argument, that Virginia might maintain a suit in this court as trustee, the question must be considered whether the bill states a good cause, or good causes, of action in favor of the plaintiff, either in her own right or as trustee for the parties. Clearly there is no cause of action shown against West Virginia under the provisions of the act of February 4, 1863, which is embodied in the bill (R., p. 4). The first section of that act appropriates $150,000 to the State of West Virginia when it shall be organized and admitted into the Union; but it does not provide that the new State shall account for it in any way. Whether the whole of the sum appropriated, or, if not the whole, what part of it, had been paid into the treasury by the counties located within the boundaries of the proposed new States does not appear from the act, and is not alleged in the bill. As there was no provision that it should be accounted for or repaid to Virginia, the presumption is, especially in the absence of an allegation upon that subject, that it was in fact collected from the West Virginia counties, or that it was intended as a gratuity to the new State. The bill being silent upon the subject and every presumption being against the pleader in such a case, the court cannot infer a cause of action in favor of the plaintiff. The second section of the act shows plainly on its face that it appropriated no money except what had been actually collected from the counties within the proposed boundaries of the new State, and as it was not required to account, and never agreed to account, no cause of action, legal or equitable, can be based on that part of the statute.

The other act under which a claim is made in this action was passed February 3, 1863 (R., p. 4). In brief, the first sec-

tion of that act transfers to West Virginia certain public property "within the boundaries of the proposed new State of West Virginia when she becomes one of the United States," and declares that the title shall pass without any other assignment, conveyance, transfer or delivery than is therein contained. The second section provides that if the appropriation of the property, stocks, and securities made by the act shall take effect, the State of West Virginia "shall duly account for the same in the settlement hereafter to be made with this State." The bill alleges that the plaintiff "is informed, believes, and so charges" that the property transferred under this act consisted of a number of items, and that its value amounted to "several millions of dollars," but that the plaintiff is "unable to state at this time the exact amount." It is then alleged that the State of West Virginia realized from the bank stocks alone "about six hundred thousand dollars;" but there is no allegation as to their value at the time of the transfer.

It is evident that the "settlement hereafter to be made with this State" means a settlement of West Virginia's just proportion of the old public debt which had been provided for by the ordinance of the Wheeling convention and by the constitution of West Virginia, which was then before Congress on her application for admission into the Union. In the adjustment provided for in the compact West Virginia was to be charged with "all the State expenditures within the limits thereof," since any part of the debt was contracted, and consequently the State of Virginia, in order that it might not thereafter be claimed that the expenditures on account of the public property transferred by the act of February 3, 1863, were not to be included in the settlement under the compact, expressly provided that they should be. The bill therefore shows an attempt to make two causes of action out of one—a separate cause of action based upon the compact for the recovery of the amount of money originally expended by the State of Virginia in paying for the property so transferred, and another cause of action founded on

the statute. The State of Virginia of course retained all the public property situated within her own boundaries after the separation, and it was the intention of Virginia that West Virginia should become the owner of all within her limits and should, in the settlement under the compact, account to the old State for the expenditures made by that State in procuring it.

We think enough will be said, and suggested, in other parts of this argument to establish the proposition that the State of Virginia has not alleged, and cannot allege, either in her own right, or as trustee, a good cause of action against the defendant State on the compact. Before she could possibly sue the defendant State, either at law or in equity, to recover for contribution, she must have paid the whole debt, or at least she must have paid more that her own legal or equitable share of it. As the case is now presented, neither Virginia nor her creditors have been injured in the slightest degree by the fact that West Virginia has not paid her proportion of the debt. Virginia has not been injured, because she has herself paid, or extended, only that part of the debt which, according to her own judgment, she would have been justly required to pay if West Virginia had fully complied with her alleged obligations, and she has been released from all the remainder; and the creditors have not been injured by any alleged default on the part of West Virginia, because they never had any claim, legal or equitable, against her and have voluntarily discharged their only debtor from liability. It is elementary law that if one owes a debt and another agrees with him—not with the creditor—that he will furnish a part of the money to pay it, or that he will reimburse the debtor as to a part of it, the original debtor cannot sue for contribution until he has paid the debt, and certainly not until he has paid his own share and some part of what the other agreed to furnish or reimburse; and in the latter case he could sue only for what he had paid in excess of his own share. The applicability of this legal and equitable rule is the same whether the liability to contribute

is founded on an express contract between the parties or is implied, as in the case of cosureties.

It is not alleged in the bill that the State of Virginia has ever made an account or statement of her claim under the compact and presented it for payment or adjustment. On the contrary, it is shown by the bill and exhibits that as early as 1871, if not before that date, Virginia repudiated the compact and arbitrarily decided that West Virginia was liable for one-third of the debt, and has always, at least up to the time of the institution of this suit, insisted upon an adjustment on that basis only. This is shown by the preambles and provisions of every act passed providing for an adjustment with her creditors; and in the joint resolution of March 6, 1894, creating a commission to settle with West Virginia, it was declared:

> "But such commission shall in no event enter into negotiations hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original State which she has already provided for as her equitable proportion thereof."
> (R., p. 40.)

This restriction upon the power of the commission has never been repealed, and that body has now no power to negotiate with the defendant State upon any other basis. It is a mockery, however, to characterize such a proceeding as a "negotiation." An ultimatum was presented at the very beginning, and West Virginia was distinctly informed that she must recognize her liability to pay one-third of the debt, or have no adjustment. Under this proposition no accounts were to be presented or examined, no vouchers or other documents were to be considered, except such as would show the amount of the debt prior to January 1, 1861; the terms of the compact were to be wholly ignored and nothing was to be done except to divide the amount of the debt by three. West Virginia was perfectly justifiable in declining to "negotiate" upon such a basis as this.

If the allegations contained in paragraphs fifteen and sixteen of the bill (R., p. 9) are to be regarded by the court as setting up a cause of action for West Virginia's equitable proportion of the debt, the plaintiff is claiming in this case a double liability upon the part of that State—a liability for her equitable proportion, or for one-third, of $33,000,000, the alleged amount of the whole public debt on the 1st of January, 1861, and also a liability for her equitable proportion, or one-third, of the $25,000,000 alleged to have been paid by Virginia, which is a part of the $33,000,000. We do not tnink, however, that the court can regard the general and indefinite allegations in the paragraphs to which we have referred as even a serious attempt to state a cause of action; but if it is, then the bill contains three separate claims instead of two.

But it is clear that Virginia could not under the ordinance, or upon any principle of law or equity, have a cause of action against West Virginia for contribution to the payment of her (Virginia's) own equitable share of the debt, either before or after she had paid it; nor can that State recover against West Virginia any part of the old debt from which she has been released and discharged by her creditors.

We have endeavored to show that if Virginia, either in her own right or as trustee, ever had a cause of action against West Virginia on account of the old debt, it was founded on the compact, and the sum she had a right to demand was to be ascertained and paid in the manner prescribed in the compact; but that State and her creditors have, without consulting West Virginia, created a situation which renders it impossible for this court, or any other tribunal, now to adjust the liability of the latter State in the manner therein prescribed without doing great injustice to her. An examination of the Wheeling ordinance shows that the amount of the Virginia debt as it existed prior to January 1, 1861, is not a factor to be taken into consideration in ascertaining

West Virginia's just proportion. It is alleged in the bill that the debt at the time of the separation amounted to "about $33,000,000." When Virginia passed the ordinance, and when West Virginia accepted it with the modifications as to the manner of ascertaining and paying the debt, both parties knew what the amount of the indebtedness was; and it was agreed between them that if West Virginia was charged "with all the State expenditures within her limits and a just proportion of the ordinary expenses of the State since any part of the debt was contracted, and credited with the moneys paid into the treasury of the Commonwealth from the counties included within the proposed new State during the same period," the result would show what was her just proportion of the debt; that is, her just proportion of $33,000,000. If Virginia had repudiated the entire debt, or had admitted her liability for only $5,000,000, or for any other sum less than the $33,000,000, and her creditors had settled upon such a basis, it could scarcely be seriously contended that West Virginia would still be liable to her for exactly the same amount as if she had paid, or adjusted, the whole $33,000,000; and yet that will necessarily be the result if the mode of settlement provided for in the compact is applied to a situation which Virginia and her creditors have now created. The State of Virginia has not paid the debt, but has extended two-thirds of it, which she decided for herself was her equitable share, and has been released from all the remainder; but she now asks that West Virginia may be compelled to pay to her in her own right, or as trustee, the same amount precisely as if the whole debt had been paid or settled by the issue of new bonds.

It is important to bear in mind throughout the consideration of this case that West Virginia's obligation to pay a just proportion of the debt was to Virginia alone, not to the bondholders. As to the bondholders, Virginia was legally the sole obligor and has always remained so. Neither changes in her constitution of government nor in her territorial area

could affect in any degree her liability under her previous obligations. Notwithstanding such changes in either of these respects, the State continued to be the same political entity which incurred the obligation, and the compact by which West Virginia agreed to pay her just proportion of the obligations was made between the two States alone, not between them and the bondholders, and the settlement was to be made between the two States. We doubt whether, in the absence of a compact on the subject, the State of West Virginia would have been legally liable to pay any part of it to Virginia, or to reimburse the parent State on account of any part of it; but as there was a compact, the discussion of these propositions would be purely academic in this case.

If the court has any power to render and enforce a judgment or decree in this cause which would afford to the plaintiffs effective and final relief, it must be a judgment or decree for a definite sum of money found to be due to the State of Virginia on a settlement made in the mode provided by the compact, or else the solemn compact entered into with the consent of Congress, thereby becoming, as this court said in *State of Pennsylvania v. Wheeling Bridge Co.*, 13 How., 185, "a law of the Union," must be wholly disregarded and the amount of the judgment or decree must be ascertained according to some other rule or principle, adopted by the court, to which the parties refused to assent when the compact was made. The adoption of the latter method is not even supposable, for the compact is either valid or invalid; and if it is valid, it cannot be disregarded by the court, while if it is invalid the consequence would be that West Virginia was unconstitutionally admitted and is not now a State of the Union, and therefore cannot be sued as such.

In *Green v. Biddle,* 8 Wheat., 1–85, 86, this court said:

> "Now, it is perfectly clear that although Congress might have refused their consent to the proposed

> separation, yet they had no authority to declare Kentucky a separate and independent State without the assent of Virginia *or upon terms variant from those which Virginia* had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed by a solemn act the consent of that body to the separation. The terms and conditions, then on which alone the separation could take place, or the act of Congress become a valid one, were necessarily assented to; not by a mere tacit acquiescence, but by an express declaration of the legislative mind, resulting from the manifest construction of the act itself. To deny this is to deny the validity of the act of Congress, without which Kentcky could not have become an independent State; and then it would follow that she is at this moment a part of the State of Virginia, and all her laws are acts of usurpation. The counsel who urged this argument would not, we are persuaded, consent to this conclusion; and yet it would seem to be inevitable, if the premises insisted upon be true."

In *State of Penna. v. The Wheeling Bridge Co.*, 13 How., 518, 566, the court, speaking of this same compact, declared (p. 566):

> "This compact, by the sanction of Congress, has become a law of the Union," citing *Green v. Biddle, supra.*

In the case of *Poole v. Fleger,* 11 Pet., 185, 209, the court construed the compact between Kentucky and Tennessee, consented to by Congress, determining a matter of boundary, and it held that—

> "The compact, then, has full validity, and all the terms and conditions of it must be equally obligatory upon the citizens of both States."

If the court is to found its judgment or decree upon the compact, it must take the place of the legislature of West Virginia in the determination of the amount due, and then

it must also disregard the terms of payment provided for in the constitution of that State, which is a part of the compact, or it must in some way establish a sinking fund sufficient to discharge the interest and principal of the debt at the end of a series of years. It may be observed here that the sinking fund contemplated by the constitution of West Virginia was not intended to be, and in fact could not be, established until the amount of that State's proportion of the debt had been ascertained by the legislature, for until that had been done it was not possible to know what sum would be required to produce the necessary accumulation.

Leaving out of consideration the untenable proposition that the compact is to be disregarded and the adjustment made according to some rule or principle not recognized in it, the demand of the plaintiffs is, in substance and effect, that the court shall decree and enforce a specific performance of the compact, for if that is not the object of the suit, it presents only a moot question which the court will not decide. A mere declaration of the principles upon which an accounting shall be had and the taking of the account accordingly, to be followed by no enforceable judgment or decree, affords no relief and would therefore be an idle and useless proceeding. Besides, it is wholly unnecessary for the court to declare the principles upon which the adjustment shall be made; that is plainly done in the compact.

We have said that this court could not compel the legislature of West Virginia to levy a tax or appropriate money or issue bonds to provide for the payment of any judgment or decree which might be rendered in this case; and we may add that it could not even appoint a receiver or commissioner to collect a tax or to issue bonds for that purpose even if the tax had been imposed by the proper legislative authority, or the issue of bonds had been duly authorized.

The authorities upon this and analogous questions are numerous and conclusive. In *Rees v. City of Watertown* (19 Wall., 107), which was a suit in equity to enforce the

collection of certain judgments upon the bonds of the city of Watertown, the court said:

> "We are of the opinion that this court has not the power to direct a tax to be levied for the payment of these judgments. This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. Especially is it beyond the power of the Federal judiciary to assume the place of a State in the exercise of this authority at once so delicate and so important."

And, after referring to the statute, the court said:

> "But independently of this statute, upon the general principles of law and of equity jurisprudence, we are of opinion that we cannot grant the relief asked for. The plaintiff invokes the aid of the principle that all legal remedies having failed, the court of chancery must give him a remedy; that there is a wrong which cannot be righted elsewhere, and hence the right must be sustained in chancery. The difficulty arises from too broad an application of a general principle. The great advantage possessed by the court of chancery is not so much in its enlarged jurisdiction as in the extent and adaptability of its remedial powers. Generally this jurisdiction is as well defined and limited as is that of a court of law. It cannot exercise jurisdiction when there is an adequate and complete remedy at law. It cannot assume control over that large class of obligations called imperfect obligations, resting upon conscience and moral duty only, unconnected with legal obligations. Judge Story says: 'There are cases of fraud, of accident, and of trust which neither courts of law nor of equity presume to relieve or to mitigate,' of which he cites many instances. Lord Talbot says: 'There are cases, indeed, in which a court of equity gives a remedy where the law gives none, but where a particular remedy is given by law, and that remedy

> bounded and circumscribed by particular rules, it would be very improper for this court to take it up where the law leaves it, and extend it further than the law allows.' "

Again the court said:

> "A court of equity cannot, by avowing that there is a wrong and no remedy known to the law, create a remedy in violation of law, or even without the authority of law. It acts upon established principles not only, but through established channels. Thus, assume that the plaintiff is entitled to the payment of his judgment, and that the defendant neglects its duty in refusing to raise the amount by taxation, it does not follow that this court may order the amount to be made from the private estate of one of its citizens."

Again the court said, in the course of its opinion:

> "The want of a remedy and the inability to obtain the fruits of a remedy are quite distinct, and yet they are confounded in the present proceedings."

In *Heine v. The Levee Commissioners* (19 Wall., 655) the court said, speaking of the right to give a party the relief demanded:

> "If sustained at all it must be on the very broad ground that because the plaintiff finds himself unable to collect his debt by proceedings at law, it is the duty of a court of equity to devise some mode by which it can be done. It is, however, the experience of every day and of all men, that debts are created which are never paid, though the creditor has exhausted all the resources of the law. It is a misfortune which in the imperfection of human nature often admits of no redress. The holder of a corporation bond must in common with other men submit to this calamity, and the law affords no relief.
>
> "The power we are here asked to exercise is the very delicate one of taxation. This power belongs in this country to the legislative sovereignty, State or

national. In the case before us the national sovereignty has nothing to do with it. The power must be derived from the legislature of the State. So far as the present case is concerned, the State has delegated the power to the levee commissioners. If that body has ceased to exist, the remedy is in the legislature either to assess the tax by special statute or to vest the power in some other tribunal. It certainly is not vested, as in the exercise of an original jurisdiction, in any federal court. It is unreasonable to suppose that the legislature would ever select a federal court for that purpose. It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an evasion by the judiciary of the federal government of the legislative functions of the State government. It is a most extraordinary request, and a compliance with it would involve consequences no less out of the way of judicial procedure, the end of which no wisdom can foresee."

In *The State Railroad Tax Cases* (92 U. S., 575), speaking of the want of authority in judicial tribunals to interfere with the process of collecting taxes, the court said:

"It is a wise policy. It is founded in the simple policy derived from experience of ages that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully other instrumentalities and other modes of enforcing it are necessary than those which belong to courts of justice. See *Cheatham v. Norvell*, decided at this term; *Nickoll v. United States* (7 Wall., 122); *Dow v. Chicago* (11 Ill., 108)."

In *Merriweather v. Garrett* (102 U. S., 472), the court said, on page 501:

"The power of taxation is legislative and cannot be exercised otherwise than by the authority of the legislature. * * * Taxes can only be collected under authority of the legislature. If no such authority exists the remedy is by appeal to the legislature which alone can grant relief."

And Mr. Justice Field, for himself and Mr. Justice Miller and Mr. Justice Bradley, in a concurring opinion, said, on page 515:

> "The courts cannot continue in force the taxes levied, nor levy new taxes for the payment of the debts of the corporation. Levying taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the legislature upon considerations of policy, necessity and the public welfare. In a distribution of the powers of government in this country into three departments, the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare and to provide the revenues for the support and due administration of the government throughout the State in all its subdivisions. Having the sole power to authorize the taxation, it must equally possess the sole power to prescribe the means by which the tax shall be collected and to designate the officers through whom its will shall be enforced.
>
> "It is the province of the courts to decide cases between parties and in so doing to construe the constitution and statutes of the United States and of the sovereign States and to declare the law, and when their judgments are rendered, to enforce them by such remedies as legislation has prescribed or as are allowed by the established practice. When they go beyond this, they go outside of their legitimate domain and encroach upon the other departments of the government, and all will admit that a strict confinement of each department within its own proper sphere was designed by the founders of the government, and is essential to its successful administration."

In *Heine v. The Levee Commissioners* (1 Wood, 247), in the United States circuit court, the opinion was delivered by Mr. Justice Bradley, and, speaking of taxation, he said:

> "The judicial department has no power over the subject. If the officers who are charged with the

duty of laying or collecting taxes refuse to perform their functions, the court, in a clear case of failure, and at the instance of a party directly interested, can, by the prerogative of the writ of mandamus, compel them to perform acts which are ministerial as distinguished from those which are judicial or discretionary. This is all that the judicial department can do on the subject unless the legislation has expressly conferred upon it further powers."

Louisiana v. Jumel (107 U. S., 711) was a bondholders' bill against the State board of liquidation, alleging that the State had impaired the obligation of an express contract, and there was also a petition for a mandamus against the board and the State auditor and treasurer. The object of the proceedings was to compel the State officers to pay from the general funds of the State the repudiated bonds and coupons held by the complainants. The court said:

"In neither of the suits was any inquiry to be instituted in respect to the particular bonds and coupons held by the plaintiffs, or any special relief afforded as to them. All that is asked will inure as much to the benefit of the other holders of similar obligations as to the particular parties to these suits. So that the remedy sought implies power in the judiciary to compel the State to abide by and perform its contracts for the payment of money, not by rendering and enforcing a judgment in the ordinary form of judicial procedure, but by assuming the control of the administration of the fiscal affairs of the State to the extent that may be necessary to accomplish the end in view.

* * * * * * *

"In *United States v. Lee,* 106 U. S., 196, it was held that the officers of the United States, holding in their official capacity the possession of lands to which the United States had no title, could be required to surrender their possession to the rightful owner even though the United States were not a party to the judgment under which the eviction was to be

had. Here, however, the money in question is lawfully the property of the State. It is in the manual possession of an officer of the State. The bondholders never owned it. The most they can claim is that the State ought to use it to pay their coupons, but until so used it is in no sense theirs.

"Little need be said with special reference to the suit for *mandamus*. In this no trust is involved; but the simple question presented is, whether a single bondholder, or a committee of bondholders, can, by the judicial writ of *mandamus*, compel the executive officers of the State to perform generally their several duties under the law. The relators do not occupy the position of creditors of the State demanding payment from an executive officer charged with the ministerial duty of taking the money from the public treasury and handing it over to them, and, on his refusal, seeking to compel him to perform that specific duty. What they ask is that the auditor of State, the treasurer of State, and the board of liquidation may be required to enforce the act of 1874, and 'carry out, perform, and discharge each and every one of the ministerial acts, things, and duties respectively required of them, * * * according to the full and true intent and purport of that act.' Certainly no suit begun in the circuit court for such relief would be entertained, for that court can ordinarily grant a writ of mandamus only in aid of some existing jurisdiction. *Bath County v. Amy*, 13 Wall., 244; *Davenport v. County of Dodge*, 105 U. S., 237. Our attention has been called to no case in the courts of Louisiana in which such general relief has been afforded; and the jurisdiction of the circuit court was, therefore, in no way enlarged through the operation of the removal acts, even if this is a case which was properly removed,—a question we do not deem it necessary to now decide. The remedy sought, in order to be complete, would require the court to assume all the executive authority of the State, so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question

until the bonds, principal and interest, were paid in full, and that, too, in a proceeding in which the State, as a State, was not and could not be made a party. It needs no argument to show that the political power cannot be thus ousted of its jurisdiction and the judiciary set in its place. When a State submits itself, without reservation, to the jurisdiction of a court in a particular case, that jurisdiction may be used to give full effect to what the State has by its act of submission allowed to be done; and if the law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the courts, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them as against the political power in their administration of the finances of the State. In our opinion, to grant the relief asked for in either of these cases would be to exercise such a power."

And in the case of *Thompson v. Allen County*, etc. (115 U. S., 550), the whole subject was again reviewed by this court, upon a certificate of division from the circuit court. Two of the questions certified were:

1. Whether taxes levied under judicial direction can be collected through a receiver appointed by the court of chancery, if there is no public officer with authority from the legislature to perform the duty.

2. Whether taxes levied by State officers under judicial direction can be collected through a receiver appointed by the United States court where the legislature has provided an officer to collect, but there is a vacancy in office and no one can be found willing to accept the office.

This court answered these questions in the negative. (See also the same case reported in 13 Fed. Rep., 97, Mr. Justice Matthews delivering the opinion.)

It is evident that a judgment or decree in this case must be for money only and must be enforced, if enforced at all, either by a sale of the State's property or by taking control of its legislative and executive authorities and compelling them, by some process not heretofore known to our jurisprudence, to appropriate money from the State treasury for the satisfaction of the debt, or to levy taxes or issue and sell bonds for that purpose. The question whether any of these remedies can be afforded must, it seems, be directly met and finally settled in the present case if there is any good cause of action shown; for, as before said, there is no allegation that there is a lien or trust or any other element involved in either of the alleged causes of action to require the application of any remedy except a judgment or decree for money.

The jurisdiction of this court in an action brought by one State against another to settle a question of boundary, or to secure redress for wrongs and injuries perpetrated by another State upon the territorial rights of the complaining State, or upon the rights of large communities of its people, has been definitely settled by a long series of cases, beginning with *Rhode Island v. Massachusetts* (12 Peters, 657) in one class, and ending with the other class in the two cases of *Kansas v. Colorado* (185 U. S., 125) and *Missouri v. Illinois* (180 U. S., 208, and 200 U. S., 496). But when this court decides a question of boundary between two States, or the boundary between a State and a Territory of the United States, no judicial process is necessary to carry its judgment or decree into effect. When the fact as to the true location of the line of separation has been found by the court, the political departments of the Government, as well as the courts of the States concerned, are bound to recognize its adjudication as conclusive of the question, and the territory formerly in dispute must be thereafter treated as part of the State to which it has been awarded. It will be included by the legislative department of the

United States in the congressional and judicial districts of that State, and its people will be recognized as qualified electors in the choice of members of the House of Representatives, and their representatives in the State legislature will be recognized as qualified electors in the choice of members of the United States Senate for that State. The executive department of the United States, in the exercise of its authority under the Constitution, in the execution of its powers concerning the constitutional and legal relations between the State and the general government, will also treat the territory as part of the State to which it has been adjudged to belong. No State which has lost part of its territory by such adjudication could, therefore, prevent the practical execution of the judgment or decree by legislation or otherwise; for every attempt to continue the exercise of its own jurisdiction over it would be defeated, not only by the political departments, but by the courts as well. So far as we have been able to ascertain, no judicial process has ever been issued or applied for to carry such judgments or decrees into effect, except an order directing the established line to be surveyed and properly marked.

In the other class of cases, where trespasses or nuisances are complained of, and where the acts complained of are done by or under the authority of the defendant State, a decree of this court enjoining the continuance of the wrongs would be binding upon all the officers and agencies of the State, and upon all other persons who might thereafter knowingly participate in the violation of the decree, and they could all be punished for contempt. A power to make and enforce a decree in such a case is very different from the power to make and enforce a decree requiring the legislative or executive authorities of the State to take affirmative action in regard to matters which their own constitution and laws, and the plan and theory of our dual system of government, have committed to their own exclusive judgment and discretion.

There is no fact alleged that would authorize a court of equity to take jurisdiction for the enforcement of such claims as are set up in this case. But, waiving, that subject for the present, we propose to confine ourselves in this part of the argument to the question whether this court, under that provision of the constitution which confers upon it jurisdiction over cases in which a State shall be a party, has the power, either in equity or at law, to hear and determine a case in which the final relief demanded is the rendition and enforcement of a simple judgment for money against a State. In *United States v. North Carolina*, 136 U. S., 217, which is one of the cases relied upon to show the jurisdiction of this court in an action against a State for the recovery of money, not only was there no objection made to the jurisdiction at any stage of the proceedings, but the whole case, which involved no question of fact and only a single question of law, was, by the written consent of the parties, submitted to the court for its decision. It has been decided by this court that a State may waive its privilege and submit itself to the jurisdiction of any court at the suit of another State, or at the suit of an individual.

Beers v. Arkansas, 20 How., 527.
Clark v. Bernhard, 108 U. S., 115.

In the case last cited the court said:

> "The immunity from suit belonging to a State which is respected and protected by the Constitution within the limits of the judicial power of the United States, is a personal privilege which it may waive at pleasure; so that a suit otherwise well brought, in which a State had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction; while of course those courts are always open to it as a suitor in controversies between it and citizens of other States."

We do not think, therefore, that the case relied upon can be properly considered as a conclusive adjudication that this court has jurisdiction of an action against a State for the recovery of a money judgment when the State has not consented to be sued, but is protesting. Besides, the court, after considering the question submitted by consent of the parties, found that nothing was due from the State and therefore was not required to render a judgment against it. What it would have done if it had found against the State, whether it would have decided that it had power to render and enforce a judgment for the payment of the money, cannot, of course, be known; but from what was subsequently said and done in the case of *South Dakota v. North Carolina*, 192 U. S., 286, we are at liberty to say that the question of power in the court to render and enforce such a judgment is at least still open.

In the case last referred to the court said:

> "But we are confronted with the contention that there is no power in this court to enforce such a judgment, and such lack of power is conclusive evidence that, notwithstanding the general language of the constitution, there is an implied exception of actions brought to recover money. The public property held by any municipality, city, county or State, is exempt from seizure upon execution because it is held by such corporation, not as a part of its private assets, but as a trustee for public purposes. *Meriwether v. Garrett*, 102 U. S., 472, 513. As a rule, no such municipality has any private property subject to be taken upon execution. A levy of taxes is not within the scope of the judicial power except as it commands an inferior municipality to execute the power granted by the legislature."

The court then refers to the cases of *Rees v. City of Watertown* (19 Wall., 107) and *Heine v. The Levee Commissioners* (19 Wall., 655) and says:

> "In this connection reference may be made to *United States v. Guthrie*, 17 How., 284, in which an

application was made for a mandamus against the Secretary of the Treasury to compel the payment of an official salary, and in which we said (p. 303):

"'The only legitimate inquiry for our determination upon the case before us is this: Whether, under the organization of the federal government, or by any known principle of law, there can be asserted a power in the Circuit Court of the United States for the District of Columbia, or in this court, to command the withdrawal of a sum or sums of money from the Treasury of the United States, to be applied in satisfaction of disputed or controverted claims against the United States? This is the question, the very question presented for our determination; and its simple statement would seem to carry with it the most startling considerations—nay, its unavoidable negation, unless this should be prevented by some positive and controlling command; for it would occur, *a priori*, to every mind, that a treasury, not fenced round or shielded by fixed and established modes and rules of administration, but which could be subjected to any number or description of demands, asserted and sustained through the undefined and undefinable discretion of the courts, would constitute a feeble and inadequate provision for the great and inevitable necessities of the nation. The government under such a *regime*, or, rather, under such an absence of all rule, would, if practicable at all, be administered, not by the great departments ordained by the constitution and laws, and guided by the modes therein prescribed, but by the uncertain and perhaps contradictory action of the courts, in the enforcement of their views of private interests.'

"Further, in this connection may be noticed *Gordon v. United States*, 117 U. S., 697, in which this court declined to take jurisdiction of an appeal from the Court of Claims, under the statute as it stood at the time of the decision, on the ground that there was not vested by the act of Congress power to enforce its judgment. We quote the following from the opinion, which was the last prepared by Chief Justice Taney (pp. 702, 704):

"'The award of execution is a part, and an essen-

> tial part, of every judgment passed by a court exercising judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy. * * * Indeed, no principle of constitutional law has been more firmly established or constantly adhered to, than the one above stated—that is, that this court has no jurisdiction in any case where it cannot render judgment in the legal sense of the term; and when it depends upon the legislature to carry its opinion into effect or not, at the pleasure of Congress.'"

The court also cited *In re Sanborn,* 148 U. S., 222, and *La Abra Silver Mining Company v. United States,* 175 U. S., 423, 456, and proceeded to say:

> "We have, then, on the one hand the general language of the constitution vesting jurisdiction in this court over 'controversies between two or more States,' the history of that jurisdictional clause in the convention, the cases of *Chisolm v. Georgia, United States v. North Carolina,* and *United States v. Michigan* (in which this court sustained jurisdiction over actions to recover money from a State), the manifest trend of other decisions, the necessity of some way of ending controversies between States, and the fact that this claim for the payment of money is one justiciable in its nature; on the other, certain expressions of individual opinions of justices of this court, the difficulty of enforcing a judgment for money against a State, by reason of its ordinary lack of private property subject to seizure upon execution, and the absolute inability of a court to compel a levy of taxes by the legislature. Notwithstanding the embarrassments which surround the question, it is directly presented and may have to be determined before the case is finally concluded, but for the present it is sufficient to state the question with its difficulties."

The decision of the question never became necessary, for the reason that the parties afterwards settled the matter be-

tween themselves, so that all that the court actually did in that case was to enforce a lien.

In *United States v. Michigan,* 190 U. S., 379, the opinion of the court was delivered upon a demurrer which, of course, admitted all the material allegations of the bill, and the court decided that the State of Michigan held certain funds and certain tools and machinery appertaining to the Saint Mary's River canal in trust for the United States, and that on the face of the bill the United States had a right to demand an accounting and a payment of the sum found due.

In the opinion it was said:

> "In the consideration of this case, the controlling thought must of course be to arrive at the meaning of the parties, as expressed in the various statutes set forth in the bill. While that meaning is to be sought from the language used, yet its construction need not be of a narrow or technical nature, but in view of the character of the subject, the language should have its ordinary and usual meaning.
>
> "Whether, under these circumstances, technical words were used to express the thought that the State was to be trustee, is not important if, upon a reading of the statutes and a survey of the condition of the country when the acts were passed, it is apparent that the intent was that the State should occupy the position of trustee in the construction and operation of the canal. *Winona &c. R. R. Co. v. Barney,* 113 U. S,. 618, 625."

And after an examination of the question the court held that the State was a trustee for the United States as to the money and property in its possession, and it overruled the demurrer and gave the defendant leave to answer.

In *Kentucky v. Dennison,* 24 Howard, 66, where a law had been constitutionally enacted by Congress making it the duty of the governor of a State to surrender fugitives from the justice of other States, the court held that the suit was against the State, although the governor was the only party

made defendant on the record, and in the course of the opinion it said:

> "But the language of the act of 1793 is very different. It does not purport to give authority to the State executive to arrest and deliver the fugitive, but requires it to be done, and the language of the law implies an absolute obligation which the State authority is bound to perform. And when it speaks of the duty of the governor, it evidently points to the duty imposed by the constitution in the clause we are now considering. The performance of this duty, however, is left to depend on the fidelity of the State executive to the compact entered into with the other States when it adopted the Constitution of the United States and became a member of the Union. It was so left by the constitution, and necessarily so left by the act of 1793.
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> "And it would seem that when the constitution was framed, and when this law was passed, it was confidently believed that a sense of justice and of mutual interest would insure a faithful execution of this constitutional provision by the executive of every State, for every State had an equal interest in the execution of a compact absolutely essential to their peace and well being in their internal concerns, as well as members of the Union. Hence, the use of the words ordinarily employed when an undoubted obligation is required to be performed, 'it shall be his duty.'
>
> "But if the governor of Ohio refuses to discharge this duty, there is no power delegated to the general government, either through the judicial department or any other department, to use any coercive means to compel him" (pp. 109, 110).

In *Missouri v. Illinois*, 200 U. S., 496, in which no judgment or decree for money was demanded, the court said:

> "In the case at bar, whether Congress could act or not, there is no suggestion that it has forbidden the action of Illinois. The only ground on which that State's conduct can be called in question is one

which must be implied from the words of the constitution. The constitution extends the judicial power of the United States to controversies between two or more States and between a State and citizen of another State, and gives this court original jurisdiction in cases in which a State shall be a party. Therefore, if one State raises a controversy with another, this court must determine whether there is any principle of law, and, if so, what, on which the plaintiff can recover. But the fact that this court must decide does not mean, of course, that it takes the place of a legislature. Some principle it must have power to declare. For instance, when a dispute arises about boundaries, this court must determine the line and in so doing must be governed by rules explicitly or implicitly recognized (*Rhode Island v. Massachusetts,* 12 Pet., 657–733). It must follow and apply those rules even if legislation of one or both of the States seems to stand in the way. But the words of the constitution would be a narrow ground upon which to construct and apply to the relations between States the same system and municipal law in all its details which would apply between individuals. If we suppose a case which did not fall in the power of Congress to regulate, the result of a denial of rights by this court would be the establishment of a rule which would be irrevocable by any power except that of this court to reverse its own decision, an amendment of the constitution, or possibly an agreement between the States sanctioned by the legislature of the United States.

"The difficulties in the way of establishing such a system of law might not be insuperable, but they would be great and new."

In every case since the adoption of the eleventh amendment to the Constitution where the court has found that the effect of granting the relief sought by the plaintiff would be to enforce the claim of an individual, whatever may be its nature, against a State, it has denied its power, or the power of any other court of the United States, to do so. It can make no difference what means or devices the parties

may have resorted to for the purpose of getting the case into the court, if it appears that the real object of the action and the effect of the judgment or decree would be to conclude the State itself, and not merely its ministerial officers or agents, the court has refused to exercise jurisdiction for that purpose.

> See *Hollingsworth v. Virginia,* 3 Dall., 378; *Osborn v. Bank,* 9 Wheat., 738; *Briscoe v. Bank,* 11 Pet., 257; *Jumel v. Louisiana,* 107 U. S., 710; *N. H. v. Louisiana,* 108 U. S., 726; *Poindexter v. Greenhow,* 114 U. S., 270; *Marye v. Parsons,* 114 U. S., 325; *Hagood v. Southern,* 117 U. S., 52; *In re Ayres,* 123 U. S., 443; *Christian v. Atlantic & N. C. R. R. Co.,* 133 U. S., 233; *Louisiana,* etc., *v. Steele,* 134 U. S., 230; *Penoyer v. McConnaughy,* 140 U. S., 1; *In re Tyler,* 149 U. S., 164; *Reagon v. Farmers' Loan and Trust Co.,* 144 U. S., 362; *Scott v. Donald,* 165 U. S., 58; *Tindel v. Wesley,* 167 U. S., 204; *Smith v. Ames,* 169 U. S., 466; *Fitz v. McGhee,* 172 U. S., 516.

This being the law, it is not possible to see how the State of Virginia can maintain an original action as trustee in this court for the avowed use and benefit of individuals on claims in which she as a State has no interest. To sustain such a proceeding would be a palpable evasion of the eleventh amendment, and would establish a precedent which would practically nullify that provision of the organic law by conferring original jurisdiction upon the court in every case where an individual might choose to transfer his real property or his goods and chattels, or choses in action, to a State as trustee, even if it were done, as in this case, for the sole purpose of conferring jurisdiction on this court. Certainly it cannot be held that a controversy between two States, justiciable in this court, can be created by the transfer of a claim on behalf of an individual to one of the States as a

mere trustee to sue and collect it, whatever may be the law in a case where the complaining State is itself the real and beneficial owner of the claim sued on. But this precise question was presented in the case of *Kansas v. United States*, decided February 25, 1907, and not yet reported, and the court disposed of it in a single sentence. After finding that the State was suing as trustee for the Missouri, Kansas and Texas Railway Company, the court said:

"In these circumstances we think it apparent that the name of the State is being used simply for the prosecution in this court of a claim of the railroad, and our original jurisdiction can not be maintained;" and the court held that as the United States has not consented to be sued the bill must be dismissed.

We cannot see how the provision of the Constitution which confers upon this court jurisdiction in cases in which a State shall be a party can be properly so construed and applied as to destroy, or disarrange, the distribution of powers between the federal government and the States, which that instrument establishes. To hold that the judicial tribunals of the United States, whether the case be in equity or at law, can seize and sell the property of a State or direct money to be paid out of its treasury, or assume control over its legislative and executive departments and decree when and how, and for what purpose, they shall exercise their constitutional authority, would be destructive of the independence of the several States in the management and control of their own internal affairs. Yet it is indisputable that if such tribunals possess the power to render valid judgments and decrees in such cases, they must be enforced by some one of the means we have stated.

Some other interpretation must therefore be given to the constitutional provision, some interpretation which will be consistent with the character of our political institutions and at the same time invest this court with original jurisdiction to hear and determine all controversies between

States which affect their rights as States—that is, as political organizations clothed with the authority and charged with the duties of government. It is the duty of a State as such to preserve and protect its territorial area against the encroachments of another State; to see that the lives, health, and safety of its citizens are not impaired or endangered by the action of another State or by its authority; and when controversies arise concerning these matters, or others of like character, this court has original jurisdiction to hear and determine them. There is, in fact, no other way to settle them except by negotiations or war, and the latter is prohibited by the constitution. To confine the jurisdiction to controversies of the character indicated and decline its exercise in cases where the enforcement of a judgment or decree would destroy or impair the sovereign authority of the States, would establish a reasonable construction of the constitution and accomplish all its real beneficial purposes.

There are many controversies between individuals which no judicial tribunal can take cognizance of, notwithstanding the comprehensive terms in which their jurisdiction is conferred, many rights which cannot be enforced, and many wrongs which cannot be redressed by the courts. Although they were established for the purpose of administering justice, it often happens that they are incapable of doing so by reason of the character of the questions involved or the character of the remedies required.

It is safe to say that if the framers of the constitution had expressly provided that this, or any other tribunal of the United States, should have power to seize and sell the property of a State or control the legislative and executive authorities of a State in any matter concerning its financial or other internal affairs, their work would have been rejected, and we do not think such an extraordinary power should be now implied from the general grant of original jurisdiction to this court in cases where a State is a party.

While it appears from the quotations made from the

opinion in *South Dakota v. North Carolina* that in the judgment of this court the question as to its jurisdiction to render and enforce a judgment or decree against a State in a suit on a contract for the payment of money, where no lien or trust exists, is still an open one, yet, in view of the facts that it has been elaborately discussed at the bar and much considered by the court in previous cases, we do not propose in this brief to repeat the arguments or cite further authorities. Some questions have been, we think, definitely settled by former adjudications. They are:

1. That the public property of a State cannot be seized and sold to satisfy a judgment or decree.

2. That a court has power in a case properly made to compel the municipal authorities or ministerial officers of a State to comply with the laws of the State in the matter of imposing and collecting taxes.

3. That no court can appoint a receiver, commissioner, or other official with power to collect taxes and apply the proceeds to the satisfaction of a judgment or decree, even after they have been imposed by the proper authorities of the State.

4. That no court can by its judgment or decree order the payment of money out of the State or national treasury when it has not been appropriated by the proper legislative authority.

5. That no court can compel the legislature or executive authorities of a State to impose a tax or issue bonds or appropriate money for any purpose, or to exercise any other authority vested in them by the constitution of the State. Unless the numerous cases establishing these propositions shall be overruled in whole or in part, or unless the present case can

be in some way distinguished from them, it is plain that no enforceable judgment or decree can be rendered by the court on any one of the alleged causes of action; and if that is so, it has, according to all the authorities on the subject, no jurisdiction to hear and determine the controversy.

We confidently submit that the outline of the bill heretofore given and the exhibits made part of it shows conclusively that it is multifarious, and that the demurrer ought to be sustained on that ground, if any good cause of action is shown over which this court has jurisdiction.

Virginia suing in her own right upon a separate and independent cause of action alleged to belong exclusively to her is not the same party as Virginia suing as trustee upon a different cause of action for the use and benefit of others who have no interest in her claim. Moreover, the State could not sue in equity in her own right, in one bill, upon two causes of action so entirely separate and distinct from each other as the claim for money and property alleged to have been delivered to the defendant under the acts of the legislature, and the claim founded upon the compact for the defendant's just proportion of the old public debt, even if she had paid that debt and was entitled to contribution. The foundations of the two causes of action are wholly different, and they are of a wholly different nature and require different judgments or decrees. They involve different questions of law and fact, and a defense which would be good against one would be wholly inapplicable to the other.

"Multifariousness," says Foster, "consists in the joinder of two or more distinct and unconnected grounds for equitable relief each of which might be the foundation for a separate bill. This may occur in three ways—by misjoinder of plaintiffs; by misjoinder of defendants, and by misjoinder of grounds for equitable relief held by and against the same parties."

Foster, Fed. Prac., sec. 71; *Calvert on Parties, Book I*, ch. VII.

Story says:

> "By multifariousness in a bill is meant the improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several of a distinct and independent nature against several defendants in the same bill."
>
> *Story's Equity Pl.*, sec. 271.

Again, it is stated by Story:

> "The result of the principles to be extracted from the cases on this subject seems to be that where there is a common liability and a common interest, a common liability in the defendants, and a common interest in the plaintiffs, different claims to property, at least if the subjects are such as may without inconvenience be joined, may be united in one and the same suit" (sec. 533).

In Daniel's Chancery Practice, page 335, it is said:

> "It may be that the plaintiffs and defendants are parties to the whole of the transactions which forms the subject of the suit and nevertheless those transactions may be so dissimilar that the court will not allow them to be joined together, but will require distinct records."

In *Brown v. Guarantee Trust Co.* (128 U. S., 404) this court said:

> "To support the objection of multifariousness because the bill contains different causes of suit against the same person, two things must occur: First, the ground of suit must be different; second, each ground must be sufficient as stated to sustain a bill. *Bedsole v. Monroe* (5 Iredell Eq., 313); *Larkins v. Biddle* (21 Ala., 252; *Nail v. Mobley* (9 Ga., 278; *Robinson v. Cross* (22 Conn., 171)."
>
> See also *Shields v. Thomas*, 59 U. S., 253 (18 How.).

In *Walker v. Powers* (104 U. S., 245), a case analogous to the present, there was a misjoinder of plaintiffs and a misjoinder of causes of action. The opinion was delivered by Mr. Justice Miller, and the cases of *Emals v. Emals* (14 McArthur [N. J. Eq.], 114) and *Sawyer v. Noble* (55 Me., 273) were cited and approved.

See also *Dial v. Reynolds* (96 U. S., 340).
Doggett, etc., v. Florida R. R. Co. (99 U. S., 72).

In *Salvidge v. Hyde* (Jac., 151; 5 Mad., 158) the Vice-Chancellor said:

> "In order to determine whether a suit is multifarious, or, in other words, contains distinct matter, the inquiry is not, as this defendant supposes, whether each defendant is connected with every branch of the case, but whether the plaintiff's bill seeks relief in respect of matters which are, in their nature, separate and distinct."

In *Church v. Citizens' Street Railway Company*, 78 Fed., 529, the court said:

> "Multifariousness consists in stating against the same party two or more independent causes of action in the same bill; or it may consist in stating one or more causes of action against a portion of the defendants and another cause of action against another portion of the defendants."

In that action the plaintiffs, who had purchased stock in a corporation, attempted to secure relief for themselves in their own right on one cause of action, and also to secure relief against the same defendants for themselves and all other stockholders on another cause of action. The court held the bill was multifarious.

C. Ziegler v. Lake City Elevated Railroad Company, 76 Fed., 662; the *First National Bank v. Sioux City*, 75 Fed., 154; *Price, receiver, etc., v. Coleman*, 21 Fed., 557, opinion by J. Grey; *Central Bank v. Fitzgerald et al.*, 94 Fed., 16; *Lewarne v. Mexican Internal Improvement Co.*, 38 Fed., 629; *Ætna Insurance Co. v. Smith*, 73 Fed., 318.

In *Metropolitan Trust Co. v. Columbus & Hocking Ry. Co.*, 93 Fed., 689, Judge Taft said:

> "It it also true that a cause of action in favor of one in his own right is as distinct from a cause of action in favor of the same person as trustee as it is from that of a different person. And therefore that a defendant against whom a trustee attempted to unite in the same bill with a cause of action asserted by him as trustee a wholly distinct cause of action in his individual right might object on the ground of multifariousness. In the case before us the defendant railway company might therefore be heard to urge this defect in the bill, because it asks for an enforcement of two different liens held in different rights."

But the court held that the objection to the bill for multifariousness could not be taken by Zohorst and the Second National Bank, "for," said the court, "as to that issue made by the complainant as trustee the right is the same." And again the court said:

> "Upon that issue the complainant as trustee and in its own right has precisely the same interest. And the union of the two causes of action does not embarrass Zohorst or the bank in the slightest; for as to them, the causes of action raised but one narrow question" (page 691).

The difference between that case and the case at bar is obvious at a glance. In the case at bar the bill alleges two entirely separate and distinct causes of action arising out of two unconnected transactions, in one of which it alleges an interest in the plaintiff State, and in the other an interest as trustee, and thus presents two distinct series of issues to be investigated and decided. And, besides, it is perfectly clear that the State of Virginia has not the same interest in the cause of action alleged in her own right and in the one asserted as trustee; nor can the State of West Virginia make the same defense to both.

In *Moss v. Cohen,* 158 N. Y., 240, the plaintiff entitled the action as by himself individually and as executor, but there was only one cause of action alleged, and that was wholly for the benefit of the estate he represented. The court said:

> "There is no pretense or allegation that the plaintiff claimed more than a single right of recovery and that he brought to enforce as executor and for the benefit of the estate he represents";

and it held that there was consequently no improper joinder of parties.

In *Hall v. Fisher,* 20 Barb. (N. Y.), the plaintiff sued in its own name and also as administrator, alleging that he and his intestate were during the lifetime of the latter tenants in common, the intestate owning three-fourths and the plaintiff owning one-fourth of a lot of land; and his claim was that the defendants should account to him individually and to him as administrator for their shares of rents and profits. The court held that the cause of action should have been separately stated. It said:

> "How else can the defendant, if he has a defense of a different character as to each cotenant, avail himself of such defense? He might in this case have one defense against the plaintiff as to his personal claim and another defense as to the interest whose rights he claims to represent as administrator. It cannot be regular for a plaintiff to include in the same action claims in his individual right and as administrator of another. It was never allowed at common law and is not sanctioned or allowed by any statute, not even the Code."

It is evident that the State of Virginia, having been by contract with her creditors discharged from all liability for the one-third of the old debt represented by the certificates, has no pecuniary interest whatever in the alleged claim against West Virginia for which she sues as trustee; and

it will not be contended, we presume, that the owners of the unfunded one-third of the ante-war debt, whether it is represented by the canceled bonds held in trust by the State or by the certificates, have any interest whatever in the claim of Virginia for money and property alleged to have been transferred to West Virginia under the acts of 1863. The unfunded one-third of the old bonds formerly held by the Virginia Commissioners of the Sinking Fund and the Literary Fund is in the same position as that belonging to the other creditors. Virginia has solemnly and repeatedly declared that she was not liable for the one-third, has refused to pay it or any part of it, and has canceled the bonds and issued to the Sinking Fund and Literary Fund precisely the same kind of certificates issued to other creditors. The fact, if it be a fact, that the Commissioners of the Sinking Fund and the Literary Fund are agencies of the State, would simply show that the State owed that part of the debt to herself. But the State has released herself from the obligation for one-third of the bonds originally held by these funds and has thereby withdrawn from them that proportion of the sum which she originally intended they should have. Unless, therefore, the two funds, as agencies of the State, now have a valid claim against West Virginia, their demands have been fully satisfied and extinguished. In any aspect, the claim is asserted by Virginia to recover from West Virginia for contribution on account of money which she (Virginia) has never paid.

The claim against West Virginia under the compact cannot be divided into separate parts, so that Virginia can sue in her own right or for the Commissioners of the Sinking Fund and the Literary Fund for the part represented by the certificates held by those two funds, and also sue as trustee for another part held by different parties. The claim is an entirety and the amount is to be ascertained *in solido*, in the manner provided by the compact, and is to be paid in the

manner provided by the compact. Whatever the amount might be, it was all payable to Virginia herself, and not to the bondholders, who never had a cause of action against West Virginia, even if the State had been suable; and they cannot create a cause of action for their own benefit, in the name of the State, by the process of having Virginia transfer the indebtedness, or a part of it, to them by the enactment of statutes or the issue of certificates or otherwise, and then transferring it back to the State as trustee. But whether the State is, or could be, legally a trustee, or whether, if she be legally a trustee, she could maintain an action in this cause in that capacity, makes no difference in the decision of the question of multifariousness, for the bill and exhibits show that for nearly, if not all, of the unfunded one-third of the debt she actually sues as trustee in this action and not otherwise; and that is sufficient to sustain the contention that there is a misjoinder of parties and a misjoinder of causes of action. Even, therefore, if it should be held that the State is suing in her own right for a judgment and recovery of the amount represented by the certificates held by the two funds, and as trustee for the holders of the other certificates, it would furnish another substantial reason for holding the bill to be multifarious. Besides, it would show that there is a conflict between the personal interests of the trustee and the interests of the *cestuis que trust*, for whatever the trustee might receive in her own right in the distribution of the sum recovered would, to that extent, diminish the portions of the other beneficiaries; and it is a well established rule that plaintiffs whose interests are conflicting cannot unite in the same action—a rule which ought to be rigidly enforced, especially when one of the plaintiffs sues as trustee for the others, and consequently controls the entire proceeding.

Walker v. Powers, 104 U. S., 245.

In view of her own statutes and the agreement she has exacted from the other holders of certificates, it is difficult to

see how Virginia can consistently claim in this action to be suing in her own right to recover any part of the alleged indebtedness of West Virginia on account of the ante-war debt, or, for that matter, on account of any other claim. By statutes she has required her creditors to enter into contracts to defray all the expenses of this proceeding, to release her absolutely, and to accept whatever may be received from West Virginia—whether it be much or little or nothing at all—in full satisfaction and discharge of their claims, and this suit, as alleged in the bill, is being prosecuted under those statutes and agreements.

The bill wholly fails to show a case which entitles the plaintiff to an accounting against the defendant. There are no mutual accounts between the parties, no trust or lien alleged, no fraud, mistake, or concealment, no discovery asked or shown to be necessary, no multiplicity of suits to be avoided, no question as to the application of payments, and no question of apportionment or contribution except upon a basis which is expressly and plainly stated in the compact between the States, and which, therefore, calls for no exercise of the powers of a court of equity. In all its branches, the action is founded on contracts evidenced by the ordinance, and by statutes and constitutional provisions, easily interpreted and involving no question not cognizable in a court of law; and the only possible remedy is a simple judgment for money which a court of law is fully competent to award, if it can be awarded at all in such a case.

In a case where there are no mutual accounts, and no discovery is necessary, the court will not decree an accounting. Story says:

> "One of the most difficult questions arising under this head (and which has been incidentally discussed in another place) is to ascertain whether there are any, and if any, what are the true boundaries of equity jurisdiction in such matters of account as are cognizable at law; we say cognizable at law, for wher-

> ever the account stands upon equitable claims or has equitable trusts attached to it, there is no doubt that the jurisdiction is absolutely universal and without exception, since the party is remediless at law" (Sec. 454).

And again he says:

> "But in cases where there is a remedy at law, there is no small confusion and difficulty in the authorities. The jurisdiction in matters of this sort has been asserted to be maintainable upon two grounds, distinct in their own nature and yet often running into each other. In the first place, it has been asserted that where in a matter of account the party seeks a discovery of facts, and these appear upon his bill to be material to his right of recovery, there, if the answer does in fact make a discovery of such material facts (for it would be no ground of jurisdiction if the discovery failed), the courts have at once a rightful jurisdiction of the cause and may proceed to give relief in order to avoid multiplicity of suits" (Sec. 455).

The authorities in support of the propositions we have stated are substantially uniform.

In *Russell v. Clark* (7 Cranch, 89), this court said:

> "It is true that if certain facts essential to the merits of a claim, purely legal, be exclusively within the knowledge of the party against whom that claim is asserted, he may be required, in a court of chancery, to disclose those facts, and the court, being thus rightly in possession of the cause, will proceed to determine the whole matter in controversy. But this rule cannot be abused by being employed as a mere pretext for bringing causes properly from a court of law into a court of equity. If the answer of the defendant discloses nothing, and the plaintiff supports his claim by evidence in his own possession unaided by the confessions of the defendant, the established rules, limiting the jurisdiction of courts, require that he should be dismissed from the court

of chancery, and permitted to assert his rights in a court of law."

See *Fowle v. Lawrason,* 6 Pet., 495; *Dowell v. Mitchell* and *Mitchell v. Dowell,* 105 U. S., 430 (and the authorities therein cited); *Consolidated Safety Valve Co. v. Ashlan,* 26 Fed., 369; *Lord v. Whitehead,* 24 Fed., 421; *Gunn v. Brinkley,* etc., 66 Fed., 382.

French v. Hay, 22 Fed., 231-237, was a bill for an accounting, and the court said:

> "And were it conceded that by the instrument through which he claims, French became the owner of the judgment, as between himself and Hay, we do not perceive how the concession could aid him in this case. If, as the bill avers, Hay collected the judgment and now holds the money for the use of the complainant, there is a complete remedy at law. This is not a bill for discovery and the aid of the court of equity is not needed."

It is shown by the bill in this case that the State of Virginia has in her own possession all the accounts, vouchers, and documents relating to the amount of the old indebtedness, and all the charges and credits that should be made against and in favor of West Virginia on the settlement provided for in the compact, and she offers to produce them before the master. The prayer of the bill asks that the defendant State "may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth," etc., etc.; but it is not alleged anywhere in the bill that the State of West Virginia has in her possession, or under her control, any such entries, documents, reports, or proceedings.

There is no semblance of a ground for the intervention of a court of equity in this case unless it be the fact that the jurisdiction of such a court can be invoked merely because the accounts necessary to be examined in deciding the controversy between the parties are voluminous or tedious; but in the case of *Brown v. Chase,* 94 U. S., 81, the court said:

> "If the evidence is merely voluminous or tedious, that circumstance is not sufficient cause for transferring a case from a court of law to a court of equity" (p. 824).

But it is unnecessary to discuss this question at length, for the distinction between the common law and equity jurisdiction of the courts of the United States under the constitution has been so often stated and explained in the decisions of this court that it would be tedious to repeat them here.

For cases in which this distinction is stated, see—

Fenn v. Holmes, 21 How., 491;
Robinson v. Campbell, 8 Wheat., 221;
Strother v. Lucas, 6 Pet., 768;
Parish v. Elkins, 16 Pet., 453;
Bennett v. Butterworth, 11 How., 669;
Galt v. Galloway, 4 Pet., 432;
Young v. Porter, 3 Woods, 342;
Scott v. Seely, 140 U. S., 106;
Hipp v. Robbins, 19 How., 271;
Parker v. Winnipiseogee et al., 2 Black, 545;
Grand Chute v. Winniver, 15 Wall., 373;
Lemon v. Coches, 23 Wall., 461;
Killian v. Ebbinghaus, 110 U. S., 468.

There is no allegation in the bill that any authority has been given for the prosecution of this action on behalf of the State of Virginia, except for the single purpose of securing an adjustment of the proportion of the old debt

proper to be borne by the State of West Virginia. The plaintiff State has already determined for herself what her just proportion of the debt is, and neither asks nor is willing to have that question reopened. The only authority for the institution of the suit is found in the act of March 6, 1900, which relates exclusively to the ascertainment of West Virginia's proportion of the debt represented by the certificates deposited with the commission, and provides that "the said commission shall be authorized and empowered by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings in behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement as aforesaid." This is the whole extent of the authority given for the use of the name of the State in this action, and it is expressly limited to an action or proceeding on her behalf as trustee for the certificate-holders; and, as we have already shown, this court cannot entertain that part of the bill.

It was held by the court in *Texas v. White* (7 Wall., 700) that the governor of a State had the power to authorize the institution of an action by the State in a case where the interests of the State itself were involved; but no such rule can be applied where the suit is not for the assertion of a claim or the protection of a right belonging to the State, but is for the sole benefit of individuals, and she sues as their trustee. In such a case the legislature possesses the sole authority to direct its institution. But, whether this is the general rule or not, the fact in this case is that the legislature, the supreme authority of the State, did assume and exercise control over the subject, and by an act which was approved by the governor, specifically defined the purpose for which the name of the State might be used.

Ordinarily the objection that the suit was brought without authority from the party named as plaintiff should be

taken by a plea in abatement, but where the lack of authority appears on the face of the bill or complaint, the question can be raised by demurrer. For instance, in a case where diverse citizenship is necessary to confer jurisdiction, and it appears on the face of the bill or complaint that the plaintiff and defendant are citizens of the same State, or even where it does not appear that they are citizens of different State, no plea in abatement is necessary, and a demurrer to the jurisdiction will be sustained.

The demurrer in this case calls the attention of the court to the fact that the bill contains no prayer for a judgment or decree or any other final relief. (*See Equity Rule* 21.) It merely asks that the principles upon which an accounting shall be had "may be ascertained and declared;" that an accounting may be had, and that the plaintiff may be granted such other and further general relief as the nature of the case may require or to equity may seem meet. We do not suppose a decree or judgment for the recovery of money or property can be rendered upon a mere prayer for general relief; but this is not a matter of great importance, because the bill might be amended in this particular.

We respectfully submit that the demurrer should be sustained and the bill dismissed.

J. G. CARLISLE,
For West Virginia.

Supreme Court of the United States,

OCTOBER TERM, 1906.

COMMONWEALTH OF VIRGINIA *vs.* STATE OF WEST VIRGINIA.	ORIGINAL NO. 7.

SUPPLEMENTAL BRIEF ON THE DEMURRER.

The evident purpose of the Virginia funding act of March 30, 1871, was to settle with the creditors for the full amount which the State had decided was her just share of the old public debt, and every creditor who surrendered his original bond for cancellation under the provisions of that act understood that he was being paid in the new bond all that the State recognized her obligation to pay. By presenting his bond for cancellation as required by the statute, and by accepting the certificate representing the remaining one-third, he necessarily released the State from any further pecuniary liability to him; for all the State agreed to do—if the language of the certificate constitutes an agreement—was, that the unfunded one-third "will be provided for in accordance "with such settlement as shall hereafter be had between "the States of Virginia and West Virginia in regard to "the public debt of the State of Virginia at the time of "its dismemberment." Both the act and the certificate issued under it provided that the State should hold the cancelled bonds in trust for the owners of the certificate (Record, pp. 15; 47-48).

The settlement referred to was to be made between the two States alone, and the essence of the agreement was that if anything should be received from West Virginia the holders of the certificates should have the benefit of it to the extent of their ratable shares. If Virginia had been suable, no action could have been thereafter maintained against her on this agreement unless she had actually received money in a settlement with West Virgina. Money so received would have been held in trust by the State for the certificate holders; and she now sues in that capacity for their exclusive benefit.

Unless Virginia has a valid claim in her own right against West Virginia for contribution independently of her transactions with the creditors, she cannot maintain this action. It certainly cannot be said that the issue of certificates to which West Virginia was not a party could confer upon Virginia a greater or more perfect right with respect to the unfunded one-third than she would have otherwise possessed; and, in fact, it is conceded by counsel that the liability of West Virginia is in no way affected by the issuance of the certificates. Although counsel insist that Virginia was not released from pecuniary liability under the act of 1871, yet the Attorney General, in his reply brief, says:

> "While the creditor, as the result of this arrange-
> "ment, took the risk of such a settlement ever being
> "made, it was none the less the duty of Virginia to
> "do all that she could, or all that could be reasonable
> "and fairly expected of her, to bring about and effect
> "such a settlement; and, her repeated efforts to that
> "end having proved abortive by reason of the failure
> "of West Virginia to meet her overtures, this suit
> "has become necessary."

The next funding act was passed March 28, 1879. It provided for the surrender and cancellation of the outstanding bonds and for the issue of certificates, and ex-

pressly declared that "The acceptance of said certificates "for West Virginia's one-third issued under this act shall "be taken and held as a *full and absolute release* of the "State of Virginia for all liability on account of said "certificates" (Record, p. 19). Notwithstanding this plain provision of the act, it is contended in one of the reply briefs that Virginia was not released from liability for the sums represented by the certificates issued under it. Of course, it was not necessary to provide that the State should be released from any part of the old bonds, because they had all been surrendered to her and cancelled, and no longer constituted, even apparently, an obligation upon her part.

The next act, which was passed February 14, 1882, also provided for the surrender and cancellation of the outstanding bonds, and for the issue of certificates for the unfunded one-third, "to be accounted for by the State of "West Virginia without recourse upon this commonwealth" (Record, pp. 28-29).

The next and last funding act was passed February 20, 1892, and it also required the surrender and cancellation of the outstanding bonds and the issue of certificates for the unfunded portion "to be accounted for to the holder "of this certificate by the State of West Virginia without "recourse upon this commonwealth" (Record, p. 30).

The foregoing references to the statutes show the relation which the State of Virginia bore to the unfunded part of the debt when the joint resolution of March 6, 1894, was passed constituting a commission to negotiate with West Virginia, upon the express condition, however, that it should "in no event enter into any negotiations "thereunder except upon the basis that Virginia is bound "only for two-thirds of the debt of the original State, "which she has already provided for as her equitable pro-"portion thereof" (Record, p. 40).

This was followed by the act of March 6, 1900, which

authorized the commission to take the certificates on deposit "upon an agreement and contract on the part of the "holders of said certificates that if the said commission "would secure a settlement with West Virginia with respect to said certificates, the holders of said certificates "so deposited will accept the amount realized on such "settlement from West Virginia on said certificates as a "full settlement of all their claims thereunder" (Record, p. 42). And it was further provided that the commission, with the advice and approval of the Attorney General, might take such action and institute such proceedings "on behalf of the State" as might in their judgment be needful and proper to "bring about and carry into effect a settlement as aforesaid;" but it was expressly provided that the owners of the certificates should defray all the expenses involved in connection with the proceedings "and the State shall not be subject to any expense on that account" (Record, .pp. 42).

The contracts exhibited with the bill, which are set forth in full in our original brief, show that the holders of the certificates which were deposited with the commission agreed to all the terms and conditions of the acts last referred to; and the record shows that before the institution of this suit certificates to the amount of $13,-173,435.41 had been deposited with the commission. Of this amount $10,851,294.09 were issued under the act of 1871 (Record, p. 89). Certificates held by the State of Virginia or by the commissioners of the sinking fund and literary fund amounting to $2,745,462.01 have not been deposited, of which $2,578,518.68 were issued under the act of 1871 (Record, p. 90). If Virginia owes any part of the debt represented by these certificates, she owes it to herself on acount of obligations created for her own exclusive benefit, and West Virginia could in no event be responsible for any part of it.

The dissenting opinion of Judge Staples in the case of

Antoni vs. *Wright*, 22 Grattan (62 Va.), p. 838, and the cases of *Higginbotham* vs. *Commonwealth*, 25 Grattan (66 Va.), p. 628, and *Greenhow* vs. *Vashon*, 81 Va., 341 are cited by counsel in support of their contention that Virginia was not released by the act of 1871 from the obligation to pay the unfunded one-third of the debt. But an examination of the cases shows that no such question was involved, or could have been involved, in either of them.

In *Antoni* vs. *Wright*, decided in 1872, the question was as to the constitutionality of the Virginia act of 1872, repealing the provision of the act of March 30, 1871, which made the coupons receivable for taxes. The court, in a very able opinion, held that the repealing act was unconstitutional. Anderson, *J.*, in delivering a concurring opinion, said:

> "It matters not whether the State is released from "the one-third of the debt or not; if a new bond had "been given for the whole of the debt, it would have "been a valid obligation for a valuable consideration. "Whether the State is released or not for one-third "of the debt, it is very clear that in this transaction "she has only assumed to pay two-thirds of it. And "I could not say that she is bound for any more. "That question, though one of great interest to the "State, is not involved in this case" (p. 873).

We call the attention of the court also to what was said by the court on page 840 of the report.

In *Higginbotham* vs. *Commonwealth*, decided in 1874, the question was whether the State was bound under certain acts of the legislature to pay dividends on the stock of the James River & Kanawha Company. It was contended by the Attorney General for the State that the two States were bound ratably to the stockholders for the dividends agreed to be paid, and that Virginia was, therefore, released from one-third of it by the dismemberment. The court expressed the opinion that they were bound

ratably, but that Virginia was not released, and, speaking of the State's attitude, said:

> "By the payment of the whole debt, an equity at "once arises in her favor to demand contribution "from the other State which she may enforce in the "United States Courts; a right secured to States but "denied to individuals. She cannot suffer, there- "fore, by doing right. Virginia has not lost her "identity by the loss of forty-eight counties and the "inhabitants thereof."

In the course of its opinion, the court further said:

> "It is scarcely necessary to add that in what has "been said above it had not been my purpose to ex- "press or intimate any opinion as to the respective "rights and liabilities of the State and those of her "creditors who have accepted the provisions of the "act of March 30, 1871, commonly called the funding "act. That question is not before us, even inci- "dentally, and no opinion is expressed thereon." (p. 636.)

There had been no adjustment between the State and the stockholders who sued in that action, as there had been with the holders of the old public debt, and therefore there was no foundation for the claim that the State had been released from any part of the liability for dividends. The position assumed by the court that West Virginia was liable directly to the creditors for her just proportion of the debt is not insisted upon by counsel in this case. On the contrary, it is conceded that if West Virginia is liable for contribution, it is to Virginia alone.

In 1886, when the case of *Greenhow vs. Vashon* was decided, the entire personnel of the court had been changed as a result of the controversy over the readjustment of the public debt. It was a proceeding to compel the treasurer of the State to receive coupons in payment of taxes, and the court held that he could not be compelled

to do so because the funding act of March 30, 1871, was unconstitutional and void!

We think it is clear that Virginia has been released by the provisions contained in the various funding acts, by the surrender and cancellation of the bonds, by the acceptance of certificates under the acts, and by the contracts entered into between the creditors and the commissions; but, even if there had been no formal or voluntary release, the State has repeatedly declared in the funding acts and in the joint resolution of March 6, 1894, and the act of March 6, 1900, under which this action is brought, that she is not liable for the unfunded one-third of the debt. These declarations amount to a positive refusal to pay, or to fund, that part of the debt, and are therefore equivalent to a direct repudiation of the State's obligation to that extent.

Under these circumstances, what possible pecuniary interest can the State have in the claims alleged against West Virginia? But, no matter whether Virginia has been released or not, and no matter whether she has repudiated the one-third or not, she sues in this action for contribution, and no such suit can be maintained until she has actually paid, or in some way settled, more than her share of what her counsel call the "common indebtedness." She has decided for herself, with the consent of her creditors, what her just share was, and she has neither paid nor extended anything in addition. No authority has been cited, and we are not aware that any exists, showing that one co-obligor—and the States are not co-obligors—can maintain an action against another, either at law or in equity, for contribution, before he has paid more than his own just proportion of the joint indebtedness. The only authority relied upon by counsel on the other side in support of their contention on this point is *1 Spence, Equity Jurisprudence, p. 662;* but that citation has no bearing upon the question.

Speaking of the right to sue for contribution, the author says:

> "If one of several sureties paid the whole or more "than his proportion of the debt, he might compel "his co-surety to contribute proportionately to the "amount so paid. So if the original debtor, or one "of the parties liable, becomes insolvent, each of the "solvent parties was made to contribute to the obli- "gation thrown upon them."

He then states what the Roman law was upon the subject of contribution, and, still speaking of that law, he makes the following statement, which is the only quotation made by counsel on their brief:

> "It *was* not necessary to wait till some one was "damnified by having paid or having claim made "against him for the whole; a bill might be filed to "settle the amount due from each individual of a "body liable to a common burden, and to compel the "payment by each, of his share." (*Original brief*, p. 18.)

We have said that there are no co-obligors in this case, and that is conceded by counsel on the other side. The bill is not framed upon the theory that West Virginia was ever bound to the holders of the old bonds, or that she is now bound to the holders of the certificates issued by the State of Virginia, either as a co-obligor or otherwise. The claim is made against her by Virginia alone, and it has been argued throughout the case that the indebtedness is to her. If the old bonds had been secured by a lien upon the public property situated in the new State, or by a pledge of the revenues to be derived from the people or territory embraced in the new State, it might have been contended that there was a direct liability to the creditors upon the part of West Virginia; but such was not the case. The bonds of a State, as this court has often said, are secured only by a pledge of its honor and

good faith; and Virginia is still the same State that issued and sold the bonds. It cannot be necessary to make an argument to show that neither this court nor any other has power to exonerate her from any part of her liability. Even if such a power existed in any court, the creditors whose claims would be extinguished by the exoneration would be indispensable parties.

It is now contended by counsel for the plaintiff that there never was a compact between the two States with reference to the old public debt, and that no consent to the formation of the new State was ever given by the legislature of Virginia; and it is said that the question as to the existence of the compact cannot be relied upon by the defendant State in this argument because it is not specifically stated as one of the grounds of demurrer. The compact is set forth in the bill (pp. 4–6), and one of the separate grounds of demurrer is that the court has no jurisdiction to hear and determine the cause, which necessarily requires it to ascertain the foundation and character of the claim asserted and the nature and extent of the remedy sought by the plaintiff. The office of a demurrer is to present to the court the legal and equitable questions arising upon the face of the pleading—not to argue them—and one of the questions presented by the demurrer in this case is whether, if the compact is valid, the court has power to enforce it according to its terms.

We do not propose to reargue the question as to the existence of the compact or to discuss the validity of the Virginia act of May 13, 1862, consenting to the formation of the new State and asking its admission into the union under the constitution which had then been framed. The compact itself was entered into by the sovereignty conventions of the two States and consented to by Congress in accordance with the provisions of Clause 3 of Section 10 of Art. 1 of the constitution of the United States, and all that was required of the legislature of Virginia by Clause 1

of Section 3 of Art. 10 of the constitution was that it should give its consent, not to the compact, but to the formation of the new State out of a part of the territory of the old State.

Counsel claim in the reply briefs that the ordinance of the Wheeling Convention requiring West Virginia to assume a just proportion of the debt and prescribing the method of ascertaining it is binding upon that State, but deny that the conditions upon which the proposition was accepted are binding upon Virginia (Mr. Conrad's brief, pp. 22–23). We insist that the compact is binding as a whole or it is not binding at all, and that the act of the Virginia legislature, passed May 13, 1862, while it was not necessary to the validity of the compact, constituted a ratification of it by that body. Without this act the State of West Virginia could not have been constitutionally formed or admitted into the union, whether there was a compact or not.

Congress never passed but one act providing for the admission of the State into the union, and when it was afterwards actually admitted by the proclamation of the President, the constitution which Congress had already approved had not been altered in the slightest respect so far as it related to the compact between the two States. The only change that had been made, or that was required to be made, by Congress, was in relation to the institution of slavery.

But it is now argued that the compact between the two States has been abrogated by the omission of the State of West Virginia to include in the constitution of 1872 the same provision in regard to the old public debt that was contained in the constitution of 1862 under which the State was admitted into the union; but, notwithstanding this contention, it is still insisted by counsel that West Virginia became liable and is now liable for a just proportion of the debt as provided in the Wheeling ordinance,

and which it is claimed constituted a part of the compact. The entire compact was that the new State should take upon itself a just proportion of the public debt, to be ascertained by charging to it all the State expenditures within its limits, and a just proportion of the ordinary expenses of the State Government since any part of the debt was contracted, and deducting therefrom the moneys paid into the treasury of Virginia from the counties included within the new State during that period, and that the legislature of West Virginia should ascertain the same as soon as practicable and provide for its liquidation by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years.

This compact was entered into by the sovereignty conventions of the two States. In one the proposition was made in the form of an ordinance, and in the other it was accepted in the form of a constitutional provision; and then it was consented to by Congress, and thus became an absolute and permanent obligation of the two States, which neither of them conld thereafter abrogate or alter. It was not necessary for West Virginia to repeat in a subsequent constitution the terms upon which she had accepted Virginia's proposition, and upon which the compact had been concluded with the consent of Congress. The compact itself provides that the new State shall assume a just and equitable proportion of the debt, and that the Legislature of that State shall ascertain what that proportion is, and establish a sinking fund sufficient to pay the interest and redeem the principal in thirty-four years. The latter part of the compact is as binding upon the two States now as it ever was. The legislature of West Virginia has not been abolished; it still exists and possesses full power to provide for the ascertainment and payment of the State's just proportion of the debt in accordance with the stipulations of the compact between the parties. The State of Viriginia has not

heretofore supposed that West Virginia had extinguished her obligation to assume and pay a just property of the debt, or that she could do so; but if the argument now made is sound, she has done so by merely omitting a part of the compact from her constitution.

The act of Congress admitting the State into the union and thereby, as this court has held, giving the consent of that body to the compact, is a law of the United States enacted in pursuance of the constitution, and is therefore the supreme law of the land; and the compact itself constitutes a part of that law. *Penna.* vs. *Wheeling Bridge Co., 13 How. 185.* No State can abolish it or change it, even by an affirmative act, much less by a mere omission to repeat it in her constitution or statutes.

It is true, as stated in one of the reply briefs, that nearly forty-four years have passed since the compact was made, but it is also true that Virginia has repudiated it ever since 1871; and, although she has in her own exclusive possession all the accounts and vouchers necessary to effect a settlement, she has never presented to West Virginia any account, or even part of an account, which would enable the Legislature of that State to take any action in accordance with the Wheeling ordinance. It will be time enough for Virginia to make complaint against West Virginia when she has furnished that State with such an account or statement as will enable her Legislature, or a commission appointed by it, to ascertain the amount claimed, in the manner prescribed by the Wheeling ordinance, which was Virginia's own chosen method of adjustment.

The reference to the fact that this court entertains jurisdiction of appeals from the Court of Claims involving demands for money, and renders judgments in such cases, is of no consequence in this discussion, because Congress has by statute not only consented that the United States might be sued on such claims, but has expressly author-

ized judgments to be rendered and directed their payment by the Secretary of the Treasury out of the general appropriations.

Act of March 3, 1863, Ch. 92, sec. 7; 12th, Stat. 766; Act of September 30, 1890, Ch. 1126, sec. 1.

The case of *Carter* vs. *State, 42 La. Ann., 930*, quoted from in the original brief of counsel for plaintiff, is not at all in conflict with our contention in the case at bar. That was a proceeding to subject money belonging to the State to the satisfaction of a judgment previously obtained, and the court decided that it had no power to do so, although the legislative had authorized the institution of the action in which the judgment was rendered. In the course of its opinion, the court said:

> "The incidents and appurtenances of ordinary ju-
> " risdiction have no application to a case like this.
> " Undoubtedly jurisdiction granted to render judg-
> " ments between parties subject to judicial power
> " and control implies power to execute such judg-
> " ment. But the sovereign is not subject to judicial
> " power and control except just so far as is consented
> " thereto; the moment the limit of that consent is
> " reached, the judiciary must instantly halt."

But it is said by counsel that this court can afford adequate relief because it can ascertain and declare West Virginia's proportion of the debt, and that this will operate to exonerate Virginia from any further liability on account of the indebtedness. The adjudication would have no such effect; on the contrary, if Virginia is now liable, as her counsel contend, the effect of such adjudication would be simply to fix the amount of her liability, but with no judgment or decree for its payment. How that could afford any relief to Virginia in any respect, or to her creditors, we are unable to see.

While we do not consider it necessary to add anything to the argument heretofore made on that part of the

demurrer which raises the question of multifariousness, it is proper to say that we do not controvert any of the propositious stated in Hogg's Eq. Proc., which is relied upon by counsel for plaintiff. They are in accord with the authorities cited by us.

Counsel quote from Mitford's Pl., p. 399, to show that there can be no misjoinder unless the parties have, or may have, conflicting interests in the suit, or unless some of them have no interest in the suit. What the author says, is:

> "If the plaintiffs actually have, or may have, con-
> "flicting interests in regard to the object of the suit,
> "or if any or either of them have no interest in the
> "subject-matter of the suit, there is a misjoinder.
> "But to be free from the objection of misjoinder it
> "is not necessary that a co-plaintiff should have an
> "identity of interest."

They also refer to Daniels' Chancery, pp. 301–2, to show that an auctioneer may be joined with the vendor in a suit against the purchaser, but they omit to state, or quote, the reason given by the author, which is—

> "because the auctioneer has an interest in the con-
> "tract, and may bring an action upon it; he is also
> "interested in being protected against the legal lia-
> "bility he has incurred in an action by the purchaser
> "to recover the deposit" (pp. 301–2).

He then says:

> "Upon a similar principle in cases where all the
> "plaintiffs have an interest in the subject of the suit
> "but their interests are distinct and several, they
> "will not be allowed to sue together as co-plaintiffs"
> (p. 302).

It is not usual to embody the speech of an advocate in a bill in chancery, and thus require the defendant to admit on demurrer the truth of the statements contained in it; yet that course has been pursued in the present case,

and counsel on the other side quote from the speech of Mr. Harrison to show that the ultimatum contained in the joint resolution of March 6, 1894, had been abandoned by Virginia in 1900. All that we can say in response to this is that the gentleman who made the speech had no authority from the State of Virginia to propose or agree to any settlement except upon the basis that the share of the State was only-two thirds of the debt. An examination of the act of March 6, 1900, will show that its preamble reaffirms the position which the State of Virginia had previously taken with respect to the extent of West Virginia's obligation for one-third of the debt, and that it does not repeal or modify any part of the joint resolution of March 4, 1894, but merely authorizes the commission to receive the certificates on deposit and to "take such action and institute such proceedings on behalf of the State as may in the judgment of the Commission and the Attorney General be needful and proper to protect the interests of the State and bring about and carry into effect a settlement as aforesaid." Under this act the commission had no power to settle by negotiation except upon the basis that Virginia had paid her full share—two-thirds—but it was authorized to sue for a settlement for the benefit of the certificate holders, and, of course, if less than one-third should be recovered from West Virginia in the suit, they had the power to receive it for distribution among the beneficiaries under the contract made with them.

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MOLLOHAN, MCCLINTIC & MATHEWS.
CHAS. E. HOGG.

Office Supreme Court, U. S.
FILED.
MAR 3 1908
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1907.

IN EQUITY.—ORIGINAL No. 3

COMMONWEALTH OF VIRGINIA,
Complainant,

against

WEST VIRGINIA,
Defendant.

BRIEF FOR DEFENDANT ON COMPLAINANT'S MOTION TO REFER CAUSE TO MASTER.

C. W. MAY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. McCLINTIC,
W. G. MATTHEWS,
Of Counsel for Defendant.

C. G. Burgoyne, Walker and Centre Streets, New York.

Supreme Court of the United States,

OCTOBER TERM, 1907.

COMMONWEALTH OF VIRGINIA, Complainant, AGAINST WEST VIRGINIA, Defendant.	Original No. 4. In Equity.

Brief for Defendant on Complainant's Motion to Refer Cause to Master.

The complainant proposes an interlocutory decree referring the cause to a master with a direction to the master to take an account ascertaining:

I.

"The amount of the public debt of the Commonwealth of Virginia as of the First day of January, 1861, stating specifically how and in what form the same was evidenced and by what authority of law and *for what purposes the same was created* and the dates and nature of bonds or other evidences of said indebtedness."

This paragraph was adopted in the decree proposed by the defendant, although in our view entirely unnecessary; but, upon reflection, it seems to require amendment in order to conform it to the allegations of the bill and the admission of the Answer. The

words "for what purposes the same was created" imply that the debt was created for diverse purposes. The bill alleges that "on the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory."

The bill is burdened with allegations as to the internal improvements, the motive which led the Commonwealth of Virginia to enter upon the policy, etc. The first sentence of paragraph I. of the Answer is as follows:

> "That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in 'about' the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvements within her then territory."

Then, upon the allegation of the bill that the indebtedness of about $33,000,000, as it existed prior to January 1st, 1861, was incurred in connection with the construction of works of internal improvement, both parties are by bill and Answer in accord. In so far, therefore, as paragraph I of the proposed decree calls for an investigation into the purposes for which the same was created, if by "purposes" it means for the accomplishment of objects other than the construction of works of internal improvement, it is a departure from the fact established by the pleadings. Unless that is admissible, which we deny, the paragraph is objectionable for its uncertainty of expression. It would be better in accord with the Bill and Answer, and more useful to the court and to the parties, if the words were stricken out and there were inserted in their place: "for what particular works of internal improvement the same was created and its proceeds expended and where the same were located."

II.

"What amount and *proportion* of said indebtedness and *what interest* accruing thereon *should in equity* be *apportioned to and be now paid by the State of West Virginia.*"

The defendant's objection to Paragraph two is radical and will fully appear in the argument submitted herein in support of *its* proposed Paragraph two.

The remaining paragraphs of the decree proposed by the complainant need not here be set forth.

On the other hand, the defendant proposes a decree which directs the master to ascertain:

II.

(*a*) "The amount of State expenditures made by the Commonwealth of Virginia prior to the First day of January, 1861, within the territory now included within the State of West Virginia, since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861."

(*b*) "The aggregate ordinary expenses of the State government of the Commonwealth prior to January 1st, 1861, and since any part of said indebtedness was contracted."

(*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the Counties included in the State of West Virginia during said period."

Paragraph III. of the complainant's proposed decree directs that the master:

> "III. Will make and return with his report any special or alternative statement of the account between the complainant and defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the Court."

The difference between the two proposed decrees above quoted is radical, and presents to the Court a question which in our view is fundamental and which West Virginia contends, respectfully and very earnestly, should be decided before any reference to a master to state the account between the parties.

The jurisdiction of the Court over this case is settled by the decision overruling the demurrer. We are quite aware that the Court has recognized a distinction between suits by private parties in respect of the application of the rules of pleading and of practice, and suits between States. Thus it was held, in *Rhode Island vs. Massachusetts* (13 Peters, 23), that:

> "From the character of the parties, and the nature of the controversy, we cannot, without committing great injustice, apply to this case the rules as to time, which govern

Courts of Equity in suits between individuals. In the last-mentioned cases, the material allegations in the bill are comparatively few in number, and rest in the personal knowledge of the individual who is to put in his answer. But a case like this, and one, too, of so many years' standing, the parties, in the nature of things, must be incapable of acting with the promptness of an individual."

In *Rhode Island vs. Massachusetts* (14 Peters, 256), the Court, through Mr. Chief Justice TANEY, says:

"The case to be determined is one of peculiar character, and altogether unknown in the ordinary course of judicial proceedings. It is a question of boundary between two sovereign states, litigated in a Court of justice; and we have no precedents to guide us in the forms and modes of proceeding, by which a controversy of this description can most conveniently, and with justice to the parties, be brought to a final hearing. The subject was, however, fully considered at January term, 1838, when a motion was made by the defendant to dismiss this bill. Upon that occasion the Court determined to frame their proceedings according to those which had been adopted in the English Courts, in cases most analogous to this, where the boundaries of great political bodies had been brought into question. And acting upon this principle, it was then decided, that the rules and practice of the Court of Chancery should govern in conducting this suit to a final issue. The reasoning upon which that decision was founded is fully stated in the opinion then delivered; and upon re-examining the subject, we are quite satisfied as to the correctness of this decision (12 Peters, 735, 739).

"The proceedings in this case will therefore be regulated by the rules and usages of the Court of Chancery. Yet, in a controversy where two sovereign states are contesting the boundary between them, it will be the duty of the Court to mould the rules of Chancery practice and pleading in such a manner as to bring this case to a final hearing on its real merits. It is too important in its character, and the interests concerned too great, to be decided upon the mere technical principles of Chancery pleading. And if it appears that the plea put in by the defendant may in any degree embarrass the complainant in bringing out the proofs of her claim, on which she relies, the case ought not to be disposed of on such an issue. Undoubtedly the defendant must have the full benefit of the defense which the plea discloses; but at the same time, the proceedings ought to be so ordered as to give the complainant a full hearing upon the whole of her case. In ordinary cases between individuals the Court of

> Chancery has always exercised an equitable discretion in relation to its rules of pleading whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength."

West Virginia does not and could not successfully here contest the principles thus laid down, but the principles of equity and the rules of chancery procedure so far as *essential* to protect the rights of parties litigating in this tribunal will, of course, be substantially enforced. The application of some of the rules of procedure are certainly essential to substantial justice. Mr. Bates, in his work on Federal Equity Procedure (Vol. II., p. 802), says (section 753):

> " Before a cause is referred to a master to take and state an account between the parties, the following preliminary steps should be taken, as conditions precedent to the reference, viz: (1) The pleadings should be perfected and the cause put at issue; (2) the parties should take the proofs upon the issues made by the pleadings, as fully as the nature of the case will allow; (3) the cause should be regularly set down for hearing; (4) the cause should be regularly heard upon the pleadings and the evidence by the court; (5) *upon such hearing the court should pass upon all the issues made by the pleadings, and should enter an interlocutory decree declaring the rights of the parties,* and *also settling and declaring the principles upon which the account is to be taken:* (6) the decree should refer the cause to a master to take and state the account in accordance therewith and report to the court, and all other matters should be reserved until the coming in of the report. * * *"

While the foregoing quotation refers to the equity practice which obtains in the *Circuit* and *District Courts* of the United States, so far as the practice is based upon substantial justice and is necessary for the protection of the rights of parties litigant, we suppose it will be pursued by this Court in the exercise of its *original* jurisdiction. If there were two bases of accounting in this case, both equally open to adoption by the Court, the objection of West Virginia to paragraph II. of the decree propcsed by the complainant, would be perhaps without force, but from our standpoint, it is conclusively apparent that there is but one basis upon which an accounting in this case for West Virginia's Equitable proportion

of the Virginia debt can be decreed. The bill alleges, in paragraph VI., that on the 20th day of August, 1861.

> " The Restored State of Virginia in convention assembled in the City of Wheeling, Virginia adopted an ordinance to 'provide for the formation of a new State out of portion of the territory of this State,' section 9 of which ordinance was as follows, to wit: '9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, *to be ascertained by charging to it all the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the Counties included within said new State during such period.* All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'"

The bill also alleges, paragraph VII., that:

> " On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinance of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in the proposed Constitution with regard to the liberation of slaves therein."

Also that it was provided by the Act of Congress that whenever the President should issue a proclamation stating that such change had been made and ratified, the Act admitting such new State should be effective sixty days after the date of such proclamation.

The bill also alleges that a proclamation was issued by President Lincoln on April 20th, 1863 and that West Virginia in conformity therewith, and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863.

The bill also alleges, in paragraph X. *inter alia*, that

> " 'By section 8 of Article VIII. of the Constitution of West Virginia it is provided:
>
> " An equitable proportion of the public debt of the Com-

monwealth of Virginia prior to the First day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'"

The bill in paragraph XVIII. alleges the second of four grounds upon which the liability of West Virginia in this suit is asserted, as follows :

"II. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia as it existed prior to the creation and erection of the State of West Virginia, *forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed, and this liability is embedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.*"

This is rhetorical, but it is none the less accurate and true.

The answer admits (paragraph VI.) the allegations of the bill as to the adoption and terms of the ordinance, including Section 9. It also admits the allegations of the bill averring the assumption of a liability and making provision for its ascertainment and payment by the constitutional provision quoted in the bill.

Paragraph XVIII. of the answer is as follows :

"This respondent for further answer to said bill says : that she denies that the alleged liability of the State of Virginia for a just and equitable proportion of the public debt of the Commonwealth of Virginia rests upon any ground specified in Paragraph XVIII. of said bill *except* the *second, upon which, as hereinbefore averred in this answer,* the *State of West Virginia has always been ready and willing and is now ready and willing to adjust her liability.*"

Thus it stands *alleged in the bill* and *admitted by the answer*, and if it were not admitted by the answer, it is *conclusively estab-*

lished by the bill and its exhibits, that there was a solemn agreement entered into in 1861 between the State of Virginia and the new State of West Virginia, with the consent of the Congress, by which the latter State assumed (as one of the conditions of the assent of Virginia to her becoming a State) a just proportion of the indebtness of that Commonwealth as it existed prior to January 1st, 1861, *the manner of ascertaining which proportion was defined by the ordinance itself.*

The ordinance was, as treated by this Court in the case of Virginia vs. West Virginia (11 Wallace, 39), a *proposition* by the Commonwealth of Virginia to the people of the proposed new State. It was accepted by the constitutional convention of the proposed new State, carried into its Constitution and adopted by the people; and when the State was admitted into the Union by the Congress, with the assent of Virginia, *it became a completed compact between competent parties, upon adequate consideration, protected by the Constitution of the United States from impairment by either party.*

We say the ordinance defines what would be a just proportion. This is an accurate statement; for the ordinance provided not only for the assumption of a just proportion, but provided *specifically in what manner that proportion shall be ascertained.* We do not understand the suggestion which appears to have been made at the argument, that the continued obligation of the compact depends upon the *continued assent to it by both States.* A compact between States, entered into with the consent of Congress, has always been treated by this Court as irrevocable by *either* of the parties, and where the legislation of either has attempted to impair the obligation of a compact, it has been held void under the Constitution of the United States (See *Greene vs. Biddle*, 8th Wheaton, 1).

The obligation of a lawful compact between two States, justiciable in its nature, certainly is as binding in law upon *both* until abrogated by *both* in a constitutional way, as a contract between a State and an individual, or between two individuals, and a disregard or violation of it by one, certainly cannot thereby release it from its obligation.

It is difficult to understand how, from the averments of the bill and the admissions in the answer, and the argument at the Bar, it can be an *open question in this case* that the only liability of West Virginia for an Equitable proportion of the *ante-bellum* debt of Virginia is upon the basis of the ordinance.

The bill, in paragraph XVIII, summing up the grounds upon which it rests the liability of Virginia to account, says:

> "FIRST. The area of the territory now known as the State of West Virginia, formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original state at the time of its dismemberment, and the State of West Virginia *by the acquisition and appropriation of said territory*, with the population thereof, *assumed therewith liability for a just and equitable portion of the public debt* created prior to the partition of said territory."

This is followed by the second ground, hereinbefore quoted, which is based upon the ordinance and Section 8 of the Constitution.

The third ground is as follows:

> "The State of West Virginia has further by repeated enactments and joint resolutions of her legislature recognized her liability for a just proportion of this debt."

The first ground invokes the application of what is assumed to be the rule of *international law* that "debt follows territory," and that the debt as between West Virginia and Virginia is to be "ratably apportioned" on the basis of *population* and *territory* at the time of the separation.

In support of this theory of liability, which is absolutely incompatible with the theory of liability based upon the compact, one of the learned counsel for the complainant read, on the argument, from the opinion of Mr. Justice FIELD, who wrote for the court in *Hartman vs. Greenhow* (102 U. S., 672) this sentence:

> "Where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them."

counsel added, "That is in Hartman vs. Greenhow."

JUSTICE HARLAN: "Please read that again."

MR. CONRAD: "Where a state is divided into two or more states in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them."

Counsel added: "That is an opinion of this court that has received no dissent."

With the greatest veneration for the learning and just fame of Mr. Justice FIELD as a jurist, we venture the observation that the subject was not at all involved in the case. The question there was solely as to the *receivability of coupons*, of bonds representing the funded debt of Virginia, *for taxes*. West Virginia was not a party; nor was Virginia. But aside from this the quotation read from Mr. Justice FIELD did not in the slightest degree correctly put before the Court the view which he must be deemed to have entertained. We supply the deficiency, quoting all that he said:

> "Writers on public law speak of the principle as well established that, where a State is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On this subject Kent says: 'If a State should be divided in respect of territory, its rights and obligations are not impaired; *and, if they have not been apportioned by special agreement*, their rights are to be enjoyed and their obligations fulfilled by all the parties in common' (1 Com., 26); and Halleck, speaking of a State divided into two or more distinct and independent sovereignties, says: 'In that case, the obligations which have accrued to the whole before the division are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of courts, and the practice of nations' (International Law, c. 3, Sect. 27)."

Mr. Justice FIELD continues:

> "In *conformity* with the doctrine thus stated by *Halleck*, both States—Virginia and West Virginia—have recognized in their constitution their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement."

It is apparent that Mr. Justice FIELD, in the clause last above quoted, referred to the *special agreement* evidenced by Section 9 of the Ordinance and to the first clause of Section 8 of Article VIII. of the West Virginia Constitution.

It is worth noting that, in *Antoni vs. Greenhow* (107 U. S., 769), which also involved the same Funding Act, Mr. Justice FIELD, in his dissenting opinion, in which Mr. Justice HARLAN concurred, said, referring to the same subject :

> " It is a well-settled doctrine of public law that, upon the division of a state into two or more states, the debt shall be ratably apportioned among them (*See authorities upon this subject in Hartman v. Greenhow* (102 U. S., 672, 677)."

Phillimore, after quoting both Grotius and Kent, says :

> " If a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts " ;

and Sir Sherston Baker in " First Steps of International Law," page 36, says :

> " The case is slightly different where one state is divided into two or three distinct and independent sovereignties. In that case the obligations which had accrued to the whole before the division are (*unless they have been the subject of a special agreement*) ratably binding upon the different parts. This principle is established by the concurrent opinions of text writers, the decisions of courts and the practice of nations. It is incorporated into the treaty by which the modern Kingdom of Belgium was established."

Thus it will be seen that the general rule as quoted from Mr. Justice FIELD, is *essentially qualified* by the authorities which he quotes, in this, that a *special agreement* between the two states in respect of the assumption of a proportion of the debt as it existed before the separation, *takes the case out of the general rule ;* so that the second ground alleged in the bill, which specifically avers a *special agreement, destroys the applicability of the rule to this case.* Upon what theory is this special agreement, consisting of a proposition by Virginia, its acceptance by the constitutional convention, its embodiment in the Constitution, the ratification of the latter by the people, and the admission of the State into the Union by the Congress, to be so cavalierly dismissed

from this case as the decree proposed on behalf of Virginia would do? This Court had occasion to consider the validity of this ordinance in the case of *Virginia vs. West Virginia*, 11 Wallace, 39, in respect of the provision contained in it for the incorporation of the counties of Berkeley and Jefferson in the latter State conditioned upon a popular vote therefor; and the Court said:

> "There was then a valid agreement between the two states consented to by Congress, which agreement made the accession of these counties dependent on the result of a popular vote in favor of that proposition."

If the ordinance was valid *then* in respect of the incorporation of the two counties, upon what theory can it be held to be invalid as to the specific provision contained in Section 9 for the assumption by the new State of a just proportion of the indebtedness *to be ascertained in the manner defined*, clearly carried into the Constitution of the new State and assented to by Congress by the admission of West Virginia into the Union? It does not impeach or even belittle the "Restored State of Virginia" or the validity of its acts to refer to it as a "revolutionary government" or to the ordinance as a "revolutionary proceeding." Whether it was or was not the lawful government of Virginia was a political question. When the House of Representatives admitted the members of Congress from that State and the Senate admitted the senators elected by the legislature of the "Restored State," and the President recognized that government as the true government of Virginia, that forever settled its legality and regularity beyond the power of judicial review and made valid its acts *ab initio*. But for that "Restored State of Virginia," and its recognition by the political departments of the Federal Government, there would have been no government of Virginia *under the Constitution* of the United States from April, 1861, to the close of the war. The ordinance of the Wheeling convention of '61, which was the genesis of the State of West Virginia, and the adoption of its Constitution, are, from the standpoint of law, as clearly acts of the Commonwealth of Virginia as if they had taken place in 1851 instead of in 1861.

The suggestion so often made in oral and printed argument that West Virginia is the "daughter of Virginia," is sentimental, but in-

accurate. When admitted into the Union she came in on an equality with the original states and became a member of the sisterhood of states, equal in sovereignty and personality to the older commonwealth of which her territory had once been a part, and of which her people had once been citizens.

May it not be that this misconception of the real relation of West Virginia as a State of the Union to old Virginia has played an unconscious part in the disregard by the latter of the special agreement which has operated to delay an adjustment under its provisions? If this special agreement in respect of the proportion of the debt of Virginia which was to be assumed by the State of West Virginia constituted a valid compact between the two states, when it did cease to be valid, and for what reason, at the suit of Virginia, is it to be ignored? It was said, by Mr. Justice BALDWIN, in *Rhode Island vs. Massachusetts* (12 Peters, 748), speaking for the Court:

> "In Poole vs. Fleeger, this Court declared that an agreement between States, consented to by Congress, bound the citizens of each State."

Greene vs. Biddle, supra, involved the validity of the compact between Virginia and Kentucky, entered into at the time she separated from the former and was admitted into the Union as a State, and the compact in that case in respect of the assent of Congress to it, is not unlike the compact in the present case. The Court said:

> "The compact was entered into between Virginia and the people of Kentucky, upon the express condition that the general government should, prior to a certain day, assent to the erection of the District of Kentucky into an independent State, and agree, that the proposed State should immediately, after a certain day, or at some convenient time future thereto, be admitted into the federal Union. On the 28th of July, 1790, the convention the District assembled under the provisions of the law of Virginia, and declared its assent to the terms and conditions prescribed by the proposed compact; and that the same was accepted as a solemn compact, and that the said District should become a separate State on the 1st of June, 1792. These resolutions, accompanied by a memorial from the convention, being communicated by the President of the United States to Congress, a report was made by a committee, to whom the subject was referred, setting forth the agreement of Virginia, that Kentucky should be erected into a State, *upon certain terms and con-*

ditions, and the acceptance by Kentucky *upon the terms and conditions so prescribed;* and, on the 4th of February, 1791, Congress passed an act, which, after referring to the compact, and the acceptance of it by Kentucky declares the consent of that body to the erecting of the said District into a separate and independent State, upon a certain day, and receiving her into the Union.

"Now, it is perfectly clear, that, although Congress might have refused their consent to the proposed separation, yet they had no authority to declare Kentucky a separate and independent State, without the assent of Virginia, or upon terms variant from those which Virginia had prescribed. But Congress, after recognizing the conditions upon which alone Virginia agreed to the separation, expressed, by a solemn act, the consent of that body to the separation. The terms and conditions, then, on which alone the separation could take place, or the act of Congress become a valid one, were necessarily assented to; not by a mere tacit acquiescence, but by an express declaration of the legislative mind, resulting from the manifest construction of the act itself. To deny this, is to deny the validity of the act of Congress, without which, Kentucky could not have become an independent State, and then it would follow, that she is at this moment a part of the State of Virginia, and all her laws are acts of usurpation."

It was held that the act passed by the Legislature of Kentucky in violation of the compact was void.

The suggestion that Virginia never assented to the compact with West Virginia because of the amendment which Congress proposed to the Constitution, is without weight.

The conditions imposed by Virginia upon West Virginia were embodied in the Ordinance. It may be admitted that any amendment proposed by Congress which would vary the terms of the *Ordinance* might have been operative to destroy the consent of Virginia to the erection of a new State out of her territory, but her General Assembly was content with the Constitution as not being in violation of the ordinance, and the amendment proposed by Congress to the Constitution, relative to slavery, was a matter with which Virginia could have no concern, it being purely local to the the State of West Virginia, as affecting the status of property and persons within her borders and under her sovereignty. It sustained no relation whatever to the Ordinance or to the conditions upon which Virginia had given her assent. It is almost an evidence of desperation that, at this day, it should be solemnly argued in this Forum in behalf of Virginia that West Virginia did not become a

State with the assent of Virginia, because Congress decided, in response to representations from West Virginia, to require, as a condition of admission, an amendment to the Constitution providing for the gradual extinction, within her borders, of slave ownership.

We have asserted that the Ordinance was carried into the Constitution. The provision is as follows:

> "ARTICLE VIII. Section 8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years."

It will be noted that this language of assumption is the language of the ordinance except that the word "equitable" is used in the Constitution, while the word "just" is used in the ordinance. As a qualifying word, used in such a connection, "equitable" and "just" are synonymous. An equitable proportion could not be other than a "just" proportion, and a just proportion would be an "equitable" proportion. The ordinance and the Constitution are the constating instruments upon which the State was erected and they are to be read *in pari materia*, and it is not susceptible of doubt that the word "ascertain" as used in Section 8 of the Constitution is an adaptation of the word "ascertained" in section 9 of the Ordinance. It will be remembered that this convention assembled within ninety days after the adoption of the Ordinance. Its sole warrant for assembling was the ordinance. Its authority to frame the Constitution was derived from the ordinance. The ordinance as a whole was a proposition to that Convention and, as a whole, was accepted by the Convention. The Convention complied with all the provisions of the Ordinance. The Constitution was framed to meet all the requirements of the Ordinance. It was the basis of the Constitution.

It is difficult to consider with equanimity, the studied and inconsistent attempt to eliminate the Ordinance from the case. This is apparently the present posture of counsel for Virginia. If section 8 of the Constitution is not read in connection with the Ordinance, and, therefore, as an assumption of an equitable proportion of the debt to *be ascertained as provided in the Ordinance*, the Ordi-

nance is eliminated, and section 8 of the first Constitution is to be construed as the assumption by the new State of an equitable proportion of the public indebtedness of Virginia prior to January 1st, 1861, upon the basis of *population* and *territory*. It is inconceivable that such can be the law of this case. The assembling of the Convention was an acceptance of Section 9 of the Ordinance. The Ordinance embodied the conditions, and section 9 by no means the least important of them, of Virginia's consent to the erection of the new State out of her territory.

If the Convention had failed to comply, *in the Constitution*, with the *requirements of the Ordinance*, or had departed in any way from the conditions of Virginia's assent, as stated in the Ordinance, its work would have been nugatory. It was bound by the ordinance to carry into the Constitution the assumption by the new State of an equitable proportion of the indebtedness of Virginia prior to January 1st, 1861, to be ascertained as provided in the Ordinance.

It could no more disregard the terms of Section 9 than it could the other conditions of the ordinance. It was for Virginia to fix the terms of her consent. It was not for the convention to depart therefrom. It could only accept or reject. If it rejected it, it must have adjourned. Its work would have been done. Although we take it that nothing is finally decided in this case except the question of jurisdiction, we note that the court was impressed, as shown by the opinion of the Chief Justice with the relation of the ordinance to the Constitution. In the opinion it is said:

> "Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression 'that the legislature shall ascertain' was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed and provide for the liquidation of the amount so ascertained."

The attempt to dislocate the first clause of section 8 of Article VIII. of the Constitution of West Virginia "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State" from section 9 of the Ordinance, is subversive of fundamental principles of Constitutional construction and is indefensible from every standpoint of law or equity. It is beyond all reason to suppose that the plain language of the first clause of Article VIII., general in its terms, was anything more or less than an acceptance of the

proposition theretofore specifically made in section 9 of the Ordinance in order that the first clause of section 8 and section 9, would together make plain the compact.

The suggestion that section 8 of Article 8 of the Constitution had no reference to section 9 of the Ordinance, assumes that the new state was taking upon herself an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, without definition or understanding as to the basis upon which it was to be ascertained, therefore leaving open the vital question as to what would constitute an equitable proportion, for future adjustment between the two states. This is not to be believed.

The debt of the Commonwealth of Virginia on January 1st, 1861, was doubtless well known throughout the State of Virginia. It was a matter of public record and reduced to a certainty. It is alleged in the bill that about $33,000,000 of it were incurred in connection with the construction of works of internal improvement—an enormous sum " in those days." If it had been the purpose of Virginia, in requiring as a condition of her assent, the assumption by the proposed new state of an equitable proportion of the public debt without specification as to the manner in which, and the basis upon which that proportion should be ascertained, it is inconceivable that the language of section 9 of the Ordinance would have been what it was, and that the language of section 8 of Article VIII. of the Constitution would have been what it was. It was entirely for Virginia to dictate the terms, and if it had been her purpose to require an assumption of the debt upon the basis of territory and population, West Virginia would have been required to assume " one-third of the debt as it existed prior to the first day of January, 1861," or " an equitable proportion to be ascertained upon the basis of territory and population." If she had so provided in Section 9 of the Ordinance, the first clause of Section 8 of Article VIII. of the Constitution would have *adequately assumed liability upon that basis.* But no such proposition was made to her. No such condition of assent to her statehood was imposed upon her and there is no reason to believe that in her then condition in respect of financial ability, her people would have been willing to enter upon the status of statehood burdened with $11,000,000, or thereabouts, of the indebtedness of the old state. At all events, she was neither called upon nor given an opportunity to decide whether she would accept statehood upon such a condition.

If section 9 of the Ordinance had provided " The new state shall take upon herself a just proportion of the public debt of the Com-

monwealth of Virginia prior to the first day of January, 1861, to be ascertained upon the basis of territory and population " or " The new state shall take upon herself one-third of the public debt of the Commonwealth of Virginia prior to January 1st, 1861 ", would West Virginia be heard here for a moment to contend that the Ordinance was no part or basis of the Constitutional provision and that the court is at liberty to adopt some other basis than that agreed upon by the parties? It would not tax the ability of the distinguished counsel on the other side, to demolish such a proposition. And section 9, as it was written, defining the basis upon which the new state should take upon herself an assumption of a just proportion of the public debt as completely forecloses the question of basis as would have been the case had the language of the Ordinance been as we have suggested.

To rub out section 9 of the ordinance and put upon West Virginia, liability for one-third of the debt of the Commonwealth of Virginia, as it existed prior to January 1st, 1861, upon the theory that this was what she assumed by section 8 of Article VIII. of the Constitution, is a proposition as unjust as it is untenable. Indeed, if the opposite theory were adopted no testimony need be taken except to ascertain the amount of the public debt of Virginia on the first day of January, 1861, and the proportion of population and territory of the new state to that of the Commonwealth of Virginia at the time of the separation. If the Ordinance were eliminated it follows that the assumption of an equitable proportion of the debt by section 8 of Article VIII. of the Constitution of West Virginia was purely voluntary *and not in any sense a condition of the assent of Virginia to the admission of West Virginia as a state into the Union.* This is contrary to repeated allegations of the bill and against the truth as disclosed everywhere in the record. If section 9 of the Ordinance were eliminated, it is a grave question whether, but for an assumption of liability by section 8 of Article VIII. of the Constitution, West Virginia would have been legally liable at all, upon principles of international law, for a dollar of that debt (See Hall on International Law, sec. 27, p. 78, and especially note on p. 80).

An effort is argumentatively made in the bill and was repeated at the bar, and it seems to have somewhat impressed the court, to make it appear that Sections 5 and 7 of Article 8 are a recognition, not only of the liability to assume a portion of the indebtedness of Virginia, but as a recognition of liability to Virginia for grants of land and money made by the Acts of February 3 and 4, 1863.

Although not especially material, with great deference, we are unable to agree to this construction. Section 5 of Article 8 provides:

> "5. No *debt* shall be contracted by this state except to meet casual deficits in the revenue, to redeem a *previous liability* of the state, to suppress insurrection, repel invasion or defend the state in time of war."

And Section 7 of the same article provides:

> "7. The legislature may *at any time* direct a sale of the stocks owned by the state, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the *public debt* and hereafter the state shall not become a stockholder in any bank."

We do not see that the words "a previous liability," in Section 5, and the words "public debt," in Section 7, can be construed, all things considered, as referring to *any liability* of the new state to Virginia. Both Sections 5 and 7 were manifestly intended to be permanent provisions of the Constitution. They would have been properly included in the Constitution if Virginia, at the time of separation, had owed not a dollar of debt. Section 5, in our view, was intended to express the policy of the state as to indebtedness. The word "debt" is used here in contradistinction from the word "liability." A debt is a liability, but a liability is not necessarily a debt, and where they are *both used in the same clause*, as above, they are not to be construed as synonymous. The phrase "a previous liability" is altogether indefinite, and has no regard to the time at which it is incurred, except that it must have been incurred *prior* to the *contracting of a debt* with which to redeem it. The provision will apply to any liability incurred during the history of the state, which *thereafter* must be provided for by the contracting of a debt. It was the evident policy of the Constitution that West Virginia should "pay her way" except as therein otherwise indicated. If it is uncertain whether anything will be demandable by virtue of the contract, it cannot be called a debt. "Debt," as used here, we think, means a certain sum of money due upon an express agreement.

Hagar vs. Reclamation District, 111 U. S., 701.

The theory of the constitutional provision was, we submit, that the state should rely upon taxation and current revenues to carry on its operations, and was to prohibit the contracting of debts (borrowing of money), evidenced by bonds or otherwise, except to meet

casual deficits in revenue, etc., *which would involve a previous liability.* In other words, that money should not be borrowed, *save as excepted,* in *anticipation of liabilities.* The words "public debt" in Section 7 are not to be construed as having any reference to unliquidated demands. It will not be pretended that until an accounting West Virginia owes a "debt" to Virginia. She has assumed a liability which may or may not ripen into a debt, only to be determined by a judicial accounting or by voluntary adjustment.

Section 7 was likewise a permanent provision of the Constitution. To say otherwise is to assume that there was not to be any "public debt" *except* the debt to be contracted under the ordinance when its amount shall be ascertained. This assumption is untenable, for Section 5 authorizes the state to borrow money to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion or defend the state in time of war. Very conclusive evidence that this is the true construction of these provisions is to be found in the fact that in the new constitution of West Virginia adopted in the year 1872 from which was *omitted* Article 8 of Section 8 which was in the Constitution of 1861, is found this provision.

Sec. 4, Article 10) :

> "No debt shall be contracted by the state except to meet casual deficits in the revenue, to *redeem a previous liability* of the state, to suppress insurrection, repel invasion or defend the state in time of war, but the payment of any liability other than that for the ordinary expenses of the state shall be equally distributed over a period of at least twenty years."

Strongly supporting the view which we urge is the fact that in the Constitution of *Virginia* of *1867–8*, Article X., section 7, is found this provision :

> "No debt shall be contracted by this State except to meet casual deficits in the revenue, to *redeem a previous liability* of the State, to suppress insurrection, repel invasion or defend the State in time of war."

This seems to have been rather a customary permanent Constitutional provision in that region.

But a better reason, why sections 5 and 7 of Article VIII. of the West Virginia Constitution should not be construed as having any reference whatever to any liability of West Virginia to the Com-

monwealth of Virginia is that by section 8 of the same Article, it was provided:

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year 1861, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

This is a provision not susceptible to misconstruction in respect of the subject to which it refers. Its language is not general. It is in its nature a temporary provision. It deals with but one thing and that is the assumption by West Virginia of a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, with a provision for its ascertainment and liquidation.

It is hardly to be supposed that three distinct sections of Article VIII., two of them general and permanent and one specific and self-executing so far as the assumption of the indebtedness was concerned, were deemed necessary in order to carry into the constitution the provision of section 9 of the Ordinance. The omission of the clause in the next Constitution was very natural and nowise sinister. It would have been absurd to readopt it in the Constitution. The liability had been solemnly assumed, and once assumed in the Constitution, it was an acceptance of the proposition of the Ordinance and, with the assent of Congress, by her admission into the Union became an irrevocable compact between West Virginia and Virginia. It is as valid to-day as it was when it was made. It could not be subtracted from by omission to repeat it in every new or revised Constitution, nor could it be added to by frequent repetition. Any act passed by the Legislature of West Virginia or any subsequent Constitutional provision attempting to repeal this assumption of liability would be void under the Constitution of the United States; and it is as binding upon *Virginia*, who was a party to it, as it is on *West Virginia*.

But *under Section 5 of Article VIII.* it is perfectly clear that when the proportion of the public debt of Virginia prior to the 1st day of January, 1861, to be borne by West Virginia under the ordinance and the constitutional provision shall have been ascertained, as provided by the former, a "debt" may lawfully be contracted by the State to redeem it, upon such terms as the legislature may pre-

scribe. The question is: Was the ordinance binding and is it still binding?

If it be valid and binding, it is impossible for us to discover any ground upon which it can be disregarded by the Court, for if it is binding upon the states, it is binding upon the court. True, West Virginia could not by any suit prevent Virginia from disregarding it in the adjustment with her creditors of her debt or any portion of it. But when Virginia invokes the original jurisdiction of this Court in a suit against West Virginia to compel her to account for an equitable proportion of her debt prior to January 1, 1861, upon the basis of the ordinance *and upon other and different bases*, she may plead the ordinance as the only basis upon which the Court can decree an accounting by her. The Court will not make a new contract for the parties. They were competent to make one for themselves, and they did make one for themselves. It is unfortunate that the two states were unable many years ago to adjust the matter in accordance with the agreement which they had entered into and which subsist between them. Without asserting that the fault for delay rests solely with either, we have a right to say on the record that it does not lie in the mouth of Virginia to impute much, if any, of the fault for delay to West Virginia. The records of this Court show that in December, 1866, Virginia instituted a suit in equity in this Court against the State of West Virginia to test the question whether the Counties of Berkeley and Jefferson were or were not a part of the territory of West Virginia. The cause was not determined until the 6th day of March, 1871, upon which day it was decided in favor of West Virginia, and until it was settled, obviously there could be no accounting under the ordinance, for the boundaries of West Virginia depended upon the decision, and until it was determined what Counties were a part of West Virginia, the basis for accounting under the provisions of the ordinance was wanting.

This Court takes judicial notice of the general laws and constitutions of the states. The Constitutional Convention which assembled at Alexandria on the 11th day of April, 1864, framed and adopted a constitution, it not being submitted to the people for ratification. Section 27 was as follows:

> "The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt proper to be borne by the States of Virginia and West Virginia, respectively, and may authorize, in conjunction with the State of West Virginia, the sale of all lands

and property of every description, including all stocks and other interests owned and held by the State of Virginia in banks, works of internal improvement, and other companies, at the time of the formation of the State of West Virginia, *and no ordinance passed by the Convention which assembled at Wheeling on the 11th day of June, 1861, adjusting the public debt between Virginia and West Virginia shall be binding upon this State.* It shall provide for the payment of any debt or obligation created in the name of the State of Virginia by the usurping and pretended authorities at Richmond, and shall not allow any County, City or corporation to levy or collect any taxes for the payment of any debt created for the purpose of effecting any rebellion against the State or the United States. The legislature shall not provide for the payment of any bonds now held by rebels in arms against the State or United States Government."

This convention was provided for by the General Assembly of Virginia of 1863. Relatively few delegates were elected for the districts were mostly within the Confederate lines. The Constitution was adopted by the convention but was not required, nor was it submitted to a vote of the people. Under this Constitution the government of Virginia was conducted until it was superseded by another Constitution adopted some years later. We apprehend that no lawyer would contend that this attempted repudiation of section 9 of the ordinance of the Wheeling Convention, embodied in the Constitution of Virginia, adopted in convention *after the State of West Virginia had been for over a year in the Union,* was of the slightest validity. Nevertheless, it showed bad faith and doubtless had a tendency to prevent an energetic effort by West Virginia for the ascertainment of the liability under the ordinance with that government.

The Court will find appended to the bill as an exhibit the argument of Mr. Randolph Harrison, representing the Virginia Debt Commission, before the Joint Committee on Finance of the West Virginia Legislature, February 1, 1905, in relation to West Virginia's contributive share of the debt of Virginia, an unusual document to be found in such a relation, but certainly the complainant is not in position to impeach its accuracy, for it is made a part of its bill, In that argument Mr. Harrison says:

"In February, 1870, Virginia sent delegates to Wheeling, West Virginia, then the capital of the State, for the purpose of inviting the Governor and the legislature of West Virginia to unite with her in making a statement in settlement of this account, but the Governor of West Virginia did not think the

time opportune to deal with the subject, because the suit between the two states involving the counties of Jefferson and Berkeley had not then been decided. *Soon thereafter the Governor of West Virginia sent Commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia, did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.*"

It cannot therefore upon the basis of the Bill be truthfully said here that West Virginia was in the beginning laggard in respect of attempting to adjust on the basis of the ordinance the burden which she had assumed by her acceptance of it. She could not do it without the co-operation of Virginia.

Then came the enactment, on March 30, 1871, by the General Assembly of Virginia of the first funding bill, approved March 30, 1871 (Exhibit No. 1 of the bill). By this act Virginia *herself* undertook to "apportion," without consulting West Virginia, the debt between *herself and West Virginia* upon the assumed international law basis, and adjusted it upon the basis that Virginia's share of the debt was two-thirds, and *West Virginia's share was one-third;* which act provided for the issue of several million dollars of what were known in the market as "West Virginia certificates" for one-third of the debt. This was in utter disregard of the compact. If she had settled with her creditors on the basis of two-thirds, and left open the ascertainment, on the basis of the ordinance, of West Virginia's share, without issuing the "West Virginia certificates," it would have been simply her affair. But the preamble to this act challenges attention. It is as follows:

"WHEREAS, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and

"WHEREAS, *in the ordinance authorizing the organization of such state it was provided that the said State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary;* and

"WHEREAS, the people of this Commonwealth are anxious for the prompt liquidation *of her portion of said debt,* which is estimated to be two-thirds of the same; and

"WHEREAS, it has been suggested that the authorities of

West Virginia may prefer to pay that *State's portion of said debt* to the holders thereof, and not to this State, as the Constitution of this State provides;

NOW, THEREFORE, to enable the State of West Virginia to settle *her proportion* of said debt with the holders thereof and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her portion of said debt as the same shall become due therefor;

"1. Be it enacted by the General Assembly of Virginia," etc.

Here, the Court will observe, is a distinct reference in the second clause of the preamble of the first funding act, to the *Wheeling ordinance*, under *which West Virginia was to take upon herself the just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861*, with the declaration that it had not yet been fulfilled, although repeated and earnest efforts in that behalf had been made by this State, "and will continue to be made as long as may be necessary." This ordinance is made the basis of her funding legislation.

How strange it seems that in this legislation asserting the liability of West Virginia to be based upon section 9 of the ordinance, and declaring that it would be continuously insisted upon, its terms, brief as they were, should have been garbled, and that the legislature should have proceeded to ignore it. But the reference to section 9 of the ordinance in the preamble was operative in law to incorporate it *all*, and to put upon notice of its terms as measuring the liability assumed by West Virginia thereunder, every person who accepted a bond or a certificate issued under that act and under the subsequent acts.

In the act of 1879, approved March 28, 1879, Exhibit No. 2 of the bill, it was provided by section 7:

"The owners of all classes of bonds mentioned in this act who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the *remaining one-third of their principal and interest due and payable by the State of West Virginia*, shall receive certificates of a like character to those issued under the act of March 30, 1871, when they made such exchange, etc."

In the act of February, 1882, Exhibit 3 of the bill, it is provided:

> "6. For all *balances* of such indebtedness constituting *West Virginia's share of the old debt*, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said Board for Sinking Fund Commissioners shall issue a certificate as follows:
>
> "No. . The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for , held by , dated the day of , numbered , leaving a balance of , with interest from , *to be accounted for by the State of West Virginia without recourse upon this Commonwealth.*"

Exhibit No. 4, Chapter 325, provides for the issue of similar certificates, "to be accounted for to the holder of this certificate by the State of West Virginia."

In the act, Exhibit No. 5, Chapter 747, after reciting in the preamble the various funding acts of 1871, 1879, 1882 and 1892, occurs the following:

> "WHEREAS, in each of said acts provision is made for issuing to creditors of the original State of Virginia which should accept the new bonds provided for by said several acts, certificates for such proportion of the obligations surrendered by them as was *deemed proper to be borne by the State of West Virginia*, to wit, *one-third of the amount of said obligations*, of which certificates this State holds a large amount, through the agency of the Commissioners of its Sinking Fund and Literary Fund; and
>
> WHEREAS, the present State of Virginia has settled and adjusted to the entire satisfaction of her people and her creditors the liability assumed by her on account of two-thirds of the debt of the original State;
>
> "NOW, THEREFORE, be it resolved," etc., "that a commission of seven members is hereby created," etc., "which is known as the Debt Commission, and said Commission is hereby authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia properly to to be borne by West Virginia;" concluding with this language:
>
> "But said Commission shall in no event enter into any negotiation hereunder, *except upon the basis that Virginia is*

bound only for the two-thirds of the debt of the original State, which she has already provided for as her equitable proportion thereof."

Thus beginning with 1871, Virginia has proceeded without regard to her compact to adjust two-thirds of the indebtedness as her own, and to issue $18,000,000 or thereabouts, of West Virginia certificates, frequently characterized in the act as West Virginia's proportion, and several millions of them bearing on their face the statement that they are to "be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth," and hawked about in the markets, to the injury of the credit of West Virginia. Is the State of West Virginia much to be chided for the delay which has occurred in adjusting with Virginia this matter on the basis of the ordinance?

But there would seem to be, from the bill and the argument on behalf of Virginia in this Court, no question open here as to the validity and binding force of the compact created by the proposition in the ninth section of the Wheeling ordinance, its acceptance by the Convention of November, 1861, its incorporation in the constitution of West Virginia, its ratification by the people of the State, and the assent of Congress to it, evidenced by the admission of the State into the Union.

It was said on the argument by the learned Attorney-General of Virginia, who officially and very ably represents the Commonwealth in this cause, after outlining, at page 323, what he thinks *would have been* a fair adjustment and coming to the ordinance, as follows:

"MR. ANDERSON: In the 11th Wallace case it was established that the Wheeling government was the government of Virginia, and the effect of that decision was to uphold the validity of what is known as the Wheeling ordinance.

"Now instead of letting these questions be settled upon the principles of equity and public law, that convention prescribed this artificial and arbitrary basis of adjustment. *We have to concede that we cannot go behind this, that we must accept it.*

"Section 9 of the ordinance, giving the consent of Virginia to the formation of the new State, reads as follows:

"MR. JUSTICE HARLAN: What are you reading?

"MR. ANDERSON: From the Wheeling Ordinance quoted at page 3 of the brief of the counsel for the plaintiff. Section 9 of the ordinance reads as follows:

"'9. The new State shall take upon itself a just propor-

tion of the public debt of the Commonwealth of Virginia, prior to the 1st day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period.'

"*That is the basis upon which the consent of the Commonwealth of Virginia was given to the formation of this new State. The stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given, and which afterwards, in forming the State of West Virginia, the people of that new Commonwealth accepted and assented to, was that the new State should assume and take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained in the manner therein prescribed. That was a fundamental as well as a contractual provision, and it constitues a primary obligation and lies at the very foundation of the right of West Virginia to be a State.*"

Nothing could be stronger than this statement nor could anything be more accurate.

It is very difficult to reconcile this explicit and conclusive statement by the chief law officer of the Commonwealth of Virginia, in respect of the binding force and effect of the ordinance, with the decree which he proposes on behalf of Virginia and the brief which he submits in its support; for this proposed decree asks the Court to ignore the ordinance, to treat the matter as being as completely open as if the ordinance had never been adopted or accepted; and to commit the case at large to a master to ascertain as an original proposition on the alleged basis of international law or any other basis he may choose to adopt, what proportion of said indebtedness and of the interest accrued thereon *should in equity be apportioned* to and be *now* paid by the State of West Virginia. (See Kimberly vs. Armes, 129 U. S., 512). West Virginia says to this

That she thinks herself entitled to have the question whether or not the special agreement as to what shall constitute a just proportion of the debt solemnly entered into between the two states is binding, determined at this juncture *by the Court* and that, if it be held to be a binding agreement, Virginia is entitled to no accounting with West Virginia in this suit for her equitable proportion of the debt of the Commonwealth prior to January 1,

1861, *except under the terms of that ordinance, carried into the constitution.*

True, the decree proposed by the complainant directs that the master.

> "III. Make and return with his report any special or alternative statements of the account between the plaintiff and the defendant in the premises *which either* may desire him to state or which *he* may deem to be desirable to prevent to the Court."

This asks the Court to leave the determination of the pivotal point in the case, which we think should be decided by it in advance of an accounting, to a master, albeit only in an advisory way, and it gives West Virginia permission to have an accounting made, *if she desires* it, on the basis of the ordinance *at her own expense. She is defendant* here. In that event we would have two lines of investigation proceeding before the master at the same time, each entirely distinct in basic principle from the other, each burdensome in labor, expense and the consumption of time. Neither would throw any light upon the other. An exhaustive accounting under the ordinance would not aid the Court in determining whether it is *binding* and the only legal basis of settlement or not. An exhaustive investigation upon the international law basis would no more aid the Court in determining whether the ordinance is binding and therefore the sole ground upon which the liability of West Virginia to an accounting at all can be based. If the compact is in force, any accounting save under that will be not only burdensome, but superfluous. If both were made, upon what principle would the Court choose between them?

Upon general principles there must be a distinction, one would think, dealing with the general doctrine of apportionment, *in the absence of a special agreement* between a debt incurred by a state, before separation, in repelling invasion, *a debt which would be for the equal benefit of all its inhabitants,* and a debt incurred, as was the *entire* debt of Virginia prior to the first day of January, 1861, for *works of internal improvement.* If the proceeds of such a debt were all expended in the territory of the original state, there would seem to be no equity in requiring the new state erected out of a portion of its territory to be saddled with any portion of the debt, for the reason that the improvements for which the debt was

incurred would be owned by and remain entirely within the limits of the original state. Upon the other hand, if a portion of the debt were expended in improvements within the boundaries of the newly erected state, it would seem that upon separation, as such *improvements would be local* and the old state would be deprived of her property in them and the new state would become the proprietor and beneficiary by virtue of the separation *in the absence of a special agreement*, she should, in equity, contribute their cost or value to the payment of the debt of the original state. And this was the theory of the Ordinance.

In this case it is alleged in the bill that the larger portion of the indebtedness for internal improvements, for which the debt was incurred, were constructed within the state of Virginia, but it is alleged, generally, that several millions were expended in constructing improvements within the territory of the new state of West Virginia. All this, manifestly, must have been taken into account in the framing of the ordinance. All the local improvements which were constructed in what is now Virginia remain in Virginia, of course; and those which were constructed in what is now West Virginia were fixed within her borders. It is alleged in the bill:

> "That the completion of some of the main lines of improvement beyond the said range toward the Ohio River since the first of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvements which could not have been had not the lines east of said range been first constructed."

But it must be remembered, *first*, that these internal improvements which have been completed within the territory, now West Virginia since January 1st, 1861, have been completed without expense to Virginia, and for that she is entitled to no credit. *Second*, Obviously, the completion of such works to a connection with the railroads and other means of transit in Virginia, has enhanced the value of the improvements local to Virginia constructed with the proceeds of said debt, by increasing the business over them. The allegations of the bill, that these improvements in Virginia, which began in 1820, were mainly with a view to ameliorating the condition of the people of West Virginia, and for their benefit are not

issuable allegations, but they are denied by the answer. They are easily pleaded, but they afford no basis upon which the Court can enforce a liability upon West Virginia. Whatever element of fact there is in the allegation was well known to the government of Virginia when the Wheeling ordinance was adopted, and undoubtedly entered into the proposition embodied in Section IX.

It is said in the brief for complainant by way of objection to Paragraph 2 of the decree proposed by defendant :

> " We respectfully object to paragraph 2 of defendant's draft, on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of account, which is not shown by anything *as yet* in the cause to be either equitable or just.
>
> " Before any such question can be fairly adjudicated, it is necessary to the ends of justice, that there shall be a mass of evidence in the case, not yet introduced, which evidence the court should have the aid of its Master in collating and thoroughly digesting."

In reply to this we have to say that *all that can be shown*, bearing upon the question whether the ordinance, and its acceptance and incorporation into the constitution with the consent of Congress, is the measure of liability assumed by West Virginia in agreement with Virginia *is already in the case.* No evidence can throw any light upon it. It raises a question of law pure and simple; evidence or aid by a Master are not necessary to its determination. The facts are not only undisputed and indisputable, but they are documentary, and are alleged in the bill and admitted by the answer. If the court is of the opinion that it is the basis agreed upon between the two states, it certainly is not for the court to determine whether the agreement *ought*, or *ought* not, *to have been made between the states.* Whether it would, from the standpoint of to-day, a just or equitable basis, is beside the question, which is: Is it the basis agreed upon? It is also said :

> " There is by no means enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be *equitable* to adopt in stating the account.
>
> " To do so at this stage of the litigation would be to decide an important question in the case before the evidence for a full understanding and just decision of that question is

before the court. It would be largely to take a step in the dark, which might, and in all probability would, do injustice to one party or the other.

"Our *main* objection to *paragraph 2* of defendant's draft is that its effect manifestly is to have the court *prejudge* the case as to the *basis* upon which the *account shall be stated.*"

All this means but one thing, and that is, that the court shall take a mass of testimony in order to enable it to determine whether or not *it will set aside the compact between the two states.* We take this to be an impossible proposition. Of course it is not possible to determine now what the result of an *accounting*, on the basis of the ordinance, will be, if such an accounting is had. The records archives and papers bearing upon it, for the most part have been in the continued custody of the complainant, and were not open, upon reasonable request many years ago officially preferred, by the Commissioners appointed by West Virginia authorized to state the account. It seems to be the notion of the learned counsel that the court will feel itself at liberty to enforce the ordinance as the basis of accounting, or set it aside and resort to the alleged international law basis, according as *testimony* shall be furnished as to whether it *was equitable or otherwise.* We do not understand that to be within the province of the court upon the allegations of this bill and the conceded facts in this case. It involves no pre-judgment. It is simply what occurs in such cases generally that the court will have decided where upon the pleadings and other exhibits it is able to do so, upon the *principle which shall govern the accounting.* There is no allegation in the bill that the proposition made by the restored government of Virginia, defining the just proportion of the debt to be assumed by the new state, was not advisedly made. There is no allegation of fraud or overreaching, and if there were it comes over forty years too late. It must not be forgotten that this proposition, which was accepted by West Virginia, was a proposition *made by Virginia*, and that the *acceptance* of it was a *condition* upon which *she gave her assent* to the *erection of the new state out of her territory.* It is not for her to ask the court to aid her in repudiating it. It must be borne in mind, too, that the fairness of the agreement is to be considered, if it were an open question, without reference to the condition of either party at this day but with reference solely to the condition of both in 1861 when the ordinance was adopted.

Probably it is true that with the development of West Virginia, which has come about through the lapse of years, the increase of her population, the expenditure of vast sums in transportation facilities, in mining and other operations, and the general exploitation of her resources, Virginia would not be willing to make the proposition which she did make a half century ago. But when one thinks of West Virginia as she was then, with her undeveloped resources, with scant transportation facilities and population, it will be quite apparent that the agreement in her then condition was at least a fair one. If it is open to criticism at all, it is that it is unfair to West Virginia. True, Virginia has suffered; she was through four years of war a battleground; her people were largely withdrawn from their vocations of peace; her agriculture languished; her commerce was paralyzed and much of her property destroyed by contending armies. But the people of West Virginia, who adhered to the Union and helped to rescue the government of their state and to bring it into harmony with and support of the government of the United States are neither to blame for it nor should they be compelled to pay for it. West Virginia likewise suffered from her proximity to the theatre of war. Counsel add:

> "It is submitted for a decree referring it to a Master, to state and report to the court the data necessary to enable the court to justly decide it upon its *merits*—and all the complainant desires *is an opportunity to show to the court and its Master what is the fair and equitable basis upon which the account between the two states should be stated, under all of the circumstances of the case, as they shall appear when the evidence is all in.* If it should *then appear* that the *basis prescribed by the Wheeling ordinance is binding upon the parties* and *must be followed as the basis upon which the account shall be made up, that basis would be adopted.* But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to *impair the obligation of the contracts by which the common debt was created*, contracts which were and are alike obligatory upon Virginia and West Virginia, or for any other valid reason, then the scheme of settlement indicated in the Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted."

This, too, is but a restatement by counsel, in different language, of the proposition that it is for the court to take testimony through a Master, to determine what *would be a just and equitable basis* of settlement between Virginia and West Virginia, the agreed basis, or the assumed international law basis. This is plainly calling upon the court to ignore the ordinance as a binding agreement, notwithstanding the solemn statement of the Attorney-General on the argument as to its binding force and contractual character. This, it seems to us, is impossible.

What is meant by the suggestion that the ordinance may be held to be *unconstitutional* because it *impairs* the obligation of contracts by which the common debt was created, "contracts which were and are alike obligatory upon Virginia and West Virginia," is difficult for us to understand. It is easy to see that it begs the question, for it assumes the indebtedness of Virginia prior to January 1st to be contracts which are binding alike upon Virginia and West Virginia. The personal identity or individuality of Virginia as a state which issued the bonds and owed the debt was not at all affected by the separation of West Virginia from her and her erection into a new state. It would have been entirely competent for Virginia to have agreed with West Virginia that she would not be liable to assume any portion of the debt of Virginia as it existed prior to the first day of January, 1861. It would not have impaired the obligation of any contract, just as it was competent for the United States to enter into an agreement with Texas that she should pay her own debt, consisting of several millions of dollars, incurred before she was received into the Union.

The writers on international law are unanimous as to the validity of agreements between nations, under similar circumstances, as to the apportionment of indebtedness accrued before a separation. It is needless to again quote or cite them:

Counsel say further by way of objection to paragraph second of the decree proposed by the defendants:

> "While it is believed upon the facts stated in the bill and the accompanying exhibits and upon the proofs hereafter to be adduced in support thereof that West Virginia will owe a very large sum under the arbitrary scheme of the Wheeling ordinance, we submit that we should not in the present status of that litigation be *tied down to the terms of that ordinance.*"

If it is binding upon the two states, why should not both parties be "tied down to the terms of that ordinance?" It will be observed by the Court that no argument is made that it is not binding and that no reason is given why it should not be binding and enforced. Indeed it is insisted upon in the Bill as an irrevocable Compact.

Counsel add:

> "Indeed, its provisions were modified by the terms of the eighth section of Article VIII. to the State Constitution, under which West Virginia was made a state, which provided that West Virginia should assume an equitable proportion of the common debt of the Commonwealth, *principal and interest*, and yet the defendant's draft excludes any item of interest from the account."

Section 8 of Article VIII. of the first West Virginia constitution *did not* assume the payment of *any interest upon the debt of Virginia as it existed prior to the 1st day of January, 1861.* It is brief, we repeat it:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State."

The above words constitute all there is in the Constitution by way of *assumption of liability for indebtedness.* If there was unpaid interest due January 1, 1861, that would be a part of the debt of the Commonwealth of Virginia then existing, an equitable proportion of which was assumed by this constitutional provision. After assuming an equitable proportion of the debt, Article VIII. laid a command upon the *legislature:*

> "* * * to ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This injunction for reasons which appear in the case was not observed. There was no agreement to assume an equitable proportion of the *interest* on the *debt* which *might accrue after January 1, 1861.* The Constitution shows that it was in the contemplation of its framers that the new State, confessedly sparsely settled and undeveloped, would require time for the discharge of the equitable proportion of the *debt* so *assumed* when it should have been *ascertained,* and it was provided that the legislature should make pro-

vision for the liquidation of the *debt so assumed*, when ascertained, by a sinking fund to pay the *interest* accruing on the *debt so ascertained* and *assumed* by West Virginia, and to pay the principal of the *debt so ascertained* and *assumed* within thirty-four years.

The thirty-four years have expired. The constitutional provision has been omitted. The provision as to ascertaining the indebtedness and providing for its liquidation, etc., within thirty-four years was outside of the constitutional *assumption* of an *equitable proportion of the debt* of the Commonwealth of Virginia, as it existed prior to January 1, 1861. It was no part of the ordinance which was carried into the Constitution, and fulfilled by the specific assumption of an equitable proportion of the debt. The ordinance had made no provision as to the tribunal by which the debt should be ascertained, nor did it contain any provisions as to its payment, after its ascertainment. The assumption of the debt was a literal acceptance and fulfillment of the requirement of Section 9 of the ordinance, to be ascertained as therein provided. If Article VIII. had stopped there, it would, so far as the obligation of West Virginia to Virginia was concerned, have been complete; it would have constituted, as it does constitute, a compact for the assumption and payment of an equitable proportion of the debt of the Commonwealth of Virginia as it existed prior to January 1st, 1861. If the requirement that the Legislature should "ascertain" the amount and provide for its payment, principal and interest, within thirty-four years, had been carried out and bonds issued therefor, the bonds might have been delivered to Virginia for distribution among her creditors and would have borne interest; or they might have been sold by West Virginia, and the cash proceeds paid to Virginia for distribution among her creditors. Either method was open under section 8 to the legislature and so, when there shall have been an accounting under the ordinance and an ascertainment thereby of what is the equitable proportion of the debt as it existed prior to the date of January 1, 1861, assumed by West Virginia, the legislature of West Virginia is perfectly free as to the manner in which the obligation shall be discharged. It would not be obliged to issue bonds for thirty-four years, that provision of the Constitution having been omitted in the revised Constitution. *It might do so if it chose.* It might provide for the issue of bonds due in 100 years, or 20 years. It is at liberty to fix the

rate of interest which the bond shall bear at 2 per cent. or 3 per cent. or 4 per cent. It could provide for the delivery of the bonds to West Virginia in discharge of her obligation to that Commonwealth, if acceptable to her, or she could borrow the money on her bonds at a low rate of interest and discharge the debt to Virginia *in money*. That would be a "debt contracted" under section 5 of the Constitution for the *redemption of a previous liability*, and in nowise a modification of or departure from the ordinance or the contract of assumption made irrevocable by the adoption of section 8 of the first Constitution. She made no covenant to pay interest upon the debt of Virginia but she did provide for the payment of interest upon the proportion which she assumed upon its ascertainment, until the amount should be paid to the State. But whether she should pay interest or not, is a question which it is not necessary to determine at this time through a Master or otherwise. In any event, it is very difficult to see what testimony could be taken before a Master which would aid the Court in determining the *liability* of the defendant *to pay interest*.

Under Point III., the learned Attorney General objects to the second paragraph of the decree proposed by the defendant also upon the ground that it excludes from the account the *value of the property, assets and money which West Virginia is alleged to have received from the Commonwealth* of Virginia by grants contained in the *acts of February 3 and 4, 1863*. The learned Attorney General says that these acts were passed, as we understand him, "before the legislature of Virginia had in any form given its consent to its (West Virginia) creation out of the territory of Virginia". In this he is certainly in error. It has been our understanding that the claim of Virginia, for which an accounting is sought in this case, is restricted by the court to an accounting which shall ascertain the equitable proportion of the debt of the Commonwealth of Virginia, prior to January 1, 1861; but be this as it may, the argument of the learned Attorney General is extraordinary.

It is said that upon the basis of the ordinance alone none of the property embraced by the grants contained in the acts of February 3 and 4, 1863, would have passed to the State of West Virginia; and on page 6:

> "By the terms of that ordinance Virginia's title to ownership of all the property and assets theretofore belonging to the Commonwealth remained intact. By it West Virginia would acquire no title to any of these assets or of that prop-

erty. Framed as that ordinance was, by West Virginians, and arbitrary on its face, unjust as were the *criteria* by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt, which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a share of the property and assets of the Commonwealth free of charge.

"All that was by the terms of that ordinance to be ceded by the Commonwealth to the new State was political dominion and jurisdiction over the people and territory embraced in the new State."

To this we do not agree. There is nothing in the terms of the ordinance which affirms Virginia's title to and ownership of all the property and assets theretofore belonging to the commonwealth of Virginia, or of any thereof located in the territory of the proposed new state. Virginia consented to the erection of West Virginia into a new State, out of her territory. She did not *grant sovereignty* to the new State. There could not be a new State without sovereignty, and when she gave her consent to the erection of the new State, it was accompanied by all the rights and powers which upon principles of international law would follow the territory and inhere in the sovereignty of the new State over the territory within her borders. The ordinance contained nothing upon the subject. The ordinance did provide—as such ordinances have always provided:

"SECTION 9. All *private* rights and interests in lands within the proposed State derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State and shall be determined by the laws now existing in the State of Virginia. The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grants of land, or land warrant issued by the proposed State, shall interfere with any warrant issued from the Land Office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed State now liable thereto."

By Section 1 of the ordinance it is declared:

"The people of Virginia, by their delegates assembled in convention at Wheeling, *do ordain that a new State*, to

be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary, to-wit: * * *"

And there is not a word in the ordinance in regard to what should be possessed by the new State of West Virginia, nor a *single reservation* in *the ordinance of assets or property of any kind to the commonwealth of Virginia.* What passed to the State of West Virginia by the separation was what would have passed had Virginia been a nation and a portion of her people had, by revolution, separated themselves from her sovereignty and formed of the people and the territory an entirely distinct and new nation called West Virginia; and what would be possessed by the new nation out of what had been possessed by the old one, would be measured entirely, *in the absence of special agreement*, by the settled principles of international law. It is needless to cite authorities. As Mr. Hall says (p. 79):

> "And as the old State continues its life uninterruptedly, it possesses everything belonging to it as a person which it has not expressly lost; so that property enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continues to belong to it. *On the other hand, rights possessed in respect of the lost territory*, including rights under treaties relating to cessions of territory, and demarcations of boundary, *obligations contracted with reference to it alone* and *property which is within it and which has therefore a local character*, or which, *though not within it, belongs to State institutions localized there, transfer themselves to the new State person.*"

Again he says:

> "Property which becomes transferred by the fact of separation consists in domains, public buildings, museums and art collections, communal lands, charitable and other endowments connected with the State, and the like."

State banks, which are State institutions and local in their nature, certainly belong to the new State created after a forcible secession. The same result would follow from an agreed dismemberment, unless the property in them were reserved. The same would be true of railroads and all proprietary interests of the old State *local to the new State.* Section 9 of the ordinance indus-

triously safeguards all *private* rights and interests in lands within the proposed new State and their titles; but we repeat, it is silent as to *public interests* and *ownership* of the old State *located within the borders of the new.*

All that Virginia required in a financial way of the new State was that she should—

> "take upon herself a just proportion of the public debt of the commonwealth of Virginia prior to the 1st day of January, 1861, by charging to the defendant all stated expense within the limits thereof and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted and deducted therefrom, the moneys paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Expressio unius est exclusio alterius.

Possibly, these grants were made in February, 1863, mainly to afford a ground for the claim that the property which had passed by the separation should be "accounted for in the settlement hereafter to be made." The learned counsel contends—as he is obliged to contend, we think, to give any plausibility even to his proposition—that the *statutes of February 3d and 4th, 1893,*

> "*together with the Wheeling ordinance,* the *first Constitution of West Virginia,* the Act *of the United States Congress, approved December 31, 1862,* under which the new State was afterwards admitted into the Union, and the act of the Wheeling legislature of May 13, 1862, constitute the constating instruments and acts by which her political existence was created and her governmental powers and duties determined."

And he adds:

> "As was indicated by this court in its decision overruling the defendant's demurrer, the Wheeling ordinance and Section 8 of Article VIII. of the first Constitution of West Virginia must be taken and read together; *so, also,* these constating acts of February 3 and 4, 1863, and particularly of February 3, 1863, *must be taken and read together with Section 9 of the Wheeling ordinance, and with Section 6 of Article VIII. of the first West Virginia Constitution, as together prescribing the terms and conditions on which the consent of the commonwealth was given to the formation of the new State out*

of her territory, and the transfer to that new State, when formed, of any portion of the assets and property of the parent State."

The court does say in the opinion overruling the defendant's demurrer, "Reading the Virginia ordinance and the West Virginia Constitution, in *pari materia*, it follows that what was meant by the expression that the legislature "shall ascertain" was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed and provide for the liquidation of the amount so ascertained." True this was said in deciding adversely to the contention that the admission of the State under the ordinance and Section 8 of the Constitution, with the consent of Virginia, created a *compact which gave to the legislature of West Virginia power of final ascertainment of the equitable proportion of the public debt of Virginia prior to January 1st, 1861, assumed, as provided in the 9th Section of the ordinance.* But there can be no question of the correctness of the proposition above quoted from the opinion. We dissent altogether from the suggestion of counsel that the acts of February 3d and 4th, 1863, are to be taken and read with Section 9 of the Wheeling ordinance and with Section 8 of Article VIII., of the first West Virginia Constitution,, *as together prescribing the terms and conditions on which the consent of the commonwealth was given to the formation of the new State out of her territory.* This proposition is entirely untenable. The Wheeling ordinance was adopted August 20th, 1861. The Constitutional Convention assembled in November, 1861, and framed the Constitution which was thereafter duly ratified by a vote of the people, which Constitution contains Section 8, assuming an equitable proportion of the debt. *On the 13th of May, 1862,* an act was passed by the legislature of Virginia giving the consent of that State to the formation and erection of the proposed new State within the jurisdiction and territorial limits of said State of Virginia, Section 1 of which is as follows:

> "That the consent of the legislature of Virginia be and the same is hereby given to the formation and erection of the State of West Virginia within the jurisdiction of this State, to include the counties of Hancock, Brook and Ohio (and many other counties), according to the boundaries and under the provisions set forth in the constitution of the said

State of West Virginia and the schedule thereto annexed proposed by the convention which assembled at Wheeling on the 26th day of November, 1861."

Section 3 said act provided :

"Be it further enacted That this act shall be transmitted by the executive to the senators and representatives of this Commonwealth in Congress, together with the certified original of the said Constitution and schedules, and the said senators and representatives are hereby requested to use their endeavors to obtain the consent of Congress to the admission of the State of West Virginia into the Union."

It ought here to be stated that the Constitutional Convention of West Virginia appointed three Commissioners to that end also that the Commissioners presented on May 31, 1862, to the United States Senate a memorial praying for the admission of that State into the Union, addressed to the Hon. B. F. Wade, Chairman of the Committee on Territories, in which they gave a history of the proceedings which led to the organization of the restored government of Virginia, and which *included at length the ordinance adopted on the 20th of August, 1861, by the Convention at Wheeling entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State", which, on the 31st day of May, 1862, was referred by the Senate to the Committee on Territories and ordered to be printed* (Congressional Globe, p. 2451 ; 37 Cong., 2d Session, Misc. Senate Doc. No. 99), thus *clearly demonstrating that Congress had before it not only the Constitution of West Virginia, but the Wheeling ordinance in full.*

On the 31st day of *December, 1862*, an act was passed by the 37th Congress providing that the new state, thus formed in pursuance of the ordinance of the Wheeling convention above referred to, should, upon a certain condition, be admitted into the Union by the name of West Virginia, with the Constitution which had theretofore been adopted by the new State and by the people thereof ; said condition being that a change should be made in the constitution of the proposed State in regard to the liberation of slaves therein. And it was provided by the act of Congress that whenever the President should issue his proclamation stating the fact that such change had been made and ratified, *thereupon the act admitting the*

new State into the Union should become effective 60 days after the date of uch proclamation.

The proclamation was duly issued by President Lincoln on the *20th day of April, 1863*, and on the *20th day of June, 1863*, West Virginia became a state and fully organized as one of the States of the Union.

Prior to the passage, it will be observed, of the acts of February 3 and 4, 1863, the general assembly of Virginia *had consented* to the admission of West Virginia under the Constitution adopted by her people and had requested her admission, and *Congress had admitted her under that Constitution with the single condition* that *a should change be made in it relative to the liberation of slaves, which was made.* And we deny that it was in the power of Virginia *after the action of Congress* to withdraw her consent to the admission of West Virginia or to change the terms of her consent, Congress not having required as a condition of her admission any *change in the ordinance* adopted by the Wheeling convention or in the Constitution *in anywise affecting the provisions of the ordinance.*

Virginia could not thus play fast and loose with Congress in respect of her consent to the admission of West Virginia. This proposition has been sustained by this Court in *Virginia vs. West Virginia*, 11 Wallace, 39.

It cannot be supposed that after Congress had passed the law admitting the state of West Virginia into the Union upon the conditions indicated and authorizing President Lincoln to issue the proclamation announcing a compliance with the condition, that a *specific withdrawal by Virginia of her consent to the admission of the new state into the Union would have been of any force.* If this be a correct proposition, it necessarily follows that no modification of the consent theretofore given upon which Congress had acted and *after Congress had acted on the faith of her prior consent*, would be of any efficacy. The proposition of the learned counsel must have for its predicate the assumption that after Congress had passed the act for the admission of West Virginia and up to the time President Lincoln issued his proclamation declaring the condition imposed by Congress to have been complied with, the General Assembly of Virginia possessed the power to withdraw her consent or to modify it as she might see fit. If she could withdraw it, she could modify it. She could change its terms and impose other conditions. *Prior to February, 1863*, West Virginia *had been admitted into the Union*

upon a condition subsequent. The act was complete. Congress simply suspended the taking effect of the act until sixty days after the proclamation of the President that the condition had been complied with. The argument places the acts of February 3 and 4, 1863, upon precisely the same basis, which it is conceded that the Wheeling ordinance of August 20, 1861, and the constitution of 1861 stand. It is probable that Virginia might have withdrawn her consent to the formation of the new state at any time before the acceptance of the proposition proffered by the ordinance, by the convention which framed, adopted and submitted for ratification the constitution of 1861. That she could not do it afterwards and before the action of Congress is subject to grave doubt, although it is academic, since she *did not attempt to do so.*

The counties of Berkeley and Jefferson involved in the case of Virginia vs. West Virginia, *supra*, were by the ordinance authorized to be incorporated in West Virginia upon the condition that a majority of the votes of the counties were cast in favor of becoming a part of West Virginia. The convention by the constitution made provision for their being incorporated. By act afterwards Virginia renewed her consent by legislation. The *vote* was not *taken by the counties until after the state had been admitted into the Union* and by that time *and before the vote was taken Virginia had repented and had passed an act withdrawing her consent;* and, to test the question whether these counties had become a part of the State of West Virginia, the suit of Virginia vs. West Virginia was brought in this Court. The Court said :

> "Now, we have here on two different occasions the legislative proposition of Virginia that these counties might become part of West Virginia, and we have the *constitution of West Virginia agreeing to accept them* and providing for their place in the new-born state. There was one condition, however, imposed by Virginia to her parting with them and one condition made by West Virginia to her receiving them, and those conditions were the same, namely, the assent of the majority of the votes of the counties to the transfer. It seems to us that here was an agreement between the old state and the new that these counties should become part of the latter, subject to that condition alone."

Again, as to Congress having assented, the Court says :

> "It is therefore an inference clear and satisfactory that Congress by that statute (referring to the act of admission)

intended to consent to the admission of the state with the contingent boundaries provided for in its constitution and in the statute of Virginia, which prayed for its admission on those terms and that in doing so it necessarily consented to the agreement of those states on that subject. There was then a valid agreement between the two states, consented to by Congress, which agreement made the accession of these counties dependent upon the result of a popular vote in favor of that proposition."

Mr. Justice DAVIS, with whom concurred Justices CLIFFORD and FIELD, dissented upon the ground, that Congress had not given its consent to the compact between the states for the transfer of Berkeley and Jefferson Counties to West Virginia until March 2, 1866, saying:

"If so, the consent came too late because the legislature of Virginia had on the 5th day of December, 1865, withdrawn its assent to the proposed cession of these two counties. This withdrawal was in ample time, as it was before the proposal of the state had become operative as a concluded compact, and the bill in my judgment shows that Virginia had sufficient reasons for recalling its proposition to part with the territory embraced within these counties. *But it is maintained in the opinion of the Court that Congress did give its consent to the transfer of these counties by Virginia to West Virginia when it admitted Virginia into the Union.*"

From this the learned justices dissented.

It is clear to our apprehension that whatever may be the opinion of the court as to the effect of the acts of February 3 and 4, 1863, it cannot be said that they had any effect whatever, qualifying or otherwise, upon the assent which Virginia gave in the ordinance and by the act of her legislature to the admission of the State of West Virginia into the Union, and if the Court shall be of the opinion that under the general public law which governs between nations, the property referred to in the acts of February 3 and 4 or either of them, passed by the acceptance of the ordinance and the conditional admission of the State by Congress upon the request of Virginia, the enactment of the acts of February 3 and 4, 1863, were not necessary as evidences of title, and *in no event could be anything more than that.* The learned Attorney General further says:

"It is objected to the draft of the proposed decree for the de-

fendant that it does not direct any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January 31, 1861, which West Virginia should assume and pay, but contents itself with merely directing the arbitrary and inconsequential accounts defined in paragraph second of defendant's proposed decree. This is an objection simply that the proposed decree of the defendant is upon a different theory from that proposed by the complainant. That this is true, is freely admitted. It was not intended by the draft that the Court should direct the Master to ascertain and report what *proportion* of the public debt of Virginia prior to the first day of January, 1861, West Virginia *ought to assume and pay*. That was settled by Virginia and West Virginia nearly fifty years ago. The latter was required to take upon herself a just proportion of the debt, and the two states agreed how that should be ascertained. The draft proposed by the defendant is in literal execution of the contract of the parties, as evidenced by the ordinance and section eight of the first constitution.

It directs the Master to ascertain and report:

(*a*) The amount of State expenditures made by the Commonwealth of Virginia prior to the 1st day of January, 1861, within the territory now included within the State of West Virginia, since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of August 20, 1861.

We agree that the last clause need not be inserted.

(*b*) To ascertain the aggregate ordinary expenses of the State Government of the Commonwealth prior to January 1, 1861, and since any part of said indebtedness was contracted.

(c) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the said period.

The items *(a)* and *(b)* are, under the ordinance, to be *charged* to West Virginia.

The item *(c)* is under the ordinance to be *credited* to the State of West Virginia, and when these three steps shall have been taken, and the two items *charged*, and the one item *credited*, the *sum which it was agreed between the two States should constitute a just proportion of the debt of the Commonwealth of Virginia prior to January 1, 1861, which West Virginia assumed, will have been ascertained.* It is vain to refer to these as "arbitrary and inconsequential items."

They are the items which Virginia herself framed and required to be accepted by the proposed new State as a condition of assent to her separation and admission into the Union.

The entire debt of the Commonwealth of Virginia as it existed prior to January 1, 1861, *as averred in the bill*, and *admitted by the answer*, was contracted for, and its proceeds are alleged to have been expended in, the construction of a system of internal improvements, the greater part of which were expended in what is now Virginia, and several millions of which were, it is alleged by the Bill, and denied in the answer, expended in what is now West Virginia. It was just that Virginia should provide that there should be charged to West Virginia so much of the proceeds as were expended in the construction of internal improvements within her territory. It ought not to be very difficult to ascertain how much of the debt was expended for internal improvements within the limits of what is now West Virginia.

There is but one item in section 9—defining the manner in which the account should be taken in order to ascertain the proportion of the debt to be taken upon herself by the proposed new State—left at all indefinite, and that is item *(b)*, "'*a just proportion*' of the ordinary expenses of the State Government, since any part of said debt was contracted." This involves a determination of the basis upon which a "just proportion" of the aggregate ordinary expenses of the State Government during the said period is to be ascertained. Shall it be population or territory, or both, or taxable values? We are strongly of the opinion that it should be based upon population, since "government"—including the administration of justice, the making and administering of the laws, the education of the children through a system of common schools, academies and a State university, the maintenance of State institutions, the support of prisoners, the care of the insane and paupers, and the like—is for *people*, not *acres*. It is difficult to conceive of *government* except in its relation to *people*, and so, it has seemed to us that the basis must be population. We therefore suggest that there should be added to the draft proposed by the defendant, in respect of an ascertainment of the aggregate ordinary expenses of the State, a direction to the Master to find alternatively certain facts substantially as follows:

> "For the purpose of enabling the Court to determine the just proportion of the aggregate of the ordinary expenses of

> the State Government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of said indebtedness was contracted, said Master shall ascertain and report the population during the said period of the counties now constituting the Commonwealth of Virginia, and separately the population of the counties now constituting the State of West Virginia, as shown by the decennial censuses taking during the said period by the United States, and also the average population of Virginia during each of said periods of ten years."

The aggregate ordinary expenses being found, and the items suggested as to population, it will be easy to determine the "just proportion" if that is the proper basis.

We submit that this case should not be cast at large, with no definition of the principles to govern his action, into the hands of a Master; that at least it should be settled before a reference for the *purpose of taking an account*, whether the liability of Virginia to West Virginia is upon the *special agreement* which preceded and accompanied her admission into the Union, *or, because of the absence of a special agreement*, upon the basis of *population* and *territory*.

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10

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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 3 Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA.

MEMORANDUM FOR DEFENDANT.

It will be observed that in paragraph II of this draft of a decree the master is not only directed to ascertain the amount and proportion of said indebtedness, but "of the interest accrued thereon."

Counsel for the defendant object further to this paragraph because there is no legal ground for directing the ascertainment of interest. The State of West Virginia has not obligated herself in any manner for the payment of interest. The principle is well settled that a State is not liable to pay interest unless it has expressly contracted to do so.

In support of this proposition this court, in United States *v.* North Carolina, 136 U. S., 211, said:

"A state is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of its legislature, or by lawful contract of its executive officers."

Following the principle thus announced by this court, many of the State courts have laid down in distinct terms the same proposition. Among the decisions of these courts are the following:

Sawyer *v.* Colgan, 102 Cal., 293; 36 Pac., 583.
Hawkins *v.* Mitchell, 34 Fla., 421, 422; 16 So., 316.
Molineux *v.* State, 109 Cal., 380; 50 Am. St. Rep., 50; 42 Pac., 34.
Flint, etc., R. R. *v.* Board of State Auditors, 102 Mich., 502; 60 N. W., 971.
Carr *v.* State, 127 Ind., 204; 22 Am. St. Rep., 624.

In Carr *v.* Sate, 127 Ind., 204; 22 Am. St. Rep., 624, this principle is announced as one of the points decided:

"A sovereign State is not bound to pay interest unless it has contracted to do so."

The court, in the course of its opinion in this case, says:

"In the case of State *ex rel. v.* Board, etc., 36 Ohio St., 409, it was held that in the absence of a promise to pay interest none can be recovered against a State, and that a State is not within the provisions of a general statute providing for the payment of interest in cases where money is wrongfully withheld from a creditor. The court put its decision upon the familiar rule that a sovereign is not bound by the words of a statute unless it is expressly named, and in support of its conclusion cited these cases: Trustee, etc., *v.* Campbell, 16 Ohio St., 11; Joselyn *v.* Stone, 28 Miss., 753; State *v.* Kinne, 41 N. H., 238; Attorney-General *v.* Cape Fear, etc., Co., 2 Ired. Eq., 444; Auditorial Board *v.* Arles, 15 Tex., 72; State *v.* Thompson, 10 Ark., 61. In Wightman *v.* United States, 23 Ct. of Cl., 144, the general rule was stated, and it was said: 'Hence there is no law fixing a rate of interest for all classes of the public debt, and a long-established public policy has been to pay interest only where it is a subject of express agreement or of positive enactment.' It was held in the case of Tillson *v.* United States, 100 U. S., 43, that a statute referring a claim did not authorize a recovery of interest, in the absence of words expressly providing for

the payment of interest. It is impossible to escape the effect of these authorities, and considerations may be readily suggested which increase their force. One is, that there is no right to coerce the payment of a debt due from a sovereign, and, of course, a sovereign may impose limitations upon its liability."

In a note appended to this case as reported in 22 American State Reports, at page 448, we find the following:

"With respect to the obligation of the State to pay interest upon its indebtedness, the principal case is well established by other authorities upon the same subject. In nearly and perhaps all of the States there are statutory provisions providing that moneys, after they become due, shall, in the absence of express contract to the contrary, bear the rate of interest specified in such statutes; but, acting under the old common-law rule that the king or sovereign is not bound by a statute unless expressly named therein, it has been uniformly held that these statutory provisions respecting interest did not apply to any obligation either of the State or of the national government, and therefore that interest is never allowed upon such obligations, in the absence of some special statute clearly manifesting the intention of the sovereign to be bound for the payment of interest upon the particular obligation or class of obligations under consideration (United States *v.* North Carolina, 136 U. S., 211; State *v.* Thompson, 10 Ark., 61; State *v.* Board of Public Works, 36 Ohio St., 409; State *v.* Bank of Washington, 18 Ark., 554; United States *v.* Sherman, 98 U. S., 565; United States *v.* Bayard, 127 U. S., 251; Tillson *v.* United States, 100 U. S., 43; *In re* Gosman, 17 Ch. Div., 771; Attorney-General *v.* Cape Fear N. Co., 2 Ired. Eq., 444; Bledsoe v. State, 64 N. C., 392; Trustee *v.* Campbell, 16 Ohio St., 11; Joselyn *v.* Stone, 28 Miss., 753; Wightman *v.* United States, 23 Ct. of Cls., 144)".

Office Supreme Court, U. S.
FILED.
MAY 27 1908
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 8

THE COMMONWEALTH OF VIRGINIA

v.

WEST VIRGINIA.

BRIEF IN SUPPORT OF MOTION TO MODIFY DECREE OF REFERENCE.

W. G. CONLEY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

THE COMMONWEALTH OF VIRGINIA

v.

WEST VIRGINIA.

BRIEF IN SUPPORT OF MOTION TO MODIFY DECREE OF REFERENCE.

Paragraph 2 of the decree of reference entered herein on the 4th day of May, 1908, directed the special master to ascertain—

> "2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately."

As a substitute for this the defendant proposes the following:

> "2. The *territorial area* and *assessed valuation* of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately *stated, including in the latter State the counties of Berkeley and Jefferson.*"

We respectfully submit that unless the official assessments of the territory and slaves in both sections of the State are

made the basis of the valuation by the master, it will be impossible for him to comply with this part of the decree in a manner satisfactory to the court or the parties. Forty-five years have elapsed since the date fixed in the decree for the valuations, and it is scarcely possible that witnesses can now be produced whose testimony upon the subject will be conclusive or satisfactory. Moreover, the introduction of parol evidence to prove values as they existed forty-five years ago, in a State consisting of more than 60,000 square miles of territory and containing many thousands of slaves, would necessarily prolong the investigation to an unreasonable extent and subject the litigants to a very large and, we think, useless expense. At best, the witnesses could only state their opinions, and upon such a subject they would differ so widely that it would not be possible to reconcile them so as to reach a satisfactory conclusion. The decree provides:

> "All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency."

The authentic official evidence thus provided for in the decree would seem to be sufficient to secure a reasonable degree of accuracy in the valuations ordered to be ascertained by the master without encumbering the record and protracting the investigation by the introduction of unreliable opinions, which must, under the circumstances, be mere guesses.

The assessments are parts of the public records of the State and constituted the basis of taxation in both sections, and their accuracy ought not to be impeached at this late day by the mere opinions of witnesses based upon their recollections of the situation as it then existed. These opinions as to the value of the territory of West Virginia would be largely influenced by the developments of her mineral and other resources and the internal improvements made in that State since 1863, and the testimony would be quite different from what it would have been if it had been taken at that time. It was then known, as is alleged in the bill, and was known when Virginia began to create the debt, that these resources existed, and it is to be presumed that the officials in assessing the value of the land took them into consideration. Most of the land was not arable and was valuable mainly, if not entirely, because of the forests and minerals. It would be manifestly unfair to West Virginia to receive as evidence, for the purpose of increasing the valuations, the mere opinions of witnesses as to the values of gas, coal, iron, and timber separately from the land in which the minerals were deposited or on which the timber was grown, and then add that value to the assessment which already included them. It is stated in the brief filed for Virginia on this motion that these minerals and other resources were not included in the assessments "as distinct subjects of valuation;" but it is said "their presence was considered in estimating the value of land in transactions between vendor and vendee," and that the property was assessed at two-thirds its value. That would be, we suppose, at two-thirds of its market value, including, of course, the minerals and other resources. The same rule of assessment prevailed in both sections of the State, and therefore the relative proportions which the value of property in one section bore to the value in the other would be precisely the same as if it had been assessed at its full market value.

If the assessments are not to govern, what is to be the test of value? It would be impracticable to prove the market

value of the land and slaves in 1863, but if assessed values are to be ignored or contradicted, we know of no other test except market value that could be properly applied.

For two years prior to June, 1863, a large part of the territory which now constitutes the State of Virginia was occupied by the two armies, and not only was much valuable property destroyed or carried away, but all values, and especially the values of slave property, were greatly depreciated. The people of West Virginia were not responsible for this condition and they ought not to be prejudiced by it in ascertaining the relative values of the property in the two States at that date.

Paragraphs 3, 4, 5, and 6 read as follows:

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.
>
> "4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.
>
> "5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.
>
> "6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The defendant asks that these paragraphs be so modified as to read as follows:

> "3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of said debt was contracted, *and prior to January 1, 1861.*
>
> "4. The ordinary expenses of the government of Virginia since any of said debt was contracted *and*

prior to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

"5. And also on the basis of the *assessed* valuation of the property, real and personal, by counties, of the State of Virginia during the same period.

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia, during the said period, *and prior to January 1, 1861.*"

Unless some date is fixed by the court at which the investigation shall stop, the master will be required to decide what seems to us some very difficult questions. On the 17th of April, 1861, Virginia passed an ordinance of secession from the Union, and from that time on until long after West Virginia was admitted as a State the two sections were substantially as separate and distinct as they are now. Not long after the passage of the ordinance of secession the restored government of Virginia was organized, composed almost entirely of the counties now constituting the State of West Virginia. These counties paid nearly the whole of the revenue of the restored State until the admission of the new State into the Union. Is West Virginia to be charged in this proceeding with money expended in what is now her territory during that time, and with her just proportion of the ordinary expenses of the government up to June 30, 1863? That was the only recognized government existing in Virginia during that period. We do not suppose it will be claimed that West Virginia is liable for any part of the ordinary expenses of the government at Richmond after the passage of the secession ordinance. To make such a charge against her would be to compel her to contribute to the support of a government in rebellion against the United States. Under the Wheeling ordinance she ought to be charged with money expended in her counties and with her share of the ordinary expenses and credited with money paid into the State treasury during *the same period,* whatever that period may be; and it should be prescribed by the court, not left to the master.

Most of what we have said concerning paragraph 2 of the decree is also applicable to paragraph 5. It does not appear to us at all practicable to ascertain, by the testimony of witnesses, what was "the fair estimated valuation of the property, real and personal, by counties" forty-five years ago. According to the position taken by counsel for Virginia, the valuation is to be ascertained by considering the oil, gas, iron, coal, and timber separately from the land in or on which they were situated, and then, of course, it would be necessary to ascertain the value of the land separately, without the minerals or timber, in order to secure the entire valuation. This tedious process would have to be adopted in both States, if it was adopted in one, and the investigation would consequently be almost interminable. It is well known that Virginia had vast and valuable deposits of coal and iron and large forests of timber, as well as many other natural resources and advantages which West Virginia did not possess, such as navigable waters, access to tide water, with large bays and fine harbors. Are all these assets to be valued separately also, or did they, like the minerals and timber in West Virginia, affect the value of land and other property of the State and thereby increase the valuation in the official assessments?

The fact that assessments were not made annually, but only once in ten years, is not very material when they are introduced as evidence of values in any intermediate year. The United States census is taken only at the end of each decade, but each decennial census and each decennial assessment shows a certain rate of increase or decrease, as the case may be, since the last one was taken, and it is not difficult, therefore, to calculate with reasonable accuracy what the values are in any particular year. Such evidence is certainly far more reliable than the memories and opinions of witnesses who are called to testify after the lapse of nearly half a century.

In plaintiff's brief on this motion it is said:

> "The expenses of the government of the restored State government from June or July, 1861, to June 20, 1863, when the State of West Virginia was created, were all furnished from the funds of the Commonwealth of Virginia, as appears from the acts of the legislature referred to in the progress of this cause. So that the latter date would be the proper one, if any amendment at all is to be made."

On the 19th day of June, 1861, the convention which had assembled at Wheeling on the 8th of June, 1861, adopted an ordinance for the reorganization of the State government, and the restored State government was organized immediately thereafter by the election (by the convention) of a governor and other State officials. Senators were elected to the Congress of the United States on the 9th day of July, 1861, and they were admitted to seats in the Senate on the 13th day of the same month. This government continued until 1867, and it defrayed all its own expenses as long as it existed. As already stated, nearly the whole of its revenue was paid by the counties now composing the State of West Virginia until the admission of that State into the Union; the old Commonwealth of Virginia paid no part of the expenses. It had not only withdrawn protection from the persons and property of the people in West Virginia, but was waging war against them, having, as early as April 24, 1861, seven days after the passage of the ordinance of secession, entered into an agreement with the Confederate States transferring the control of the State to the Confederacy. We are not aware of the existence of any acts of the legislature showing that any part of the expenses of the restored State government was paid "from the funds of the Commonwealth of Virginia," unless the restored government is meant; and if this is the meaning of the statement, the people of West Virginia have paid once for the support of their government and for the protection of their territory and property, without any assistance from the old State, and that State ought not now to have any credit on account of these ordinary expenses.

We respectfully submit that, whatever date may be fixed with respect to the closing of the other accounts in controversy, it is clear that West Virginia should not be charged with any part of the ordinary expenses of the State government after the actual separation and the withdrawal of protection by Virginia in this respect.

W. G. CONLEY,
Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910

ORIGINAL NO. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.) In Equity.

STATE OF WEST VIRGINIA, Defendant.

DEFENDANT'S BRIEF

PARTS I., II. AND III.

WILLIAM G. CONLEY,
Attorney General of West Virginia.

JOHN C. SPOONER,
CHARLES E. HOGG,
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W. G. MATHEWS,
WM. M. O. DAWSON,
Of Counsel for Defendant.

LOVETT PRINTING COMPANY, INC.
CHARLESTON, W. VA.

IN THE

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Table of Contents

PART I.

	Pages
Introductory Statement	1-3
Historical Statement Showing Formation of West Virginia and Her Assumption of a Just Proportion of the Public Debt	3-11
Virginia Sought no Adjustment with West Virginia of any Part of the Public Debt as Alleged in Her Bill	12-20
All Questions Arising Upon the Record of this Case Are Still Open for the Consideration and Decision of the Court	20-21
The Bill Sets Up Four Distinct and Independent Grounds in Respect to Each of Which Virginia Seeks Relief	21-22
Questions Arising Upon the Record for the Consideration and Decision of the Court	22-24
Virginia has no Interest in this Suit so far as it Seeks to Ascertain West Virginia's Proportion of said Debt	24-43
Act of Virginia of 1871	30-32
Act of Virginia of 1879	32-34
Act of Virginia of 1882	34-37
Act of Virginia of 1892	37-43
The Status of Virginia as to Her Unfunded Debt by Virtue of the Provisions of Her Four Legislative Acts of 1871, 1879, 1882 and 1892	43-51

Accord and Satisfaction Created between Virginia and Her Creditors as to the Unfunded (One-third) Portion of Her Debt ---------- 51-59

Surrender and Cancellation of the Old Bonds---------- 59-61

Promise of a Debtor to Do Some Act in the Future Is Sufficient to Create an Accord and Satisfaction without Performance by the Debtor ---------- 61-62

Virginia had the Right under Her Own Laws to Discharge Herself from Liability by Assuming Two-thirds of the Old Debt, if Done with the Consent of Her Creditors (and it Was so Done), without Impairing Their Rights (if Any They Had) against West Virginia for the Residue ---------- 63-65

Virginia has no such Interest in any Part of the Unfunded Debt Held by Third Parties, which it Is Claimed West Virginia Should Pay, as to Enable Her to Enforce Payment by this Suit ---------- 65-66

Party without Interest Cannot Maintain an Action-------- 66-76

Virginia, being without Interest in the Unfunded Debt Held by Third Parties, Cannot Constitute Herself a Trustee, and thus Create a Controversy between Herself as Trustee and the State of West Virginia, and Thereby Maintain this Suit as to such Unfunded Part of said Debt ---------- 77-82

The Principles of Law Governing Suits between Private Persons Are Applied to Controversies between States----- 82-84

This Court follows the Former Practice of the Courts of King's Bench and of Chancery, in England, in Cases of Original Jurisdiction in Equity---------- 84-86

This Suit Discloses no Controversy between the Two States, as to the Unfunded Debt Represented by Certificates Owned by Individuals---------- 86-95

An Accounting Cannot Be Maintained by Virginia in this Suit ---------- 96-99

That Part of the Debt not Held by Third Persons, but which Virginia Avers She Holds in Her Literary and Sinking Funds, in Her Own Right and not as Trustee, not a Proper Charge against West Virginia---------- 99-102

Virginia Is not Entitled to Contribution from West Virginia 102-105

The Bill Multifarious ---------- 105-125
Mr. Carlisle's Argument ---------- 118-124

The Plaintiff's Suit Barred by Laches ---------- 125-136

PART II.

On Exceptions of the Plaintiff and the Defendant to the Report of the Special Master.

PARAGRAPH I. OF DECREE.

Exception of Virginia ---------- 136-139

PARAGRAPH II. OF DECREE.

No Exceptions under This Paragraph---------- 139

Court's Attention Called to Certain Alternative Finding---- 139

PARAGRAPH III. OF DECREE.

Exceptions of West Virginia.

Kanawha River Turnpike and Kanawha River Improvements 139-144

Brandonville, Kingwood and Evansville Road, $10,595.73; Clarksburg & Buchanan Turnpike, $19,259.36; and Kingwood and West Union Turnpike, $18,140.61----- 144-145

Item 55, Surveys, $60,873.19 ---------- 146

Item 150, Loan to the Town of Bath, $2500---------- 146-148

Exceptions of Virginia.

Nature of Her Exceptions 148-156

Items 57-65, Bridge Companies, $78,412.50 148-152

Items 66-69, Navigation Companies, $210,500 148-152

Items 70-147, Turnpike Companies, $803,555.83 148-152

Item 6, Berryville and Charles Town Turnpike Co., $11,932.52 148-152

Coal River Navigation Company 149-152

Money Expended for Purchase of Stocks not a State Expenditure 149-151

"Complainant's Sixth Exception" 151

Winchester and Potomac Railroad 154-156

Nature of the Loans Made by Virginia to Corporations 155

Act of February 3, 1863 156

Item 15, Kanawha Board Bonds, $60,000 157

Item 53, Harper's Ferry Raid, $189,715.59 157

Item 54, School Commissioners, $830,865.37 157-158

Item 56, Trans-Alleghany Lunatic Asylum, $27,000 158

Item 148, Fairmont Bank, $50,000; Item 149, Northwestern Bank, $341,800 158-159

PARAGRAPH IV. OF DECREE.

Its Meaning—The Period of Accounting 159

Exceptions of West Virginia.

Item No. 1, Tobacco Receipts, $353,123.96 160-162

Item 5, Maps (Board of Public Works), $11,446.48 162

Item 23, Sundry Board of Public Works Expenses, $36,728.50 162
Item 27, General Expenses Connected with Surveys, $106,983.67 ---------- 162

Item 25, Harper's Ferry Raid, $251,763.65 ---------- 163-165

Item 16, Calling out Militia at Wheeling in 1836, $1,099.00 163-165

Item 24, Interest on Public Debt, $18,547,747.34---------- 165-175

Item 26, Expended for Primary Schools, $2,400,331.11---- 176-180

Exception as to Apportionment ---------- 180-182

Exceptions of Virginia.

Her General Exception ---------- 182

Items Claimed by Virginia, but not Allowed by the Master 182-183

PARAGRAPH V. OF DECREE.

Exceptions of Virginia.

As to Fair Estimated Value of Real Estate---------- 184-186

Master's Finding of Fair Estimated Value of Personal and Real Property as of January 1, 1861 ---------- 186-188

PARAGRAPH VI. OF DECREE.

Exceptions of West Virginia.

To Master's Refusal to Allow Certain Sums as Payments into Treasury of Virginia, as Moneys from West Virginia Counties ---------- 188-189

Exceptions of Virginia.

Virginia Files no Specific Exception under this Heading-- 189-190

PARAGRAPH VII. OF DECREE.

Exceptions of West Virginia.

To Value of Stock of Northwestern Bank as Found by Master ---------- 190-196

Exceptions of Virginia.

To Master's Finding that West Virginia Received no Money from Virginia ---------- 196-198

PART III.

CAUSES OF SEPARATION OF WEST VIRGINIA:

1. Rule of construction to be applied in this case---------- 199

2. Physical characteristics of West Virginia and Northwestern Virginia ---------- 200

3. Court may resort to speeches of Chairman of Committee reporting a bill and of author of the bill---------- 201

4. Speech of Senator Wade in support of act for admission of West Virginia ---------- 201

5. Speech of Senator Willey ---------- 202

6. Speech of Daniel Webster ---------- 205

7. Conditions at the time of creation of West Virginia---- 205

THE RULE OF PUBLIC LAW IN REGARD TO THE APPORTIONMENT OF THE DEBT OF A STATE AFTER ITS DIVISION:

1. This Court has never decided that when a state is divided the debts of the original state should be ratably apportioned between it and the new state---------- 206

2. The true rule of public law in case of the division of a state. General debts are apportioned on the basis of taxable value. Local debts are assumed by the state for the exclusive benefit of whose territory they were incurred. The authorities ---------- 210-229

   (*a*) Hall ---------- 210
   (*b*) Oppenheim ---------- 213
   (*c*) Glenn ---------- 214

(*d*) Hannis Taylor ---------- 215
(*e*) Pradier Fodere ---------- 216
(*f*) Bluntschli ---------- 217
(*g*) Bonfils ---------- 218
(*h*) Franz v. Liszt ---------- 219
(*i*) Piedelievre ---------- 219
(*j*) Rivier ---------- 222
(*k*) Fiore ---------- 223
(*l*) Pradier Fodere ---------- 224
(*m*) Huber ---------- 225
(*n*) Appleton ---------- 226

3. Application of International Law doctrine in this case 229

4. Recognition of distinction between general and local debts in division of territory of Dakota---------- 230

5. Distinction between general and special debt discussed in negotiation of treaty between United States and Spain ---------- 234

6. The distinction between general debt and local debt is substantial and just ---------- 234

7. The public debt of Virginia prior to January 1, 1861, was a local or special, and not a general, debt------ 236

8. The nature of the debt as shown by the legislation under which it was incurred ---------- 237

THE RULE OF PUBLIC LAW DOES NOT GOVERN THIS CASE BECAUSE THE WHEELING ORDINANCE AND THE CONSTITUTION OF WEST VIRGINIA CONSTITUTE A SPECIAL AGREEMENT AS TO THE PROPORTION OF THE OLD VIRGINIA DEBT TO BE ASSUMED BY WEST VIRGINIA:

1. Section 9 of the Ordinance ---------- 248

2. Section 8 of Article VIII. of West Virginia Constitution 249

3. Two views of opposing counsel in relation to the Ordinance ---------- 249

4. Virginia is not in a position to insist upon the elimination of the Ordinance from the case ---------- 252

5. Virginia does not contend that the Ordinance has ceased to be binding ---------- 253

6. There is no conflict between the Ordinance and the Constitution ---------- 255

7. The vice in the argument for Virginia ---------- 258

8. "Just" and "Equitable" are symonymous ---------- 261

9. If the Ordinance is in conflict with the Constitution, the Ordinance must be wholly eliminated ---------- 263

10. With the Ordinance eliminated the ascertainment of West Virginia's proportion of the debt must be left to the Legislature of Virginia ---------- 263

11. With the Ordinance eliminated, is the matter justiciable?* ---------- 265

12. The Court has declared that the Ordinance and the Constitution do not conflict and are to be read *in pari materia* ---------- 270

EXCEPTIONS TO THE MASTER'S REPORT:

1. The Master was right in holding that bonds held by the Sinking Fund and by the Literary Fund were not a part of the public debt of Virginia ---------- 273

2. The Master was right in excluding under Paragraph III. of the decree expenditures by corporations in which Virginia was a stockholder ---------- 274-281

(*a*) The Master's finding ---------- 275

(*b*) The rejected claims represented expenditures by private corporations ---------- 275

(*c*) Virginia Legislature and Courts recognize the distinction between private corporations with stock and public corporations without stock 276

*On p. 265, line 6 from bottom, the word "justifiable" should read "justiciable."

(*d*) Virginia Act of 1863 transferring to West Virginia property within her boundaries---- 278
(*e*) The transfers of property took place ---------- 279
(*f*) West Virginia cannot equitably be charged both with the value of the stock and with the expenditures made by the corporations---- 280
(*g*) Counsel for Virginia beg the question ------ 281

3. The Master was wrong in finding that interest on the public debt of Virginia was part of the ordinary expenses of the state government ---------- 282-314

(*a*) The language of the Ordinance ---------- 283
(*b*) Defendant's contention ---------- 283
(*c*) Interest on state debt is not an ordinary expense of government because it is payable only during a limited period ---------- 283
(*d*) Interest on the old Virginia debt was not an ordinary expense of government because the debt was incurred for extraordinary purposes 284
(*e*) The fact that the interest was payable at regular intervals did not make it an ordinary expense ---------- 285
(*f*) Interest is not properly described as an expense ---------- 285
(*g*) The distinction between the state and the government of the state ---------- 286
(*h*) Finance provisions of state constitutions show that interest on a state debt is not regarded as an expense of government ---------- 288
(*i*) Extracts from state constitutions ---------- 289
(*j*) The distinction between ordinary expenses of government and interest on a public debt is apparent in the case of municipal corporations ---------- 293

(*k*) The adjectives "ordinary," "current," and "necessary," when applied to governmental expenses are synonymous ---------- 294
(*l*) The Master's argument ---------- 295
(*m*) Fallacy of the Master's argument ---------- 296
(*n*) By the great preponderance of judicial construction, interest on a public debt is not an ordinary expense of government. The authorities ---------- 297
(*o*) Legislation of Virginia during the period covered by the Ordinance did not deal with interest on the public debt as an ordinary expense of government ---------- 307
(*p*) The creation of a sinking fund for the payment of interest on the Virginia debt shows that such interest was not an ordinary expense of the state government ---------- 311
(*q*) The words of the Ordinance should be construed in the light of the surrounding circumstances ---------- 313
(*r*) The proportion of ordinary expenses with which Virginia is to be charged should be ascertained upon the basis of taxable values 314

WEST VIRGINIA IS NOT BOUND TO PAY INTEREST FROM JANUARY 1, 1861, ON THE PROPORTION OF THE OLD VIRGINIA DEBT ASSUMED BY HER:

1. Neither by the Ordinance nor by her Constitution did West Virginia *in praesenti* assume any portion of the public debt of Virginia ---------- 317
2. The Virginia rule as to private contracts that interest follows the principal does not apply to contracts between states ---------- 319
3. Analysis of *Higginbotham's Executrix* v. *Commonwealth* ---------- 319

4. The case of *United States* v. *North Carolina* 323

5. There is no basis for Virginia's claim for interest---- 324

6. West Virginia agreed to assume a just proportion, not of the outstanding obligations of Virginia, but of her debt ---------- 325

7. There is no evidence that the improvements constructed by Virginia within her present limits were for the benefit of the region now West Virginia ---------- 326

8. Facts showing injustice of Virginia's claims -------- 327

9. Under the Ordinance and her Constitution, West Virginia cannot be charged with interest until the ascertainment in the manner prescribed of her equitable proportion of the old Virginia debt ---------- 329

10. Memorandum of John G. Carlisle ---------- 332

11. Virginia's responsibility for the delay in apportioning the debt ---------- 335

APPENDIX A.

Plaintiff's Original Exhibit D-1 ---------- 341-351

APPENDIX B.

Act of Confederate Virginia Respecting Jeffersonville Branch of Northwestern Bank ---------- 352-355

Report of Hon. Chester D. Hubbard Concerning State Stock in Northwestern Bank ---------- 355-358

APPENDIX C.

Memorial of Commissioners Praying for Admission of West Virginia into the Union ---------- 359-375

APPENDIX D.

Virginia Investment in Capital Stock ---------- 376-377

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DEFENDANT'S BRIEF

PART I.

ARGUMENT OF CASE ON THE BILL AND ANSWER AND EXHIBITS.

INTRODUCTORY STATEMENT.

Complainant's bill was filed at the October term, 1906, to which defendant interposed demurrer and amended demurrer, which, after argument, in March, 1907, were overruled in the opinion of this Court pronounced May 27, 1907 (206 U. S. 290).

The briefs and argument of counsel on the demurrer are contained in West Virginia Compilation, Vol. I. (See last paragraph of this statement.)

Defendant filed her answer and its exhibits in October, 1907.

May 4, 1908, the cause, by a decree, was referred to a Special Master

with directions (209 U. S. 514), which directions were modified, June 1, 1908, by substituting in paragraph 2 of the decree of reference the words "assessed valuation" for the word "value."

There is contained in Vol. 2 of West Virginia Compilation, at the pages indicated, the following:

Form of decree proposed by each party, referring cause to a Master, plaintiff's at p. 35, defendant's p. 41; the motion of defendant to modify the decree of reference, p. 325; the order modifying said decree, p. 371; the names recommended by each party as fit persons to be appointed Master, by plaintiff at p. 61, by defendant at p. 57; the order appointing Mr. Charles E. Littlefield Special Master, p. 375. The volume also contains the briefs and arguments of counsel on the motion to refer the cause to a Master and on the motion to modify the decree of reference.

Beginning on November 16, 1908, and ending on July 2, 1909, sessions were held by the Special Master at Richmond, Va., to take evidence. Thereafter the Special Master held sessions in the city of New York, to hear arguments of counsel, the last whereof was held on January 1, 1910.

March 17, 1910, the Special Master filed his report.

In April, 1910, the parties filed printed exceptions to the Master's report.

The printed Record consists of two volumes; the Record proper, referred to herein as "R., p. ---"; and the Appendix to the record, referred to herein as "App., p. ---." The Appendix contains such statutes and ordinances and extracts therefrom, and selections from constitutions of Virginia and West Virginia, as were deemed most material to the questions in the cause, compiled by the parties under direction of the Special Master.

The Record consists of Part I. and Part II. The former contains the Bill and its exhibits; defendant's demurrer and amended demurrer; opinion of the Court overruling demurrer (206 U. S. 290); defendant's answer and its exhibits; decree referring cause to the Master; motion to modify decree of reference; and the orders modifying decree, and appointing the Special Master.

Part II. contains the proceedings and evidence taken before the

Special Master, arranged under the seven paragraphs of the decree of reference; followed by the evidence of general application to the cause. Under each paragraph is printed the exhibits and other evidence germane to the subject of the paragraph.

But not all the exhibits, documents and other evidence adduced is printed in the Record. In order to keep the Record as small as might be, under direction of the Master much was omitted therefrom. None of the original principal exhibits of either party are printed, except under Paragraph VII. After the oral evidence of the expert accountants of each party was given, by direction of the Master, these accountants prepared "Joint Exhibits," from which all items were omitted about which there was no disagreement as to amount; and in which the items and details thereof about which there were disagreement were stated. Some other exhibits were also omitted.

So, the oral evidence of the expert accountants printed in the Record was given under the original exhibits and before the "Joint Exhibits" were prepared. All matters of mere routine were also omitted from the Record; but all the exhibits, evidence, etc., introduced before the Master at the hearings specified are part of the record of the cause, and were returned by the Master with his report.

Some evidence was taken by the Master after the Record was printed, and designated as "Supplemental Exhibits" 1 to 11.

Besides the foregoing, there have been used in the cause two books, gotten out by the Attorneys General of West Virginia, referred to above as West Virginia Compilation, Vol. I. and Vol. II., and referred to herein as "W. Va. Comp., vol. ---, p.----." Copies of these books have been filed in the clerk's office of the Court.

Historical Statement Showing Formation of West Virginia and Her Assumption of a Just Proportion of the Public Debt.

On November 15, 1860, Governor John Letcher issued a proclamation convoking the General Assembly of Virginia in extra session. In obedience to this proclamation, the general assembly convened in the capitol at Richmond at the time designated therein, and on January 14, 1861, passed an act providing "for electing members of

a convention and to convene the same." The delegates to this convention were to be elected on the 4th of February, 1861, and to assemble at Richmond on the 14th of the same month.

The convention assembled at Richmond at the time appointed, composed of 152 delegates, of whom 47 were from counties now included in West Virginia, and on April 17, 1861, the following ordinance was adopted by said convention:

> "AN ORDINANCE TO REPEAL THE RATIFICATION OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY THE STATE OF VIRGINIA, AND TO RESUME ALL THE RIGHTS AND POWERS GRANTED UNDER SAID CONSTITUTION.
>
> "The people of Virginia, in their ratification of the Constitution of the United States of America, adopted by them in Convention on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, having declared that the powers granted under the said Constitution were derived from the people of the United States, and might be resumed whensoever the same should be perverted to their injury and oppression, and the Federal Government having perverted said powers, not only to the injury of the people of Virginia, but to the oppression of the Southern Slaveholding States.
>
> "*Now, therefore, we, the people of Virginia, do declare and ordain*, That the ordinance adopted by the people of this State in Convention, on the twenty-fifth day of June, in the year of our Lord, one thousand seven hundred and eighty-eight, whereby the Constitution of the United States of America was ratified; and all acts of the General Assembly of this State ratifying or adopting amendments to said Constitution, are hereby repealed and abrogated; that the union between the State of Virginia and the other States under the Constitution aforesaid is hereby dissolved, and that the State of Virginia is in full possession and exercise of all the rights of sovereignty which belong and appertain to a free and independent State.
>
> "*And they do further declare*, That said Constitution

of the United States of America is no longer binding on any of the citizens of this State.

"This Ordinance shall take effect and be an act of this day, when ratified by a majority of the votes of the people of this State, cast at a poll to be taken thereon, on the fourth Thursday in May next, in pursuance of a schedule hereinafter to be enacted."

The Ordinance of Secession was accompanied by a Schedule providing, among other things, for a vote of the people on the question of the ratification of the ordinance by the people of Virginia, to be taken on the fourth Thursday in May, 1861. The ninth section of this ordinance provided as follows:

"The election for members of Congress for this State to the House of Representatives of the Congress of the United States, required by law to be held on the fourth Thursday in May next, is hereby suspended and prohibited until otherwise ordained by this Convention."

On April 18, 1861, said Convention adopted the following resolution:

"*Resolved*, That the Governor of this Commonwealth be requested to communicate immediately to the President of the Confederate States, the fact that this Convention, on yesterday, adopted an Ordinance resuming the powers delegated by Virginia to the Federal Government, and to express to the said President the earnest desire of Virginia to enter into an alliance, offensive and defensive, with the said Confederate States."

Pending the question of the ratification of the Ordinance of Secession by a vote of the people of Virginia, the State entered into the following temporary convention with the Confederate States of America:

"1st. Until the union of said Commonwealth with said Confederacy shall be perfected, and said Commonwealth shall become a member of said Confederacy according to the Constitutions of both powers, the whole military force and military operations, offensive and defensive, of said Commonwealth, in the impending conflict with the United States, shall be under the chief control and direction of the President of said Confederate States, upon the same principles, basis and footing

as if said Commonwealth were now, and during the interval, a member of said Confederacy.

"2nd. The Commonwealth of Virginia will, after the consummation of the union contemplated in this convention, and her adoption of the Constitution for a permanent Government of said Confederate States, and she shall become a member of said Confederacy, under said permanent constitution, if the same occur, turn over to said Confederate States all the public property, naval stores and munitions of war, etc., she may then be in possession of, acquired from the United States, on the same terms and in like manner as the other States of said Confederacy have done in like cases.

"3rd. Whatever expenditures of money, if any, said Commonwealth of Virginia shall make before the union under the Provisional Government, as above contemplated, shall be consummated, shall be met and provided for by said Confederate States.

"This Convention, entered into and agreed to, in the city of Richmond, Virginia, on the twenty-fourth day of April, eighteen hundred and sixty-one, by Alexander H. Stephens, the duly authorized commissioner to act in the matter of the said Confederate States, and John Tyler, William Ballard Preston, Samuel McD. Moore, James P. Holcombe, James C. Bruce and Lewis E. Harvie, parties duly authorized to act in like manner for said Commonwealth of Virginia—the whole subject to the approval and ratification of the proper authorities of both governments respectively.

"*In testimony whereof,* the parties aforesaid have hereto set their hands and seals, the day and year aforesaid, and at the place aforesaid, in duplicate originals.

"JOHN TYLER, (SEAL)
"WILLIAM BALLARD PRESTON, (SEAL)
"SAMUEL MCD. MOORE, (SEAL)
"JAMES P. HOLCOMBE, (SEAL)
"JAMES C. BRUCE, (SEAL)
"LEWIS E. HARVIE, (SEAL)
"Committee of the Convention.

"ALEXANDER H. STEPHENS, (SEAL)
"Commissioner for Confederate States."

On the day upon which the Convention adopted the Ordinance of Secession, it took steps to enable the government of Virginia to possess itself of the property of the Federal Government within its territorial jurisdiction; and Virginia accordingly reduced into her own possession the Norfolk and Gosport Navy Yards, with vessels, steam engines, machinery, tools, supplies and other property, valued at $2,497,130.92, and the old and new custom houses at Norfolk, valued at $207,000.00.

On the same day (April 17) the Commonwealth of Virginia, through said Convention, provided for a State Military force. This was done by the adoption of "An Ordinance to call the volunteers into the service of the State and for other purposes." On the 19th of April, the office of Major-General of the Military and Naval forces of the State was created. Three days later Governor Letcher nominated Robert E. Lee for this office, which was promptly confirmed by the Convention. April 27th, an Ordinance providing for Enlistment in the Provisional Army was adopted. It provided that all free, able-bodied men, between the ages of eighteen and forty-five, might enlist, and the enlistment should be binding on minors, provided they be allowed four days to reconsider and retract their enlistment.

On the 29th of April, five Congressmen were elected to represent Virginia in the Provisional Congress of the Confederate States, about to assemble at Montgomery, Alabama. These were the Hon. R. M. T. Hunter, of Essex county; William C. Rives, of Albemarle county; the Hon. John W. Brockenbrough, of Rockbridge county; Walter R. Staples, of Montgomery county, and Judge Gideon D. Camden, of Harrison county.

By another Ordinance, adopted April 30th, the term of service of all volunteers called into service under the Ordinance of the 17th of April, 1861, was twelve months, unless sooner discharged.

On May 1, 1861, the Convention adopted an Ordinance absolving all citizens of Virginia from their allegiance to the United States.

On May 7, 1861, the representatives of Virginia in the Confederate Congress took their seats in that body, except said Camden, and a Resolution adopted by the Congress of the Provisional Government, ratified the terms of alliance entered into on the 24th of the preced-

ing April, by and between Alexander H. Stephens, the Confederate Commissioner, and the Commissioners of Virginia, and the old Commonwealth was thus formally admitted into the Confederate States of America, May 7th, 1861.

> "*A Brief Summary.*—The Convention having adopted an Ordinance of Secession; forbidden the election in the State of representatives to the Federal Congress; effected an Alliance, offensive and defensive, between Virginia and the Confederate States; adopted the Constitution of the Provisional Government of said States; elected five members of the Confederate States Congress, four of whom hastened to take their seats; released all officers from the oaths they had taken to support the Constitution of the United States, and absolved all the people of Virginia from their allegiance to the United States; captured the property of the National Government at Harper's Ferry; took possession of the Norfolk and Gosport Navy Yards, with the property connected therewith; occupied the custom houses at Norfolk and Richmond; and made arrangements by which the State was formally admitted a member of the Confederate States,—the whole done before the time arrived for the people to vote for the ratification or rejection of the Ordinance of Secession,—the Convention adjourned until June 12th ensuing."
>
> See "*How West Virginia Was Made,*" by Lewis,. pp. 8-23.

Pending the vote upon the question of ratifying the Ordinance of Secession, the loyal citizens left within the counties now constituting West Virginia asserted an earnest and patriotic endeaver to avoid the calamity incident to the adoption of this ordinance. After publication by the authorities at Richmond of its adoption, the citizens of the old state living within the present boundaries of West Virginia, instituted a movement to restore the practical governmental relations of Virginia to the United States.

The first convention called by the people of Northwestern Virginia, known as the May Convention, adjourned on the 15th day of May, 1861, after having provided for the meeting of a second convention in the event that the Ordinance of Secession should be ratified by the

people on the 23rd day of May ensuing. This was done by means of a resolution, reported by the Committee on Federal Relations, adopted by the convention, as follows:

> "*Resolved*, That, in the event of the Ordinance of Secession being ratified by a vote, we recommend to the people of the Counties here represented, and all others disposed to co-operate with us, to appoint, on the 4th day of June, 1861, delegates to a General Convention, to meet on the 11th of that month, at such place as may be designated by the Committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand, each county to appoint a number of Representatives to said Convention equal to double the number to which it will be entitled in the next House of Delegates; and the Senators and Delegates to be elected on the 23rd inst., by the counties referred to, to the next General Assembly of Virginia, and who concur in the views of this Convention, to be entitled to seats in the Convention as members thereof."

The second convention of the people of Northwestern Virginia assembled on June 11, 1861. It adopted an ordinance for the reorganization of the State government of Virginia. This ordinance provided for the appointment of a governor and a lieutenant governor, and also for other State officers of Virginia, and declared that the members elected to the General Assembly of Virginia should meet in Wheeling and constitute the legislative department of the government; and all other necessary steps were taken to restore the government of Virginia to her proper place in the Union; in fact, the government of Virginia was duly restored in this convention. After transacting all the business necessary to this restoration, the convention adjourned to meet on the first Tuesday in August, 1861, in the city of Wheeling. On Tuesday, August 6, 1861, this convention, which adjourned on the 25th of June of the same year, re-assembled pursuant to its adjournment. At its second session this convention provided by ordinance for the formation of a New State out of the territory of Virginia now constituting West Virginia, and for the call of a convention, to which delegates should be elected, for the

formation of a constitution for the new State. This election was duly held, and the delegates elected to such convention met, and framed a constitution. The convention assembled on the 26th of November, 1861, and, having finished its work, adjourned on February 18, 1862. A schedule was attached to this proposed constitution, providing for an election to take the sense of the people on the question of ratification. The election was held on April 3, and resulted in its ratification by the people. On May 13, 1862, the General Assembly of Virginia passed an act giving the assent of Virginia to the formation and erection of the proposed new State; and on April 20, 1863, a proclamation was made by the President of the United States, reciting the act of Congress approved on the 31st day of December, 1862, by which the State of West Virginia was declared to be one of the United States of America, and was admitted into the Union on an equal footing with the original States in all respects whatsoever, upon the condition that certain changes should be duly made in the proposed constitution of that State; and then reciting that proof of a compliance with that condition had been submitted to him, he therefore declared in pursuance of the act of Congress, that the said act would take effect and be in force from and after sixty days from April 20, 1863; and accordingly on that day, June 20, 1863, West Virginia became one of the United States.

See *"How West Virginia Was Made,"* pages 78 *et seq.*, 317 *et seq.*

A condensed history of the formation of West Virginia appears in the case of *Virginia* v. *West Virginia*, 78 U. S. 39 (20 L. Ed. 67). There can be no question as to the validity of the acts of the Restored Government of Virginia which resulted in the formation of the State of West Virginia, as this is settled by the case just cited, and also because the new State was recognized as one of the States of the Union by all branches of the general government. The formation of the State of West Virginia was the result of the acts of the loyal government of Virginia—a government in harmony with the general government, and one performing all the acts of a government of a State in all its practical relations with the Federal government. The ninth section of the ordinance providing for the

formation of the new State, contains the following as to the assumption by West Virginia of a part of the public debt of Virginia:

> "Said new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State within the same period."
>
> Appendix to R., p. 122.

The Constitution of the new State, adopted in 1862, by a vote of the people, with reference to the said debt, provides as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."
>
> Appendix to R., p. 125.

Shortly after the close of the late Civil War, Virginia brought suit against West Virginia to establish jurisdiction over the counties of Jefferson and Berkeley, claimed by the defendant as a part of her territory. This suit was not decided until March 6, 1871, when the demurrer filed to the bill was sustained and the bill dismissed.

Virginia v. *West Virginia*, 78 U. S. 39 (20 L. Ed. 67).

Therefore, it was not known until the decision of this case whether the counties of Jefferson and Berkeley were a part of Virginia or West Virginia; and hence no settlement could be made between the two States with reference to the public debt, on the basis of the ordinance of Virginia, above quoted, providing the method by which the settlement should be effected, until after this case was decided.

Virginia Sought No Adjustment with West Virginia of Any Part of the Public Debt as Alleged in Her Bill.

With reference to the efforts at settlement between the two states touching the public debt, the bill makes this averment:

> "After the year 1865, and prior to the year 1872, attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settling of any kind was ever had between the two States in regard to this debt."
>
> Record, p. 10.

The answer of the defendant to this paragraph of the bill appears in the record at pages 149-154. The facts in relation to this matter are as follows:

The first governor of West Virginia, the Hon. Arthur I. Boreman, in his first message to the first legislature of that state, in discussing the financial condition and prospects of the new state, said:

> "The constitution provides that this state shall assume an equitable proportion of the debt of Virginia, prior to the first day of January, 1861, but no settlement can be made at present, and when it is made our 'equitable proportion' cannot be much."

In his message, dated January 16, 1866, to the legislature of that year, Governor Boreman, after quoting section 8 of article 8 of the constitution of West Virginia, says that the execution of this provision of the constitution had theretofore been impracticable on account of the existence of the war, but now that the war is over and peace is restored, he recommended the appointment of commissioners on behalf of the state to meet a like commission from Virginia.

Prior to December, 1866, Virginia instituted a suit in equity against the State of West Virginia in this Honorable Court for a decision of the question whether or not the counties of Berkeley and

Jefferson constituted a part of the State of West Virginia. This cause was not determined until the 6th day of March, 1871, on which day it was decided in favor of West Virginia. During pendency of this suit no adjustment of West Virginia's liability, as provided in the ordinance, could be made, because until the boundaries of West Virginia were definitely determined it could not possibly be known what (1) amount of money was spent within the boundaries as state expenditures, (2) what her just proportion of the expenses of the state government was, nor (3) the amount paid into the state treasury from her counties, as provided by the ordinance.

In his message to the legislature of 1867, Governor Boreman refers to his recommendation of the appointment of commissioners, made in last message, to meet commissioners from the State of Virginia, and states that it had not been done because the authorities of Virginia had made no provision for such settlement. He states that he was informed that the Honorable Alexander H. H. Stuart of Virginia, together with two others, had been appointed under a resolution adopted by the general assembly of Virginia; first, for the purpose of securing a reunion of the two states, or secondly, for the purpose of adjusting the public debt and for a fair division of the public property. On February 28 of the same year, the legislature of West Virginia by resolution declared that the people of that state were unalterably opposed to a reunion with the people of Virginia, but expressed the willingness of West Virginia to effect a prompt and equitable settlement between the two states, and directed the Governor as soon as the said suit in the Supreme Court of the United States relating to the counties of Berkeley and Jefferson had been disposed of, to appoint three commissioners on the part of West Virginia to treat with commissioners of Virginia upon the matter of adjusting the public debt as provided in the ordinance of 1861 and the constitution of West Virginia (W. Va. Compilation, vol. 1, pp. 444-6).

In January, 1868, the governor of West Virginia informed the legislature in his annual message, that the

> "Commissioners to treat with Virginia in regard to the public debt of that state, have not yet been appointed under the resolutions of that subject adopted by the

> legislature, February 28, 1867. The resolutions prescribe that the suit brought by Virginia in the Supreme Court of the United States, to recover jurisdiction over the counties of Berkeley and Jefferson, shall be finally disposed of before such appointment shall be made, which event has not yet transpired; and, if it had, there might still be a question whether such settlement should take place in the present condition of affairs in Virginia."

The "present condition of affairs in Virginia" referred to was doubtless that arising out of the anomalous situation caused by the refusal of Congress to admit representatives from Virginia, from December, 1865, until the state was re-admitted into the Union in 1870. Congress, it appears, refused to recognize as valid the legislature that assembled under the Alexandria constitution of Virginia. Later, the state was placed under military government; a new constitution was adopted in 1868, ratified by the people in July, 1869, and Virginia re-admitted into the Union January 26, 1870. No negotiations could properly or safely have been carried on with Virginia during this period of "reconstruction," even if the suit to recover Berkeley and Jefferson counties had not been pending.

Again, in his message in 1869 to the legislature of West Virginia, the Governor stated that commissioners had not been appointed by him up to that time, owing to the fact that the suit between the states was still pending. Virginia having, by an act approved February 18, 1870, provided for the appointment of three commissioners to treat with the authorities of West Virginia, the Governor of West Virginia, by communication dated February 24, 1870, advised the legislature of West Virginia of the passage of that act; and thereupon the legislature of West Virginia, March 1, 1870, appointed a joint committee of its two houses to confer with the Virginia commissioners and report to the legislature, providing, however, that such appointment of commissioners should not in any manner prejudice the rights of West Virginia involved in the suit then still pending in this Court respecting the counties of Berkeley and Jefferson. (W. Va. Comp., vol. 1, pp. 446-7.)

On March 3, 1870, the Governor of West Virginia was authorized

by the legislature by joint resolution to appoint three resident citizens of the state, to treat with the authorities of Virginia upon the subject of the public debt of that state, but it was provided that nothing in that action was to be construed as impairing the jurisdiction of West Virginia over the counties of Berkeley and Jefferson. (W. Va. Comp., vol. 1, pp. 447-8.) As the resolution was passed on the last day of the session, and as there was omission to make appropriation of money to carry out its provisions, the Governor of West Virginia, in his message of 1871, stated that no appointment had been made, owing to the lack of funds to pay the compensation and expenses of such commission.

Pending the efforts thus being made on the part of West Virginia, the general assembly of Virginia, through the Governor of that state, tendered to West Virginia a proposition for an arbitration of the question relating to the debt, the arbitrators not to be citizens of either state, each state to appoint two, and an umpire to be chosen by the arbitrators if deemed necessary. This proposal was submitted to the legislature of West Virginia on February 17, 1871; but on the 15th, two days prior to the communication of this action of Virginia, the legislature of West Virginia had passed a joint resolution, authorizing the Governor to appoint three disinterested citizens of the state to treat with the authorities of Virginia upon the subject of the adjustment of the public debt of that state existing prior to January 1, 1861, to report on various matters relating to the creation of the debt, upon the investments held by the state of Virginia, and, providing, among other things, compensation for the commissioners and for the employment of an accountant or clerk. (W. Va. Comp., vol 1, pp. 448-9.)

The proposal of Virginia relating to arbitration was referred by the legislature of West Virginia to a joint special committee of the two houses, which committee reported a preamble and joint resolution, rejecting the tender of arbitration because the adjustment of the debt should be subject to the ratification of the legislature of the two states, and because citizen commissioners from the two states would be necessarily more familiar with the circumstances attending the creation of the said debt and other questions connected therewith. This joint resolution also invited Virginia to appoint three disinterested

citizens of that state as commissioners, with authority to treat with the commissioners theretofore authorized upon the part of West Virginia; but it was provided that their report should be subject to the approval and ratification of the legislature of the State of West Virginia and the general assembly of the commonwealth of Virginia. The Governor of West Virginia was directed by said resolution to communicate to the Governor of Virginia, without delay, certified copies of the preamble and resolution. (W. Va. Comp., vol. 1, pp. 449-54.) Accordingly, the Governor of West Virginia appointed three commissioners for the purpose aforesaid. This commission is known as the "West Virginia Debt Commission of 1871." After their appointment they proceeded to Richmond, where all the evidences of the receipt and expenditure of the money were kept, and there spent some time in the examination of such documents as were accessible. Realizing the necessity for further and more accurate information than they could obtain unassisted, they addressed a communication to the second auditor of Virginia, soliciting specifically the necessary information. To this request the second auditor made a reply, in which he declined to furnish the information desired, a copy of which reply is filed as "Exhibit No. 2" of defendant's answer (R., p. 166).

Soon after their appointment the commission addressed a letter to the Governor of Virginia, notifying him of their appointment, their organization, and the duties put upon them, and requesting him to indicate at his earliest convenience what "channel of communication will be open to us." Nearly a month later they received from the Governor of Virginia a copy of a letter from him to the Governor of West Virginia, declining to recognize the West Virginia commissioners (W. Va. Comp., vol. 1, pp. 457-9). A few weeks later, in his message to the legislature, the Governor of Virginia "proceeds," to quote the language of the West Virginia Debt Commission, "to asperse the good faith of the State of West Virginia" (W. Va. Comp., vol. 1, p. 463). Having failed in their effort to obtain either the recognition or the co-operation of the Governor or the second auditor of Virginia, the commission left Richmond, because, as they say in their report, "further stay was not likely to add to the scant information

already gleaned by them from the public documents" (W. Va. Comp., vol. 1, p. 462).

The failure and refusal of Virginia to recognize, receive, or co-operate with the commissioners placed them at a great disadvantage, and they therefore obtained only such facts and figures as enabled them to make an imperfect report to the Governor of West Virginia with reference to the matters with which they were charged; and because of the incompleteness and inaccuracy of their report, and because it appeared therefrom, that in making their invetsigations they wholly disregarded the provisions of the ordinance of the Wheeling convention adopted August 20, 1861, and did not follow the method of settlement therein prescribed, their report was not adopted by the legislature of West Virginia. In 1873, the senate of West Virginia made an investigation of the subject of the debt, through its finance committee, of which J. M. Bennett, who was for eight years auditor of the old state of Virginia, and whose time expired when the city of Richmond was evacuated in 1865, was chairman. This committee made a report on December 22, 1873, from which it appeared that West Virginia upon a settlement with Virginia, based on the provisions of section nine of the ordinance, did not owe to Virginia anything whatever, but that, on the contrary, Virginia was indebted to West Virginia on account of said debt on January 1, 1861, in the sum of $512,000, not including interest. A copy of this report is printed in the record at page 166, as Exhibit 3 of defendant's answer.

A few weeks after the West Virginia Debt Commission of 1871 retired from Richmond after their fruitless endeavors there for recognition and co-operation, and after the Governor of Virginia had, in his message to the general assembly, questioned the good faith of West Virginia, Virginia passed her first funding act, that of 1871, in which she assumed two-thirds of the amount of the debt as her full share, and, *in violation and repudiation of section nine of the ordinance* of August 20, 1861, arbitrarily set aside the other one-third as West Virginia's portion. This is the more remarkable when it is remembered that she refers to and quotes from said section nine of the ordinance in the preamble of this act (R., p. 18). And to the same

effect were the funding acts of 1879, 1882, and 1892. The joint resolution of the general assembly of Virginia, approved March 6, 1894, to provide for adjusting the portion of the debt to be borne by West Virginia, and creating the Virginia Debt Commission, provides (R., p. 49):

> "But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

And the act of the general assembly of Virginia, approved March 6, 1900, is to the same effect, namely, that Virginia is liable for two-thirds only of the debt as her part thereof, which she has already provided for.

West Virginia, since the passage of the funding act of 1871—certainly since the adoption of the joint resolution of 1894,—could enter upon negotiations with Virginia upon no other basis. West Virginia must agree, as a preliminary to any such negotiations with Virginia, that Virginia was liable for two-thirds only of the debt, that this was her "equitable proportion," and that she has settled that. And what besides would it be held that West Virginia recognized or admitted or agreed to had she entered into negotiations with Virginia on such basis? This, that she had recognized that she was liable for the other third as *her* "equitable proportion"; for, it would be reasoned, that since it takes three thirds to make a whole, and as Virginia was liable for two-thirds only, West Virgina must be liable for the other third. It is and was not reasonable to ask that West Virginia should place herself in such a position, especially as it would have set aside the agreement West Virginia made with reference to her portion of the debt and the method of ascertaining the same contained in section nine of the ordinance.

West Virginia has never receded from the said provisions of the ordinance with reference to the settlement of her just proportion of the public debt of Virginia, but has uniformly adhered thereto throughout her history as a state. The resolutions adopted by her legislature in recent years, in which she declared that she did not owe

the state of Virginia anything on account of said debt, and would not negotiate with her concerning the same, were based upon the said report of the finance committee of 1873, upon Virginia's persistent refusal to recognize the basis of settlement provided for in said ordinance, and upon the conditions of negotiations dictated by Virginia in her said joint resolution of 1894 and said act of 1900.

After the said proposition of Virginia, made in 1871, to select arbitrators, which was declined by West Virginia, as hereinbefore stated, Virginia at no time signified her desire to settle with West Virginia the matters relating to West Virginia's proportion of said public debt, until after the adoption of said joint resolution approved March 6, 1894, whereby she had compromised and settled with her creditors and been released from all liability, which resolution provided that the commission thereby created should not proceed with negotiations with West Virginia until assurances should be received from the holders of a majority in amount of the certificates issued by Virginia under her funding acts, hereinbefore referred to, that they desired the commission to undertake such negotiations and would accept the amount so ascertained to be paid by West Virginia in full settlement of the one-third of the debt of the original state which had not been assumed by Virginia; and also that in no event should said commission enter into negotiations except upon the basis that Virginia was bound only for the two-thirds of the debt of the original state and which she had already provided for as her equitable proportion thereof. Under this resolution no negotiations were proposed to West Virginia until the year 1895, and then only upon the conditions prescribed in said joint resolution of 1894, which has never yet been repealed or modified in this respect. Negotiations were again offered by Virginia in 1906, but upon the same condition, that is, that West Virginia should enter upon such negotiations with the admission on her part that Virginia should be liable for two-thirds only of the debt, which was again declined by West Virginia.

It will be clearly seen, therefore, that the allegations in the bill that "attempts were made at different times by the public authorities of both the commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportion of

the common liability," is not supported to the extent and effect sought to be shown by the bill filed in this case.

It is averred in the bill that it was soon apparent that Virginia had by the act of March 6, 1871, assumed a heavier burden than she was able to bear, and other plans for the settlement of the debt were attempted to be made by the action of the General Assembly on March 28, 1879, and February 14, 1882, until at length, it is alleged, that a final and satisfactory settlement of the portion of the debt of the original state which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. See R., pp. 21-47. Virginia files with her bill copies of each of these Acts of her General Assembly as exhibits Nos. 2, 3 and 4. It is also shown by the bill that Virginia by her Act of March 30, 1871, sought to fix her liability upon the basis of two-thirds of the original debt, and it is alleged that this was the intention of that act.

All Questions Arising Upon the Record of this Case Are Still Open for the Consideration and Decision of the Court.

Before entering upon the further consideration of the case, the attention of the Court is respectfully called to its former decision rendered upon the demurrer filed to the bill in this cause, appearing in 206 U. S. 290-322, the third point of the syllabus reading as follows:

> "The question whether the Commonwealth of Virginia has been released from all liability on account of the public debt evidenced by bonds of the state outstanding on January 1, 1861, will not be passed upon on a demurrer to a bill filed by that state against the State of West Virginia which seeks an adjudication of the amount due the former by the latter as the equitable proportion of the public debt of the original State of Virginia which was assumed by West Virginia at the time of its creation as a state, but the consideration of such question will be postponed until the final hearing."

Again, in this case, reported in 209 U. S. 514-537, in the opinion of the Court referring this cause to a Master, specifying the matters

as to which the Master should report, the Court uses the following language:

> "The answers to these inquiries to be without prejudice to any question in the cause."

Inasmuch as the question of the release of Virginia by her creditors from all liability to her on account of the debt in question, and her lack of interest to prosecute this suit so far as it relates to the settlement of said debt, or the ascertainment of the just proportion thereof payable by West Virginia, is still open for consideration, these matters may, therefore, be properly argued on the hearing of the cause at this time, as well as all other questions that properly arise in the cause.

The Bill Sets Up Four Distinct and Independent Grounds in Respect to Each of Which Virginia Seeks Relief.

To intelligently argue this case, it is necessary to know just what Virginia seeks to recover by her bill. An examination of it discloses four distinct and independent grounds upon which she asks adjudication, and in respect to each of which she seeks a recovery against West Virginia.

The *first* of these grounds is that which relates to the part of the public debt held by third persons which Virginia alleges West Virginia should be required to assume and pay, and which Virginia has not paid and declines to pay, for the very substantial reason, as shown by her bill and its exhibits, that from its payment she has been exonerated by the acts and consent of her creditors, the holders thereof, and as to which she avers that she *sues in trust* for the benefit of those creditors or holders of said unpaid part of said debt who may be entitled thereto.

The *second* of these grounds is that which relates to the part of the said debt not held by third persons but which Virginia avers she holds in her Literary and Sinking funds, of which she herself, as she contends, is the owner, and as to which she sues in her own right and *not as trustee*.

The *third* ground is predicated upon the allegation that Virginia

has paid off or retired of principal and interest of said debt a sum considerably in excess of $25,000,000, which she owns in her own right, and on account of which she avers that she has "a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor." This claim she asserts in her own right.

The *fourth* and last ground in respect to which she asks a decree against West Virginia is based upon certain property which she avers was transferred to and became the property of West Virginia, under two acts of the legislature of Virginia passed respectively on the 3rd and 4th days of February, 1863, amounting, in the aggregate, as alleged in the bill, to several millions of dollars, the exact amount of which it is alleged the plaintiff is unable to state. This claim is also asserted by Virginia in her own right.

These four several phases of the bill will be presented and considered in the order we have here respectively designated.

Questions Arising Upon the Record for the Consideration and Decision of the Court.

First. Virginia has no interest in this suit, so far as it seeks to ascertain West Virginia's proportion of said debt, Virginia suing therefor in her alleged capacity as trustee; because no liability now attaches to Virginia in respect thereto, as Virginia has been released therefrom by the concurrent acts of herself and her creditors.

Second. Inasmuch as the bonds held by Virginia through the agency of her Literary and Sinking funds do not constitute any part of the debt within the meaning and contemplation of the ordinance of 1861, or the provision of the constitution of West Virginia adopted in 1862, Virginia cannot maintain this suit as to this phase of the bill; for the very cogent reason that these bonds are assets belonging to Virginia herself, and do not constitute a debt in any sense of the term.

Third. To authorize a suit for contribution, where the principle of this doctrine is applicable, it is absolutely essential that the party seeking contribution shall have paid more than his just share of a common debt. The very contrary appears from exhibit 3 filed with

plaintiff's bill (R. pp. 26-38) and made a part thereof. From the bill and this exhibit it appears that every dollar which Virginia ever paid on account of said debt was actually applied in reduction of that part of the debt which she herself assumed, and that no part thereof was ever applied upon the unfunded part which Virginia contends should be assumed and paid by West Virginia; and, inasmuch as West Virginia has not received any benefit whatever of any sum paid by Virginia, she is not liable to the plaintiff for contribution. It is clear, therefore, that Virginia can not maintain the bill as to this phase of the cause, predicated upon her alleged right of contribution.

Fourth. The plaintiff produced no proof of the *value* of the property embodied in the claim of Virginia against West Virginia, for property transferred by the former to and received by the latter by the act of February 3, 1863 (App. to R., p. 128) In the printed record the only evidence of this value is that furnished by West Virginia. West Virginia admitted that the value of the bank stocks received by her was $186,630.00. The Special Master found that the value of the other property so received by West Virginia was $73,578.00 (Report, pp. 181-193). Hence, if Virginia can maintain this suit as to this feature of her bill, she could recover only the sum of $260,208.00.

Fifth. But Virginia has blended in this suit, with the claim which she asserts in her representative capacity as trustee, various other claims which she asserts in her own right, thus clearly creating a *multifarious* demand, which cannot be asserted in one and the same cause, unless the court shall be constrained for convenience' sake to treat those demands which she asserts in her own right as mere matter of surplusage and not entitling her to any relief on account thereof.

Sixth. Treating then the claims which Virginia asserts in her own right as not proper subjects for relief but as surplusage, Virginia has no claim whatever, as shown by the bill and its exhibits, which she can sustain in this cause; and therefore the whole bill must be dismissed.

The propositions which we have here presented, and which clearly arise upon the record in this cause, will be discussed in the order named; and in our argument we will consider the various acts of legislation adopted by the State of Virginia which ultimately resulted

in her release from any and all liability regarding the unfunded part of the Virginia debt created before and existing on January 1, 1861. It is clear that this is the date from which we must reckon, because this date is fixed by the ordinance of Virginia herself in section 9 thereof (R. p. 146), and the constitution of West Virginia adopted in 1862 (R. p. 147), and to the provisions whereof Virginia gave assent and therefore accepted as the condition of her assent to the formation out of her territory of the new state (R. p. 165).

Virginia Has no Interest in this Suit so far as it Seeks to Ascertain West Virginia's Proportion of Said Debt.

Virginia has no interest in this suit so far as it seeks to ascertain West Virginia's proportion of the debt, because any part of the debt which West Virginia may have assumed by reason of the ordinance or her constitution was direct to the creditors and not to Virginia; and because no liability now attaches to Virginia in respect thereto, as Virginia has been released therefrom by the concurrent acts of herself and the creditors.

Following in consecutive order the propositions arising on the record, we necessarily begin with the consideration of the Wheeling Ordinance and the first Constitution adopted by the State of West Virginia.

Any assumption of any part of the public debt that West Virginia may have taken upon herself by reason of the Wheeling Ordinance of August 20, 1861, or by reason of the West Virginia constitution of 1862, was to the creditors and not to the Commonwealth of Virginia. Both the terms of the Ordinance and of the Constitution relating thereto are clear and distinct, and show that West Virginia did not assume to pay any part of the public debt to Virginia. That part of said Ordinance relating thereto is as follows:

> "Sec. 9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any

part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period." * * * *

"Sec. 10. When the general assembly shall give its consent to the formation of such new state, it shall forward to the congress of the United States such consent, together with an official copy of such constitution, with the request that the said new state may be admitted in the union of states." App. to R., p. 122.

That part of the West Virginia Constitution referred to in section 10 of said Ordinance is as follows:

"Sec. 8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years." App. to R., p. 125.

From the foregoing it clearly appears, therefore, that the Commonwealth of Virginia had full knowledge that any assumption West Virginia made of any part of the public debt was to the creditors and not to the Commonwealth of Virginia. The terms of said Ordinance and the provisions of the West Virginia Constitution were known to Virginia. Section 3 of the act of the General Assembly of Virginia passed May 13, 1862, required the Governor of Virginia to transmit to the senators and representatives of Virginia in Congress, said act of the General Assembly and a "certified original of the said Constitution and schedule." App. to R., p. 126.

That the assumption was to the creditors, and not to Virginia, is evident not only from the words of the Ordinance and the Constitution, but also from the condition of the times. The people of Virginia inhabiting that part which became West Virginia were loyal to the Union; they adhered to and were under the jurisdiction of a government which was in a state of war with the government to which what

is now the State of Virginia adhered and was loyal. The two states of Virginia and West Virginia were in armed conflict. Virginia had "suspended," or postponed until after the end of the war, her obligations to those citizens, including those of West Virginia, who adhered to the Union. She "repudiated" that part of her debt, and the interest thereon, held by citizens loyal to the Union. She held up the property of the citizens of West Virginia who adhered to the Federal government. The Ordinance and the Constitution were framed under these conditions—in a time of war; when it was impossible to forecast the result of that war; when no victory had favored the Union cause, but when the victories favored the cause of the Southern Confederacy; indeed, when the chances favored the success of the Confederacy, and the creation of another nation in the territory of the Federal government seemed probable. It would be most unreasonable to suppose that West Virginia would, under such conditions, agree to pay money over to Virginia for the benefit of West Virginia's own citizens who were at that time the creditors of Virginia. It would be most reasonable that West Virginia would look to the interests of her own citizens, and that any money she should pay would be paid so as to protect their interests. And this is what she did do. And hence she agreed to take upon herself or assume a just or equitable proportion of the debt; but provided that this proportion should be ascertained by *her own legislature*. There is nothing in the compact that she would consult Virginia either as to the portion she would pay or as to the persons to whom she would pay it. To this agreement and compact Virginia assented. Upon this agreement and compact, Virginia assenting, West Virginia was admitted into the Union. It is fundamental that, while courts can enforce agreements between parties, they cannot make agreements for parties; they can only enforce the agreements the parties have made.

The lawfully Restored Government of Virginia, when she framed the ordinance for the creation of the new state (R., p. 6), and when she gave consent for the admission of West Virginia into the Union, did not contemplate that any part of the public debt should be paid by West Virginia to the mother state; nor would Congress, under the conditions then existing, have given its consent to the admission

of West Virginia if it had been understood that the said ordinance and the constitution provided that the share of the public debt which West Virginia would pay was to be paid to the old state. It was the understanding of the Restored Government of Virginia, of the framers of the constitution of West Virginia, and of Congress, that payment would be made direct to the creditors of Virginia, and not to the state of Virginia. The circumstances attending the passage of the act of Congress admitting West Virginia into the Union clearly indicate this. In support of this proposition, we quote from Exhibit No. 8 of plaintiff's bill the following excerpt:

> "A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:
>
> "MR. OLIN: 'I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?'
>
> "MR. HUTCHINS: 'I will answer my friend from New York. Here is the provision of the constitution of West Virginia in reference to that matter: An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.'"
>
> "MR. CRITTENDEN: 'There is another question; the State of Virginia owes a large debt. How is this debt to be divided?'"
>
> "MR. BLAIR: 'The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession.'"
>
> "MR. CRITTENDEN: 'I only knew that in this bill there was no provision made for a division of the said debt. The gentlemen tells us there is a provision made for it in the constitution, and I am satisfied with that. As it has been attended to, I have no more to say about it.'" (Record, pp. 80, 81.)

For the original of the above quotations from the debates in Congress, see pp. 45-47 of Congressional Globe, Part I., 3d sess. 37th Cong. 1862-63.

From that debate we add the following quotation from the speech of Representative Edwards (p. 47):

> "But it is said, further, that there may be some difficulty about the public debt of Virginia. Well, sir, if Virginia remains in rebellion, if she succeeds, in conjunction with others of the southern states, in establishing the independence of the southern confederacy, where then, I ask, will the creditors of that state, many of them living in the northern states, go for the collection of their debts? What is the market value of the securities of the state now under the circumstances of her rebellion? Sir, if I had bonds of that state in my possession, I should consider them worth far more with the new state of Western Virginia in the Union as a free state, with her industrious population, she having provided in her constitution to assume her just proportion of all the debts of the state, than if the old state remained entire and wasting the resources of both its eastern and western portions in supporting the rebellion."

It seems clear that the solicitude of Congress related to the holders of the debt, and it was believed by them that these creditors would have the right to look to the new state for payment to them of the just and equitable proportion of the debt she had assumed. The question asked by Mr. Crittenden, and his comment on the reply to it, and the remarks of Mr. Edwards, and, indeed, the whole course of the debate, so far as it touched the debt question, go to show that it was contemplated by all the parties that payment would be made to the creditors and not to the State of Virginia. There is no reason to believe that it was the intention of either the Restored Government of Virginia, or of Congress, that West Virginia was to assume a just or equitable proportion of the public debt of Virginia and then turn the same over to the old State of Virginia, the greater part of whose territory was then in rebellion against the Federal Government and held by armies in hostility to that government. Why would the Federal Government, under such circumstances, concern itself about the fiscal affairs of the rebellious government of Virginia? There was every reason, however, why Congress should concern itself about

the interest of the loyal creditors of Virginia; and the same sentiment which prompted Congress to have solicitude for the interest of such creditors, would also prompt the loyal Restored Government of Virginia concerning them. At that date there could be no negotiations between West Virginia and the old state; nor could it be told with any certainty how soon in the future there could be such negotiations between them, because the result of the war was at that time very uncertain, and no one could tell either what the result of the war would be nor how long it would continue, nor *what would be the conditions after its close.* The language of the ordinance and of the constitution of West Virginia is that West Virginia should assume or take upon herself and pay a just or an equitable proportion of the debt. But, very significantly, neither instrument declares it should be paid to Virginia. If the intention had been to pay it to Virginia, then it would seem a reasonable assumption that it could not be paid to Virginia until the amount was ascertained by negotiations between the two states. In other words, if it was the contemplation that whatever West Virginia was liable for was a liability to Virginia, then it would follow that Virginia should have something to say about the amount thereof. But the constitution of West Virginia distinctly provided that the legislature of West Virginia alone should ascertain the amount; and this was agreed to by both the Restored Government of Virginia and the Congress of the United States, the former in giving its consent to the formation of the new state, and the latter by its act admitting West Virginia into the Union.

This is the view taken by the Supreme Court of Appeals of the Commonwealth of Virginia, in the case of *Higginbotham* v. *Commonwealth,* 25 Gratt. 627, decided in 1874, and cited by Virginia in her brief in this cause. It was upon this principle of a direct liability from West Virginia to the creditors, that Virginia based her first act of March 30, 1871 (R., p. 17), whereby she funded a large amount of the public debt upon the basis of two-thirds to herself and one-third to West Virginia. It was upon this principle that she passed the acts of March 28, 1879 (R., pp. 21-26), and of February 14, 1882 (R., pp. 26-38), and of February 26, 1892 (R., pp. 38-47). It was upon this principle that Virginia adopted her joint resolution

approved March 6, 1894 (R., p. 49). It was upon this principle that Virginia passed the act of March 6, 1900 (R., p. 50). It was upon this principle of construction that Virginia waived, in said funding acts of 1871, 1882 and 1892, the clause in her constitution of 1869, which provided that such part of the public debt as should be assumed by West Virginia should be applied to the discharge of said debt. It was also upon this principle of construction that Virginia superseded section 19 of article 10 of her constitution of 1869 by her constitution of 1902, in the latter of which she impliedly remits the holders of the unfunded part of her debt to the State of West Virginia for the direct payment thereof.

We next take up in consecutive order the consideration of those acts whereby Virginia was ultimately released from all liability as to that part of the state debt which she has assumed to be her just portion thereof. The first of which is the

Act of 1871,

which had for its express object the funding of said debt and the fixing, upon her own basis, of Virginia's proportion thereof, and remitting her creditors to West Virginia for the payment of the residue. This act, which is filed as exhibit number 1 with plaintiff's bill (R. p. 17), contains the following recital:

> "Whereas in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the Ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it

has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this state, as the constitution of this state provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

"1. Be it enacted," etc. (R., p. 18.)

The act then provides:

"That from and after its passage * * * no bond, certificate or other evidence of indebtedness shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt except as hereinafter provided." (R. p. 18.)

The act then provides for the funding of the two-thirds of the debt, with its accrued and unpaid interest to the first day of July, 1871, to bear interest at the rate of six per cent per annum, to be due and payable in thirty-four years from date, redeemable at the pleasure of the state, the bonds to be made payable to order or bearer, the coupons to be paid semi-annually and receivable for taxes and other debts due the state (R. 18). The third section of the act provides for the surrender of the old and the acceptance of the new bonds for two-thirds of the amount of said debt, and the issuance of a certificate, bearing the same date as the new bond, for the other one-third of the debt, "and that payment of said amount, with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be made between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees. * * * The remaining one-third of unpaid interest, both on the bonds and certificates, shall be

payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia." (R. p. 19.)

Section 4 of this act provides:

> "The treasurer, by proper endorsement, written or stamped, upon each bond, certificate of stock or interest certificate so surrendered and delivered to him, shall cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law." (R. p. 20.)

An examination of this act discloses that provision is made only for the payment of the new bonds funded under this act and the interest accruing thereon. By this act Virginia signifies to her creditors that she will pay no bond or any part of said debt except the two-thirds thereof provided for in this act, nor any interest thereon except upon the bonds issued by her to cover said two-thirds.

The provisions of this act were accepted by a large number of her creditors, as shown by the number of certificates issued under it, which amounted on January 23, 1905, to $10,639,776.42 (R. p. 55.)

The acceptance of the provision of this act by the creditors constituted between them and Virginia a lawful contract, as declared by this court in *Hartman* v. *Greenhow*, 102 U. S. 672 (26 L. Ed. 271). The consideration of this valid contract was based upon the negotiability and receivability of the coupons for taxes and other dues owing to the state, written on their face, and the conditional promise of Virginia to pay the unfunded part of said debt. This act did leave a conditional liability upon Virginia to pay or provide for the payment of the unfunded debt of the Commonwealth represented by certificates issued by her, from which she could not relieve herself without the assent of her creditors; but Virginia was relieved from this conditional liability by the consent of the creditors, and the subsequent acts of the Commonwealth relating to the debt, and hereinafter cited.

Act of 1879.

To obtain a reduction of the rate of interest upon the two-thirds

of said debt assumed by Virginia, this act (1879) was passed, the recital in such act declaring that,

> "The council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest." (R., p. 21.)

The act, to effectuate its purpose, divides the outstanding indebtedness of the state into two classes, as follows:

> "Class I., which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds
>
> "Class II., which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds." (R., p. 22.)

It will be seen that this act deals with the entire debt, both that funded under the act of 1871 and that not so funded, and of that so unfunded this new act provides for the funding of two-thirds of it at its face value with two-thirds of its unpaid accrued interest.

The act is made effectual upon the following condition, provided in the act as part of section 5 thereof:

> "If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act." (R., p. 23.)

The act also provides for the funding of the entire debt, on the basis of two-thirds thereof assumed by Virginia, and gives, in effect, an indefinite period for such purpose (R., p. 23.)

Provision is made by section 6 of this act for the cancellation of the bonds surrendered under it (R., pp. 23, 24), and section 7 thereof provides as follows:

> "The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act and who shall not have yet received certificates representing the remaining one third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of said certificates." (R., p. 24.)

The act provides in section 8 thereof for the payment of interest on the bonds issued thereunder (R., p. 24). The act also provides for a sinking fund to pay the principal of the bonds (section 9; R., pp. 24, 25). It repeals all acts inconsistent with it, and therefore repeals the act of 1871 and the acts amendatory thereof. The rate of interest under the act of 1871 was six per cent per annum (R., p. 18); while under this act the annual rate was three per cent for ten years, four per cent for twenty years, and five per cent for ten years (R., pp. 21, 22).

Act of 1882.

The following is the title of the act of 1882:

> "An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing

at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon." (R., p. 26.)

To this act there is this preamble:

"Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the state, it is confidently submitted as presenting a true state of the account between the state and her creditors—the account is as follows." (R. p. 26.)

Then follows a full statement of the account of the debt as between Virginia and the holders thereof.

On January 1, 1861, there were three classes of this debt:

Sterling, bearing 5 per cent interest	$ 1,973,000.00
Dollar, bearing 6 per cent interest	29,533,582.90
Guaranteed, bearing 6 per cent interest	294,130.00
Total	$31,800,612.90

Interest on this debt:

Past due and uncalled for	$101,023.63
Maturing at this date, January 1, 1861	944,156.38
Total	$1,045,180.01

Then follows a statement of the debt as of July 1, 1863, amounting to $33,141,212.12. This is followed by a statement of accrued interest to July 1, 1863, amounting to $5,954,716.08. Of this total principal as of July 1, 1863, Virginia assumes two-thirds as her "equitable portion," which is $22.094,141.96. Of this total amount of interest Virginia assumes two-thirds, which is $3,969,810.72; an aggregate of principal and interest of $26,063,952.38.

Virginia continues this statement in detail to July 1, 1882, crediting herself and charging to her creditors all payments made by her on account of said debt from January 1, 1861, to July 1, 1882, making an aggregate balance of $21,035,377.15, principal and interest, and inclusive of $1,428,245.25 held by the literary fund of the state and

$602,016.90 as interest on such fund (R., pp. 27-32). This total sum of $21,035,377.15 represents two-thirds of the debt, principal and interest, as of July 1, 1882, after deducting everything ever paid by Virginia on account of said debt during the period between January 1, 1861, and July 1, 1882—a period of twenty-one and one-half years.

The act then continues with an extended recital classifying this debt, stating her intention to provide a uniform rate of interest, treating the said sum of $21,035,377.15 as,

> "the amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account" (R., pp. 33, 34).

Then follows sections 1, 2, 3 and 4 of the act, authorizing the issuance of new bonds for said debt, prescribing the form of the bond, fixing therein the rate of interest at three per cent per annum, and the form of the coupon to accompany the bond (R., pp. 34, 35). Section 5 of the act prescribes the denomination of the bonds to be issued in exchange for the outstanding indebtedness of the state as enumerated in the act for "her equitable share" (which the act fixes as we have seen at two-thirds of the original debt after deducting therefrom all money paid by her on account thereof) of each class as shown in the recital to the act (R., p. 33), extending from A to F inclusive. For her equitable share of class A she refunds at 53 per cent; class B at 60 per cent; class C at 69 per cent; class D at 80 per cent; class E at 69 per cent; class F at 63 per cent. (R., pp. 35, 36.)

Section 6 of this act of 1882 provides as follows:

> "For all balance of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:
>
> "No.------
>
> "The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for -------- dollars, held by --------, dated the -------- day of ---------- and numbered ------, to be accounted for by the State

of West Virginia, without recourse upon this commonwealth.

"Done at the capitol of the State of Virginia, this ------ day of ----------, eighteen ----------
----------, Second Auditor.
----------, Treasurer."

(R., p. 36.)

It is prescribed in section 8 of this act:

> "All the bonds and certificates of debt and evidences of past due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the general assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled from time to time shall be certified by said board and filed with the treasurer for preservation." (R., p. 37.)

The act, in section 11, provides for a sinking fund (R., p. 37), in section 13 for the payment of interest on the bonds issued under the act (R., p. 38), and section 15 declares:

> "That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided."

Act of 1892.

While the act of 1882 contemplated and provided for the funding of all the said debt assumed by Virginia and her release from the balance thereof, in March, 1890, as appears from a recital in this act of 1892 (R., p. 38), it had not all been funded by said act of 1882; so that in March, 1890, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the Commonwealth not funded under the act of 1882, known as the "Riddleberger bill" (R., p. 38).

This act recites as a fact that,

"said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Junior, Hugh R. Garden and John Gill, constituting a committee for certain of the creditors of Virginia, called the 'Bondholders' committee,' have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States) together with the interest thereon to July first, eighteen hundred and ninety one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety one, and maturing one hundred years from said date with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually, of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now hold and agree to surrender not less than twenty-three million of dollars; and

"Whereas said report and agreement contemplate the

surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

"Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act." (R., pp. 38, 39.)

This act provides in the first section, that the sinking fund commissioners do issue nineteen million of dollars in bonds in lieu of the twenty-eight million dollars outstanding not funded under the act of 1882 (R., p. 39); in the second section, the date of the bonds, when payable, the rate of interest (two per cent for the first ten years and three per cent for the remaining ninety years), and for the redemption of the bonds (R., pp. 39, 40). The third section prescribes the form of the bond, and the fourth the form of the coupon (R., pp. 40, 41). Section 5 is divided into paragraphs, the first of which prescribes the denominations of the bonds. The other paragraphs are designated by capital letters from A to E inclusively (R., pp. 41-43). Paragraph C provides that after the presentation of not less than twenty-three million dollars:

"after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided." (R., p. 42.)

Paragraph D provides that:

> "The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered, provided that no certificates issued on account of the proportion of West Virginia of the obligations of the states shall be funded under this act." (R., p. 43.)

After thus carefully providing for a refunding of that part of the debt not funded under the act of 1882, section 6 of said act of 1892 provides as follows:

> "For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz.:
>
> "No. ------. The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ------ dollars, dated ------ day of ----------, and No. ------, leaving a balance of ---------- dollars with interest from ----------, to be accounted for to the holder of the certificate by the state of West Virginia, without recourse upon this commonwealth.
>
> "Done at the capitol of the State of Virginia, this ------ day of ----------, eighteen hundred and ninety-two.
>
> ----------, Second Auditor.
>
> ----------, Treasurer."
>
> (R., pp. 43, 44.)

Section 9 of this act provides that:

> "All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly, a schedule of the bonds, certificates, and other evidences of debt so canceled shall be certified by said commissioners and filed by the treasurer for preservation." (R., p. 45.)

Section 10 of this act provides for a sinking fund for the payment of the bonds issued under this and the act of 1882, and for their cancellation, and it also provides for the cancellation of all bonds issued under the act of 1882 and held by the commissioners of the sinking fund at the time said act of 1892 was approved,

> "as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act" (R., p. 46).

The thirteenth section of said act of 1892 provides for the payment of the interest on the bonds issued under it, as the same shall become due and payable (R., p. 46). Section 16 repeals the act of 1882, and all other acts amendatory thereof (R., pp. 46, 47).

It will be perceived that the act of 1871 was repealed by the act of 1879, as the two acts were inconsistent with each other, if not expressly repealed by the repeal therein of the act of 1878, as it was in substance an amendment and re-enactment of the act of 1871 (R., p. 26); and the act of 1882 repealed the acts of 1879 by implication, as it treated the adjustment and settlement of the debt, so far as the liability thereon of Virginia is concerned, as an entirety. That such repeal was so effected by the act of 1882, we submit the following authorities:

In *Grant* v. *Railroad Co.*, 66 W. Va. 175, this subject of the repeal of a statute by implication, where a subsequent statute deals with the subject as an entirety, is fully considered and the authorities cited. The opinion in that case deals with the repeal of a statute by implication, resultant upon the enactment of a subsequent act dealing with the subject as an entirety. The court said:

"The principle applied here has been stated by the Supreme Court of the United States in the following terms: 'Where the later of two acts covers the whole subject matter of the earlier one, not purporting to amend it, and plainly shows that it was intended to be a substitute for the earlier act, such later act will operate as a repeal of the earlier one, though the two are not repugnant. *District of Columbia* v. *Hutton*, 143 U. S. 18. This Court in *Herron* v. *Carson*, 26 W. Va. 62, has stated it in these terms: 'A subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, though it contains no express words to that effect, must, on principles of law as well as in reason and common sense, operate a repeal of the former law; it has been applied by this Court in other cases. *State* v. *Harden*, 62 W. Va. 313; *State* v. *Mines*, 38 W. Va. 125. Scores of additional cases of the same class could be enumerated. See *United States* v. *Claflin*, 97 U. S. 546; *Eckloff* v. *District of Columbia*, 135 U. S. 240; *Morris* v. *Crocker*, 13 How. (U. S.) 429; *Mitchell* v. *Brown*, 1 Ell. & Ell. 267; *Parry* v. *Croydon Gas Co.*, 15 C. B. (N. S.) 568; *Heckman* v. *Pinckney*, 81 N. Y. 211; *United States* v. *Tyneu*, 11 Wall. 88; *Commonwealth* v. *Killiher*, 12 Allen (Mass.) 480; *State* v. *Campbell*, 44 Wis. 529. Under this rule the implication does not rest on inconsistency or repugnancy, in the restricted sense in which these terms are generally used. It arises as a matter of legislative intention, disclosed by the character of the act, its title or preamble, and subject matter, and inconsistency, so far as it may be deemed to enter into the inquiry, is of a broader kind, namely, inconsistency between the old law and the legislative intent shown by the new. It is not inconsistency or repugnancy between words, phrases or clauses, considered as such, but inconsistency between the acts considered as entireties."

The act of 1892 refunded every part of the debt created by Virginia prior to January 1, 1861, except the one-third thereof which she claims is West Virginia's proportion; and, as to such unassumed and unfunded part, the act remits the holders thereof to West Virginia

without recourse upon the Commonwealth of Virginia. The holders of the part of the debt assumed by Virginia assented to its settlement under the acts of 1882 and 1892, in the manner therein prescribed. Of this the exhibits filed with the bill and made a part thereof afford full proof.

The Status of Virginia as to Her Unfunded Debt by Virtue of the Provisions of Her Four Legislative Acts of 1871, 1879, 1882 and 1892.

Virginia, in her act of 1871, declaring its object and clearly expressive of its purpose, says:

> "Now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other matter of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon *her proportion of said debt* as the same shall become due, therefore,
>
> "1. Be it enacted," etc. (R., p. 18.)

Section 3 then provides for the issuance of certificates for the unfunded part of the said debt, alleged by Virginia to be West Virginia's proportion thereof, providing that,

> "payment" (of such unfunded debt) "will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia at the time of its dismemberment" (R., p. 19).

Thus, Virginia settled with her creditors for two-thirds of the debt, funded in new bonds drawing six per cent interest, with the understanding that the bonds unfunded and canceled, surrendered to Virginia, represented by the certificates delivered to the owners, should be held by Virginia *in trust*, to be paid in accordance with a settlement to be made at some future time with West Virginia. It will be seen that Virginia conditionally promises to pay the unfunded part of the debt under the act of 1871, dependent upon the contingency of a

subsequent settlement with West Virginia; payment to be in accordance with such settlement, and no interest is payable on any part of the debt not funded under the act.

It will be observed that this act treats the two-thirds which Virginia assumes as *her proportion of said debt.* All the creditors accepting the provisions of this act thereby assented to this as her portion to be assumed and paid by her, and the residue as West Virginia's proportion, as stated in the act, and with which Virginia was only connected or in which she was only interested under a conditional promise.

The act of 1879 repealed all acts inconsistent therewith and also the act of March 14, 1878 (R., p. 26), and provided again for the funding of the debt, as of the date of January 1, 1879, the principal payable forty years thereafter, bearing interest annually at the rate of three per cent for ten years, four per cent for twenty years, and five per cent for ten years, payable in the cities of Richmond, New York and London, as provided in the bonds issued thereunder (R., pp. 20, 21).

This act of 1879 provided that upon the filing with the governor of the assent of the representatives of the holders of the debt to an acceptance of the terms of this act, such acceptance should create a contract between the Commonwealth and said corporations—that is, the foreign bondholders' and funding associations, treated as corporations, representing the holders of the debt. This assent was accordingly filed. Therefore this act of 1879 created a new and different contract as to the entire debt from that which existed between the Commonwealth and the holders of the debt under the act of 1871. The characteristics or distinguishing features of this contract so created by the act of 1879 were:

First, that the state of Virginia would negotiate, or aid the creditors holding all certificates issued under the act of 1879 or previous acts in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia, thus relieving her from her conditional liability created as to the unfunded bonds under the act of 1871.

Second, the acceptance of certificates under this act of 1879 for West Virginia's alleged one-third was taken and held as a *just and absolute*

release of the Commonwealth of Virginia from all liability on account of said certificates.

Thus it is seen that Virginia was expressly released from all liability as to the certificates issued under the act of 1879; and as to the certificates issued under the act of 1871 there was substituted for her conditional liability a promise on her part either to negotiate herself directly with West Virginia or to aid the creditors holding the certificates issued under both acts of 1871 and 1879 in negotiating with West Virginia for an amicable settlement of West Virginia's alleged one-third of said debt, being the unfunded portion thereof not assumed by Virginia under said act.

It appears that there had been issued on December 14, 1904, $12,910,555.89, of which $10,639,776.42 were issued under the act of 1871. So that Virginia was released by the very words of the act of 1879 of more than $2,000,000 of the unfunded debt, and released of the residue (amounting to more than $10,000,000) by the acceptance of the terms of the act by the representatives of the holders of all the debt.

Third, another characteristic of the new contract made by Virginia with the holders of the debt under the act of 1879 was the very large reduction of the interest from that provided under the act of 1871.

By the act of 1882 Virginia makes a statement of her entire debt as existing before and on January 1, 1861; and upon the basis of this statement she makes an entirely new contract with reference to the entire debt. This act, thus forming a new contract, is assented to by her creditors. The characteristic changes made under this new act are:

First, a scaling of the debt whereby she pays a certain percentage of each class of bonds (R., pp. 35, 36).

Second, by this she effects a large reduction in the amount of the two-thirds of the debt which she had theretofore assumed under the acts of 1871 and 1879, and secures more favorable terms of interest and changes the place of the payment of the interest, the rate of interest by this act being fixed at three per cent and the place of payment at Richmond, Virginia (R., pp. 34, 35).

After thus fixing the basis of her liability upon the scaling of the debt at the rate designated in the act, the act then arbitrarily prescribes

that "for all balances of such debt, constituting West Virginia's share of the old debt," a certificate shall be issued to be accounted for by the state of West Virginia without recourse upon Virginia (R., p. 36). Virginia thus arrogated to herself the right to fix the amount to be paid by West Virginia without West Virginia's consent, and without legal authority.

It will be observed that by this act it is not the certificates issued under it, if any were issued, as to which Virginia is released, but she is released by the terms of the act "for all balances of such indebtedness, constituting West Virginia's share of the old debt." This act provides, as we have seen, for the surrender of all bonds ever issued by Virginia, whether prior to 1861 or subsequent thereto, and for their cancellation. This act of 1882 by its very terms necessarily repealed all previous acts of Virginia relating to the public debt, and creates an entirely new contract between her and her creditors with reference thereto. It is true that the creditors did not bring in the certificates and surrender them which had been issued to them under the acts of 1871 and 1879, for the reason that these certificates represented definitely the unfunded portion of the entire debt, the very part that Virginia declines to assume under the act of 1882, and for which she provides that certificates shall be issued without recourse upon her, and for the very substantial reason that these certificates only represented that part of the debt from which Virginia had been released by the concurrent acts of herself and the holders of these certificates; and they accurately represented the part of the debt which Virginia declined to assume, and specifically designated the bonds for which the certificates were given, being the bonds of the old debt existing prior to and on January 1, 1861. Wherefore, then, bring in the old certificates and take new ones? To do so would not affect the relationship of the holders with reference to the unfunded debt, nor would it affect the liability of Virginia, because she had already exonerated herself, as we have seen, from even a conditional liability by virtue of the act of 1879 for any portion of the debt which these certificates represented. Therefore the certificates which these holders already possessed, issued under the acts of 1871 and 1879, were retained by them as an evidence of that part of the debt

as to which Virginia had been released and as to which, under the act of 1882, as well as the act of 1879, they were to look to West Virginia for payment.

The act of 1892 was designed to fund all that part of the debt which Virginia had assumed that had not been funded under the act of 1882. The debt not funded under the act of 1882, then amounted to about $28,000,000, as we have seen. This act was passed in the light of the agreement between the representatives of the holders of this debt and the Virginia debt commission created two years prior to this act, and they proposed to surrender the said $28,000,000 not funded under the said act of 1882, for new bonds to be issued under the act of 1892, amounting to $19,000,000. So, under said act of 1892, the $28,000,000 in bonds made for all principal and interest were surrendered to Virginia and canceled, and in lieu thereof new bonds amounting to $19,000,000 were issued, as we have already seen; and the act expressly provides for the cancellation of all bonds of the state issued under the act of 1882, then held by the commissioners of the sinking fund, "as soon as at least $15,000,000 of new bonds shall have been issued and delivered pursuant to the provisions of this act"—meaning the act of 1892 (R., pp. 45, 46).

Thus we perceive that, by the very language of the act of 1892, which is filed as exhibit number 4 with plaintiff's bill, Virginia effected a complete settlement as to that part of the debt which she assumed, and that all bonds issued prior to 1892 were canceled, and a complete settlement of the debt as to her liability thereon effected by this act.

And the act then provides:

> "for all balances of the indebtedness, *constituting West Virginia's share of the old debt*, principal and interest,"

a certificate shall be issued, the act prescribing that the amount of the old debt represented by such certificate

> "is to be accounted for to the holders of this certificate by the state of West Virginia without recourse upon the commonwealth." (R., pp. 43, 44.)

Neither the act of 1882 nor the act of 1892 restricts the certificates to be issued to any part of the unfunded debt, but the act applies such

certificate to all balances of the old debt, constituting West Virginia's alleged share thereof. The acts of 1871 and of 1879 restricted the certificates to those issued under the act.

Can there be any doubt now that said act of 1892 constituted a final settlement between Virginia and the holders of the debt as to the part which it was agreed Virginia should assume, and operated to release her from all liability whatsoever upon "all balances" not funded under said act? Indeed, Virginia herself alleges in her bill, after referring to the acts of 1871, 1879, and 1882, as follows:

> "Until at length a final and satisfactory settlement of the portion of the debt of the original state which Virginia should assume and pay was definitely concluded by the act of February 20, 1892." (R., p. 11.)

What are we to understand by the use of the term "final and satisfactory settlement"? If such settlement was final, there could be no further settlement in reference to the debt. If such settlement was satisfactory, it must necessarily have been satisfactory to the parties concerned in it, and these parties were the commonwealth of Virginia and the holders of the debt.

It was final, because the only provision made for the payment of any part of the debt is that contained in the act of 1892, which was brought about by the creditors themselves, and the state of Virginia through her debt commission. This act provides a sinking fund for the principal, and provides for the payment of the interest on the bonds issued under it, as the same should become due and payable (R., p. 46). No other act exists and is in force in the state of Virginia relating to the debt, except the act of 1892.

Now, when Virginia has been released from all liability as to the unfunded part of said debt which is represented by the certificates mentioned in the bill, she passes a joint resolution to provide a means whereby West Virginia may be induced to assume and pay the said unfunded part of said debt (R., p. 47). In this joint resolution there is a long preamble, the last of which reads as follows:

> "Whereas the present state of Virginia has settled and adjusted to the entire satisfaction of her people and the creditors the liability assumed by her on account of

two-thirds of the debt of the original state; now, therefore, be it resolved," etc. (R., pp. 48, 49.)

This resolution created a commission composed of citizens of Virginia, which is,

> "authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia" (R., p. 49).

But the commission is not to proceed with its negotiation until satisfactory assurances have been received from a majority of the holders of said certificates (exclusive of those held by the state),

> "that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But Virginia shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

A majority of the holders of said certificates have requested this commission to proceed with its negotiations, and upon the understanding and agreement that Virginia is only bound for two-thirds of the debt, and that she has already provided for it.

Can there be any evidence more conclusive than this that Virginia is no longer liable for any part of the said debt represented by said certificates? She has been as effectually released therefrom as it is possible for positive legislation and the acts of the parties in conformity thereto to effect such a release.

This being in brief the status of the case as made out by the bill, West Virginia in her answer, in section 22 thereof, reciting these various acts, among other things, avers as follows:

> "And so respondent avers that the Commonwealth of Virginia has been wholly released from all liability on account of the said certificates and every part of them,

and has no legal or equitable interest in any claim based thereon, and that this suit was instituted and is being prosecuted by the said Commonwealth of Virginia solely as trustee for and on behalf of the holders of the said certificates, and not in her own right; and that she has agreed through her said commission with said creditors that she is to incur no expense on account of this action, and that the whole expense thereof is to be borne by the holders of said certificates, in whose behalf and for whose exclusive benefit the same was instituted and is now being prosecuted" (R., pp. 163, 164.)

Everything that Virginia did toward securing an exoneration from all liability as to the unfunded part of said debt, (she alleging that two-thirds of the original debt is her just proportion and which she has assumed and which the creditors have accepted as her just proportion,) appears on the face of the bill and its exhibits; and the allegation of the answer alleging this release must be taken as true for the purposes of this suit, because Virginia has not controverted the truth thereof by any replication to said answer. It is well settled that, in the absence of a statute or rule of court to the contrary, where a cause in equity is set down for hearing on bill and answer alone, the general rule is that the answer is to be considered as true in all its allegations, whether responsive or not, on the ground that the complainant's failure to put in issue by replication the facts alleged in the answer would preclude the defendant from proving them.

Gettings v. *Burch*, 9 Cranch 372 (3 L. Ed. 763).

Leeds v *Marine Insurance Co.*, 2 Wheat. 380 (4 L. Ed. 266).

Peirce v. *West*, 19 Fed. Cas. No. 10, 909.

United States v. *Scott*, 26 Fed. Cas. No. 16, 242.

Reynolds v. *Bank*, 112 U. S. 405 (28 L. Ed. 733).

Bank v. *Manchester*, 128 U. S. 244 (32 L. Ed. 425).

In re Sandford Fork, etc., Co., 160 U. S. 247 (40 L. Ed. 414).

United States v. *Freight Association*, 7 C. A. 15 (24 L. R. A. 74).

Atlantic Trust Co. v. *Chapman*, 145 Fed. 820 (76 C. C. A. 396).

We have here cited some of the decisions of the federal courts in support of the proposition above announced; but all the state courts that have passed on the subject hold the same doctrine, and there is no break in all the authorities. This is the doctrine of the courts of Virginia.

Jones v. *Mason*, 5 Rand. 577 (6 Am. Dec. 161).
Kennedy v. *Baylor*, 1 Wash. 162.
Pickett v. *Chilton*, 5 Munf. 467.
Blanton v. *Brackett*, 5 Call 232.
Cock v. *Minor*, 25 Gratt. 246.

But it is needless to cite authorities here, as there is a wilderness of them in support of the doctrine that all parts of an answer unreplied to must be taken as true.

Accord and Satisfaction Created Between Virginia and Her Creditors as to the Unfunded (One-third) Portion of Her Debt.

The acceptance by her creditors of the several acts of legislation of Virginia, hereinbefore cited, effected an agreement between them, whereby Virginia was not to be held liable for the payment of the unfunded debt, nor to suit thereon; which unfunded debt is one-third of the whole original debt, and which unfunded debt is evidenced as to amount by the certificates issued by Virginia. By this agreement the holders of this unfunded debt, who are also the holders of these certificates, look to West Virginia for payment thereof without recourse upon Virginia. Thus, Virginia was relieved of all liability for this one-third of her debt not funded nor assumed by her, and there was created between her and her creditors, as to the unfunded one-third of the debt upon which the certificates were issued, an *accord and satisfaction*.

If the acts of the legislature of Virginia, the provisions whereof were accepted and acted upon by her creditors, show anything at all, they show that these creditors accepted these certificates with the express agreement that Virginia was not to be liable to them for any part of the debt unfunded and which was represented by said certificates. Before considering the law applying to this feature of the case, we call the Court's attention to certain incontrovertible facts appearing in the record.

By the act of 1871, as we have seen, the bonds funded under said act were to be surrendered to Virginia and canceled, but to be retained by her nevertheless *in trust* for the holders of the certificates representing the unfunded part. The rate of the interest prescribed to be paid upon the new bonds was at the rate of six per cent per annum.

By the act of 1879, which provided for the funding of the entire debt (R., p. 23), all bonds surrendered were likewise to be canceled, and the rate of interest changed from six per cent to three per cent per annum for ten years, four per cent for twenty years, and five per cent for ten years (R., pp. 21, 22); and all certificates issued under that act were to be accepted by the holders *without recourse upon Virginia*.

Under the act of 1882, after a full statement of the debt and fixing Virginia's proportion thereof, a large reduction was obtained from the principal of the debt. The rate of interest was again changed from that fixed by the act of 1879, and fixed at the rate of three per cent per annum. Under the act of 1879, the interest was payable in the cities of Richmond, New York or London (R., pp. 21, 22), while under the act of 1882 the interest was payable at the office of the treasurer of Richmond, Virginia. There was therefore a change in the place of the payment of the interest.

By the act of 1892, Virginia obtained a reduction of the principal and a reduction of the rate of interest to two per cent for the first ten years and three per cent for the remaining ninety years, and the place of the payment of the interest to be at Richmond, New York and London, or either place, might be designated by the state (R., p. 40).

These changes in the contract as to the rates of interest, the places where the interest was payable, the reduction of the amount of principal, and the extension of time for the payment of the debt, the adjustment in this manner being to the satisfaction of the creditors before the maturity of the debt, constitute a valid consideration for an accord and satisfaction between Virginia and the holders of the old debt.

In *Goodnow* v. *Smith*, 35 Mass. 414, the action was assumpsit on a joint and several promissory note made by the defendants, Noah Smith and Joseph H. Adams, dated February 26, 1827, and payable one-half in one year and one-half in two years from April then ensuing. Adams defaulted. Smith pleaded the general issue. The defense was that in the autumn of 1827, before either of the installments of the note became due, it was agreed between the plaintiff and Smith that if Smith would then pay one-half of the note and take of the plaintiff at par a note for $21.14 which he held against one Willis the plaintiff would exonerate and discharge Smith from payment of the other half of this note, and that Smith in pursuance of this agreement then paid one-half of the principal and the interest on the note and took Willis' note at par value and endorsed by the plaintiff without recourse. The court sustained this defense. The syllabus of the case reads as follows:

> "In an action upon the joint and several promissory note of A. and S., brought against both promisors, A. was defaulted, and S. set up, as a defense, an agreement made between him and the plaintiff, before the note became due, by the terms of which the plaintiff exonerated and discharged S. from the payment of one-half of the note, upon his then paying the other half and receiving of the plaintiff, at par, a note of a third person endorsed without recourse to the plaintiff. It was *held*, that the agreement was founded on a good and sufficient consideration; and that it was a good defense to the action so far as respected S.; but that under St. 1834, c. 189 (Revised Stat., c. 100, §7), the plaintiff was entitled to judgment against A."

The court in its opinion said:

> "This case turns upon the distinction between a

> technical release and a covenant not to sue one of two joint obligors or promisors. The distinction is, that a release to one of two joint and several obligors discharges both, whereas a covenant with one not to sue him is not to be construed as a release so as to discharge the other obligor. This distinction is well founded on principle, and is supported by all the authorities."

The court reviews the authorities, and holds that the plaintiff could not maintain any action against Smith.

In *Chicago, Milwaukee & St. Paul Railroad Co.* v. *Clark*, 178 U. S. 353 (44 L. Ed. 1099), points two and three of the syllabus are as follows:

> "The rule that payment of a less sum in satisfaction of a larger sum is not binding for want of consideration only applies when the larger sum is liquidated, and when there is no consideration whatever for the surrender of a part of it, and the rule itself is considered so far with disfavor as to be confined strictly to the cases within it.
>
> "The payment of a specified sum conceded to be due, but including certain items but excluding disputed items, on condition that the sum so paid shall be received in full satisfaction, will be sustained as an extinguishment of the whole sum where the aggregate amount is in dispute."

An examination of the opinion in this case, delivered by the late Chief Justice Fuller, discloses a very careful consideration of the rule, an examination of many authorities, and the adoption of the principle that any (even the most insufficient) consideration is valid to support an accord and satisfaction based upon the payment of a less sum in discharge of a greater. The learned justice also says that in some of the states the old common-law rule has been changed by statute: the states mentioned as having altered the rule are Alabama, Georgia, Maine, Tennessee, and Virginia.

In *Hutton* v. *Stoddart*, 83 Ind. 539, the syllabus reads as follows:

> "A. employed B. as a traveling salesman at a salary

of $1,200 per annum, and becoming dissatisfied with him sent him a check for $400 in payment of the last half of the salary before the expiration of the year, with instructions to return it if not satisfactory. B. retained the check, collected the money upon it, and assigned the residue of the salary, for which suit was brought.

"*Held*, that the action cannot be maintained; that the retention of the money was an acceptance of A.'s proposition, and operated as a complete satisfaction of the claim.

"The payment of a part of a debt in satisfaction of the whole, if made before the debt is due, is a complete satisfaction of the whole debt.

"A dispute about a claim is sufficient to maintain a compromise, and thus render the payment of a part of a debt a complete satisfaction of the whole debt."

In *Allison* v. *Abendroth*, 108 N. Y. 470 (15 N. E. 606), the court in the course of its opinion, discussing the well settled common-law doctrine that a promise by a debtor to pay part of an admitted debt, followed by payment of such part, is not a good accord and satisfaction of the unpaid part, said:

"This rule of the common law, as was said by Nelson, J., in *Kellogg* v. *Richards*, 14 Wend. 117, is 'technical, and not very well supported in reason'; but it has been steadily maintained by the courts in cases coming strictly within it. But it is held that where there is an independent consideration, or the creditor receives any benefit, or is put in a better position, or one from which there may be a legal possibility of benefit, to which he was not entitled except for the agreement, then the agreement is not *nudum pactum*, and the doctrine of the common law to which we have adverted has no application. Upon this distinction the cases rest which hold that the acceptance by the creditor, in discharge of the debt, of a different thing from that contracted to be paid, although of much less pecuniary value or amount, is a good satisfaction; as, for example, a peppercorn for a thousand pounds (*Pinnel's Case, arguendo*), or a negotiable instrument binding the debtor or a third person for a smaller sum (*Curlewis* v. *Clark*, 3 Exch.

> 375). Following the same principle, it is held that, when the debtor enters into a new contract with the creditor to do something which he was not bound to do by the original contract, the new contract is a good accord and satisfaction, if so agreed. The case of accepting the sole liability of one of two joint debtors or co-partners in satisfaction of the joint or co-partnership debt is an illustration. This is held to be a good satisfaction, because the sole liability of one of two debtors 'may be more beneficial than the joint liability of both, either in respect to the solvency of the parties, or the convenience of the remedy.' *Thompson* v. *Percival,* 6 Barn. & Adol. 925. In perfect accord with this principle is the recent case in this court of *Luddington* v. *Bell,* 77 N. Y. 138, in which it was held that the acceptance by a creditor of the individual note of one of the members of a co-partnership, after dissolution, for a portion of the co-partnership debt, was a good consideration for the creditor's agreement to discharge the maker from further liability."

In *Silvers and Brittin* v. *Reynolds,* 17 N. J. L. 275, judgment was entered against two defendants. Silvers and Brittin, by confession on warrant of attorney, upon the joint and several notes to the plaintiff for $2,400, dated May 14, 1835, as collateral security for three other notes of theirs to the plaintiff of $800 each, payable successively in August, 1836, December, 1836, and January, 1837, with liberty to enter the judgment if either of these notes was not paid at maturity. Each defendant obtained a rule on the plaintiff to show cause why this judgment as to himself should not be set aside, or opened so as to allow him to plead. The court in the course of its opinion, in making the rule absolute, said:

> "What is now shown by the affidavits, is not denied, that prior to the entry of the judgment, the plaintiff had agreed with the defendants, to take Silvers alone for the debt, and discharge Brittin from it, if he (Brittin) would pay down five hundred dollars toward it; in pursuance of which agreement, Brittin actually paid him the five hundred dollars, and the plaintiff immediately tore Brittin's name from each of the three notes, and delivered up to him the signatures; after which the

plaintiff applied for judgment against him. It is said that five hundred dollars cannot be a satisfaction for eight hundred dollarrs, in law; that an agreement to accept a less in satisfaction of a greater sum of money, is void on the face of it, and can never be enforced without a technical release. It is true that the law will not enforce an unexecuted agreement of that kind; but where such an agreement has been executed, as by giving a release of the larger sum, it is then valid and available. Now this case is as strong as that of a release. It was an executed agreement, for by voluntarily tearing the signatures from the notes, it extinguished them forever, as effectually as a release of them; and after this, it was an imposition on the court to apply for judgment against Brittin."

In *Jones* v. *Perkins,* 29 Miss. 139 (64 Am. Dec. 136), the syllabus is self-explanatory. The first two points are as follows:

"Agreement to accept less sum, or actual acceptance at the place of payment by the terms of the original contract of a less sum, than the amount due is no defense to the debtor. It is, however, said that this rule is entirely technical, and not very well supported by reasons; hence it requires but slight consideration to support such agreements.

"While general rule is that payment of less sum than the amount due at the place of payment will not discharge the contract, yet if the payment is made, or to be made, at a different place from that appointed by the contract, this is a sufficient consideration for an agreement to accept a less sum."

In *Sonnenberg* v. *Riedel,* 16 Minn. 72, the action was tried before a referee, who found that on January 12, 1867, the defendant owed the plaintiff $300 and some accrued interest, which would become due on the 1st of March, 1867; that on said 12th day of January the defendant paid the plaintiff and the plaintiff received the sum of $100 in full of said debt; that the plaintiff's motive in so doing was compassion for defendant's misfortune in having shortly before been burnt out. The referee held that the settlement was binding and a bar to the action. From the action of the court confirming the find-

ing of the referee the plaintiff appealed, and the action of the court below was affirmed. The syllabus of the case is as follows:

> "The payment and acceptance of a smaller sum, in full of a debt before it becomes due, discharges the debt."

In *Brooks* v. *White*, 43 Mass. 283, the point of the syllabus pertinent here is as follows:

> "If a debtor gives, and the creditor receives, in full satisfaction of the debt, the note of a third person for a smaller sum than the amount of the debt, it is a good accord and satisfaction to bar a suit by the creditor to recover the balance of the debt. So if the creditor receives a less sum than is his due, in satisfaction of the whole, before the day of payment."

In *McKenzie* v. *Culberth*, 66 N. C. 431, the question presented was, whether the payment by the debtor and an acceptance by the creditor of a less sum than is due upon a bond, as a payment of the whole, is a discharge of the obligation so as to preclude the creditor from recovering the remainder of the bond. The following are the points decided:

> "1. The principle is too well established and too long acquiesced in to be disturbed, that an agreement by a creditor to receive a part in discharge of the whole of a debt due him by single bill, is without consideration and therefore void.
>
> "2. To this rule there are exceptions, as if:
>
> 1. A less sum is agreed upon and received before the day of payment.
> 2. Or at a different place.
> 3. Or money's worth.
> 4. Or where a general composition is agreed upon."

The agreement of Virginia with her creditors comes within the exceptions noted above.

In *Fenwick* v. *Phillips*, 60 Ky. 87, the point in the syllabus applicable here reads as follows:

> "The doctrine is well settled, that the payment of a less sum is not a good satisfaction, unless it be made

> before the money was due, or at a different place from that at which it was payable."

In *Schweider* v. *Lang*, 29 Minn. 254 (43 Am. Rep. 202), the action was upon a promissory note. The defense was what is known as an accord executory; that is to say, an agreement upon the sum to be paid and received at a future day in satisfaction of the note, a part of the agreement being that the note was to be paid for the lesser sum agreed upon at a future day before the maturity of the note. The holder refused to perform the agreement, and transferred the note, and an action was brought against the assignor for damages for breach of the agreement. The syllabus is as follows:

> "An oral agreement by the maker of a note to pay and by the holder to accept, before maturity, a less sum than the note calls for, in full satisfaction, is valid, and the holder is liable in damages for a breach of it."

In *Bowker* v. *Childs*, 85 Mass. 434, the point in the syllabus is as follows:

> "Payment of less than the face of several promissory notes, a portion of which are not due, is a good satisfaction of all of them, if upon the receipt and acceptance of the money by the holder the notes are given up to the maker."

In *Smith* v. *Brown*, 10 N. C. 580, the second point of the syllabus reads as follows:

> "If an obligor pay a less sum than is due, either before the day specified or at another place than is limited by the condition, and the obligee receive it, this is a good satisfaction."

Surrender and Cancellation of the Old Bonds.

Virginia, in each of the four acts hereinbefore considered, in each of which she dealt as an entirety with the subject of her debt, took the precaution to provide for a surrender of all the outstanding bonds which Virginia had ever issued under the acts of 1871, 1879, and 1882, and for the cancellation of these bonds as evidences of indebtedness; and the act of 1892 effects the same result. Why did she

stipulate that these old bonds should be surrendered unless it was to get into her posesssion the evidence of her old debt, which it was her purpose, by these acts, with the agreement with the holders of the debt, that she was discharging and paying off these bonds by the course pursued by her under these various funding acts? The authorities attach great importance to the surrender of an instrument evidencing a debt, when it is sought to show the discharge of such debt by the party against whom it is sought to enforce the unpaid or unsatisfied part. The attention of the Court is called to the following authorities:

In *Murray and Mason* v. *Snow,* 37 Ia. 410, the plaintiffs brought an action against the defendant upon an account. Upon the defendant pleading a settlement of the account by note, the plaintiffs then amended their petition, declaring upon the note, and to the petition as amended the defendant pleaded that the note had been fully paid off, satisfied and surrendered. The amount paid for the surrender of the note was fifty per cent in full satisfaction thereof. The court, in holding that the action could not be maintained, in the course of its opinion said:

> "It appearing, therefore, from the pleadings and the findings of fact, that the plaintiffs and the other creditors of the defendant who was in insolvent circumstances, and without any fraud on his part, agreed to accept fifty cents on the dollar in full satisfaction for their respective claims, and that the plaintiffs had been paid such composition in full, and had surrendered the note of the defendant held by them, pursuant to their agreement, they cannot maintain this action. The judgment should have been for the defendant."

In *Draper* v. *Hitt,* 43 Vt. 439 (5 Am. Rep. 292), the first point of the syllabus is as follows:

> "The acceptance of a note of $40 in satisfaction of a note of $60, and the simultaneous surrender of the larger note, is a full discharge thereof."

In *Ellsworth* v. *Fogg,* 35 Vt. 355, the second point of the syllabus reads as follows:

> "The acceptance by the holder of a promissory note

of part of the amount due upon it, in satisfaction and discharge of the whole note, and the surrender of the note by the holder to the maker to be canceled, is a full discharge of the note, and no action can be maintained for the unpaid portion."

The court, in the course of its opinion in this case, said:

"We think the surrender of the notes by the owner to the maker may well be put upon the same ground as a release,—as being an act of the highest significance and clearest import to show the deliberate and well understood agreement of the parties. It is their agreement executed,—a release in practical operation. It is free from liability to mistake or fraud. The deliberate surrender of notes by the owner to the maker, to be canceled, is an act which no man of prudence, or of the least knowledge of business, would do, unless he intended to discharge the debt. A release, as well as the surrender of notes, may be procured by deceit and fraud,—but when they are made according to the intent of the parties, they should be sustained."

Promise of a Debtor to do Some Act in the Future is Sufficient to Create an Accord and Satisfaction Without Performance by the Debtor.

By the act of 1879 Virginia relieved herself from the conditional liability created under the act of 1871 by her promise to her creditors and their acceptance thereof, to negotiate, or to aid the holders of the certificates issued under the acts of 1871 and 1879 in negotiating with West Virginia for an amicable settlement for the payment of the unfunded part of her debt, represented by the certificates. Virginia, when she made this promise, knew that its performance on her part was not a condition precedent to the validity of the accord and satisfaction sought by the said act to be created between her and her creditors as to the old debt; because the acceptance of the provisions of the act, the funding of the old debt under it, the surrender of the old bonds, and the changing of the rate of interest constituted an accord and satisfaction independently of this promise of Virginia to negotiate or aid the creditors in negotiating an amicable settle-

ment with West Virginia for the payment of the unfunded part of the debt.

In *Smith* v. *Elrod,* 122 Ala. 269 (24 So. 994), the court in its opinion said:

> "While it is a general rule that an accord, in order to operate as a discharge of a debt, must be executed, yet it is well settled that a creditor may accept the mere promise of the debtor to perform some act in the future in satisfaction of the debt; and where such is the case the satisfaction is good, and the debt extinguished without performance. 1 Am. & Eng. Enc. Law (2d Ed.) 423; *Knowles* v. *Knowles,* 128 Ill. 110 (21 N. E. 196); *Ports.* v. *Polk Co.,* 80 Iowa 401 (45 N. W. 775); *Averill* v. *Wood,* 78 Mich. 342 (44 N. W. 381); *Railroad Co.* v. *Forrest,* 128 N. Y. 83 (28 N. E. 137); *Babcock* v. *Hawkins,* 23 Vt. 561. That the plaintiff accepted the delivery of the sawmill machinery to him, and the defendant's promise to deliver the 20,000 shingles by March 1, 1896, and to perform the other stipulations in full satisfaction of the notes and accounts, and that defendant made the delivery and promises with this understanding, is, we think, made manifest by the undisputed evidence that plaintiff told defendant he would instruct his wife to deliver the notes to him, and he could call on her at any time and get them, and that one of them was in fact surrendered to defendant by the wife. The accord was executed, in so far as its execution was necessary to the satisfaction of the debt, by the delivery of the machinery and the promise to perform the other acts, and was a complete bar to any action on either the notes or the accounts, unless rescinded for sufficient cause."

Virginia Had the Right Under Her Own Laws to Discharge Herself from Liability by Assuming Two-Thirds of the Old Debt, if Done with the Consent of Her Creditors (and it Was so Done), Without Impairing Their Rights (if Any They Had) Against West Virginia for the Residue.

As shown by her acts of legislation, Virginia treated the liability of West Virginia as direct to the creditors, and not as an obligation enuring to her. She thus dealt with the debt under these acts as if she were liable for a certain proportion thereof and West Virginia for the residue. Without consulting West Virginia, she and the creditors arbitrarily fixed her part at two-thirds, and West Virginia's at one-third. In all these acts, beginning with that of 1871, Virginia assumed that West Virginia was liable, like herself, directly to the holders of the debt; and this being so, that Virginia had the right, under her own laws, to agree with her creditors as to the amount they would exact from her; and this they did, as we have already shown.

Under the laws of Virginia, upon this theory of the case, the creditors might have dealt with the debt with Virginia alone, excluding West Virginia from the negotiations; and after a settlement with Virginia as to her part, hold West Virginia liable (if she be liable at all) for the other part. Such a course was duly authorized under the statute law of Virginia, in subordination to which the negotiations of Virginia with the holders of the debt were carried on.

In 1866-7 Virginia adopted the following provision of law, which appears in the present Code as section 2856:

> "A creditor may compound or compromise with any joint contractor or co-obligor, and release him from all liability on the contract or obligation, without impairing the contract or obligation as to the other joint contractor or co-obligors."

In *Yuille* v. *Wimbish*, 77 Va. 308, this statute was construed and held to be constitutional. It was contended that as to existing contracts it impairs their obligation and is therefore unconstitutional. Overruling this objection, the court in the opinion says:

> "It preserves all rights, and only provides an express,

direct and ready mode of doing, by and between joint contractors, what it was not unlawful to do before the statute was enacted and was done by round-about and difficult indirection. It only removes technical difficulties out of the way of compromise and settlement.

"An English statute cited in *Dewolf* v. *Lindsell*, L. R. 5, Eq. Cas. 269, bears close resemblance to our Virginia statute in its purpose and effect, and the courts expressly held that it would apply to existing contracts."

There was inserted in the Code of Virginia of 1887 as section 2858 the following:

"Part performance of an obligation, promise or undertaking, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction and rendered in pursuance of an agreement for that purpose, though without any new consideration, shall extinguish such obligation, promise or undertaking."

The law in Virginia existing prior to that enactment is clearly stated, after an examination of the authorities, in *Seymour* v. *Goodrich*, 80 Va. 303. The court in discussing the technical rule which, at common law, forbids the discharge of a debt by the payment of a smaller sum, said:

"But this rule, being highly technical in its character, seemingly unjust, and often oppressive in its operation, has been gradually falling into disfavor; and the courts have therefore not only confined its operation strictly within its own narrow limits, but have seized upon every possible opportunity to evade its application. As a consequence, it has been generally, if not universally, held that where any new element entered into the agreement of compromise—as where an earlier day is fixed for the payment, or a different place selected therefor, or where the payment is made in some other thing than what was originally contracted for, *e. g.*, a chattel, or personal services, it will amount to a satisfaction of the whole debt, if the parties so agree. *Bliss* v. *Charter*, 5 Day 359; *Gaffney* v. *Chapman*, 4 Roberts 275; *Watkinson* v. *Ingleby*, 5 John. 386; *Bowker* v. *Harris*, 30 Vt. 424; *Bull* v. *Bull*, 43 Conn. 455; *Perkins* v. *Lock-*

wood, 100 Mass. 249. And in *Goddard* v. *O'Brien*, reported in the 21st Vol. Am. Law Reg. (N. S.) 638, S. C. L. R., 9 Q. B. Div. 37, the court carried this distinction so far as to hold that an acceptance of a check for $100, payable on demand, was a good accord and satisfaction of an indebtedness of £125 7s 9d, then due and payable, for the reason that the check was a negotiable instrument, thus holding, in effect, that the supposed advantage to be derived from the negotiability of the check for a part of the indebtedness, was a sufficient consideration for a relinquishment of the remainder. *Foakes* v. *Beer*, L. R. 9 App. Cases 605."

Virginia Has No Such Interest in Any Part of the Unfunded Debt Held by Third Parties, Which It Is Claimed West Virginia Should Pay, as to Enable Her to Enforce Payment by This Suit.

If Virginia has any suable interest in the unfunded debt, what constitutes that interest? Is it to ascertain the amount of her public debt existing on January 1, 1861? No; because Virginia had already determined this by her act of 1882, to which the holders of the debt assented, and upon terms of that act and the act of 1892 they agreed to accept and did accept new bonds from Virginia for the share of the debt which it was agreed Virginia should pay. Virginia was thereby relieved from liability as to the residue. (See exhibits 3 and 4 with the bill, record pp. 26-47.)

To the action of Virginia in ascertaining the amount of the debt, as shown by her act of 1882, no objection has ever been made, either by West Virginia or any of Virginia's creditors. What controversy, then, between the two states exists as to this matter? There is none. Does Virginia's interest as to the debt consist in ascertaining the proportion thereof which she ought to assume and be liable for? No; because, as we have shown and as appears from the bill itself and its exhibits, this has already been done by agreement between Virginia and the owners of the debt, and that, too, to their mutual satisfaction. There is no controversy then between the plaintiff and defendant as to this feature of the case.

Is Virginia interested in ascertaining West Virginia's equitable proportion of said debt, if such there be? No; because Virginia, as we have seen, is not liable to her creditors for such part, and because she is to receive nothing in this suit on account of such part. No controversy, therefore, exists between the two states as to what is West Virginia's just or equitable proportion of said debt, if she be liable at all, inasmuch as it is neither due nor payable to Virginia, but to the holders of the unfunded part of said debt.

If a controversy exists with reference to what Virginia has done with her creditors touching said debt, upon what is such controversy based? Not under the act of 1871; because while she assumed a conditional liability under such act as to the unfunded part, she has been entirely released as to the certificates issued thereunder therefor by virtue of the acts of 1882 and 1892, whereby the holders of said debt agree to look to West Virginia for payment thereof without recourse upon Virginia. It is not by the form of the certificates issued under the act of 1871 that the holders thereof are to look to West Virginia for their payment, but by the very terms of the acts of 1882 and 1892, which the creditors themselves accepted.

There is no controversy created by the act of 1879; because the certificates issued thereunder representing the portion of the debt not funded under the act of 1871, were accepted under the express agreement that the creditors were to be without recourse upon Virginia.

Inasmuch as Virginia is, by express agreement with her creditors, not liable for the unfunded portion of her debt, represented by the certificates issued by her, and for payment of which portion she sues in this suit; and inasmuch as any liability for such portion of the debt as may attach to West Virginia, is to the holders of the certificates, and not to Virginia, Virginia has no such interest in this suit as enables her to enforce payment of said unfunded part of the debt.

Party Without Interest Cannot Maintain an Action.

The principle is well settled that a party cannot maintain a suit when another party is the real beneficiary in any judgment or decree that may be obtained in such suit.

An agent or other like representative cannot bring suit in his own name.

Bissell v. *Spencer*, 9 Conn. 267 (23 Am. Dec. 336).
Gilmore v. *Pope*, 5 Mass. 491.
Gunn v. *Contrie*, 10 Johns. (N. Y.) 387.
The State v. *New London*, 22 Conn. 170.
Townsend v. *Hoyle*, 20 Conn. 6.
People v. *Ingersoll*, 58 N. Y. 1 (17 Am. Rep. 178).
Morris Canal ads. *The State*, 14 N. J. L. 411.
People v. *Booth*, 32 N. Y. 397.
Wilson v. *Shively*, 10 Or. 267.
State v. *Bradish*, 34 Vt. 420.

In *Bissell* v. *Spencer*, 9 Conn. 267, cited above, an action of debt was brought by a state treasurer to enforce the payment of certain judgments rendered for fines against the testator of the defendant, who was sued as his personal representative. The fines were directed to be paid "to the treasurer of the State of Connecticut for the use of the treasury of said State." The declaration was demurred to, on the ground that the state treasurer had no interest in the sum sought to be recovered. The court below overruled the demurrer, and the Supreme Court of Connecticut, reversing the court below, in the course of its opinion said:

> "A person authorized to sue in a court of law must have a legal interest in the subject of the suit. If he is the servant or agent only of the creditor, the action cannot be sustained in his name: 1 Chit. Pl. 3, 5. That a person who has not the legal interest cannot maintain *indebitatus assumpsit*, is too clear to be disputed: 6 Conn. 312; and that even a promise by simple contract to the treasurer of a corporation is, by legal construction, a promise to his principal. The point has frequently been decided: *Pigott* v. *Thompson*, 3 Bos. & Pul. 147; *Gilmore* v. *Pope*, 5 Mass. 491; *Bainbridge* v. *Downie*, 6 *Id.* 253, 258; *Gunn* v. *Cantine*, 10 Johns. 387."

In *Gunn v. Cantine*, 10 Johns. (N. Y.) 387, it appears that the action was *assumpsit* for money had and received for the use of the

plaintiff. The plaintiff was the holder of a note which was turned over to him by the owner under a power of attorney authorizing him to sue and collect the same. The suit was brought in his own name. The Supreme Court of New York, in holding that the action could not be maintained, says:

> "It appears affirmatively, from the case, that the plaintiff had no beneficial interest in the money collected. He was a mere attorney employed by Simmons to collect this debt; and there was no express promise by the defendant to pay the money collected to the plaintiff."

The State v. *New London*, 22 Conn. 163, was an action of debt brought by the State of Connecticut against the town of New London to recover the sum of $1500 as a penalty for a violation of the statute requiring towns to appoint assessors and to cause them to be sworn. It was contended that the State could not maintain this action, but that it should be brought in the name of the financial agents of the State as the collectors of the State's revenue. The court, in overruling this objection, in its opinion said:

> "The penalties, incurred by a violation of this statute, are for the use of the treasury of the state, and the state alone has the legal interest in them, and not its officers. These officers are but agents, and cannot sue in their own names, unless empowered to do so by some statute. *Spencer* v. *Huntington*, 6 Conn. 312; *Bissell* v. *Spencer*, 9 *Id.* 267."

In *Morris Canal* ads. *The State*, 14 N. J. L. 411, the question arose whether or not the State could be made plaintiff in a writ of *certiorari*. The court, in discussing the question, in the course of its opinion said:

> "But, I apprehend, the state is never properly plaintiff in *certiorari*, where the object of the writ is to relieve individuals in matters affecting their private rights; unless the proceeding complained of has been instituted and carried on, by the state, in its corporate and political character, and for political or municipal purposes—in other words, the name of the state cannot be used, as plaintiff in *certiorari;* except in those cases

> in which the individual, for whose benefit, or relief, it is sued out, cannot, upon legal principles, be himself the plaintiff; or where the state or the whole community have some rights, or interests, in the subject matter; not speculative or political, but direct and positive rights and interests, which are to be affected one way or the other. This will be found to embrace an extensive class of cases, relating to the public peace, the public revenue, the public defense, common and public highways, and many other matters of general interest and concern. In short, wherever the authority, or the interest, of the state, in the prosecution of any of the great purposes of government, comes into conflict with individual rights, and the state, either in its corporate name, or by its appropriate agents, is the actor, in carrying into execution those purposes: *then* the name of the state may be properly used by an individual complaining of, and seeking to be relieved against *its* proceedings. In such cases, the state yields a tacit consent to be made plaintiff in *certiorari* where that is the proper remedy, for the purpose of affording the citizen an opportunity of being heard in this court, and having the error corrected, if any has been committed."

In *Wilson* v. *Shively*, 10 Or. 267, the object of the suit was to have decreed the legal title held by the defendant to be in the relators—to have the state patent to certain tide lands alleged to have been procured by fraudulent representations by Shively to be canceled and annulled, and to compel a conveyance of the title held under the patent by the defendant Shively to the relators. In holding that this suit could not be maintained by the state, the court in its opinion said:

> "And the question which confronts us at the threshold of our inquiry, is the right of the relators to carry on a litigation in the name of the state for the object sought by the suit, and the authority of the court, in a case so constituted, to adjudicate upon it. For it will hardly be asserted, if the subject matter of litigation concerns the rights of private parties only and exclusively, and the state has no direct interest in

> the prosecution or result of the suit, that state interference in such controversies ought not to be countenanced, or tolerated, either directly or upon the relation of private parties."

The court then considers the relation the state bears to the suit, or rather what interest it has in it, and, determining that the state has no interest in the subject matter of litigation, the court dismisses the action. The concluding sentence of the opinion is as follows:

> "It seems to us in facts thus constituted, in their relation of the state to them, and in consequences to be apprehended from such state interference, are objections of too serious a character to maintain this suit."

In *State* v. *Bardish*, 34 Vt. 419, the action was trespass for carrying away a quantity of tools and implements, the property of the State of Vermont. It was contended that the action could not be maintained by the state, but the court, in overruling this contention, in its opinion says:

> "It is evident both upon common law principles and upon inference from the legislation on this subject, that where there is no statutory provision to the contrary, actions by the state or for the benefit of the state are to be brought in the name of the state, in cases where, upon common-law principles, the legal interest in the subject matter is in the state."

In *Lynch* v. *United States*, 13 Okla. 142 (73 Pac. 1095), the action was brought by the United States to set aside a sale of land and cancel a patent issued by the United States. The main question discussed and decided in that case was whether or not the United States as plaintiff had such interest in the suit as authorized its maintainance. In discussing the question, the court in its opinion says:

> "The United States stands in no different relation as a suitor than any individual. When the government comes into a court to submit a question to judicial determination, she is not acting in her capacity as a sovereign, but as a litigant, claiming the same rights, and bound by the same rules, as any of her citizens under similar circumstances. This was expressly held

in *United States* v. *Bank of Metropolis*, 15 Pet. 377 (10 L. Ed. 444); *Brent* v. *Bank of Washington*, 10 Pet. 596 (9 L. Ed. 547); *United States* v. *Hughes*, 11 How. 552 (L. Ed. 809); *United States* v. *Throckmorton*, 98 U. S. 61 (25 L. Ed. 93); *United States* v. *Minor*, 114 U. S. 233 (5 Sup. Ct. 836, 29 L. Ed. 110). Hence, in determining whether the petition alleges such equities in the United States as against the defendants as will warrant the court in cancelling a patent, we must look to the general rule of chancery pleading in equity cases, and in determining these rules we need look only to the decisions of the Supreme Court of the United States, where every phase of the subject has been discussed and determined."

Classifying the cases in which a suit of this sort may be maintained by the government, and disposing of the second and third classes, holding that the suit did not come under these classes, and which it is not material to consider here, the court comes to the first class, "Where, the government being the only party interested, the patent is charged to have been obtained by fraud," and in its opinion regarding this class the Court says:

"In this class of cases a court of equity will furnish relief where the United States has been defrauded, her interest prejudiced, or to protect the general public from wrongful imposition. But if the United States has not been injured, and will not be benefited by the rescission of the contract and cancellation of the patent, the court will not grant any relief. *Ming* v. *Woolfolk*, 116 U. S. 599 (6 Sup. Ct. 489, 29 L. Ed. 740).

"This case must be tried and tested by the rule stated in the *San Jacinto Tin Co.* case, *supra*, where it was said that the United States can no more sustain an action to cancel a patent than can a private individual, if it is apparent that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use, or that there is no obligation on the part of the United States to the public. It clearly appears from the petition that the only persons who will be benefited from this proceeding are

> the town site occupants who are residing on the land, and by their failure to make the proper town site application and tender the money for the land, and follow the same to a final disposition, they have forfeited all their rights under the law, and it is well settled that equity will not aid one who has had a full and complete remedy at law, and has failed to avail himself of such remedy."

In *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273 (31 L. Ed. 747), a suit brought by the United States to set aside and annul a patent for land issued in its name on the ground that it was obtained by fraud, the Court in its opinion said:

> "But we are of opinion that since the right of the government of the United States to institute such a suit depends upon the same general principles which would authorize a private citizen to apply to a court of justice for relief against an instrument obtained from him by fraud or deceit, or any of those other practices which are admitted to justify a court in granting relief, the government must show that, like the private individual, it has such an interest in the relief sought as entitles it to move in the matter. If it be a question of property a case must be made in which the court can afford a remedy in regard to that property; if it be a question of fraud which would render the instrument void, the fraud must operate to the prejudice of the United States; and if it is apparent that the suit is brought for the benefit of some third party, and that the United States has no pecuniary interest in the remedy sought, and is under no obligation to the party who will be benefited to sustain an action for his use; in short, if there does not appear any obligation on the part of the United States to the public, or to any individual, or any interest of its own, it can no more sustain such an action than any private person could under similar circumstances."

In *State* v. *Warner Valley Stock Co.*, 48 Or. 378 (86 Pac. 780), the suit was brought by the state, through its attorney general, for the cancellation of a patent for swamp land given by the state. The case turned on the question whether or not the complaint showed on

its face that the state has such interest in the controversy as to authorize it to maintain the suit. In the course of its opinion the court says:

> "Unless the plaintiff has some interest in the land in controversy, it has no right to maintain this suit."

In *City of Atchison* v. *State*, 34 Kan. 379, the syllabus of the case, as found in 8 Pac. 367, sufficiently states the matter in controversy and the point decided, without making any further explanation:

> "Where a city, without authority of law, caused a tax to be levied and extended upon the tax-roll for the purpose of creating a fund with which to pay certain bonds theretofore issued and delivered in payment of bridges that had been built therein, and after the tax-roll had come to the hands of the county treasurer for the collection of the taxes a number of the tax-payers of the city voluntarily paid the illegal tax thus levied: *held*, that the public has no such interest in the money thus paid as will authorize the state to interfere and to maintain an action in the name of the state, enjoining the treasurer from paying out the money so received by him, and from disbursing it in accordance with the will of those who paid the same."

In *People* v. *Stratton*, 25 Cal. 242, the first point of the syllabus is as follows:

> "The attorney general may file an information in the nature of a bill in chancery, to annul a patent for lands granted by this state to an individual, in a case where the matter involved in the suit immediately concerns the rights and interests of the state."

The third point of the syllabus in this case is as follows:

> "If the state has no interest in the subject matter, an information on the relation of the attorney general, on behalf of the state, to annul a patent cannot be sustained."

In the case of *Kansas* v. *United States*, 204 U. S. 331 (51 L. Ed. 510), the bill was filed by the attorney general of Kansas on behalf of the state as trustee for the Missouri, Kansas & Texas Railway Co. of certain lands in the Indian Territory alleged to have been granted

to the state for the benefit of the railway company. The case was dismissed for want of jurisdiction. The Court, in the course of its opinion, said:

> "In our opinion it appears upon the face of the bill that the state of Kansas is only nominally a party, and that the real party in interest is the railroad company. Section 3 provides that patents should be issued not to the state, but to the company direct, which made the state nothing but a mere conduit for the passage of title. And this is so even if it were ruled that the state of Kansas was made trustee under §9, because it would only be trustee of the bare legal title. In very many cases 'in which the grant was directly to the railroad company, or in which the act of Congress required that the patents for lands earned should be issued not to the state, for the benefit of the railroad company, but directly to the company itself,' it has been held that the title vested absolutely in the railroad company. *Sioux City and St. P. R. Co.* v. *United States*, 159 U. S. 349, 364, 40 L. Ed. 177, 182, 16 Sup. Ct. Rep. 17, 23. * * * * In these circumstances we think it apparent that the name of the state is being used simply for the prosecution in this court of the claim of the railroad company, and our original jurisdiction cannot be maintained."

It seems to us that the case just cited is clearly in point, as the court holds that the real party in interest was not the State of Kansas but the railroad company, and that the name of the state was simply inserted in order to give color to the claim of jurisdiction in the Supreme Court of the United States. The court clearly indicates by this decision that in order to give this court jurisdiction of a controversy between states, the state bringing the action must prosecute it for her own benefit—that it must be a suit to protect the rights of the state as such, and not enure only to the benefit of private persons. The state herself must be interested.

In *Smith* v. *Brittenham*, 109 Ill. 450, 549, one of the main questions determined by the court was the interest of the plaintiff to maintain the suit. The court in passing on this point said:

"It is a well recognized rule that in equity the party having the beneficial interest in the subject matter of the suit must sue in his own name for any invasion of his rights in respect thereto, although the legal title may be in another. (*Frye* v. *Bank of Illinois*, 5 Gilm. 332; *Elder* v. *Jones*, 85 Ill. 384; *Moore* v. *School Trustees*, 19 *id.* 83.) It is also well settled that no one, in the absence of some statute authorizing it, can maintain a suit in chancery with respect to real estate to which he has neither the legal nor equitable title. (*Bowles* v. *McAllen*, 16 Ill. 30; *Hoare* v. *Harris*, 11 *id.* 24.) If such an interest in the complainant is indispensable to the commencement of the suit, as will be conceded, the conclusion would seem to follow that where a party having such interest commences a suit, and before any hearing or disposition of the cause upon the merits voluntarily transfers all of his interest to another, and the same is made to appear of record, as is the case here, the whole proceeding will become so defective for want of proper parties, that no valid decree can be entered in the cause until the complainant's assignee, by some supplemental bill, or otherwise, makes himself a party complainant to the suit—and this, indeed, is the well recognized doctrine and practice in such cases. *Mason* v. *York and Cumberland R. R. Co.*, 25 Me. 82."

In *Ashby* v. *Ashby*, 39 La. Ann. 105 (1 So. 282), the suit was instituted by a plaintiff claiming to be judgment creditor of one of the defendants. Exception was taken on the ground that the petition disclosed no cause of action. This exception was deferred for decision to the merits of the case. The court in sustaining this exception announced the following as its decision as shown by the syllabus in the case:

"An action can only be brought by one having a real and actual interest, which he pursues. So, where one claiming to be a judgment creditor of another seeks to annul a mortgage executed by the latter in favor of his children on the ground of fraud, and the record shows that the judgment on which the suit is founded is not in favor of the plaintiff, but in favor of her minor children, for which she is tutrix, and who had attained their

> majority before the action of nullity was brought, and they do not join in the action, the suit must be dismissed."

In *Oakley* v. *Bend*, 3 Edw. Ch. (N. Y.) 482, the action was brought in the name of certain persons as bankers who had received the note or paper sued on to collect the same, the authority to collect being transmitted under power of attorney given by the owners of the note. The court in holding that the plaintiffs had no such interest in the subject matter of the suit as authorized a suit in their own names, in its opinion, said:

> "A person who is a mere agent to sue for and collect money under a power of attorney cannot be a party to a bill for an account in his own name, nor to be joined as a co-complainant, with his principal. *King of Spain* v. *Machaao*, 4 Russ. 225, 240, recognized in *Clarkson* v. *Depeyster*, 3 Paige 337, as good ground of demurrer. As a general rule, if an agent institutes a suit under an authority from his principal he must do so in the name of his principal. *Leigh* v. *Thomas*, 2 Ves. 313. And, see Calvert, Parties, 229, 232, for the authority on the subject."
>
> "In the present case the bill alleges that the complainants are mere agents for the Bank of Leeds, in England, under a power of attorney transmitted to them by one of its officers duly authorizing the collection of the bill of exchange which the bank discounted and to whom it belongs. This being so, the bill should be filed in the name of the bank, if they have the corporate capacity to sue under the Act of Parliament mentioned in the bill; or if they have it not, then in the names of the individuals composing the bank; and it is no excuse that the names of all have not been transmitted or furnished to the agents here or that they are very numerous and constantly fluctuating. To avoid the inconvenience of numerous complainants and changes of interest, this court may allow a bill to be exhibited in the names of a few, in behalf of all interested in the bank. Calvert, 40, 41; Story, Eq. Pl. 97, 114-117."

Virginia, Being Without Interest in the Unfunded Debt Held by Third Parties, Cannot Constitute Herself a Trustee, and Thus Create a Controversy Between Herself as Trustee and the State of West Virginia, and Thereby Maintain This Suit as to Such Unfunded Part of Said Debt.

Virginia does not contend that she has any interest in the unfunded debt represented by the certificates issued by her which can in anywise enure to her benefit. She contends that she has a right to enforce payment of the unfunded debt in her capacity as trustee so far as said unfunded debt relates to third parties who own the same. It is settled by the decisions that a mere nominal trustee cannot maintain a suit in his own name.

Malin v. *Malin*, 2 Johns. Ch. (N. Y.) 238 (1 L. Ed. 361).

Graham v. *Graham*, 3 Barb. Ch. (N. Y.) 24 (5 L. Ed. 801).

Collins v. *Loffters*, 10 Leigh (Va.) 5 (34 Am. Dec. 719, and note 722).

Nichols v. *Williams*, 22 N. J. Eq. 63.

Elmer v. *Loper*, 25 N. J. Eq. 475.

Field v. *Maghee*, 5 Paige Ch. (N. Y.) 539, assignee suing in name of assignor who was without interest in the subject matter of suit.

Dean v. *Seyman*, 11 N. J. Eq. 220.

Wilink v. *The Morris Canal & Banking Co.*, 4. N. J. Eq. (3 Green) 377, 390, 397.

Blake v. *Allman*, 58 N. C. 407.

Elwell v. *Bursinger*, 70 Tex. 120 (8 S. W. 77).

In *State ex rel. Rife* v. *Hawes*, 177 Mo. 360 (76 S. W. 653), the action was mandamus by the state against Hawes and others as a board of police commissioners of the city of St. Louis to compel them to draw a warrant in favor of the relator for payment for himself and others as members of the police force of the city of St. Louis. Judgment was rendered for the relator, and the respondents appealed.

Under the laws of the State of Missouri, a trustee of an express trust may maintain an action in his own name, provided the declaration of trust be in writing. The court found from the record in the case that the real owner of the claim or debt was an individual by the name of Blair; that there was no consideration paid to Blair by the relator or any one else for a transfer of the claim; that Blair never sold his claim to the relator, and never intended to do so; that Blair would receive the fruits of the litigation, and that the action was brought by the relator for himself and his fellows purely as a matter of economy. It was held that Hawes as trustee had no such interest in the matter involved in the action as to maintain it in his own name, and the proceeding was accordingly dismissed for want of interest in the plaintiff.

But we do not concede that Virginia, as to the unfunded debt not assumed by her, is a trustee in reference thereto. To say that Virginia is a trustee of the part of the old debt which Virginia arbitrarily declared is West Virginia's equitable proportion thereof, and for which she is no longer liable, is to announce the proposition that a trust may be created having for its sole object the institution of a law-suit, and that therefore Virginia may bring this suit. Such a proposition is wholly foreign to every principle of the law relating to express trusts. Indeed, after a valid express trust has been created, the legitimate duties of the trustee defined, and the legal title to the property has passed to the trustee, ordinarily the courts will not permit him to bring a suit touching the trust property unless the beneficiaries are also before the court.

The fundamental idea of any kind of a trust contemplates the legal title to the trust subject inhering in the trustee, while the benefits which it carries accrue to and belong to another. This is elementary law.

Wallace v. *Wainwright*, 87 Pa. 263.
Seymour v. *Freer*, 75 U. S. 202 (19 L. Ed. 306).
Commissioners v. *Walker*, 6 How. (Miss.) 143 (38 Am. Dec. 433).
1 Minor on Real Prop., sec. 459.
2 Washb. on Real Prop., 4th Ed. 458.
Tiedeman on Real Prop., sec. 325.

The Court says, in *Seymour* v. *Freer, supra*:

> "A trust is where there are rights, titles and interests in property distinct from the legal ownership. In such cases, the legal title, in the eye of the law, carries with it, to the holder, absolute dominion; but behind it lies beneficial rights and interests in the same property belonging to another."

Mr. Minor, speaking of a trust as to real property, says:

> "A trust estate is a right *in equity* to take the rents and profits of lands, whereof the legal estate is vested in some other person, called the *trustee;* and to compel such trustee (subject to the discretion which may be vested in him) to execute such conveyance of the land as the person entitled to the profits, who is called the *cestui que trust*, shall direct."

Mr. Washburn says:

> "A trust may, therefore, be defined as a use, which, though lawful in itself, the statute does not operate upon to execute in the *cestui que use*, whereby the legal estate is in one, while another has a right to a beneficial interest in and out of the same, the first being termed a *trustee*, the other a *cestui que trust*."

These few cases, of the very great number that could be cited, clearly establish the doctrine that a trustee is the holder of the legal title for some lawful and beneficial purpose, enuring to the benefit of a third party, usually called the *cestui que trust*.

It is also elementary law that, while the legal title gives the trustee dominion over the property in a court of law, in a court of equity the real owner is the *cestui que trust*. Here his rights are guarded and protected to the same extent as if he were the absolute owner.

To constitute a valid trust there must be a lawful and definite object to which the subject matter is to be devoted.

> 29 Am. & Eng. Enc. L. (2d Ed.) 866, and the many cases there cited.

Here the object of the trust is definite. It is for the purpose, through the agency of the debt commission, by and with the advice and consent of the attorney general of Virginia, in the name of Virginia, to bring a suit against West Virginia for the recovery of this alleged

debt represented by the certificates. This is not a lawful object. In all the multitude of decisions, either in this country or any other jurisdiction where the doctrines of the common law and equity have been recognized and prevail, has such an object of a trust ever appeared? Can a trust have such an object? We believe not. Is it not contrary to public policy thus to encourage litigation?

Virginia herself declined to bring any suit against West Virginia, and for the very valid reason that, as alleged by her, she has already adjusted her equitable proportion thereof and could have no interest in such a suit. She also declined to bring this suit, except at the request of the holders of these certificates and only on the condition that they should be turned over to the debt commission *for that purpose*, and that *the beneficiaries would bear all the expenses of the litigation, even to the payment of the compensation and expenses of her own debt commission.*

Is this suit, therefore, one brought by Virginia in her capacity as a trustee? That is, does she occupy the attitude before this Court of a lawful trustee acting under an express trust, bringing a suit to enforce a trust having a valid object and purpose? This question certainly carries its own answer in the negative.

But to recur to the proposition that a trustee of a valid trust will not be permitted to bring suit touching his trust property unless the beneficiaries are also before the court, reliance is had upon the following authorities:

Story Eq. Pl. (9th Ed.), sec. 207.
Fish v. *Howland*, 1 Paige Ch. (N. Y.) 20.
Reed v. *Reed*, 16 N. J. Eq. 248.
Monday v. *Vance*, 11 Tex. Civ. App. 374 (32 S. W. 559).
Ebell v. *Bursinger*, 70 Tex. 120 (8 S. W. 77).

In *Ebell* v. *Bursinger*, cited above, the following appears in the opinion of the court:

> "Two questions are presented by the assignment: *First*, was the *cestui que* trust a necessary party to the suit? and, *second*, can the objection for want of a necessary party be taken by motion in the court below after default or upon appeal? As to the first question,

the general rule is well established that, in suits by or against the trustee for the recovery of the trust property, the beneficiary is a necessary party. *Boles* v. *Linthicum*, 48 Tex. 224; *Huffman* v. *Cartwright*, 44 Tex. 296; *Hall* v. *Harris*, 11 Tex. 300; *Holland* v. *Baker*, 3 Hare 72; *Woodward* v. *Wood*, 19 Ala. 213; *Van Doren* v. *Robinson*, 16 N. J. Eq. 256; *Richards* v. *Richards*, 9 Gray 313; *Ward* v. *Hollins*, 14 Md. 158; 1 Daniell Ch. Pr. (5th Ed.) 220, and note; Story Eq. Pl. §207; 2 Perry, Trusts, §873."

It is admitted that to this rule there are some exceptions. Thus, if the trustee holds the title to the property to manage and dispose of it and to do all other things to promote the purposes of the trust, he may represent the beneficiaries in a suit, and thus dispense with them as parties.

Kerrison v. *Stewart*, 93 U. S. 155 (23 L. Ed. 843).

So, another illustration is found in the case of trustees in a mortgage to secure a series of negotiable bonds upon the property of railroad companies.

Shaw v. *Railroad Co.*, 5 Gray 162.

Or where the beneficiaries are so numerous that it would be inconvenient to make them parties.

Story Eq. Pl., sec. 207*a*.

But it will be borne in mind that these principles are applicable only to valid trusts, to express trusts having a lawful object.

Furthermore, these certificates were not issued by West Virginia. They were issued by Virginia without the consent of West Virginia. West Virginia never has recognized their legality, or Virginia's wrongdoing in issuing them. And these certificates are not held by the State of Virginia, but by seven members of a commission created by a joint resolution of the General Assembly of Virginia, who as such commission are authorized and directed to negotiate with the State of West Virginia a settlement and adjustment of the public debt of the original State of Virginia proper to be borne by West Virginia. This joint resolution was approved March 6, 1894, and by an act of March 6, 1900, this commission was to receive and take upon deposit the cer-

tificates or to have the same otherwise placed or held on deposit subject to their control, upon an agreement and contract on the part of the holders of said certificates that if said commission would secure a settlement with West Virginia with respect to said certificates the holders would accept the amount realized upon such settlement from West Virginia "as a full settlement of all the claims thereunder." (R. pp. 47-51.)

Thus, it will be seen that this commission as an independent body holds these certificates by contract with the owners thereof that they will negotiate a settlement with West Virginia in regard to the matter. the State of *Virginia disclaiming in the joint resolution any liability on account of these certificates;* and likewise disclaimed such liability in the act of March 6, 1900, giving this commission power to take into its possession and control the certificates and to negotiate a settlement thereof with West Virginia.

The Principles of Law Governing Suits Between Private Persons Are Applied to Controversies Between States.

The principles of equity applicable in cases between individuals must necessarily be applied in the settlement of controversies between states when these controversies have been brought into court for settlement. The authorities are so numerous upon this proposition and the doctrine seems so well settled, that it scarcely seems necessary to cite them here; yet for the convenience of the court we cite a few of the many authorities bearing on this matter.

In considering the question of the rights of the State of Virginia in this suit, it must be constantly borne in mind that her rights as a state, when she becomes a suitor, are no greater or different from those of a private person. The same rules govern in such case as govern in suits between individuals.

In *State* v. *Cloudt*, ____ Tex. Civ. App. ____ (84 S. W. 415), which was an action brought by the state to recover taxes due the plaintiff on a section of land, the court says:

> "When a state appears as a party to a suit, she voluntarily casts off the robes of her sovereignty, and

> stands before the bar of a court of her own creation in the same attitude as an individual litigant; and her rights are determined and fixed by the same principles of law and equity, and a judgment for or against her must be given the same effect as would have been given it had it been rendered in a case between private individuals."

In *State ex rel. Taylor* v. *Lord*, 28 Or. 489 (31 L. R. A. 473), which was an action by the State to enjoin the defendants from executing the provisions of a statute relative to the location and erection of a branch insane asylum, the court, speaking of what it had decided on a former appeal of that case, reported in 26 Or. 205, said:

> "When this case was here before (26 Or. 205, 25 L. R. A. 862) we held that a private individual could not have public officers enjoined from using public funds, unless it could be shown that some civil or property rights were being invaded, or, in other words, that the individual was going to get hurt by the transaction. Upon that principle it was decided that he should be required to show that the location and building of the branch asylum in eastern Oregon would be attended with greater cost and expense than if constructed at the capital, thereby increasing the burden of taxation which would be imposed upon him, with others, whose duty it is to contribute to the support of the government. It was also held that the state, suing in its corporate capacity, for the protection of its property rights, stood in no different or better position in this regard than an individual. This doctrine is supported by high authority. Allen, J., in *People* v. *Canal Board*, 55 N. Y. 395, says: 'When the state as plaintiff invokes the aid of a court of equity, it is not exempt from the rules applicable to ordinary suitors: that is, it must establish a case of equitable cognizance, and a right to the particular relief demanded.' And as is said by the same eminent jurist in *People* v. *Ingersoll*, 58 N. Y. 14 (17 Am. Rep. 178): 'A distinction is to be observed between actions by the people or the state, in right of the prerogative incident to sovereignty, and those founded upon some pecuniary interest or proprietary right. The latter are governed by the ordinary rules of law by which rights are deter-

> mined between individuals. To the same effect is the doctrine announced in *People* v. *Fields*, 58 N. Y. 514. See also 2 High, Inj., §1327. So that we then concluded the plaintiff herein occupied no better or superior position, from a legal standpoint, for enforcing the remedy sought to be invoked, than the plaintiff in *Sherman* v. *Bellows*, 24 Or. 553. From this position we see no sufficient reason for receding, as we believe it to be sound in law, and supported upon reason and authority."

The first point of the syllabus in the case of *State ex rel Smyth, Atty. Gen.*, v. *Kennedy*, 60 Neb. 300 (83 N. W. 87), is as follows:

> "When a state invokes the judgment of a court for any purpose, it lays aside its sovereignty, and consents to be bound by the decision of the court, whether such decision be favorable or adverse."

To the same effect are the following cases:

> *Green* v. *State*, 73 Cal. 29 (14 Pac. 610).
> *Harris* v. *State*, 9 S. D. 453 (69 N. W. 825).
> *State* v. *Paxson*, 119 Ga. 730 (46 S. E. 872, 873).

This Court Follows the Former Practice of the Courts of King's Bench and of Chancery, in England, in Cases of Original Jurisdiction in Equity.

The rules of this Court governing controversies between States do not differ materially from those where individuals are parties. The principles of law are the same. This Court, in *California* v. *Southern Pacific Company*, 157 U. S. 229 (39 L. Ed. 683), the late Chief Justice Fuller delivering the opinion, said at page 248:

> "By the third of our general rules it is provided: 'This Court considers the former practice of the courts of King's Bench and of chancery, in England, as affording outlines for the practice of this Court; and will from time to time make such alterations therein as circumstances may render necessary.' This rule is, with the exception of some slight verbal alterations and the addition of the word 'former' before the word 'practice' in the first line, the same as original general rule seven, adopted August 8, 1791. 1 Cranch, XVII; 2 Dall.

411. And in cases of original jurisdiction it has been determined that this Court will frame its proceedings according to those which had been adopted in the English courts in analogous cases, and that the rules of court in chancery should govern in conducting the case to a final issue (*Rhode Island* v. *Massachusetts*, 73 U. S. 12 Pet. 657; 38 U. S. 13 Pet. 23; 39 U. S. 14 Pet. 210; 40 U. S. 15 Pet. 233; *Georgia* v. *Grant*, 73 U S. 6 Wall. 241) although the court is not bound to follow this practice when it would embarrass the case by unnecessary technicalities or defeat the purposes of justice. *Florida* v. *Georgia*, 58 U. S. 17 How. 478."

The Court further says in the course of the opinion:

"We have no hesitation in holding that when an original cause is pending in the court to be disposed of here in the first instance and in the exercise of an exceptional jurisdiction, it does not comport with the gravity and finality which should characterize such an adjudication to proceed in the absence of parties whose rights would be in effect determined, even though they might not be technically bound in subsequent litigation in some other tribunal."

All through the foregoing case this Court keeps constantly before it the well settled doctrine of equity jurisprudence and practice in deciding original cases brought before it on the chancery side.

Many times this Court has been called upon to decide controversies between states. Examination will disclose that in each case there was some well marked ground as the basis of a controversy. We call the Court's attention to some illustrative cases of the principle that this Court, in determining the rights of parties in an equity cause of original jurisdiction, has always been governed by the doctrines obtaining in the English court of chancery.

In the case of *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 13 How. 519 (14 L. Ed. 249), the Court said:

"The rules of the High Court of Chancery of England have been adopted by the courts of the United States, and there is no limitation to the exercise of a chancery jurisdiction by these courts except the value

of the matter in controversy, the residence or character of the parties, or a claim which arises under the laws of the United States and which has been decided against it in a state court.

In exercising this jurisdiction the courts of the Union are not limited by the chancery system adopted by any state, and they exercise their functions in a state where no courts of chancery have been established. The usage of the High Court of Chancery in England, whenever the jurisdiction is exercised, govern the proceedings. This may be said to be the common law of chancery, and since the organization of the government it has been observed."

See also the following cases:

Rhode Island v. *Mass.*, 15 Pet. 233 (10 L. Ed. 721).

Florida v. *Georgia*, 58 U .S. 478 (15 L. Ed. 181).

This Suit Discloses no Controversy Between the Two States, as to the Unfunded Debt Represented by Certificates Owned by Individuals.

The agreement between the holders of the certificates and the Virginia Debt Commission provides for their return to said holders in case they are not collected (R., pp. 94, 98), and if collected a method is provided for the distribution of the proceeds of such collection among the owners of the certificates. (R., pp. 68, 69, 98.)

So it is apparent upon the record of this suit that the great Commonwealth of Virginia as a State has not an iota of interest in this suit or in its result. *She does not even incur one cent of costs should it be decided against her.* She was not to bring this suit except at the request of the holders of these certificates (R., p. 49), and not even then until she was first indemnified against any expense to her incurred by the bringing and carrying on of such suit. (R., p. 49.) If there be any controversy in reference to said debt, it is between the holders of said certificates and West Virginia, and not between Virginia and West Virginia.

The conditions upon which this suit was instituted were very much like those prescribed by the act of the legislature of New Hampshire, section 2 of which provided as follows:

"Upon each deposit being made, it shall be the duty of the attorney general to examine such claim and the evidence thereof, and if, in his opinion, there is a valid claim which shall be just and equitable to enforce, vested by such assignment in the State of New Hampshire, he, the attorney general, shall, upon the assignor of such claim depositing with him such sum as he, the said attorney general, shall deem necessary to cover the expenses and disbursements incident to or which may become incident to the collection of said claim, bring such suits, actions or proceedings in the name of the state of New Hampshire, in the Supreme Court of the United States, as he, the said attorney general, shall deem necessary for the recovery of the money due upon such claim; and it shall be the duty of the said attorney general to prosecute such action or actions to final judgment, and to take such other steps as may be necessary after judgment, for the collection of said claim, and to carry such judgment into effect, or, with the consent of the assignor, to compromise, adjust and settle such claim before or after judgment."

New Hampshire v. *Louisiana*, 108 U. S. 76 (27 L. Ed. 656, 659).

Section 3 of this act provided:

"Nothing in this act shall authorize the expenditure of any money belonging to this state, but the expenses of said proceedings shall be paid by the assignor of such claim; and the assignor of such claim may associate with the attorney general in the prosecution thereof, in the name of the state of New Hampshire, such other counsel as the said assignor may deem necessary, but the state shall not be liable for the fees of such counsel or any part thereof."

New Hampshire v. *Louisiana*, *supra*.

The State of New Hampshire became the holder, as assignee of one of its citizens, of a part of the bonded obligation of Louisiana for the purpose of requiring payment thereof from Louisiana, and for the purpose of coercing payment suit was brought by New Hampshire against Louisiana.

This Court in its opinion says:

"No one can look at the pleadings and testimony in these cases, without being satisfied, beyond all doubt, that they were, in legal effect, commenced, and are now prosecuted, solely by the owners of the bonds and coupons. In New Hampshire, before the attorney general is authorized to begin a suit, the owner of the bond must deposit with him a sum of money sufficient to pay all costs and expenses. No compromise can be effected except with the consent of the owner of the claim. No money of the state can be expended in the proceeding, but all expenses must be borne by the owner, who may associate with the attorney general such counsel as he chooses, the state being in no way responsible for fees. All moneys collected are to be kept by the attorney general, as special trustee, separate and apart from the other moneys of the state, and paid over by him to the owners of the claim, after deducting all expenses incurred not before that time paid by the owner. The bill, although signed by the attorney general, is also signed and was evidently drawn by the same counsel who prosecuted the suits for the bondholders in Louisiana, and it is manifested in many ways that both the state and the attorney general are only nominal actors in the proceeding. The bond owner, whoever he may be, was the promoter and is the manager of the suit. He pays the expenses, is the only one authorized to conclude a compromise, and if any money is ever collected, it must be paid to him without even passing through the form of getting into the treasury of the state. * * * * * *

"It is contended, however, that, notwithstanding the prohibition of the amendment, the state may prosecute the suits, because, as the sovereign and trustee of its citizens, a state is 'clothed with the right and faculty of making an imperative demand upon another independent state for the payment of debts which it owes to citizens of the former.' There is no doubt but one nation may, if it sees fit, demand of another nation the payment of a debt owing by the latter to a citizen of the former. Such power is well recognized as an incident of national sovereignty, but it involves also the national powers of levying war and making treaties.

As was said in *U. S.* v. *Diekelman*, 92 U. S. 524, if a sovereign assumes the responsibility of presenting the claim of one of his subjects against another sovereign, the prosecution will be as one nation proceeds against another, not by suit in the courts, as of right, but by diplomatic negotiation, or, if need be, by war.

"All the rights of the states as independent nations were surrendered to the United States. The states are not nations, either as between themselves or toward foreign nations. They are sovereign within their spheres, but their sovereignty stops short of nationality. Their political *status* at home and abroad is that of states in the United States. They can neither make war nor peace without the consent of the national government. Neither can they, except with like consent, enter into any agreement or compact with another state. Art. 1, sec. 10, cl. 3."

Discussing the effect of the Eleventh Amendment, taking away the right of an individual to sue a state of the Union, the Court says:

"The evident purpose of the amendment, so promptly proposed and finally adopted, was to prohibit all suits against a state by or for citizens of other states or aliens, without the consent of the state to be sued and, in our opinion, one state cannot create a controversy with another state, within the meaning of that term as used in the judicial clauses of the constitution, by assuming the prosecution of debts owing by the other state to its citizens."

An examination of the pleadings and exhibits filed with them unquestionably discloses that the real parties to this suit are the holders of the Virginia deferred certificates, representing West Virginia's alleged proportion of the old debt, on the one side, and the state of West Virginia on the other, and hence cannot be maintained in this Court.

In *Ex parte Ayers*, 123 U. S. 443 (31 L. Ed. 216), this court held that—

"Whether a suit is within the prohibition of the Eleventh Amendment is not always determined by

> refence to the nominal parties on the record, but by a consideration of the nature of the case."

The principle here announced is considered in the opinion at some length, from which we take this excerpt:

> "The very question was presented in the cases of *New Hampshire* v. *Louisiana*, and *New York* v. *Louisiana*, 108 U. S. 76. In each of those cases there was upon the face of the record nominally a controversy between two states, which, according to the terms of the Constitution, was subject to the judicial power of the United States. So far as could be determined by reference to the parties named in the record, the suits were within the jurisdiction of this Court; but, on an examination of the cases as stated in the pleadings, it appeared that the state, which was plaintiff, was suing, not for its own use and interest, but for the use and on behalf of certain individual citizens thereof who had transferred their claims to the state for the purpose of suit. It was accordingly unanimously held by this Court, that it would look behind and through the nominal parties on the record, to ascertain who were the real parties to the suit."

In order to create a "controversy between two states," there must be an actual controversy between them in which both parties have an interest. The word "controversy" has been the subject of frequent consideration by the federal courts, and especially as it relates to the removal of causes from a state to a federal court. In all the cases in which it has been the subject of judicial consideration it is treated as meaning an *actual* controversy in which both parties have an interest.

Sheldon v. *Keokuk N. L. P. Co.*, 1 Fed. 789.

Every case that has ever come before this Court involving a controversy between states, has been one affecting boundaries and jurisdiction over lands, or cases directly affecting the property rights and interest of a state.

This is the conclusion deduced by Mr. Justice Shiras from an exhaustive examination of the cases bearing on the subject in *Missouri* v *Illinois*, 180 U. S. 208 (45 Law Ed. 497), and a review of the cases

by Mr. Justice Brewer in *South Dakota* v. *North Carolina*, 192 U. S. 286 (48 Law Ed. 448).

The cases illustrating the soundness of this deduction may be thus classified:

New Jersey v. *New York*, 5 Pet. 285 (8 Law Ed. 127); *Rhode Island* v. *Massachusetts*, 12 Pet. 657 (7 Law Ed. 1233); *Florida* v. *Georgia*, 11 How. 293 (13 Law Ed. 702); *Virginia* v. *West Virginia*, 11 Wall. 39 (20 Law Ed. 67); *Missouri* v. *Iowa*, 7 How. 660 (12 Law Ed. 861); *Florida* v. *Georgia*, 17 How. 478 (15 Law Ed. 181); *Alabama* v. *Georgia*, 23 How. 505 (16 Law Ed. 556); *Louisiana* v. *Mississippi*, 202 U. S. 1 (50 Law Ed. 913); *Missouri* v. *Kentucky*, 11 Wall. 395 (20 Law Ed. 116), and *Maryland* v. *West Virginia*, 217 U. S. 1 (54 L. Ed. ....), recently decided by this Court, were cases relating to the boundary lines of the respective states bringing the suits.

In *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 18 (14 L. Ed. 249), it appeared that the state had constructed lines of transportation connecting with the Ohio river, a navigable stream, from the tolls upon which the state derived a revenue, and the defendant, a corporation of another state, had constructed a bridge across said river, by reason of which the navigation was obstructed and the revenues of the state decreased. The court sustained its jurisdiction in this case because of the injury resulting directly to the State of Pennsylvania.

The case of *Missouri* v. *Illinois*, 180 U. S. 208 (45 Law Ed. 497), involved a threatened injury by the State of Illinois to the health and prosperity of the inhabitants of Missouri and an injury to that portion of the bed or soil of the Mississippi River which lies within the territory of Missouri.

In *South Dakota* v. *North Carolina*, 192 U. S. 286 (48 Law Ed. 448), the title to the bonds sued on was vested absolutely in the State of South Dakota, and they were not held in a representative capacity, as in the case of *New Hampshire* v. *Louisiana*, 108 U. S. 76 (27 Law Ed. 656), as they were given outright unconditionally to the plaintiff state in that case.

In *Florida* v. *Georgia*, 17 How. 478 (15 Law Ed. 181), the United States was permitted to intervene because she was the proprietor of a large part of the land situated within the disputed boundary, ceded by Spain as a part of Florida. The State of Florida was also deeply interested as a proprietor.

In the exercise of their jurisdiction, the federal courts have often felt called upon to decide whether or not the state had such an interest in the subject matter of litigation as to uphold or defeat the jurisdiction of the court.

To determine in whom the real interest resides or inheres, the court will look beyond the nominal parties. *Missouri, K. & T. R. Co.* v. *Hickman*, 163 U. S. 53 (46 Law Ed. 78). From the record in the cause it will ascertain whether or not the judgment or decree will operate upon the pecuniary or material interests of the state, or upon the interests of individuals only. In the case last cited this Court in its opinion says: "Was the state the real party plaintiff?" In answering this question, the court discusses the practice after the adoption of the Eleventh Amendment, and shows that in determining whether or not a state is the real party plaintiff or defendant, it will go behind the mere allegation as to the nominal party; and, applying this principle, says:

> "It may fairly be held that the state is such real party when the relief sought is that which inures to it alone, and in its favor the judgment or decree, if for the plaintiff, will effectively operate. Such a case was *Ferguson* v. *Ross*, 3 L. R. A. 322, 38 Fed. 161. There an action was brought in the name of Ferguson, a shore inspector, against Ross and others, to recover a penalty. The statute of New York authorized the suit to be prosecuted in the name of the inspector, but all the moneys recovered were payable into the treasury of the state, and it was held by the circuit court for the eastern district of New York that the action was one in which the real party plaintiff was the state. It was for its sole benefit that the action was brought, and it alone was to be benefited by the recovery."

The case from which we have just quoted was a suit brought in a

state court of Missouri against certain individuals constituting the State Board of Railroad and Warehouse Commissioners of the state, and in which the state court had refused to order a removal to a federal court. The question involved was, on the motion for removal, whether or not the state was the real party in interest. The Missouri court held that it was, and the state not being a citizen within the meaning of the removal act, of course there could be no removal, if indeed the state were the real party in interest, and not the board of commissioners.

In considering the question whether or not the state was the real party in interest, the Court says:

> "It is true that the state has a governmental interest in the welfare of all citizens, in compelling obedience to the legal orders of all its officials, and in securing compliance with all its laws. But such general governmental interest is not that which makes the state, as an organized political community, a party in interest in the litigation, for if that were so the state would be a party in interest in all litigation: because the purpose of all litigation is to preserve and enforce rights and secure compliance with the law of the state, either statute or common. The interest must be one in the state as an artificial person."

As stated by this Court, the supreme court of Missouri held that the state had a direct pecuniary interest in the result of the litigation, by virtue, first, of its possible liability for costs, and, secondly, because, were the litigation pushed to the extreme, there might be penalties imposed which would, when collected, pass into the school fund of the state. This Court holding that these considerations, actuating the supreme court of Missouri to decide as it did, were not sufficient to make the state the real party in interest, and says:

> "We are of opinion, therefore, that the party named in the record as plaintiff is the real party plaintiff, and that the voluntary assumption by the state of the costs in some contingencies of the litigation, or the indirect and remote pecuniary results which may follow from a disobedience of the orders of the court, do not make it

> the party to whom alone the relief sought inures, and in whose favor a decree for the plaintiff will effectively operate."

So, it is by invoking this principle that the court will look beyond the mere allegations of the pleadings, with reference to parties, and ascertain and determine, for the purposes of its jurisdiction, who are the real parties in interest. *Ex parte Ayers*, 123 U. S. 443 (31 Law Ed. 216).

In *Louisiana* v. *Jumel*, 107 U. S. 711 (27 Law Ed. 448), though nominally a suit between individuals, the Court held that the real party to be affected by the action of the Court was the state, because its judgment must operate against the state itself. And may we not say, *converso*, that if the judgment or decree of the Court does not operate in favor of the state it is not, nor can it be, a party plaintiff?

In *Antoni* v. *Greenhow*, 107 U. S. 769 (27 Law Ed. 468), it was held that a suit to compel the officers of a state to do the acts which constitute a performance of its contracts by the state is a suit against the state itself, although the state is not nominally a party to the suit.

The cases could be multiplied illustrative of the principle that the court will and must look to the effect of its judgment or decree in determining the question as to whether the state is the real party whose rights or interests will thereby be affected so as to make it a plaintiff or a defendant in the suit, as the case may be.

Alabama v. *Burr*, 115 U. S. 413 (29 Law Ed. 435), was a suit at law brought in this Court by the State of Alabama against citizens of the States of Massachusetts and New Jersey. The defendants demurred generally to the declaration. The demurrer presented the question whether the facts in the declaration were sufficient to support the action. The court in considering the demurrer concluded that the state in her declaration failed to show any such acts affecting the interests of the plaintiff as authorized her to maintain the suit. The Court in its opinion said that the injury to innocent stockholders by the wrongful acts of the company and the defendants was direct and immediate, because their property was taken and fraudulently

converted to the use of the defendants or other wrongdoers. "To the state, however," said this Court, "the injury, if any, was both indirect and remote, because the state had no direct claim upon, or interest in, the property which was misappropriated." Therefore, the Court, by a unanimous opinion, sustained the demurrer and dismissed the action.

New York v. *Connecticut*, 4 Dall. 3 (1 Law Ed. 715), was an application by the plaintiff for an injunction to stay proceedings in certain ejectment causes brought in the State of Connecticut. The prayer for injunction was argued with great force and ability. The plaintiff was not a party to the ejectment suits, but it was contended that New York was interested to preserve peace and good order, to protect individuals, to indemnify those who trusted to her faith and even to prevent dismemberment of her territory: that this political and moral obligation and regard for her public improvements and fiscal operations, created an interest of the highest character in the government of New York, and one entitling her to maintain this bill for the purpose of its prayer. But the Court held that the State of New York was not a party to the suits below, nor interested in the decision of those suits, and that the injunction ought not to issue. Thereupon the attorney general of the State of New York said to the Court: "In every grant by New York, there is a reservation of gold and silver mines, and of five acres per cent for roads The bill might, besides, be amended, by averring the state to be interested in a residuum of the land, if that would be sufficient to sustain the prayer for an injunction." Mr. Justice Washington replied: "The amendment would not satisfy me; for my opinion is founded upon the fact, that New York is not interested in the suits below." The actions of ejectment were brought by grantees of Connecticut against grantees of New York to obtain possession of the land.

An examination of all the cases decided by the federal and state courts discloses no instance wherein the state has been permitted to maintain an action or suit, the judgment or decree of which would not inure to the state. In other words, the courts have placed the right of suit on the part of a state upon the same principle with reference to interest, that is always applied in suits by individuals.

An Accounting Cannot Be Maintained by Virginia in This Suit.

One part of the prayer of the bill in this case is

> "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee" (R., pp. 16, 17).

Whether this bill may be maintained for an accounting as to matters claimed in her own right we shall presently consider; but that it cannot be maintained in her representative capacity as a trustee seems to us quite clear. The suit in her capacity as trustee relates to the unfunded part of the debt in the hands of third parties, from which Virginia has been released, and which is alleged by Virginia to be one-third of the original debt existing on January 1, 1861.

It is a cardinal principle that no bill can be sustained for an accounting when the plaintiff in its own right is not interested in the result of such accounting. Under no circumstances can Virginia be interested in any account that may be taken as to the unfunded part of said debt which is claimed by Virginia and her creditors to be West Virginia's equitable proportion. There are several grounds for this lack of interest:

First, because Virginia and her creditors agreed to the amount which Virginia should assume as her part.

Second, because her bill and its exhibits show she will receive no part of the proceeds of the unfunded debt if West Virginia should pay any part thereof, but that all of it belongs and will go to the holders of said certificates, which represent such unfunded part.

Third, because West Virginia's liability, if any exists, is direct to the creditors and not to Virginia, as heretofore shown by the Wheeling Ordinance, the West Virginia Constitution of 1862 and the acts of the General Assembly of Virginia.

To sustain this suit on the ground of an accounting would violate one of the cardinal principles underlying this branch of the jurisdic-

tion of a court of equity. It is elementary law that the person seeking an account must have an interest of some sort to promote as a result of the accounting. If there be no such interest, the bill can not be maintained.

Nicholas v. *Anderson*, 8 Wheat. 365 (5 Law Ed. 637).
Ball v. *Carew*, 13 Pick. 28.
McCabe's Appeal, 22 Pa. St. 427.

In *Nicholas* v. *Anderson, supra,* a bill in equity was filed by and in the name of the attorney general of Virginia, under the authority of a special act of the legislature of that state, passed on October 15, 1813, for the better locating and surveying of the lands given to the officers and soldiers on continental and state establishments. The act provided that all persons holding officers' and soldiers' warrants by assignment should pay down to the principal surveyor, at the time of the delivery of such warrants, one dollar for every hundred acres thereof, exclusive of the legal surveyor's fees, toward raising a fund for the purpose of paying all contingent expenses, etc. The act further provided that the deputations of officers should appoint two principal surveyors, who were accordingly appointed, one of whom was the defendant, and who immediately took upon himself the duties of the office, and exacted, in virtue of the act of 1783, from all the holders of the military warrants, the one dollar per one hundred acres as provided in the act. The bill charged that the defendant had received a large sum of money in this way and had refused to account for the same to the complainant and the agents and attorneys appointed for this purpose under the act of 1813. It also charged a misapplication of the money; and that the deputations of officers, under the act of 1783, did appoint superintendents, etc., but that most of them had long since died, and that the surveyors had declined to act for many years. The bill proceeded to state the substance of the act of 1813, which authorized one Colonel John Watts, the surviving superintendent, agent to settle with defendant, and to receive the moneys remaining unappropriated in his hands, and, if not paid, to sue for and recover the same in the name of the attorney general of Virginia; and then charged that the

defendant refused to account with Watts, and concluded with a prayer for an account, discovery and general relief.

To this bill the defendant demurred: and the circuit court of Kentucky, upon argument, sustained the demurrer and dismissed the bill. The case then came to this Court by appeal.

Mr. Justice Story, who delivered the opinion of the Court, after stating the case in substance as here stated, said:

> "The question in this case is, whether the demurrer was well taken. In support of the decree, two points are stated at the bar: 1st, that the plaintiff has not shown any interest in the subject, entitling the State of Virginia to maintain the bill: 2nd, that if there was originally any resulting authority to the state to compel an account, that power, by the erection of Kentucky into an independent state, devolved on the latter state, the defendant having been, and still continuing to be, a citizen of that state: and that it was not competent for the legislature of Virginia, in 1813, to pass a law which should bind a citizen of Kentucky to account for official duties which were not performed in virtue of any appointment made by the government of Virginia.
>
> "It is unnecessary to consider the last objection, because we are of opinion that the first is fatal to the bill. The act of 1783, for the better locating and surveying the lands given to the officers and soldiers on continental and state establishments, authorizes the deputations of officers, therein named, to appoint superintendents, in behalf of their respective lines, for the purpose of surveying the lands; and also to appoint two principal surveyors, and contract with them for their fees, etc. The third section of the act then provides, 'that every person or persons holding officers' or soldiers' warrants, by assignment, shall pay down to the principal surveyors, at the time of the delivering such warrant or warrants, one dollar, for every hundred acres thereof, exclusive of the legal surveyor's fees, toward raising a fund for the purpose of supporting all contingent expenses; or, at the option of such holder or holders, the same may be held up until warrants of all the original grantees have been surveyed; the said

surveyors to account for all the money so received to such person or persons as the said deputations may direct.' This is the clause upon which the bill is founded. And it is apparent, that in terms it provides for an accountability, not to the state, but to persons to be appointed by the deputations of officers; to those for whose benefit the fund was raised, and was to be applied, and not to the state, which had no interest whatsoever in it."

We are now brought to the second ground of recovery stated in the bill, which relates to

That Part of the Debt Not Held by Third Persons, But Which Virginia Avers She Holds in her Literary and Sinking Funds, in Her Own Right and Not as Trustee.

As to this part of the bill, we refer the Court to the answer: and, so far as pertinent to this phase of the case, the answer of West Virginia is as follows:

"This respondent denies that there was in addition to the above mentioned liability to the general public any other indebtedness evidenced by bonds held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the said State of Virginia as created under her laws, amounting, the former to $1,462,993, and the latter to $1,543,669.05, or to any other sums, as of the same date, as in the said bill is alleged, because this defendant avers that the commissioners of these two funds were and are mere state agencies, and public officials of the state, created by said State of Virginia to have the custody of and to preserve certain of her financial resources and obligations to be made available for specific purposes when necessary, and which now belong exclusively to Virginia and are held for her sole and exclusive use and benefit. Respondent denies that any of the bonds or certificates so alleged to be held by the Commissioners of the Sinking Fund and the Literary Fund were ever negotiated or sold by the State of Virginia, or that the same constituted a part of the public debt of that state on the first day of January, 1861, and denies that the certificates representing

> one-third of such bonds are now a part of the said public debt; and respondent avers that the State of Virginia has long since voluntarily canceled all of said bonds and the same are no longer of any force or validity."

It will be seen that the answer of the defendant controverts the allegations that the bonds held by the Commissioners of the Sinking and the Literary Funds of the State of Virginia constitute any part of the debt of Virginia within the meaning and contemplation of the said Ordinance of 1861, or of the constitution of West Virginia of 1862, and denies that such bonds so held constitute, or ever constituted, a part of the public debt of Virginia existing on the first day of January, 1861.

The commissioners of these two funds are mere state agencies or instrumentalities created by the Commonwealth of Virginia, to care for and preserve certain of her own financial resources, available for specific purposes, and which belong exclusively to Virginia. A few of the old bonds of Virginia issued prior to 1861 were by her converted into immediately available money by being deposited with these commissioners, and were therefore never sold and the title never transferred from her so as to create a liability against the state herself, and hence at no time was there ever any right of action or liability on account of these old bonds so deposited with the said commissioners which could properly be asserted against the old state. In other words, these few old bonds deposited with these commissioners did not create any debt against the State of Virginia. At no time or under any circumstances could these bonds have been made or become a legitimate subject matter of controversy or suit against the Commonwealth of Virginia. To make them such, would present the grotesque spectacle of a sovereign state suing herself for an accounting and payment to herself of her own funds, already under her absolute control.

Again: There can be no liability in favor of the Commonwealth of Virginia against the State of West Virginia on these bonds so held. The moneys in the sinking fund which purchased these bonds previous to the first day of January, 1861, were raised by the revenues of the entire state before the division, and they were therefore the

property of such entire state; and being owned by the state itself, the debtor, they were a dead asset both as to that portion of the state which passed into the new state and the State of Virginia as she remained, and Virginia claiming to be such owner has no more right to institute and prosecute a suit thereon against West Virginia than would West Virginia if a similar bond had fallen into her possession. If there is any liability in respect to said bonds it is a liability of the State of Virginia to the State of West Virginia for a portion thereof.

Then, if this were the status of Virginia as to the old bonds held by the commissioners of her Sinking Fund and Literary Fund prior to 1861, and which remained unchanged at the time of the formation of the State of West Virginia, could their refunding and the issuance of the deferred certificates as to the one-third of them, alter this status with reference to her right of suit thereon, or as to any part of them? The propounding of the question must evoke a negative answer.

The idea of debt necessarily implies an obligation payable by the debtor to some third party—a creditor existing independently of the debtor, and over whom, as to the obligation asserted, the debtor can have no control, and in the use or disposition of which the debtor has no right or interest whatever.

Upon what principle or ground or reason can Virginia claim that the old bonds placed by her with her commissioners of the Sinking and Literary Funds, were or are now any part of her *ante bellum debt?* We are wholly unable to perceive any. In fact, there is none.

If it be contended that the commissioners of the Sinking and Literary Funds are distinct entities from the state, persons clothed with an existence distinct and separate from the commonwealth, with the right to assert a liability against Virginia on account of these old bonds acquired by them prior to the erection of the territory contained within the boundaries of West Virginia into a state, then this Court cannot entertain jurisdiction of this suit, because these commissioners are necessary parties thereto; and the commission, having been created and existing by vrtue of the laws of Virginia, must be a citizen of Virginia, and if a distinct entity, it must necessarily be a corporation having its domicile in Virginia, where it was created.

Thus, it is seen that, in any aspect of the case, this Court has no jurisdiction of this suit so far as the certificates belonging to these commissioners are concerned. This feature itself of this cause can constitute no ground of controversy between the parties to the bill.

In the case of *Roe* v. *Marchand,* 86 Va. 107 (9 S. E. 995), we find the court saying:

> "A debt is an obligation due from one person to another, payment of which the latter has a legal right to enforce."

See also the case of *Harris* v. *Larsen,* 24 Utah 139, 1414 (66 Pac. 782).

The learned Master to whom this cause was referred had before him the question whether or not the bonds held by Virginia through the agency of her Literary and Sinking Funds constituted any part of the debt existing on the first day of January, 1861.

After careful consideration he deduces the following conclusion:

> "I am satisfied that the great weight of reason and authority is against the contention of the plaintiff, and I therefore find that the Sinking Fund with interest, and the Literary Fund with interest, within the meaning of the decree, were not a part of the public debt of the Commonwealth of Virginia on the first day of January, 1861" (Rep., p. 28).

True, Virginia has excepted to this part of the report; but the reasons assigned by the Master for his conclusion are so cogent, and the authorities cited and relied on by him in his report so conclusive, that further consideration of the question is not necessary. Therefore, we contend that Virginia cannot maintain this suit because of any claim by her on account of the certificates held by the Literary and Sinking Funds.

Virginia Is Not Entitled to Contribution from West Virginia.

The third ground stated in the bill upon which Virginia seeks relief alleges that Virginia has paid off or retired, of principal and

interest of said debt, a sum considerably in excess of $25,000,000, which she owns in her own right, and on account of which she avers that she has

> "a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor" (R., p. 13, Par. XVI of bill).

By reference to exhibit 3 of the bill (R., pp. 26, 38, and especially pp. 27-32), it will be seen that Virginia, by this act of her legislature, makes a full and detailed statement of the whole debt existing on January 1, 1861, stating it with reference to four distinct periods, to-wit: as of January 1, 1861; July 1, 1863; July 1, 1871; and July 1, 1882. Ascertaining by this statement the entire debt as of January 1, 1861, she by this act fixes as her just proportion thereof two-thirds of the entire debt. This statement purports to show the accrued interest and the various payments made by Virginia on account of said debt and its interest. It shows that she credits herself with every dollar paid by her on account of this debt, and deducts the aggregate of such payments from her assumed just proportion of two-thirds of said debt. By repeated declarations she avers this to be her just proportion, at the same time declaring the residue, one third, to be West Virginia's just proportion of said debt. It further shows that no part of any sum paid by Virginia on said debt was ever paid on account of any part of the one-third of said debt alleged to be West Virginia's just proportion. In fact, as shown by the record Virginia has paid nothing on account of any part of said debt she claims West Virginia should pay.

The answer of West Virginia with reference to this feature of the bill is as follows:

> "For further answer to said bill respondent avers that if any sum has been paid by Virginia, even though amounting in the aggregate to $25,000,000, including principal and interest to date, calculated at the rate of 6 per centum per annum, it was paid by her on account of her admitted just and equitable proportion of said public debt created prior to January 1, 1861; and if she has any claim at all against West Virginia on account of said alleged payment, which is not admitted,

but is denied, it can only be for such amount as may be ascertained upon the basis and according to the principles embodied in section 9 of the ordinance of the Virginia convention, as hereinbefore stated. So this respondent denies that she is liable for any part of the obligations mentioned in paragraph XV and paragraph XVI of the plaintiff's bill, alleged to have been taken up and paid on account of said public debt, and denies that the said Commonwealth of Virginia has, in her own right, a 'just claim' against West Virginia for contribution on account thereof.

"Respondent, for further answer to said paragraph XVI of said bill, avers that all accounts, vouchers and other records relating to the said public debt of Virginia, showing the payments made thereon, if any, and all other facts connected therewith, are now and always have been in the exclusive possession and control of the plaintiff, and respondent has no knowledge or information concerning the alleged payment of $25,000,000, or any other sum, on account of said debt existing prior to January 1, 1861, and therefore denies that plaintiff has paid said sum of $25,000,000, or any part thereof, and demands strict proof." (R., p. 157.)

Thus the answer positively denies any payment by Virginia on account of said debt which entitles her to contribution from West Virginia, thereby placing Virginia upon proof of this feature of her bill. The record is entirely barren of any proof in support of this allegation. Virginia could not properly take proof to bring this feature of the bill in issue, by reason of her failure to file a replication to the answer. In fact, the evidence, as shown by the contents of exhibit 3 of the bill, instead of supporting the bill in this regard, proves the truth of this part of the answer.

The cardinal principle of contribution is founded in and controlled by the doctrine of equity and natural justice, whereby one of two common debtors who has paid more than his *just share* of the common debt shall be permitted to call upon the other to contribute such sum to the one who has paid it all as will equalize the burden between the two.

White v. *Banks*, 21 Fla. 705 (56 Am. Dec. 283).

Owen v. *McGhee*, 61 Ala. 440.

Golsen v. *Brand*, 75 Ill. 148.

Chaffee v. *Jones*, 36 Mass. 260.

Campbell v. *Mesier*, 4 Johns. Ch. (N. Y.) 334 (8 Am. Dec. 570).

Moore v. *Moore*, 11 N. C. 358 (15 Am. Dec. 523).

Armstrong County v. *Clarion County*, 66 Pa. St. 218 (5 Am. Rep. 368).

Screven v. *Joyner*, 1 Hill Eq. (S. C.) 252 (26 Am. Dec. 199).

Jobe v. *O'Brien*, 21 Tenn. 34.

To entitle a party to enforce contribution, the one seeking it must have discharged the entire common or joint liability.

Culmer v. *Wilson*, 13 Utah 129 (44 Pac. 833).

The Bill Multifarious.

The question whether the bill is multifarious is yet open for discussion and decision. This Court, in disposing of the demurrer in this case, says:

> "Consideration of the objections of multifariousness, misjoinder of parties and of causes of action, may properly be postponed until the final hearing of a bill filed by the Commonwealth of Virginia against the State of West Virginia, which seeks an adjudication of the amount due the former by the latter as the equitable proportion of the public debt of the original State of Virginia which was assumed by West Virginia at the time of its creation as a state."
>
> *Virginia* v. *West Virginia*, 206 U. S. 290 (51 L. Ed. 1068).

And in a subsequent opinion, in referring the cause to a master, the Court said:

> "The answers to these inquiries to be without prejudice to any question in the cause."
>
> *Virginia* v. *West Virginia*, 209 U. S. 514 (52 L. Ed. 914).

One of the grounds of the defendant's demurrer filed to the plaintiff's bill was that of multifariousness, consisting in uniting two separate and distinct demands in the same bill. One of the grounds for an accounting set out in the bill is the claim or demand which Virginia asserts *in her own right* under two acts passed by the legislature of Virginia, on the 3d of February, 1863, and the 4th of February, 1863. This part of the bill appears in paragraphs VIII. and IX. of the bill at pages 7 and 8 of the record. The first act, under which it is alleged that certain property was transferred by the Commonwealth of Virginia to the State of West Virginia, reads as follows:

> "That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed state of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state." (R., pp. 7, 8.)

By the fifth section it was enacted:

> "That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and

credits shall have been obtained since the reorganization of the state government." (R., p. 8.)

The bill then charges that the property transferred to the state of West Virginia under this act was received and enjoyed by that state, and consisted of a number of items, the value of which amounted in the aggregate to "several millions of dollars," the bank stocks alone having realized to the state about "six hundred thousand dollars." (R., p. 8.)

The second act is as follows:

> "1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the states of the United States.
>
> "2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this state to make a statement of all the moneys that up to that time have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also all moneys that up to the same time have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this state." (R., pp. 8, 9.)

And the bill alleges that the sum of one hundred and fifty thousand dollars, "together with other sums belonging to the State of Virginia," were received and collected by the State of West Virginia, after its formation. It is also alleged in said bill in clause four of paragraph XVIII., at page 14 of the record:

> "The State of West Virginia has, since her creation as a state, received from the State of Virginia real and

> personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia." (R., p. 14.)

This feature of the bill is intended to embody the demand made by the commonwealth of Virginia *in her own right,* separate and distinct from any claim or demand of the creditors of Virginia.

The other feature of the bill presents the claim of Virginia, for an accounting with West Virginia for the latter's proportion of the public debt of Virginia prior to January 1, 1861.

It is alleged in the bill that on the 20th of August, 1861, the commonwealth of Virginia, in convention assembled, at the City of Wheeling, adopted an ordinance "to provide for the formation of a new State out of the portion of the territory of this state," and then quotes section 9 of the ordinance. (R., pp. 6, 7.)

It then alleges that West Virginia was admitted into the Union on the 20th of June, 1863, under a constitution which contained the following provisions:

> "5. No debt shall be contracted by this state except to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion, or defend the state in time of war."
>
> "7. The legislature may, at any time, direct a sale of the stocks owned by the state, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the state shall not become a stockholder in any bank."
>
> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (R., p. 9.)

As is shown in the bill and elsewhere in this brief, Virginia settled with the holders of the old public debt by issuing new bonds for two-thirds of the amount thereof, which amount she declared to be her equitable proportion of such debt; and the creditors agreed thereto, and accepted the bonds. Virginia arbitrarily declared that the other one-third of the amount of her debt was the proportion for which West Virginia was liable, and for such one-third she issued certificates; and her creditors agreed thereto and accepted the certificates and released Virginia from all liability therefor. The bill then alleges:

> "By each of the acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your oratrix, should be surrendered to and held by your oratrix, who either by the express terms of the settlement provided for by said acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your oratrix to each creditor whose old Virginia bond was so surrendered to her." (R., p. 12.)

And it is also further alleged in the bill that:

> "All of the bonds and obligations and other evidence of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto." (R., pp. 12, 13.)

The several acts of the legislature of Virginia under which the debt was adjusted and the contracts made under which the certificates issued by the state have been deposited with the commission *in trust* for the purpose of bringing this suit, are exhibited with and made part of the bill; and it is alleged that "this suit has been instituted at the request and direction of the said Commission, and in strict conform-

ity with the provisions of said Act of March 6, 1900." See paragraph XX. of said bill, at p. 15 of Record.

Virginia seeks to obtain a decree in her own right for an alleged indebtedness against West Virginia, "evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05." in addition to the other claims made in her own right. See par. I. of bill, at p. 3 of Record

Another feature of the bill is that which sets up a claim on the part of Virginia in her own right against West Virginia for the unfunded debt represented by the certificates held by the Literary and Sinking Funds, financial agents employed by Virginia as part of the policy of facilitating the administration of her state government.

A further demand made by Virginia in her own right is that for contribution, which is purely an equitable demand. This we have already discussed, and again call the court's attention to this feature of the case to present more clearly the proposition of multifariousness.

In *Haines* v. *Carpenter*, 1 Woods 262 (Fed. Cas. No. 5905), a demurrer was filed to the bill, one ground of which was multifariousness. In discussing this point the Court said:

> "By multifariousness is meant the improperly joining in one bill, distinct and independent matters and thereby confounding them: as, for example, by uniting in one bill several matters perfectly distinct and unconnected against one defendant, or the demand of several matters of a distinct and independent matter against several defendants in the same bill. 1 Coop. Eq. Pl. 182; *Saxton* v. *Davis*, 18 Ves. 72. In this bill the controversy raised by the heirs at law of the testatrix, touching the validity of the bequest of the will, is united with the claim of the heirs of George W. Graves, the husband of testatrix, to the property disposed of by the will; they claiming that the property descended to them, and did not belong to the testatrix, and could not therefore pass by her will, and with the suit of Elias W. Dennis, a creditor of the succession, whereby he seeks to recover judgment against the estate, and

with a demand for an account to be rendered by the executor. I do not think the adjudged cases furnish a better illustration of a multifarious bill. A bill by a creditor sought an account against an executor and trustee of the testator's estate, and also to set aside a sale made by the executor and trustee to a purchaser who was made a party to the bill; it was held demurrable for multifariousness, for the purchaser had nothing to do with the general settlement of the accounts of the estate, and ought not to be involved in any litigation respecting it. *Salvage* v. *Hyde*, Jac. 151. So when devisees and legatees brought a bill against the trustees and executors under the will and against a mortgagee of part of the estates, alleging collusion between the trustees and executors and the mortgagee, and that they refused to compel the mortgagee to account for the rents and profits, or to redeem the mortgage, and the bill prayed for an account of the testator's effects, and that the mortgage might be redeemed: the bill was held on demurrer by the mortgagee to be multifarious, for the mortgagee had nothing to do with the general settlement of the accounts of the estate. *Pearse* v. *Hewitt*, 7 Sim. 471. The case when unconnected parties are allowed to be joined in a suit are where there is one common interest among them all, centering in the point in issue in the cause. *Ward* v. *Duke of Northumberland*, 2 Anstr. 469."

In this case there was a uniting in the bill of different claims in different rights, and the court held that this was the uniting of several matters of a distinct and independent nature against several defendants in the same bill. This decision was subsequently affirmed by the Supreme Court of the United States, in 91 U. S. 254.

In *Cassels* v. *Vernon*, 5 Mason 332 (Fed. Cas. No. 2503), the bill was objected to on the grounds that the plaintiff united in his bill a claim for money as administrator of Mrs. Cassels, and also a claim in his individual capacity. The court in discussing this objection said:

"The bill is certainly incorrect in this union of inconsistent claims; and if the objection had been taken upon demurrer, it would have overthrown the bill.

unless an amendment was allowed. Courts of equity will not permit distinct and independent titles to be set up in the same bill, for that would be to allow multifariousness; much less will it permit inconsistent titles, or alternative titles, for that might tend to very inconvenient consequences in point of evidence. It is the duty of the party who seeks the assistance of the court, to state his own title directly, without any alternatives, and not to put the court upon the duty to select, out of many, any one, which it may ultimately think, upon the evidence, can be supported. See *Salvage* v. *Hyde*, Jac. 151; *Edwards* v. *Edwards*, *Id.* 335; *Mole* v. *Smith*, 1 Jac. & W. 665. This difficulty, however, could have been gotten rid of by an amendment; and coming on after a full answer, and a hearing by consent of parties, the shortest course will be to dismiss the bill as to all claims, except that made in the representative character."

In *Jones* v. *Foster*, 50 Miss. 47, the pertinence of the case and the points of law applicable here appear in the syllabus, which we here copy:

"Where J., as guardian of certain minors, sold real estate on time, under an order of the probate court, and took notes for the purchase money, and F. becoming the purchaser; and afterwards, J. sold other real estate, as administrator, and F. became the purchaser again, and executed notes for the purchase money, J. filed his bill to enforce his lien on the notes payable to him, both as guardian and as administrator; *held*, that the bill was bad for multifariousness.

"The bill cannot join several distinct, unconnected subjects, against the same defendant or against several defendants.

"A party cannot be pursued in the same suit in the double capacity of guardian and administrator, because the liabilities are separate and independent. *Wren* v. *Gayden*, 1 How. 365. The complainant, representing in his own person, separate and independent capacities and rights, and the defendant F. is pursued in respect to separate and distinct estates, acquired in different rights. Where several subjects are united, it must

> appear, that as to the subject matters and the relief, all the defendants are connected, though differently, with the entire subject in dispute."

In *Van Mater* v. *Sickler*, 9 N. J. Eq. 483, the court said at page 484:

> "Second. The bill is multifarious. One object of the bill is to settle the personal estate of Isaac B. Van Mater. The complainant, as next of kin, calls on the defendant, who is the personal representative of the intestate, to answer in that capacity. But the complainant also, as an heir at law, calls upon the defendant to account for certain rents and profits which have come into his hands. It appears, from the bill, that the persons entitled to the rents, claim them as heirs at law, through their mother, who was the wife of the intestate. There are others than the heirs at law entitled to the rent, who, as next of kin, are interested in the distribution of the estate which the defendant represents. It is manifest, therefore, that these accounts cannot be settled in the same suit."

In *May* v. *Smith*, Busbee's Eq. 196 (N. C.) (57 Am. Dec. 594), the bill was filed by Peter May as the administrator with the will annexed of Reading Anderson, and part of the prayer is "that the defendants may account with the plaintiff for the assets of the deceased in their hands;" and another prayer is that the defendants may account "for the effects belonging to your orator deposited in their hands by the deceased." The court in holding that the bill could not be sustained said:

> "Here are two distinct and independent causes of action united: one to call in and collect the assets of the deceased; and the other to follow the effects of the plaintiff, effects due to him individually and in his own right. At law, an executor or administrator can not join a count for a debt due to him individually with one in his representative capacity. Neither can they be joined in equity; Adams' Eq., 2d Ed. 567; *Darone* v. *Fanning*, 4 Johns. Ch. 199; *Bedsole* v. *Monroe*, 5 Ired. Eq. 315. And the reason assigned is, that different decrees and proceedings might be

> required: for convenience, therefore, the joinder will not be permitted. For this cause the defendant might have demurred."

In *Bosley* v. *Phillips*, 3 Tenn. Ch. 649, a widow filed her bill to charge the defendant with a fund alleged to have been entrusted to her for delivery to the complainant by the husband, on his deathbed, as a gift *causa mortis;* and upon its being held by the supreme court, that the personal representative of the husband was a necessary party to the suit, the complainant took out letters of administration on the husband's estate, and asked leave to file an amended bill individually and as administratrix, praying relief either in her own right or in her representative capacity. The court refused to permit the amendment on the ground that to do so would be to allow the uniting in the same bill in chancery of distinct and hostile claims.

In *Sylvester* v. *Boyd*, 166 Mass. 445, the plaintiffs filed a bill against James O. Boyd and others. One of the prayers of the bill was that an account be taken of Boyd's doings as trustee in order that justice be done to the plaintiffs. None of the other defendants had any interest in the money alleged to have been misappropriated by Boyd, and none of them had any interest in his doings generally and his account as trustee. The plaintiffs also charged the making of a conveyance of valuable real estate and personal property to Peckham, which they averred was in violation of the duty of Boyd as trustee. The court in sustaining the demurrer said:

> "It is clear that different causes of action are joined which cannot properly be tried together, and that the demurrers should be sustained on the ground that the bill is multifarious. *Cambridge Water Works* v. *Somerville Dyeing & Bleaching Co.*, 14 Gray 193; *Metcalf* v. *Cady*, 8 Allen 587; *Sanborn* v. *Dwinell*, 135 Mass. 236; *Keith* v. *Keith*, 143 Mass. 262."

In *Leslie* v. *Leslie*, 84 Fed. 70, a bill was filed seeking to enforce the performance of a trust in real property, and also to quiet complainant's title to the same property. The court in holding the bill multifarious, said:

> "Under the state procedure, the complaint, as the pleading was there styled, would have been bad on

account of a misjoinder of causes of action. Code Civ. Proc. Cal. sec. 427: *Reynolds* v. *Lincoln*, 71 Cal. 183, 9 Pac. 176, 12 Pac. 449. The general rules of equity practice which obtain in this court conduce to the same result. The bill is multifarious, in that it joins two distinct and unconnected grounds of equitable relief. 1 Fost. Fed. Prac., secs. 71-74."

In *Inman* v. *New York Interurban Water Co.*, 131 Fed. 997, the bill was filed to settle the right of ownership of stock of a corporation, and asking relief depending upon the ownership of such stock. The court held the bill multifarious, saying:

> "To settle such right and to ask relief which depends upon the right are two independent, disconnected and unrelated questions, and the bill which attempts to join them in one suit is multifarious. *Shields* v. *Thomas*, 18 How. 253, 259 (15 L. Ed. 368); *Walker* v. *Powers*, 104 U. S. 245 (26 L. Ed. 729)."

In *Cumberland Valley Railroad Company's Appeal*, 62 Pa. St. 218, the ninth point of the syllabus reads:

> "Charging two sources of right by a plaintiff renders a bill multifarious."

Point eleven of the syllabus of the same case is:

> "A bill is multifarious by the joinder of distinct, independent and separate causes of complaint, requiring different defenses and different decrees."

In *Alexander* v. *Alexander*, 85 Va. 353, especially at page 363, the court in discussing the doctrine of multifariousness, quoting from Lord Cottenham in *Campbell* v. *Mackey*, 1 My. & Cr. 603, says:

> "It is utterly impossible to lay down any rule applicable universally, or to say what constitutes multifariousness as an abstract proposition. For 'the cases upon the subject are extremely various, and the court, in deciding them seems to have considered what was convenient in the particular circumstances rather than to have attempted to lay down any absolute rule.' Yet, it will seldom, if ever, be found difficult to determine whether multifariousness exists in the particular case, if we will only bear in mind these cardinal rules

> upon the subject, namely, that a bill will always be deemed multifarious, where several matters joined in the bill against one defendant are so entirely distinct and independent of each other that the defendant will be compelled to unite, in his answer and defense, different matters wholly unconnected with each other, and as a consequence the proofs applicable to each would be apt to be confounded with each other, and great delays might be occasioned respecting matters ripe for hearing by waiting for proofs as to some other matter not ready for hearing."

As has been seen, the certificates held by Virginia in her own right through the agency of the Literary and Sinking Funds, constituted no part of her debt, and are therefore eliminated from this suit. Therefore, now the only claim asserted by Virginia with reference to the debt is by virtue of her alleged holding of the certificates or canceled bonds *in trust* as to that part of the debt which Virginia claims should be paid by West Virginia to the holders thereof. If anything can be recovered at all in this suit on account of said debt, it must be that part which Virginia alleges she holds in trust for the creditors. She does not pretend to claim anything in her own right by virtue of any part of this unfunded debt. She has no interest in it, but is simply suing in her capacity as trustee for the sole use and benefit of the private persons who are holders of these certificates. This raises a very different controversy from that involved as to the claim asserted by Virginia in her own right.

To settle the claim of Virginia asserted in her capacity as trustee, it is necessary to decide whether or not the ordinance is to control the question, or the provision inserted in the constitution of West Virginia adopted in 1862, or whether the ordinance and the constitution shall be read *in pari materia*. In addition to this, the Court must determine whether or not the assumption by West Virginia of a just proportion of this debt was direct to the creditors themselves, so that the obligation inures to them only, or whether it was to Virginia, who might collect the same and distribute it to the creditors. Furthermore, in deciding this question of the right of Virginia to sue as trustee many other matters must be considered and decided in order to reach

a proper conclusion as to what constitutes a just proportion of this debt to be borne by West Virginia.

The claim asserted by Virginia in her own right arises under the two acts of February 3 and 4, 1863 (R., pp. 7, 8; App. to R., pp. 128, 131)—acts passed by Virginia long after the adoption of the ordinance and constitution by which an assumption of a just proportion of the public debt was made. The determination of the amount of the claim under these acts depends upon the extent of the property received by West Virginia and its market value at the time received. In this part of the bill Virginia as trustee, representing the creditors who hold the unfunded debt, has not a particle of interest. A very different character of evidence is required to establish it, and it is absolutely a distinct and separate claim from that with which Virginia is concerned as trustee.

It is true that courts of equity will so act in the administration of justice, if they may properly do so, as to avoid a multiplicity of suits; but in the language of Judge Woods in *Haines* v. *Carpenter*, Fed. Cas. No. 5905, "Courts of equity will not allow a multifarious bill as a remedy for a multiplicity of suits."

In presenting the question of multifariousness, we have done so upon the assumption, which we think we may justly indulge, that this Court will be governed by its rules of practice applicable to cases involving an exercise of its original jurisdiction. In cases of this character, this Court has in many instances determined that its proceedings should be framed according to those which had been adopted in the English courts in analogous cases, and that the rules of courts in chancery should govern in conducting a case to its final determination.

Rhode Island v. *Mass.*, 12 Pet. 57 (9 L. Ed. 1233).
Rhode Island v. *Mass.*, 13 Pet. 23 (10 L. Ed. 21).
Rhode Island v. *Mass.*, 14 Pet. 210 (10 L. Ed. 423).
Rhode Island v. *Mass.*, 15 Pet. 233 (10 L. Ed. 721).
Georgia v. *Grant*, 6 Wall. 241 (18 L. Ed. 848).
Cal. v. *Sou. Pac. Co.*, 157 U. S. 229-249 (39 L. Ed. 683).
Florida v. *Georgia*, 17 How. 478 (15 L. Ed. 181).

Grayson v. *Virginia*, 3 Dal. 320 (1 L. Ed. 619).
Penn. v. *Wheeling, etc., Bridge Co.*, 12 How. 518 (14 L. Ed. 249).

Virginia asserts a claim for money against West Virginia; with reference to a part thereof, she asserts it as trustee; with reference to another part she asserts it in her own right. These claims are derived from different sources. It seems utterly irreconcilable, with the principles of justice, that she should be permitted to uphold this demand upon any other doctrines than those which obtain in a court of equity in cases of like character when asserted by the individual citizen. The application of any other principle would involve every controversy between states in the mazes of uncertainty and doubt; and all interstate communication involving transactions resulting in litigation, in the utmost confusion and capriciousness. Virginia cannot enter this Court and invoke any other doctrines than those which prevail in cases of common right as recognized by courts of equity. This Court will not embarrass itself by settling this controversy upon any other grounds or by invoking any other considerations. It is simply a contest between two litigants in a court of equity, whose conduct must conform to its exaction and be measured and determined by its principles.

We here call the Court's attention to that part of the argument made by the late Honorable John G. Carlisle, upon the demurrer to the bill which relates to its multifariousness, and for the convenience of the Court we here copy it:

Mr. Carlisle's Argument.

"We confidently submit that the outline of the bill heretofore given and the exhibits made part of it show conclusively that it is multifarious, and that the demurrer ought to be sustained on that ground, if any good cause of action is shown over which this court has jurisdiction.

"Virginia suing in her own right upon a separate and independent cause of action alleged to belong exclusively to her is not the same party as Virginia suing as trustee upon a different cause of action for the use and benefit of others who have no interest in her claim.

Moreover, the state could not sue in equity in her own right in one bill, upon two causes of action so entirely separate and distinct from each other as the claim for money and property alleged to have been delivered to the defendant under the acts of the legislature, and the claim founded upon the compact for the defendant's just proportion of the old public debt, even if she had paid that debt and was entitled to contribution. The foundations of the two causes of action are wholly different, and they are of a wholly different nature and require different judgments or decrees. They involve different questions of law and fact, and a defense which would be good against one would be wholly inapplicable to the other."

" 'Multifariousness,' says Foster, 'consists in the joinder of two or more distinct and unconnected grounds for equitable relief, each of which might be the foundation for a separate bill. This may occur in three ways—by misjoinder of plaintiffs; by misjoinder of defendants, and by misjoinder of grounds for equitable relief held by and against the same parties.'

> " Foster, Fed Prac., sec. 71; Calvert on Parties, Book I, ch. VII.

" Story says:

> " 'By multifariousness in a bill is meant the improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several of a distinct and independent nature against several defendants in the same bill.'
>
> " Story's Equity Pl., sec. 271.

" Again, it is stated by Story (section 533):

> " 'The result of the principles to be extracted from the cases on this subject seems to be that where there is a common liability and a common interest, a common liability in the defendants, and a common interest in the plaintiffs, different claims to property, at least if the subjects are such as may without inconvenience be joined, may be united in one and the same suit.'

"In Daniel's Chancery Practice, page 335, it is said:

> "'It may be that the plaintiffs and defendants are parties to the whole of the transactions which form the subject of the suit and nevertheless those transactions may be so dissimilar that the court will not allow them to be joined together, but will require distinct record.'

"In *Brown* v. *Guarantee Trust Co.* (128 U. S. 404) this Court said:

> "'To support the objection of multifariousness because the bill contains different causes of suit against the same person, two things must occur: first, the ground of suit must be different; second, each ground must be sufficient as stated to sustain a bill. *Bedsole* v. *Monroe*, 5 Iredell Eq. 313; *Larkins* v. *Biddle*, 21 Ala. 252; *Nail* v. *Mobley*, 9 Ga. 278; *Robinson* v. *Cross*, 22 Conn. 171.'

"See also *Shields* v. *Thomas*, 59 U. S. 253 (18 How.).

"In *Walker* v. *Powers*, 104 U. S. 245, a case analogous to the present, there was a misjoinder of plaintiffs and a misjoinder of causes of action. The opinion was delivered by Mr. Justice Miller, and the case of *Emals* v. *Emals*, 14 McArthur (N. J. Eq.) 114, and *Sawyer* v. *Noble*, 55 Me. 273, were cited and approved.

"See also *Dial* v. *Reynolds*, 96 U. S. 340.

"*Doggett, etc.*, v. *Florida R. R. Co.*, 99 U. S. 72.

"In *Salvidge* v. *Hyde*, Jac. 151 (5 Mad. 158), the vice-chancellor said:

> "'In order to determine whether a suit is multifarious, or, in other words, contains distinct matter, the inquiry is not, as this defendant supposes, whether each defendant is connected with every branch of the case, but whether the plaintiff's bill seeks relief in respect of matters which are, in their nature, separate and distinct.'

"In *Church* v. *Citizens' Street Railway Company*, 78 Fed. 529, the court said:

> "'Multifariousness consists in stating against the same party two or more independent causes of action in the same bill; or it may consist in stating one or

more causes of action against a portion of the defendants and another cause of action against another portion of the defendants.'

"In that action the plaintiffs, who had purchased stock in a corporation, attempted to secure relief for themselves in their own right on one cause of action, and also to secure relief against the same defendants for themselves and all other stockholders on another cause of action. The court held the bill multifarious.

"*Zeigler* v. *Lake City Elevated R. R. Co.*, 76 Fed. 662.

"*First National Bank* v. *Sioux City*, 75 Fed. 154.

"*Price, etc.*, v. *Coleman*, 21 Fed. 557, opinion by J. Grey.

"*Central Bank* v. *Fitzgerald et al.*, 94 Fed. 16.

"*Lewarne* v. *Mexican Internal Imp. Co.*, 38 Fed. 629.

"*Aetna Insurance Co.* v. *Smith*, 73 Fed. 318.

"In *Metropolitan Trust Co.* v. *Columbus & Hocking Ry. Co.*, 93 Fed. 689, Judge Taft said:

"'It is also true that a cause of action in favor of one in his own right is as distinct from a cause of action in favor of the same person as trustee as it is from that of a different person. And therefore that a defendant against whom a trustee attempted to unite in the same bill with a cause of action asserted by him as trustee a wholly distinct cause of action in his individual right might object on the ground of multifariousness. In the case before us the defendant railway company might therefore be heard to urge this defect in the bill, because it asks for an enforcement of two different liens held in different rights.'

"But the court held that the objection to the bill for multifariousness could not be taken by Zohorst and the Second National Bank, 'for,' said the court 'as to that issue made by the complainant as trustee the right is the same.' And again the court said: (p. 691):

"'Upon that issue the complainant as trustee and in its own right has precisely the same interest. And the union of the two causes of action does not embarrass

> Zohorst or the bank in the slightest; for as to them, the causes of action raised but one narrow question.'

"The difference between that case and the case at bar is obvious at a glance. In the case at bar the bill alleges two entirely separate and distinct causes of action arising out of two unconnected transactions, in one of which it alleges an interest in the plaintiff state, and in the other an interest as trustee, and thus presents two distinct series of issues to be investigated and decided. And, besides, it is perfectly clear that the State of Virginia has not the same interest in the cause of action alleged in her own right and in the one asserted as trustee; nor can the State of West Virginia make the same defense to both.

"In *Hall* v. *Fisher*, 20 Barb. (N. Y.), the plaintiff sued in its own name and also as administrator, alleging that he and his intestate were during the lifetime of the latter tenants in common, the intestate owning three-fourths and the plaintiff owning one-fourth of a lot of land; and his claim was that the defendants should account to him individually and to him as administrator for their share of rent and profits. The court held that the cause of action should have been separately stated. It said:

> "'How else can the defendant, if he has a defense of a different character as to each co-tenant, avail himself of such defense? He might in this case have one defense against the plaintiff as to his personal claim and another defense as to the interest whose rights he claims to represent as administrator. It cannot be regular for a plaintiff to include in the same action claims in his individual right and as administrator of another. It was never allowed at common law and is not sanctioned or allowed by any statute, not even the Code.'

"It is evident that the State of Virginia, having been by contract with her creditors discharged from all liability for the one-third of the old debt represented by the certificates, has no pecuniary interest whatever in the alleged claim against West Virginia for which she sues as trustee; and it will not be contended, we presume, that the owners of the unfunded one-third of the ante-war debt, whether it is represented by the canceled bonds held in trust by the

state or by the certificates, have any interest whatever in the claim of Virginia for money and property alleged to have been transferred to West Virginia under the acts of 1863. The unfunded one-third of the old bonds formerly held by the Virginia Commissioners of the Sinking Fund and the Literary Fund is in the same position as that belonging to the other creditors. Virginia has solemnly and repeatedly declared that she was not liable for the one-third, has refused to pay it or any part of it, and has canceled the bonds and issued to the Sinking Fund and Literary Fund the same kind of certificates issued to other creditors. The fact that the commissioners of the Sinking Fund and the Literary Fund are agencies of the state, would simply show that the state owed that part of the debt to herself. But the state has released herself from the obligation for one-third of the bonds originally held by these funds and has thereby withdrawn from them that proportion of the sum which she originally intended they should have. Unless, therefore, the two funds, as agencies of the state, now have a valid claim against West Virginia, their demands have been fully satisfied and extinguished. In any aspect, the claim is asserted by Virginia to recover from West Virginia for contribution on account of money which she (Virginia) has never paid.

"The claim against West Virginia under the compact cannot be divided into separate parts, so that Virginia can sue in her own right or for the commissioners of the Sinking Fund and the Literary Fund for the part represented by the certificates held by those two funds, and also sue as trustee for another part held by different parties. The claim is an entirety and the amount is to be ascertained *in solido*, in the manner provided by the compact, and is to be paid in the manner provided by the compact. Whatever the amount might be, it was all payable to Virginia herself, and not to the bondholders, who never had a cause of action against West Virginia, even if the state had been suable; and they cannot create a cause of action for their own benefit, in the name of the state, by the process of having Virginia transfer the indebtedness, or a part of it, to them by the enactment of statutes or the issue of certificates or otherwise, and then transferring it back to the state as trustee. But whether the

state is, or could be, legally a trustee, or whether, if she be legally a trustee, she could maintain an action in this cause in that capacity, makes no difference in the decision of the question of multifariousness, for the bill and exhibits show that for nearly, if not all, of the unfunded one-third of the debt she actually sues as trustee in this action and not otherwise; and that is sufficient to sustain the contention that there is a misjoinder of parties and a misjoinder of causes of action. Even, therefore, if it should be held that the state is suing in her own right for a judgment and recovery of the amount represented by the certificates held by the two funds and as trustee for the holders of the other certificates, it would furnish another substantial reason for holding the bill to be multifarious. Besides, it would show that there is a conflict between the personal interest of the trustee and the interests of the *cestuis que trust*, for whatever the trustee might receive in her own right in the distribution of the sum recovered would, to that extent, diminish the portions of the other beneficiaries; and it is a well established rule that plaintiffs whose interests are conflicting cannot unite in the same action—a rule which ought to be rigidly enforced, especially when one of the plaintiffs sues as trustee for the others, and consequently controls the entire proceeding.

" *Walker* v. *Powers*, 104 U. S. 245."

The argument of Mr. Carlisle, from which the foregoing extract is taken, is filed in this Court in a printed brief, and will be found also in West Va. Compilation, Vol. I., pp. 157-219.

It will be seen, therefore from the positive statements of the bill, that the plaintiff has sought to unite and assert in this suit at least four different demands; three whereof are claimed to be due to her in her own right, in which her creditors have no interest whatever, and as to which there must necessarily be a separate and distinct defense made by the defendant—a claim for which a decree must be entered, if entered at all, in favor of the Commonwealth of Virginia *alone*. Two of these demands asserted in her own right arise from an entirely different source from the other demand asserted in her own right, one of which is based upon statutes passed long after the adoption of the ordinance of Virginia and the constitution of West Virginia,

and in which the measure of relief to which Virginia is entitled, if she is entitled to any, must be determined upon very different grounds and considerations from those which must determine the liability of West Virginia, if any exists, with reference to the claim by Virginia asserted in the bill as trustee for her creditors; and the other of which claims asserted by Virginia in her own right, being that for contribution, is based upon purely equitable grounds, not necessarily predicated upon the right of accounting, and is of course a subject in which the creditors have not a particle of interest.

The Plaintiff's Suit Barred by Laches.

It seems to us that, under the circumstances of this case, a final and complete answer to the claim asserted by Virginia in her representative capacity as trustee, is her laches, or that of those whom she represents as a nominal plaintiff in this suit, especially as to that part of the bill which seeks an accounting as to the unfunded debt, and as to which Virginia herself disclaims all liability.

West Virginia was admitted into the Union on June 20, 1863, and any liability which existed against her with reference to any part of said debt existed and could have been asserted against her at that time. Instead of taking any steps looking to the settlement of West Virginia's just or equitable proportion of said debt, if any existed, Virginia in 1866, three years after West Virginia's admission into the Union, brought a suit in equity in this Court touching the boundaries of the two states, which terminated March 6, 1871, when the case was decided in favor of West Virginia.

On March 30, 1871, just twenty-four days after the decision of the case just mentioned, Virginia passed an act arbitrarily making a division of the debt herself, without consulting West Virginia, on the basis of two-thirds to herself and one-third to West Virginia, and without any authority issued the so-called West Virginia certificates for such one-third to the holders of the original debt, who, so far as the record in this case discloses, are still the owners of said certificates, Virginia canceling the bonds representing the old debt which had been surrendered to her by the holders thereof, and holding said bonds, as

alleged by her, in trust for the owners of said certificates. In 1879, with these certificates still outstanding, and so far as the record discloses still in the hands of the former owners of the bonds evidencing the original debt, Virginia passed another act relating to the whole debt, refunding the entire debt under the provisions of the act of 1879, and as to so much of the original debt as had not been funded under the act of March 30, 1871, Virginia under this act of 1879 issued certificates for the one-third of such unfunded debt, which certificates were to be taken and held as a full and absolute release of the State of Virginia from all liability on account of such certificates.

This act of 1879 further provided that Virginia would

> "*negotiate, or aid the creditors holding all such certificates issued under this act or previous acts in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia.*"

It will be seen from the foregoing that with this last act of 1879, and the other two acts passed subsequently, namely, the acts of 1882 and 1892, the provisions of which funded the entire debt, the holders of which so far as the record discloses were the holders of all the certificates, Virginia simply assumed to negotiate with West Virginia to secure the payment of these certificates by West Virginia to the holders thereof. The bill itself makes no claim for Virginia to any part of the unfunded debt represented by these certificates, held by third parties, but Virginia has simply constituted herself the holder thereof *in trust* for the creditors, the real claimants as to the part of the debt represented by these certificates, the owners and holders of said certificates being the owners and holders of the bonds evidencing the original debt of the State of Virginia created before and existing on January 1, 1861. An examination of the certificates issued under the acts of March 30, 1871 (R., pp. 83, 84), March 20, 1879 (R., p. 36), and February 14, 1882 (R., pp. 43-4), specifically designates and identifies the bond or bonds representing the former debt, and each certificate shows which of the original bonds was surrendered, the amount thereof assumed by Virginia, and the balance thereof not assumed by Virginia, but for the payment of which the holder of the

original bond, being the holder of the certificate, was referred by Virginia to West Virginia. Therefore, every certificate issued by Virginia was surrendered to the owner of the bond, and when Virginia funded any bond upon the two-thirds basis assumed by her she delivered to the holder of the old bond in lieu thereof a new bond issued by Virginia for two-thirds of the original debt and a certificate for the other one-third; or, in the language of the certificate, the balance of such bond, designating the amount, "to be accounted for by West Virginia." So, at the time of the delivery of these certificates and new bonds under these various acts, the holder of the original debt was then also the holder of the new bond for two-thirds of the original debt and was at the same time the holder of the certificate representing the other one-third. Such owner, so far as the record shows, is still the holder of the certificates, and was such holder at the time the acts of 1871, 1879, 1882 and 1892 were enacted and put into operation.

The record fails to disclose any change of ownership of these certificates. If such change of ownership did take place by sale or transfer to other parties, there is no allegation to that effect, nor is there any proof showing such sale or transfer.

We say that the owners and holders of the original bonds evidencing the debt of Virginia created prior to and existing on January 1, 1861, are still the owners and holders of the new bonds issued by Virginia and the certificates for the residue, upon the well recognized principle of law that a fact once shown to exist is presumed to continue to exist until the contrary is shown.

1 Greenl. Ev., §41.

McKenzie v. *Stevenson*, 19 Ala. 691.

In *St. Louis A. & T. H. R. Co.* v. *Eggman*, 161 Ill. 155 (43 N. E. 620), objection was made to the introduction in evidence of an ordinance, on the ground that it was not shown to be in force at the time of the accident in question. The court, overruling this objection, says:

> "It having been shown that the ordinances were passed prior to the day on which deceased was killed, the presumption is that they were still in force on that date; for when a fact or state of things is once shown

> to exist the presumption is that the fact or state of things continues to exist as before until the contrary is shown, or until a different presumption is raised."

The authorities in support of this proposition are numerous, and there are none to the contrary that we have been able to discover.

Could the holders and owners of these certificates retain them for a period of thirty-five years, and then arrange with Virginia to bring suit for their payment in her name against West Virginia and obtain a decree, even if such a suit was authorized under the constitution of the United States? Certainly not.

Laches is peculiarly a doctrine of equity. Mr. Pomeroy, in the third edition of his great work, Vol. 1, §418, discussing the maxim, "Equity aids the vigilant, not those who slumber on their rights," says:

> "The principle embodied in this maxim, the original form of which is, *Vigilantibus non dormientibus aequitas subvenit*, operates throughout the entire remedial portion of equity jurisprudence, but rather as furnishing a most important rule controlling and restraining the courts in the administration of all kinds of reliefs, than as being the source of any particular and distinctive doctrines of the jurisprudence. Indeed in some of its applications it may properly be regarded as a special form of the yet more general principle, He who seeks equity must do equity. The principle thus used as a practical rule controlling and restricting the award of reliefs is designed to promote diligence on the part of suitors, to discourage laches by making it a bar to relief, and to prevent the enforcement of stale demands of all kinds, wholly independent of any statutory period of limitation. It is invoked for this purpose in suits for injunction, suits to obtain remedy against fraud, and in all classes of cases, except perhaps those brought to enforce a trust against an express trustee."

Discussing the *rationale* of the doctrine of laches, a recent work declares:

> "The rule that the enforcement of a right may be barred by laches is an application of the maxim *vigi-*

lantibus, non dormientibus, subvenit leges. Thus it has been declared with general approval that only conscience, good faith and reasonable diligence can call a court of equity into activity, and that stale demands will not be aided where the party has slept upon his rights and acquiesced for a great length of time. The doctrine is based on grounds of public policy and its aim is the discouragement, for the peace and repose of society, of stale and antiquated demands."

18 Am. & Eng. Enc. L. 97, citing the authorities, both English and American.

Another recent and reputable work says:

"Long delay in asserting a demand may defeat the remedy by raising a presumption of payment or satisfaction. Delay is always a suspicious circumstance, and if prolonged may create a presumption against the validity of a right which might otherwise be deemed established."

16 Cyc. 160.

In *Piatt* v. *Vattier*, 9 Pet. (34 U. S.) 405, Mr. Justice Story, in refusing relief in that case, and especially in the opinion at page 416, says:

"And we are of opinion that the lapse of time is, upon the principles of a court of equity, a clear bar to the present suit independently of the statute. There has been a clear adverse possession of thirty years without the acknowledgment of any equity or trust estate in Bartle; and no circumstances are stated in the bill or shown in the evidence which overcome the decisive influence of such an adverse possession. The established doctrine—or, as Lord Redesdale phrased it, in *Hovenden* v. *Annesley*, 2 Sch. & Lef. 637, 638, 'the law of courts of equity'—from its being a rule adopted by those courts independently of any positive legislative limitations, is that it will not entertain stale demands. Lord Camden, in *Smith* v. *Clay*, 3 Brown's Ch. Rep. 640, note, stated it in a very pointed manner. 'A court of equity,' said he 'which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where the party has slept upon his

> rights or acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are wanting, the court is passive and does nothing; laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation of suit in this court.' The same doctrine has been repeatedly recognized in the British courts, as will abundantly appear from the cases already cited, as well as from the great case of *Cholmondeley* v. *Clinton*, 2 Jac. & Walk. 1. It has also repeatedly received the sanction of the American courts, and was largely discussed in *Kane* v. *Bloodgood*, 7 Johns. Ch. Rep. 93, and *Decouche* v. *Saratiere*, 3 Johns. Ch. Rep. 190. And it has been acted on in the fullest manner by this court, especially in the cases of *Prevost* v. *Gratz*, 6 Wheat. 481 (5 Cond. Rep. 142); *Hughes* v. *Edwards*, 9 Wheat. 489 (5 Cond. 648); *Willison* v. *Matthews*, 3 Peters 44, and *Miller* v *M'Intire*, 6 Peters 61, 66."

In *Goddin* v. *Kimmel*, 99 U. S. 201, which was a suit brought by the creditors of a decedent for the recovery of real estate and personal property, and seeking to have the same subjected to the payment of the debts of the decedent, the syllabus of the case is as follows:

> "In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law; in many cases they act upon the analogy of the limitations at law; but even where there is no such statute governing the case, a defense founded upon the lapse of time and the staleness of the claim is available in equity where there has been gross laches in prosecuting the claim, or long acquiescence in the assertion of adverse rights."

The court in its opinion in this case says:

> "There is a defense peculiar to courts of equity founded on lapse of time and the staleness of the claim where no statute of limitations governs the case. Such courts in such cases often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting the claim, or long

acquiescence in the assertion of adverse rights. *Badger* v. *Badger*, 2 Cliff. 154; *Roberts* v. *Tanstall*, 4 Hare 269; *Stearns* v. *Page*, 7 How. 819."

The doctrine here announced is supported by an unbroken line of authorities throughout the various state courts of the Union, among which appear those of Virginia and West Virginia.

In *Hatcher* v. *Hall*, 77 Va. 573, we find in point 1 of the syllabus the following as a statement of the law regarding laches:

> "It is an inherent doctrine of courts of equity to refuse relief where there has been gross laches in prosecuting rights or long and unreasonable acquiescence in the assertion of adverse rights. This doctrine is founded on considerations of natural justice and public policy, and is always firmly enforced, especially where the immediate parties to the transaction are dead."

It will be observed that the doctrine here announced has its foundation in want of diligence and the policy of discouraging by courts of equity the assertion of stale demands. It is especially applicable, of course, where all the parties to the transaction are dead. The reason of this is the difficulty of establishing a claim to the satisfaction of the court in the absence of satisfactory sources as to evidence. The doctrine is enforced in other cases where the parties may all be living. Here, the parties claiming the right never sought the aid of Virginia to bring this suit against West Virginia in her own name until after the lapse of about thirty-five years. Neither did the creditors apply direct to West Virginia for payment. Those persons who were familiar with the territory of the two states at the time of the formation of the new state, who knew its value as well as the value of the personal estate in both states in 1863 and in 1871, also those who knew the extent of the loss suffered by both states as an incident of the civil war, the officers of the government who were thoroughly cognizant of the situation in this regard as to both states, are all dead; in view of which the obtainment of evidence necessary to fix an equitable basis upon which to determine West Virginia's liability, if any existed, is no longer accessible. Furthermore, the witnesses necessary to fix the value or values of the property alleged to have been transferred by Virginia to West Virginia are likewise dead, and the Court cannot obtain any

reliable or satisfactory evidence as to what property was turned over by Virginia to West Virginia, to recover which this suit is in part brought; nor can the evidence as to its value be obtained.

The laches of these creditors suing through Virginia, as well as that imputable to Virginia herself, is absolutely inexcusable. No legal excuse for such laches is offered in the bill or in any manner attempted to be shown. It seems to us that this delay to assert these claims in the name of Virginia, both those demanded in her representative capacity and those in her own right, has been so long continued and is so inexcusably gross as to afford evidence of the injustice of the claim, if not of its actual abandonment on the part of the State of Virginia as well as the creditors.

It is well settled that delay in the assertion of a right, when it does not operate as a statutory bar, may operate in equity as evidence of assent, acquiescence or waiver unless satisfactorily explained.

Kelly v. *McQuinn*, 42 W. Va. 774.
Pusey v. *Gardner*, 21 W. Va. 469.
Bryant v. *Glover*, 42 W. Va. 10.
Nelson v. *Carrington*, 4 Munf. 332.
Coles v. *Ballard*, 78 Va. 139-147.
Eubank v. *Barnes*, 93 Va. 153.

In *Jones* v. *Perkins*, 76 Fed. 82, the second point of the syllabus is as follows:

> "To support the defense of laches it need not be shown that defendant has been injured by the delay."

In the course of the opinion, we find the following:

> "It is contended on behalf of the complainant in the case at bar that it must appear to the court, where laches is urged as a ground of defense, that detriment has come to defendant from the delay; that his position has been changed to his injury, or that he has been deprived of evidence which an earlier prosecution of the suit would have enabled him to obtain. This position is not tenable. There are cases where a longer delay than is here complained of has been excused by circumstances, where a court could clearly say that it caused no prejudice to the defendant, but these are exceptions.

> The doctrine of laches as a defense presumes that the lapse of time is constantly destroying the evidence of rights, and that the death of witnesses and the loss of documentary evidence is its ordinary consequence."

From the case of *Speidell* v. *Henrici*, 15 Fed. 753, the decree in which was affirmed in 100 U. S. 377, we take the following:

> "A suitor in equity is required to be 'prompt, eager, and ready' in the pursuit of his rights. Diligence is an essential condition of equitable relief, and unexplained negligence is never encouraged. 'Nothing can call forth a court of equity into activity but conscience, good faith and reasonable diligence. When these are wanting the court is passive and does nothing. Laches and negligence are always discountenanced, and, therefore, from the beginning of this jurisdiction, there was always a limitation of suits in this court.' *Smith* v. *Clay*, Amb. 645, quoted with approval in *Brown* v. *County of B. Vista*, 95 U. S. 160.
>
> "So, also, says Mr. Justice Swayne in the case last referred to: 'The law of laches, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the peace, repose, and welfare of society. A departure from it would open an inlet to the evils intended to be excluded.'
>
> "And again: 'Courts of equity refuse to interfere after a considerable lapse of time, for considerations of public policy, from the difficulty of doing entire justice, when the original transactions have become obscure by time, and the evidence may be lost, and from the consciousness that the repose of titles and the security of property are mainly promoted by a full enforcement of the maxim, *vigilantibus et non dormientibus jura subserviunt.*' 1 Story Eq. Jur., §529."

May the doctrine of laches be imputed to a state? We find in the case of *Atty. Gen.* v. *Central R. Co.*, 68 N. J. Eq. 198 (59 Atl. 348),

in the opinion at page 360 of the reporter, the Court applying the doctrine of laches to the demand of a state, using this language:

> "The equitable rules relating to the effect of laches and acquiescence are enforced against the state when it is a suitor for equitable relief, as well as against private suitors. *Atty. Gen.* v. *Del. & B. B. R. Co.*, 27 N. J. Eq. 1, and cases cited at page 27."

So we find in *In re Hepburn*, 3 Bland (Md.) 95, the Court holding that laches is available as a defense against the state.

There are a number of cases decided by this Court holding that laches is not imputable to the government: *Armstrong* v. *Morrill*, 14 Wall. 120; *Lindsey* v. *Miller*, 6 Pet. 666; *U. S.* v. *Dalles Military Road Co.*, 140 U. S. 599; *U. S.* v. *Thompson*, 98 U. S. 486; *Redfoed* v. *Parts*, 132 U. S. 239. Yet this Court holds that the government may suffer loss through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same laws that govern individuals there.

> *Cook* v. *U. S.*, 91 U. S. 389. See also *French Republic* v. *Springs Co.*, 191 U. S. 427, 438.

So, too, when the government is only a formal party, and the suit is brought in its name to enforce the rights of individuals, as in the case at bar, and no interest of the government is involved, the defense of laches and limitation will be sustained as though the government was out of the case and the litigation was carried on in the name, as in fact, for the benefit of private parties.

> *U. S.* v. *Navigation Co.*, 142 U. S. 510, 538.
> *U. S.* v. *Beebe*, 127 U. S. 338.
> *Moran* v. *Horsky*, 178 U. S. 205, 214.
> *U. S.* v. *Am. Bell Tel. Co.*, 167 U. S. 224, 265.
> *McNutt* v. *Bland*, 2 How. 9.

So where the government is suing for the use and benefit of individuals or for the prosecution of private and proprietary instead of public or governmental rights, it is clear that it is not entitled to the exemption of *nullum tempus* and that the ordinary rule of laches applies in full force.

French Republic v. *Springs Co.*, 191 U. S. 427, 438.
Maryland v. *Baldwin*, 112 U. S. 490.
Curtner v. *U. S.*, 149 U. S. 662.
U. S. v. *Beebe*, 127 U. S. 338.
U. S. v. *Navigation Co.*, 142 U. S. 510, 538.

So it is held in *Miller* v. *State, use, etc.*, 38 Ala. 600, that while the statute of limitations does not apply to actions by the state, still it does extend to a suit brought in the name of the state for the use of a particular township to recover lands which constitute a part of a certain section.

In view of the well settled doctrine of courts of equity, and which this Court always applies in proper cases, that stale demands are not countenanced and that gross neglect or inexcusable delay in bringing suit to enforce an equitable claim will constitute a bar even to an otherwise meritorious demand, there can be no doubt that Virginia can not maintain this suit so far as it seeks to establish a claim against West Virginia with reference to the unfunded debt held by third parties. This ground of defense is based upon the fact that Virginia is not asserting this claim in her own right but only in her representative capacity as trustee, and that if a decree as to this part of the case can be obtained no part of it can enure to her benefit. Indeed, she asserts this in her bill, alleging that whatever is obtained in this suit is payable to the holders of these certificates. This is none other than an individual claim, and not a case involving the rights of Virginia, either pecuniary or otherwise. In fact, she declined to bring any suit except at the special request of the owners and holders of these certificates. There is no reason or excuse for this delay of thirty-five years on the part of the owners of these certificates in exerting an effort to have West Virginia pay it. It does not answer the charge of laches to say that the holders of these certificates could maintain no suit. They could not maintain a suit against Virginia. They could have been diligent in asking West Virginia to pay, and in case of refusal, in arranging to have Virginia bring this suit long before it was brought with reference to this unfunded debt, the payment of which is to enure to them. But we deny the right of Virginia to sue for the creditors. They offer no excuse for this delay.

If West Virginia was liable for the payment of any part of said public debt, she has been liable since her admission into the Union, June 20, 1863, forty-three years before the bringing of this suit.

Why this long delay? The only just inference is that they did not regard these claims as constituting a valid demand against West Virginia. Indeed, they evidently knew that they could not be asserted against West Virginia; and the institution of this suit on the account of the holders of these certificates was a mere speculative matter in which Virginia would have no part except at their request and with the understanding that she should incur no costs or expenses in such suit. This long delay certainly affords conclusive evidence against the justice of the demand made by these holders through and in the name of Virginia as plaintiff against this defendant, and was evidently undertaken for the purpose, if possible, of constraining West Virginia by means of this suit to concede their inequitable demand and settle with them for these certificates, notwithstanding their lack of inherent justice and right, and in this way possibly create a demand for these certificates of a fictitious character, and speculate upon them in the markets.

No other construction can be placed upon the long delay of the holders of these certificates in taking steps to bring suit. Virginia could have brought this suit long before she did if she had a right to maintain it, with the same show of right as she could do in 1906.

We therefore confidently insist that, if there were no other ground of defense in this case as to the certificates issued in 1871, that of the laches of the holders thereof is an ample and complete defense.

PART II.

On Exceptions of the Plaintiff and the Defendant to the Report of the Special Master.

In this part of the brief for West Virginia we will consider the facts of the case as shown by the record in connection with the exceptions filed by the plaintiff and the defendant to the report of Hon. Charles E. Littlefield, the Special Master. Questions of law will be argued incidently only. For convenience, we will take up the several paragraphs of the decree of reference in the order they are set out in the report of the Special Master, who will hereafter be referred to as the "Master."

PARAGRAPH I. OF THE DECREE.

> "1. *The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specially how and in what form the same was evidenced, by what authority of law and for what purpose the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.*"

No exceptions were filed to the report of the Master under this paragraph by West Virginia. Virginia did file an exception to the finding of the Master as follows:

> "For errors of law apparent in the record, complainant respectfully excepts to the statements contained in the Master's report in regard to the Literary Fund, save and except so far as they show the creation, existence, and amount of such fund, and especially does complainant except to the Master's conclusions that the Board of the Literary Fund (a corporation) had no right to sue and be sued and that the fund was the unconditional property of the State and subject to its control and

> ownership, while the said fund was under the law held and controlled by the board and the State in trust for educational purposes alone. See Master's Report, pp. 6 to 30, and acts in Appendix to Record, pp. 205-208."

There is no dispute of fact between the parties as to the report of the Master under this paragraph. The only dispute refers to a question of law. Virginia contended originally that the three items known as the Sinking Fund of $1,369,243.92, the Board of Public Works Fund of $150,895.00 and the Literary Fund of $1,116,843.35 were parts of the public debt of the Commonwealth of Virginia on the first day of January, 1861. The Master found against her contentions. Virginia excepted only to the report of the Master in his conclusion as to the Literary Fund, thereby conceding that the other two funds mentioned were no part of the public debt of Virginia. The Master argues the question at some length in his report, and decided it as he does therein on the ground that Virginia on the first day of January, 1861, was the absolute owner of the bonds in the Literary Fund, as well as those in the Sinking Fund, and that they were not outstanding in the hands of any one who could assert them against the state. In other words, the state could not owe a debt evidenced by said bonds and at the same time be the absolute owner of such bonds with power to do with them as she pleased. It seems to be clearly shown that these funds were simply methods of bookkeeping for the convenience of the state in the administration of her fiscal affairs. It was immaterial whether these funds were fixed and defined by the constitution or by statute. The fact remains that it was absolutely within the power of the state at any time she so willed to destroy these evidences of debt and declare the accounts closed. The funds that Virginia paid for these evidences of debt had been raised by some form of taxation from the people and property of the united state, and in law there can be no reasonable dispute on the question whether or not these bonds had been legally paid and canceled. The officers of the Board of the Literary Fund were by the law the chief executive officers of Virginia. No individuals had any rights or powers in connection therewith. We do not deem it improper to say at this point that the counsel representing Virginia in the argument before the

Master did not really deny the position here taken, and we think that the Master could truthfully have said that his conclusions were conceded by the Attorney General then in office and representing the State of Virginia.

PARAGRAPH II. OF DECREE.

> *"2. The extent and assessed valuation of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately."*

There is no dispute as to any question of fact under this paragraph and no exceptions to the findings of the Master by either the plaintiff or the defendant.

We respectfully call the Court's attention to the alternative findings under this paragraph, which were made at the request of the defendant. (Master's Rep. pp. 37-8).

PARAGRAPH III. OF DECREE.

> *"3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."*

The plaintiff and the defendant have each filed numerous exceptions to the findings of the Master under this paragraph. For convenience, we will first take up the exceptions filed by West Virginia to the conclusions of the Master under this paragraph, and then we will discuss the exceptions of Virginia thereto.

Exceptions of West Virginia.

Kanawha River Turnpike and Kanawha River Improvements.

Items 10, 11, 12, 13 and 14 (Record, p. 373) were for the following sums:

Kanawha Turnpike	$152,130.54
Kanawha Turnpike	2,593.92
Kanawha Turnpike	7,189.65
Kanawha Turnpike	80,955.28
Kanawha River Improvements	59,572.36
Total	$302,902.15

These were found to be expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia. There is no real dispute as to the facts in relation to this sum, as understood by us.

There is one matter of fact in relation to the alternative finding of the Master, found at the bottom of page 70 of his report, to which we will refer later.

We differ from the Master and except to his findings on the ground that the Commonwealth of Virginia, after expending these sums of money for the purposes set out on the Kanawha River Improvements and the construction of the Kanawha Turnpike, did by her act of March 16, 1832 (App. p. 86), *sell and transfer to a private corporation* the turnpike and the river on which, and for the improvement of which, this money was expended; and the turnpike and the river so far as travel and navigation thereon were concerned, became the private property of this private corporation by reason of such sale and transfer by the Commonwealth, and for a period of more than twenty-five years prior to the first day of January, 1861, the only interest that the State of Virginia had in the subject matter of such expenditure was that of a stockholder of this private corporation. We do not agree with the argument of the Master and of Virginia that it was immaterial what the commonwealth did before the first day of January, 1861, with the subject created by such expenditure. The principle would be the same if the commonwealth had sold the turnpike for a money consideration and had made a large profit thereon. She could not have more effectually dispossessed herself of the power and control thereof than she did when she sold this turnpike and these river improvements for ten thousand shares of stock in the private corporation, to which she transferred this property. The title to such

turnpike and to such improvements still remained in the James River and Kanawha Company, *a private corporation.*

That this corporation was a private one is conclusively determined by the decision of the Supreme Court of Virginia in the case of *James River and Kanawha Company* v. *Early*, 13 Gratt. 541. This decision was rendered in 1856, and without any thought or imaginary possibility of any future difficulty in relation to this matter. The Supreme Court of Virginia specifically held in that case that the fact, that the state owned a large interest in the stock of the Company, did not in the slightest degree release it from liability for neglect of its officers, and that the rights of the state therein were no more than those of any other stockholder.

Conceding for the purpose of this argument only, that the original expenditure made by the commonwealth through the agency of the James River Company, was an expenditure within the meaning of the decree and the ordinance, we submit that this action of Virginia in selling this turnpike and these improvements should eliminate this whole item from this account. Can it be presumed for a moment that if the commonwealth, after paying $10,000 for the land on which the asylum at Weston was afterwards built, had decided not to build thereon and had sold this land for either money or stock in some private corporation or for other thing of value, she then could have charged under this head to West Virginia as an expenditure the amount she had originally paid for such piece of land? Let us take another example: If the commonwealth had sold, prior to the first day of January, 1861, the Covington and Ohio Railroad, so far as it had been completed, for money or other thing of value, could the sum exepended thereon by Virginia have then been included in this account as a state expenditure within the present limits of West Virginia? Is it not an insult to the intelligence of the able men, including Senator Carlisle, Senator Vanwinkle, Senator Boreman, and the many other men of ability who composed the convention which passed the Ordinance of August 20, 1861, to think that they intended to include under the word "state expenditures" property which had been built, constructed or purchased by the state, and then sold before the date of the separation to an individual or private company?

In the original account filed by Virginia before the Master in thi cause is the following item:

"Interest on bonds of the City of Wheeling, $15,115.64."

This item was set up by Virginia and seriously claimed as a expenditure within the limits of the State of West Virginia during th period contemplated by the ordinance, because it had been paid b the commonwealth as interest on some bonds guaranteed by her, whic bonds were made by the City of Wheeling, a municipal corporation No doubt Virginia would be now claiming this expenditure as suc if the defendant had not discovered and shown to the satisfaction o the counsel of Virginia, that in the year 1866 this sum with interes had been fully and completely repaid to the State of Virginia by th City of Wheeling. Then the counsel of Virginia withdrew this iten from the account. While West Virginia never admitted that a loa to a muncipal corporation was a state expendit within the mean ing of the decree or ordinance; but if Virginia desires to be consisten with her claim with reference to the Kanawha River Turnpike an Kanawha River Improvements, she should also have insisted tha this amount originally loaned by the commonwealth to the city o Wheeling should be included in this account.

The James River and Kanawha Company kept the control of th Kanawha Turnpike and of the improvements on the river after th first of January, 1861, and also after the separation of the states. Al that West Virginia obtained therein was by reason of the stock own ership of Virginia in this private corporation. The ownership of th property of the James River and Kanawha Company remained in th corporation, and the ownership never was invested in West Virgini at all.

By reason of the fact that the Chesapeake and Ohio railway par alleled this turnpike, all its value to the company was taken away This happened after the Civil War, however.

Record, page 820-A, shows defendant's Exhibit "G-1." On page 1 of that exhibit it will be seen that there was expended by the State o Virginia the sum of $1,216,666.30 on the James River Canal, Blu Ridge Canal, and Kanawha Road and River, which construction wor

and improvements were turned over to the James River and Kanawha Company, a private corporation, under the act of March 16, 1832, in return for 10,000 shares of stock of the par value of $100 each in said James River and Kanawha Company. It will be further seen that the State of Virginia thereafter subscribed for 20,000 shares of stock in the same company and paid the sum of $2,000,000 in money therefor. It shows the good faith of Virginia in selling these properties to the private company. It shows that she received what she believed to be the real value of these improvements in 1832. She certainly regarded this stock as a good *investment*, or she would not have paid $2,000,000 in money for 20,000 shares more of it.

In addition to this purchase of 20,000 shares of stock in this company, for which the money was paid, the same record shows that the state loaned to this company large sums of money. The state also guaranteed large amounts of the bonds of this company, which bonds the state afterwards assumed as an original proposition by the act of March 23, 1860, and they are now included in the total of the debt set up under the first paragraph of the decree in this cause. In return for assuming these bonds as an original obligation and for the loans made by the state directly to the company, she received 72,000 shares of the stock of the company.

The Master speaks (Rep., p. 42), of the construction of the provision of the West Virginia constitution and the Wheeling ordinance relating to West Virginia's assumption of a just proportion of the debt, so as to produce an equitable result. If there is any place requiring such application anywhere in this case, it surely is here. Can it be called equitable in any sense of the word to charge against West Virginia as a "state expenditure" money which the old state spent in building a turnpike, which turnpike the old state, *before the separation of the two states*, sells and receives the proceeds? It seems rather shocking to one's equitable sense to propose such a thing. It also seems rather shocking for a plaintiff to ask a court of equity, a court of conscience, to grant such relief. If this suit had been brought solely for the purpose of recovering that one series of items, would not a court of equity have dismissed the suit upon demurrer? Assuredly it would.

On page 70 of this report, under the head "Alternative Finding," the Master says: "There is nothing in the record to show whether this transfer was actually made." He meant whether the property of the James River Company, including this Kanawha Turnpike and these improvements of the Kanawha River, were ever actually transferred to the James River and Kanawha Company. The case set out above, of *James River and Kanawha Company v. Early*, 13 Gratt. 541, and the case of *Higginbotham's Executor* v. *Commonwealth*, 25 Gratt. 627, both quoted in the Master's report, the reports of the Board of Public Works, the reports of the James River Company, numerous acts of the legislature of Virginia, which are included in the appendix, pages 86 to 112, show conclusively and prove absolutely that the transfer was duly made under the provisions of the act of March 16, 1832. Moreover the Exhibit "G-1" (R., p. 820-A), agreed to by the accountants of the plaintiff and defendant, shows conclusively that the transfer was made by the State of Virginia of all the properties above mentioned to the James River and Kanawha Company according to the provisions of the said act of March 16, 1832.

Brandonville, Kingwood and Evansville Road $10,595,73; Clarksburg & Buchanan Turnpike $19,259.36; and Kingwood and West Union Turnpike $18,140.61.

These three items, which are numbered 25, 28 and 35 in the report and record, were found to be state expenditures by the Master, to which finding West Virginia excepts. It is a question of law, whether or not they shall be charged to West Virginia. It is agreed that each one of these was a turnpike company duly chartered by the commonwealth, that the commonwealth was a stockholder in each one, and that each was a private corporation and managed by a board of directors; and while in this condition the commonwealth generously appropriated the above sums, which were expended upon the property of these private corporations. The state had no more title and no more rights to the property of the corporation after such expenditure than it had before. Under the acts appropriating the money it would appear that these sums were gifts to these corporations. If these gifts had been made to individuals and they then had expended the money

within the limits of West Virginia, would it be claimed for a moment that such gifts came within the purview of the decree or ordinance? *Can any gift to a private individual or corporation be a "state expenditure"?* We think not. If Virginia had given this money to a corporation resident of Maryland, or of Virginia itself, and such corporation had chosen to expend the same on a public utility project, such as a turnpike, railroad or canal within what are now the limits of West Virginia, would it have been a "state expenditure" in the meaning of this ordinance? Clearly not.

In the first account filed by Virginia before the Master (R., p. 373, Item 17) she claimed the sum of $7,882.92, which she had paid for stock in a Maryland corporation. This Maryland corporation had built a piece of road in the southwest corner of Garrett county, Maryland, which connected with some Virginia roads at each end. These Virginia roads were built and owned by Virginia. On reflection, at the hearing before the Master, counsel of Virginia asked leave to withdraw this item, and did so. Was it not as reasonable to charge this sum to West Virginia as the one under consideration?

It must not be forgotten that not a single one of these three turnpikes, built by private corporations, were open to free travel by the public, as turnpikes now are almost universally within the United States. Every such corporation in the state then charged and collected tolls on each and every one of these roads, as well as tolls on each and every one of the navigable rivers; and some of the road companies paid good dividends on the investment of the moneys therein, as shown by the record in this cause. Can a gift by the state, however generous might have been the impulse of the giver, which simply increased the toll collecting value of the property of a private corporation, and which did not increase the state's power or rights or financial interest therein, be called a "state expenditure," any more than the purchase of stock in that private corporation by the state could be called a state expenditure? Certainly not; but this last question will be elsewhere discussed under the exceptions of Virginia to this same paragraph.

Item 55, Surveys—$60,873.19.

This item is discussed under Paragraph III., page 75, and Paragraph IV., page 134, of the Master's report. It was agreed by the accountants that under the head of "Surveys" there was spent an aggregate of $250,206.56. It was claimed by the defendant that neither this sum of money nor any part thereof could be both a state expenditure under Paragraph III. and an item of the ordinary expenses of the state government under Paragraph IV. *The Master has seen fit to hold that it can be both:* that is to say, that such part thereof as can be shown to have been expended in the territory now West Virginia should be charged as a state expenditure, and such part as could not be shown to have been expended at any particular place should be charged as an ordinary expense of the state government. It is admitted that the total sum was expended as a part of the expenses of a state officer performing certain duties prescribed by a state statute. The Master said: "It is a narrow and close question." (Report, p. 76). It does not seem to us to be either. When we take into consideration the fact that in every other instance all the salaries of state officers, without exception, such as judges and the executive officers, and the cost of the work done by them and the expenses incurred by them in the performance of their duties, are all charged in this report as ordinary expenses of the state government, we can see no reason for this exception. In fact, it seems to us very clear that this sum of $250,206.56 is properly chargeable as a whole to the ordinary expenses of the state government; just as the other salaries and expenses of office of state officers are charged, as stated above.

Therefore, we earnestly contend that the said sum of $60,873.19, allowed as a state expenditure under this Paragraph, should be stricken out, and that there should be charged to ordinary expenses of the state government, under Paragraph IV. on page 134 of the Master's report, the said total sum of $250,206.56.

Item 150, Loan to the Town of Bath—$2500.

If it were not for the fact that there is a principle concerned in this small item we would not except to the finding of the Master. This

was a loan to the Trustees of the Town of Bath, and they were compelled to give bond with good security, payable to an agency of the state, to wit, the Board of Public Works, for the punctual payment of the interest annually to the state on this loan. The Master finds that this interest was paid to the state and that the auditor of the state described it as a loan and carried it on the books of the state as such. We do not agree with the Master that this action on the part of the State of Virginia in so carrying it has no weight, and we respectfully submit that the auditor's books quoted by the Master and the action of the state from the time of the loan up to the separation of the two states, and the action of the trustees of the Town of Bath in paying the interest thereon annually, conclusively fixes its status as a loan, and therefore is no charge against West Virginia. Further on under this paragraph we will discuss the question whether a loan by the state can possibly come under the head of "state expenditures." The Master holds that it cannot.

This *loan* is also recognized by the trustees of the Berkeley Springs, in their report to the legislature of West Virginia, 1869, which report is printed in the back part of the House Journal of the West Virginia Legislature of 1869, along with reports of state officers, other boards, etc. (What is now known as the town of Berkeley Springs, in Morgan county, West Virginia, was formerly known as the town of Bath.) This particular report of 1869 is a comprehensive one, and one of the signers thereto is no less a famous personage than David H. Strother, known in literature by his pen-name of "Porte Crayon." It is pointed out in this report (p. 4) that "the Berkeley Springs and adjacent property do not belong to the state of Virginia or to West Virginia (as its successor)." On page 3, in discussing the finances of the property, the report says:

> "That there were old debts standing against the property * * * * * to wit:
>
> "To the estate of Philip C. Pendleton, deceased, $2,000, money borrowed for the purpose of building a row of baths, with a large pool attached, for the use of the ladies.
>
> To the *Board of Public Works, Richmond, Virginia*, $2,500, money borrowed for the purpose of constructing

a graded road from Sir John's Station to the Springs." (Sir John's Station is a station on the Baltimore & Ohio Railroad.')

Thus, the law authorizing the loan, the auditor of Virginia's books, the creditor, and the books of the trustees, the debtors, *all recognize it as a loan.*

This concludes the discussion of the exceptions of West Virginia to the Master's report so far as the third paragraph is concerned.

Exceptions of Virginia under Paragraph III.

Virginia specifically excepts under Paragraph III., only to the finding of the Master that certain moneys paid by her for stock in turnpike, bridge and railroad companies, which were private corporations, and that certain moneys loaned by her to such corporations, are not allowed as state expenditures within the meaning of the decree and the ordinance. These items are divided as follows, as shown on pages 375, 376 and 377 of the record:

Items 57 to 65, inclusive, Bridge Companies	$78,412.50
Items 66 to 69, inclusive, Navigation Companies, aggregating	210,500.00
Items 70 to 147, inclusive, Turnpike Companies, aggregating	803,555.83
Item 6 (R., p. 372) Berryville and Charles Town Turnpike Company	11,932.52
The total aggregate of these items	$1,104,400.85

All these items can, to a certain extent, be discussed at the same time, as the same general principle of stockholding investment runs through them all.

Item 6, Berryville & Charles Town Turnpike Company, $11,932.52, in some respects differs from the others, and Item 66, Coal River Navigation Company, $96,000 (R. p. 375), is somewhat like the principle in Item 6, and so far as they are alike will be discussed together.

The Berryville and Charles Town Turnpike Company was a private corporation, chartered by the State of Virginia. It was duly author-

ized to and did construct a turnpike from Berryville, Clark county, Virginia, to Charles Town, Jefferson county, now in West Virginia. There is now of this road in the present limits of West Virginia 58⅓ per cent. Virginia subscribed and paid for stock in this company of the par value of $20,455.74. The special fact in relation to this corporation is that it gave a deed of trust on its property, which was this turnpike, to secure loans to the company. This deed of trust or mortgage was foreclosed in the year 1858, and the physical property of the company sold. The purchaser at this sale was the State of Virginia, and the price paid was $7,236.97. West Virginia admits her liability for 58⅓ per cent of this last sum, but denies any liability whatever as to the stock subscription. This reason is in addition to the other reasons hereinafter given, which will apply to all stock subscriptions. There is no dispute between the parties as to the facts here related (R., pp. 454, 455).

The case of the Coal River Navigation Company is somewhat like this. This is item 66 on page 375 of the Record, and is included by Virginia in her exception to the finding of the Master in relation to Items 66 to 69, inclusive, aggregating $210,500. This particular item is for the sum of $96,000. This is another instance where the state bought stock of a private corporation, in this particular case of the par value of $96,000. The corporation, on July 30, 1858, executed a mortgage or deed of trust on the property of the company to secure a large amount of indebtedness set out therein. The company failed to pay the debts so secured, and the trustees named therein, under the authority thereof, on October 25, 1865, sold all the property of this company to private persons. (R., pp. 990, 1003.) We thus see, as to these two corporations, on the first day of January, 1861, the State of Virginia was not even a stockholder in either. The corporations had in a legal way disposed of their entire properties, and all the state had was stock in a defunct corporation, and the corporations still owed large debts. West Virginia did not, under the laws of nations, nor under the acts of Virginia transferring to her property within her limits, obtain anything from Virginia in these particular cases.

The exception of Virginia to the finding of the Master disallowing

this total sum of $1,104,400.85, is based on her claim that purchases of stock in corporations doing business and owning property within the present limits of West Virginia, were state expenditures in the meaning of the ordinance and the decree. The position of West Virginia on this important question is that these were but investment of the funds of the state in private companies with the expectation at least of absolute security of the money invested and in many instances with the expectation of producing large dividends from the investment. These corporations were not the agents of the state for the investment of public funds, and were not controlled by the state as a sovereign. They were under the absolute control of the stockholders, subject to the general laws governing corporations. This was definitely settled in Virginia by the decision of its Supreme Court in 1856.

The case of *James River & Kanawha Co.* v. *Early*, 13 Gratt. 541, was an action to recover for the negligence of the corporation. In discussing the question of the liability of the company, the court said:

> "It is not a *public corporation* representing the *public* and *administering public* funds for the benefit of *the public*, but it is a joint stock company which has undertaken the construction of a work, useful to the public certainly, but *intended for the private emolument* of the stockholders in dividends of the profits" (p. 552).
>
> "That the State owned a large interest in the stock of the company will not vary the case * * * * a mere interest taken by the commonwealth in the stock would not be sufficient to bring an action against the company for neglect of its corporate duty within the influence of the decision in the case of *Sayre* v. *The Northwestern Turnpike Road*, 10 Leigh. 454 * * *" (p. 553).

As persuasive authority on the same line the case of *Moore* v. *Schoppert*, 22 W. Va. 282, is pertinent. This case was decided in 1883. It arose upon the attempt of the county court of Jefferson county, West Virginia, to take possession of a certain toll-house of

the Cross-Road and Summit Point Turnpike Company, a Virginia corporation. This corporation is Item 71 on page 375 of the record, and is included as such in the exception of Virginia to "Items 70 to 117, inclusive, turnpike companies aggregating $803,555.83." The county of Jefferson, apparently going on the theory that this road and other property of this company belonged to it as grantee from the State of Virginia under the act of February 3, 1863, (App. to R., p. 128) took possession of a toll-house and a lot of land on which it was situated, and this action of ejectment was instituted by this Virginia corporation, the Cross-Roads and Summit Point Turnpike Company, in the name of Moore, its president, to recover this piece of property. As elsewhere shown in this case, West Virginia granted to the counties in which the roads were situated all the stock received by it in the road corporations under the act of February 3, 1863. In this case the Supreme Court of West Virginia distinctly recognized and enforced the corporate ownership of the turnpike company of the property connected therewith. We quote the second syllabus, as follows:

> 2. "The effect of the legislation of the re-organized government of Virginia and of this state is to transfer to and vest in the different counties of this state the stock or interest of the State of Virginia and of this state in the roads of incorporated turnpike companies and to confer upon the respective county courts of this state the management and control of the stock or interest thus transferred, and also to give to said county courts control of any such roads or parts thereof lying in any county as such county may by agreement, condemnation, or otherwise acquire, or of such roads as may have been entirely abandoned by any such corporation or the private stockholders thereof; but it does not give to the county courts jurisdiction and control over any turnpike road belonging to any incorporated company, which is or shall be managing and controlling its road according to its charter, further than the right to control and represent as a stockholder the stock or interest acquired by the county from the state in such company, and to regulate the tolls of such company" (p. 289).

The Court in this case further says:

> "From the facts as they now appear in this case, it is evident that the county of Jefferson has no other interest in the house and lot in controversy in this action than that of a stockholder representing and controlling the stock formerly owned by the State of Virginia in the Cross-Roads and Summit Point Turnpike Company."

This case clearly shows the attitude of the courts of last resort of the State of West Virginia towards these corporations; and this decision, made twenty-seven years ago, has never been overruled or extinguished, but has always stood as the law of West Virginia in relation to these corporations. The fact remains as to each and all of these items mentioned in this exception, that Virginia subscribed and paid for and received shares of stock in each and every one of these corporations. These shares of stock in her possession were her own private property, subject to sale or any disposition the state chose to make thereof, and which under the laws of nations would not have passed to the State of West Virginia upon the separation, although the actual property of these corporations lay wholly or partly within the present limits of the State of West Virginia. The title of the State of West Virginia to these stocks is based alone upon the act of February 3, 1863 (App. to R., p. 128). This act provided, as set out in the eighth paragraph of the bill, that West Virginia should duly account for these stocks in the settlement thereafter to be made with Virginia. This provision is practically a contemporaneous construction of the meaning of the ordinance on this subject. West Virginia certainly was not to pay for this property but once. Certainly it was not intended that she should pay the cost of the stock under the ordinance, and then pay for the value of the stock under the said act of February 3, 1863.

In the account filed by Virginia under Paragraph III. she included value of shares of stock in two banks, and insisted that the money invested by Virginia in such stock be allowed as state expenditure. The Master found against her on this contention, and, unless the general exception put at the end of their printed pamphlet of exceptions covers it, Virginia did not except to this finding of the Master.

Certain it is that she did not deem it of sufficient importance to specify those two cases in her exceptions, and we feel justified in the conclusion that she has abandoned her contention as to same. She is not very consistent in such abandonment, because there is no difference in law as to money being a "state expenditure," which is expended by the state in the purchase of stock in a corporation, whether that corporation be the Northwestern Bank of Wheeling, or the Wheeling, West Liberty and Bethany Turnpike Company. As will be set out later, Virginia purchased between 1832 and 1840, 4,500 shares of the stock of the Northwestern Bank of Wheeling, and in her original account attempted to charge West Virginia with $450,000 paid therefor as a state expenditure. In the year 1857 (R., p. 499), Virginia sold 1,082 shares of this stock for the sum of $113,671.42. If an expenditure once made, as claimed in the case of the Kanawha Turnpike and Kanawha River Improvements, could never be changed by the subsequent action of Virginia prior to the separation of the two states, then Virginia was not just to herself when she withdrew from said charge of $450,000 the value of these 1,082 shares of stock, which were sold, paid for, and delivered to the purchaser in 1857. We refer to this here to show an example that Virginia dealt with these stocks as a private person would. It is further shown in this record, especially under Paragraph VI. of the Master's report, that Virginia received large dividends from many of these investments.

Against sustaining this exception of Virginia is the undisputed fact that Virginia did not expend this money or any part thereof in West Virginia. The corporation in each particular case, through its board of directors and other officers, expended the money. There was no control in the state over this expenditure beyond such as might have been given by stock ownership. The legal entity which made the expenditure, was actually the corporation. The title of the property was in the corporation; and the corporation as such managed and controlled the property. In the case of the Northwestern Turnpike, the state, through its own officers, directed the expenditure of the money. The same was true in the case of the Staunton and Parkersburg Turnpike, and of the Covington and Ohio Railroad.

In these three notable instances no one but a state officer or agent had any authority whatever. But in those corporations named in this exception the corporation alone, through its duly elected officers, expended its own money for its own corporate purposes.

On page 12 of the exceptions filed by Virginia is the following:

"VI. COMPLAINANT'S SIXTH EXCEPTION."

> "In addition to the five exceptions above set forth, complainant respectfully asks that all of the alternative statements contained in the Master's report, made at the request of and pursuant to objections interposed before the Master by the complainant, and not covered by any of the foregoing exceptions, may be taken and treated as exceptions made by the complainant to said report because of and with respect to the errors of law appearing on the face of said report and of the record returned therewith, in the particulars to which said alternative statements respectively refer."

We have seen no brief of Virginia in this case, and we are at a loss to know whether counsel for Virginia intends this to mean that every alternative statement made by the Master at her request will be insisted upon at the hearing or not: but in the event that counsel shall do so, we desire to call attention to certain alternative findings made by the Master under Paragraph III., which we will take up in the order in which they are found in the report.

The first one of these is "Item 3. Winchester and Potomac Railroad, $170,532.00." This item is discussed at length by the Master (Report, pp. 47-64). The total item is $270,000, made up of the sum of $120,000 paid for stock of this corporation by Virginia, and the sum of $150,000 loaned by Virginia to this corporation upon security therefor being given. The property of this corporation consisted of a railroad running from Winchester, in the county of Frederick in Virginia, to Harper's Ferry on the Potomac River, in the county of Jefferson, now in West Virginia. This road was constructed under the acts of Virginia of 1831, and was one of the early railroads projected in the United States. 63.16 per cent of the mileage thereof is in West Virginia. The legislation dealing with this road prior to

the separation of the two states, consisted in incorporating the same, authorizing the subscription of stock, authorizing the loan, and then by the act of February 24, 1846, Virginia commuted the loan and the stock into an annuity of $5,000.00 a year forever (App., p. 30). This annuity was paid annually up to and including the year 1861 (R., p. 489). The ledger account on the books of the Internal Improvement Fund of Virginia which carried the subscription of $120,000 to the stock, was closed with the explanation that the stock had been surrendered for this annuity. All these facts are undisputed. With the beginning of the Civil War the Court will take judicial notice of the fact that no railroad running from Winchester to Harper's Ferry could pay annuities. This annuity accumulated during the years of the war from 1861 to 1865.

The first question that arises is the state's subscription to the capital stock of this corporation. This stands, we think, on the same basis as the subscription of the state to the stock of turnpike companies, banks, and other private corporations; and the same principles and argument apply here that we have applied to the other cases of such stock subscription. They were not "state expenditures," nor were they "ordinary expenses of the state government"; they were merely and only *investments*. The special circumstances in this case of the annuity we will advert to presently.

As to the loan, we are fixed in our opinion. All the loans mentioned in the record, as was this one also, were secured in some way or manner. This record discloses three of them: the one under discussion; Item No. 15 (R., p. 373) Kanawha Board Bonds; and Item No. 150 (R., p. 377), Town of Bath. The first two have the principal and interest both secured by mortgage, and the third had the payment of the annual interest forever secured by a bond. Specific and careful provision was made in each case for this security. We deem the statement of this proposition sufficient to prove itself. In none of these cases was the money expended by Virginia. In each case it was expended by the borrower.

In this case of the Winchester and Potomac Railroad Company, Virginia, by acts passed on February 22, 1866, and April 25, 1867 (App., p. 31-2), provided that the corporation could pay to the

State of Virginia in bonds of that state at par the sum of $83,333.33, which was designated in the act as the "principal sum owing, together with all interest due thereon," and upon such payment the claim of the state against said company was to be "lifted and discharged." The Master finds (Rep., p. 64) that there was paid into the treasury of Virginia in 1866 in bonds under these acts, $118.518.12. A calculation will show that this was the principal sum of $83,333.33, plus the unpaid annuity from 1861 to time of payment, together with interest thereon. Under the act of 1846 this annuity of $5,000 was to be in lieu of interest on the debt due by this company to Virginia and of dividends on the stock of Virginia in the company, and so long as said $5,000 was paid the payment of the principal of the debt was to be postponed. Thus, we see that in 1867 Virginia capitalized the annuity of $5,000 at six per cent, making the principal sum of $83,333.33. She then exacted from the debtor the unpaid annuity with interest, and then she assigned to the company in consideration thereof all her right, title and interest and beneficial ownership in the loan and stock held by her in said company. In the event that the Court should find that West Virginia would be chargeable with this sum otherwise, then we confidently refer to this action of Virginia as an absolute release of all such claim.

Again: The act of February 3, 1863, (App. p. 128,) provides that there shall be transferred to West Virginia the "stocks of any company or corporation, the principal office or place of business whereof is located within the said boundaries" of West Virginia. The principal office of this railroad company was at Winchester, now and then in Virginia. Hence, none of the stock was transferable to West Virginia. Virginia evidently so understood it, for after the Civil War she legislated about this road, made contracts with it, and otherwise dealt with it, without regard to West Virginia, and quite in contrast with her acts after the war in connection with the Covington & Ohio Railroad. By reference to pages 35 to 49 of the Appendix to the Record, it will be seen that the acts of Virginia respecting this last named railroad were concurrent with acts of West Virginia.

Item 15, Kanawha Board Bonds—$60,000.

This item is referred to above as one of the loans set up in the record, made by Virginia to the James River and Kanawha Company, and secured by mortgage. The bonds were delivered to a private corporation, which had the power to do as it pleased with such bonds and the money derived from the sale thereof. The Master found that West Virginia was not chargeable therewith (Rep., p. 71).

Item 53, Harper's Ferry Raid—$189,715.59.

The Court will take judicial notice of the John Brown Raid and what it meant. It was an invasion of the State of Virginia by an outside armed force. The fact that Brown accidentally entered territory that afterwards became a part of the State of West Virginia, and that this large sum of money was expended in the transportation of troops, pay of soldiers, quartermasters' supplies and subsistence of the soldiers called from all over Virginia and most of them from the territory still Virginia, does not under the meaning of this paragraph and the ordinance make this a state expenditure within the limits of West Virginia. It was a most extraordinary event—an invasion of the sovereignty of a state, and an armed conflict with the officers of the state. After the prosecutions of the invaders were ended, and punishment inflicted by the execution of the judgment of the court, the local evidence of the fact that this large sum had been spent partly in Jefferson county, now in West Virginia, disappeared as quickly as fog before the morning sun. The soldiers returned to their homes in Virginia. This subject is referred to again herein under Paragraph IV.

Item 54, School Commissioners—$830,865.37.

The Master (Rep., p. 74) gives a very succinct statement of this item and the reasons why he disallowed the same. It was the total of the annual appropriations for the education of poor children, which were assigned to the counties now forming the State of West Virginia. It was no more of a "state expenditure" in West Virginia than the payment of the salaries of the judges of the courts was such an

expenditure in that state. Hereafter, when this subject is again reached under Paragraph IV., we will state some reasons why we think that the most of it should be eliminated from this cause. Certain it is that there is no error in the refusal of the Master to allow it as an expenditure under Paragraph III.

Item 56, Trans-Alleghany Lunatic Asylum—$27,000.

Virginia never erected any public building in that part of her territory now in West Virginia. The only building she commenced in what is now West Virginia was an asylum at Weston in Lewis county, and called in the account by the above name. Prior to January 1, 1861, the sum of $125,000 was appropriated for purchase of the site and the construction of this building. On January 1, 1861, there remained of this appropriation the sum of $27,000 in bank to the credit of the board of directors of this asylum and in the hands of the treasurer of such board (R., pp. 484-5). The restored government of Virginia in January, 1861, took over this sum of $27,000 and placed the same in two banks in the City of Wheeling to the credit of the State of Virginia, and used the same for the purpose of the restored government. It needed money at that time to defend the loyal portion of the state. This money was not expended before January, 1861. It was the property of the state, and the state had the right to take it and use it for other purposes. Some time later, the state appropriated large sums of money for the purpose of completing this asylum, but that does not affect the fact that this $27,000 had not been expended at all on January 1, 1861; in fact this sum was never used for that purpose.

Item 148, Fairmont Bank $50,000; and Item 149, Northwestern Bank of Virginia at Wheeling, $341,800.

These two items were on account of the investment by Virginia of that much money in the purchase of shares of stock in these two banks. As stated heretofore, the original purchase by Virginia in the Northwestern Bank was somewhat larger, and Virginia in 1857 sold 1,082 shares, making a certain profit thereon. She covered this money into her treasury, and on the hearing before the Master she

withdrew the original claim of $450,000 and reduced it to this amount, by reason of such sale.

The attitude of Virginia in this cause has been that where an expenditure had once been made, as claimed by her, no act of hers thereafter in connection therewith would affect or alter the fact. In other words, that such expenditure, when once made, should be charged in this account against West Virginia, regardless of the fact that Virginia may have sold the subject matter thereof prior to the first day of January, 1861, to some private person or corporation. These bank investments were extremely profitable. It will be seen by reference to page 176 of the Master's report under Paragraph VI. of the decree, that he reports the dividends from these identical stockholdings during the period of the accounting as $786,666.98. If Virginia intends to abandon the claim asserted by her for the amount of these bank stocks, and to attempt to distinguish the money invested in them from moneys invested in navigation or bridge company stocks, it must be because the money invested was paid back in double quantity in dividends. If West Virginia is to be charged with the moneys invested, Virginia certainly would be charged with the moneys received on the investment. We, of course, adhere to our original position, that money invested by Virginia in the stocks of all these private corporations was not a state expenditure in the meaning of the decree and the ordinance, but, as shown by the Master in his report by his excerpts from the constitution and laws of Virginia, was intended by the State of Virginia as the investment of funds in private corporations for profit. This view is made well-nigh conclusive by the fact that Virginia, by statute, prohibited the sale or transfer of any of these stocks when productive or could likely be made productive.

PARAGRAPH IV. OF DECREE.

"4. *Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia,*

with and without slaves, as shown by the census of the United States."

This paragraph, like Paragraph III., is based on the Wheeling ordinance. The ordinance used the language "a just proportion of the ordinary expenses of the state government since any part of said debt was contracted." The decree uses the language "government of Virginia," instead of the words "state government." The parties to this controversy have apparently proceeded on the proposition that the language of the decree was intended to mean the same as that of the ordinance. The agreed period for the beginning of this account is the 19th day of March, 1823. There are no disputes as to the amounts under this paragraph. The only questions are whether certain items come under the head of "the ordinary expenses of the state government."

First, we take up the exceptions filed by West Virginia to the findings of the Master under this paragraph to which she objects. As before stated, in this part of the brief the aim is to state the facts only, and discussions of questions of law are merely incidental, and indulged in in connection with the facts only so far as necessary to make clear the position of West Virginia, and justify her exceptions.

Item No. 1, Tobacco Receipts $353,123.96; Master's Report, p. 114.

An explanation is needed to show what this means. Virginia, in her original exhibit (printed as Appendix A hereto and an exhibit herewith) under this paragraph, entered into many details. She divided the ordinary expenses, as based on her theory, into five divisions, to wit: (1) general expenses of the government; (2) administrative expenses of the Board of Public Works; (3) maps, expenses of surveys, and inspection of internal improvements; (4) general expenses of the Literary Fund; and (5) interest charges.

Under general expenses of the government there were included the following subjects, to wit: General Assembly, officers of the government, criminal charges, court charges, lunatic asylums, penitentiary, militia, public warehouses, tobacco sales, slaves transported and exe-

cuted, and many other smaller items. She gave credit on the total of these items for funds derived from the sale of articles made in the penitentiary, and for fees and other moneys earned by her officers and persons whose salaries and wages were paid by the state and which were charged to this account of ordinary expenses of the state government. One of the subjects of state supervision in Virginia was the inspection of tobacco. The Court will take judicial notice of the fact that for two centuries at least tobacco had been an extremely important product of Virginia. The state appointed certain officers, called inspectors of tobacco, and paid them certain sums as salaries, and they collected from the owners of this tobacco certain fees for inspecting their tobacco. These fees were covered into the state treasury as a part of the state's moneys, and the Master finds (Report, p. 116) that the sum set out above was actually paid into the commonwealth's treasury from this source. West Virginia believes that she is entitled to a credit of this sum from the total amount of the ordinary expenses of the state government, and believes it to be very inconsistent with the original admissions of Virginia under this identical head to refuse to allow to West Virginia this credit. Virginia herself says that it is correct to allow a credit of $275,000 for moneys received from the sales of goods manufactured in the state penitentiary. The expenses of the penitentiary are charged to ordinary expenses, and the credit is given by Virginia. Under the laws of Virginia at that time, certain slaves were transported to foreign countries and sold. The owners of such slaves were paid an appraised price from the state treasury. The moneys derived from the sale of these slaves, $272,000, were credited on the total of the ordinary expenses. She had certain state officers called weigh-masters of live stock. They collected certain fees from the persons for whom they did services, and these fees were paid into the state treasury, and Virginia voluntarily gave credit therefor in her statements filed with the Master under this paragraph. We are therefore surprised at her contention that the amounts collected by the inspectors of tobacco and turned into the treasury should not likewise be a credit. When the account of ordinary expenses is charged with all the salaries of all state officers and employees and all expenses of carrying out the state laws, it

seems that as a matter of principle it would necessarily follow that credit must be given for all sums of money earned by, through or under the administration of the affairs of the state by such officers and employees, and we utterly fail to see any difference between the amounts earned by inspectors of tobacco and the amounts earned by weigh-masters of live stock and the other items as above set out and conceded by Virginia in her original exhibit No. 4 under this paragraph, printed as an appendix hereto. We must therefore insist upon this claim of West Virginia, and respectfully ask that this exception be sustained, and that said sum of $343,123.96 be deducted from the total of ordinary expenses of the state government.

Exceptions to Item No. 5, maps (board of public works), $11,446.48, will be discussed along with exceptions to Item No. 27, general expenses connected with surveys, $106,983.67.

Items No. 7, International Exchanges, $2,836.19; No. 9, Printing Treasury Notes, $375.74; No. 18, Attorney General fees for prosecuting Seldon, Withers & Co., $500; and No. 19, part of $5,000 expended under the act of February 14, 1844, are in our opinion not properly charged as a part of the ordinary expenses of the state government, but a discussion of each would take too much time and space. This is especially true when we have under this identical head an item of $18,574,747.84, to the allowance of which as an ordinary expense we earnestly object. We therefore waive the exceptions of Items 7, 9, 18, and part of 19 as set out above.

Item 5, Maps (Board of Public Works) ----$ 11,446.48
Item 23, Sundry Board of Public Works expenses ----------$ 36,728.50
Item 27, General Expenses connected with Surveys ----------$106,983.67

These three items are found on pages 118, 128 and 134 of the Master's report. The general subject has already been discussed herein, and is also discussed on page 75 of the Master's report at Item 55, Paragraph III. We are of the opinion, as heretofore stated, that the amount allowed by the Master on the last named page of his

report, $60,873.19, was improperly allowed as a state expenditure, and that the whole of the three above items, 5, 23 and 27, together with the additional amount, should be allowed as an ordinary expense of the state government, and no part thereof as a state expenditure. This would make the total of Item 27, $250,206.56. There are sundry parts of these Board of Public Works expenses which to our mind seem clearly improper to be classed as ordinary expenses, yet considering the comparative smallness of the amounts we will not further insist, for the same reasons that are given above as to other small amounts.

Item 25, Harper's Ferry Raid.....$251,763.65
Item 16, Calling out Militia at Wheeling in 1836 .....$ 1,099.00

The Master has allowed both of these items as a part of the ordinary expenses of the state government (Rep., p 129). Virginia set up this amount, less a few deductions, as a state expenditure within the limits of West Virginia, and the Attorney General of Virginia stated her position to be that any moneys, which could be shown to have been spent in West Virginia, no matter for what purpose, were to be classed herein as state expenditures. In some instances, she has classed exactly similar expenditures when expended in West Virginia as state expenditures under Paragraph III., but when expended in Virginia she has classed them as ordinary expenses under Paragraph IV. It seems to us that under no possibility of the use of language, can it be said that exigencies of the kind for which these moneys were spent could be called "ordinary." The invasion of a state by an outside armed force for the purpose of freeing the slaves, and thus taking away from the people of the state more than $300,000,000 worth of property, was certainly somewhat "extraordinary". It would even come under the definition of one of the accountants of the plaintiff, who, when he testified in this case, said that every expense which was not "ordinary" was "extraordinary". It is true, as stated by the Master, that the maintenance of a military force was admitted as an ordinary expense by the defendant. But the defendant found on an examination of this item, that the state had maintained

such military force ever since its formation, and such maintenance and the laws therefor were general, and in existence on the 19th day of March, 1823, when this account began, and were in existence until the end of this account, as they had been from the year 1788 at least. After the happening of the two events, they were brought to the attention of the legislature of Virginia, and the appropriations were made, we believe, in each case at least two years afterwards. They were most *unusual and extraordinary*. No fixed provision of any kind had ever been made in anticipation of them. The fact is that only two such events happened between March 19, 1823, and January 1, 1861. This statement applies to the whole State of Virginia. It should be noted that, in the preparation for the presentation of evidence in this cause, every expenditure made by Virginia during the entire period of the accounting, has been carefully scrutinized, and counsel for the plaintiff have set up everything that could by any possibility be charged to this defendant. Thus, we see that the great State of Virginia, extending from the Atlantic ocean to the Ohio river, comprising an area of 66,000 square miles, only had within its immense borders, two calls for the militia in thirty-eight years. To provide funds to meet the expenses of these two extraordinary events, special acts of the legislature, long after the happening of the events, were passed; and the legislature itself fixed the status of the Harper's Ferry case by saying that the moneys therefor were appropriated for the "defense of the commonwealth". One could as well call the expenses of Virginia in defending her soil against the British soldiers in the war of 1812-14 an ordinary expense of the state government. It is true that the expenditure at Wheeling of the $1,099 might be called a part of the criminal expenses; that is, a part of the expenses for enforcing the penal laws of the state, and be allowed on that score; but the same reason does not apply to the Harper's Ferry raid. This historical event stands out as one of the spectacular and extraordinary occasions in the history of the United States; and now, more than fifty years after its happening, the chief actor therein, John Brown, is still looked upon as a martyr in more than half of these United States, and his memory honored as such by the erection of monuments and public celebrations and the like.

Historically, it is simply impossible to say that this was an ordinary event, an ordinary occasion, or that the cost thereof was an ordinary expense. Its status in history is fixed otherwise.

Item 24, Interest on Public Debt, Aggregate $18,547,747.84.

This is the largest item in this account under this paragraph. We do not understand that there are any disputes of fact in relation thereto, but there are certain facts in the record which we think are proper here to be summarized, and which will have a bearing on the discussion of law relating to this item and found in Part III. of this brief. It is not the purpose of this part of the brief to make extended discussions of any questions of law, as heretofore stated.

In plaintiff's original Exhibit D-1 (which was their statement of ordinary expenses of the state government under Paragraph IV., and printed as Appendix A hereof), there is set out a partially detailed account of this interest. Certain credits were there given, amounting to $2,418,116, which were deducted from the total interest paid by the state during the period of accounting in this cause, and that deduction leaves the balance as at the head of this section of the brief, to wit: $18,547,747.84. It is our purpose to take up those deductions and other sums which appear on pages 1056, 1058 and 1059 of the printed record.

As a preliminary to this discussion, we state an undisputed fact, that the entire amount received from the sale of bonds of the State of Virginia was used for the purpose of either constructing some sort of a public work by the state directly, or for the purchase of stock or bonds of some corporation, of which turnpike, bank, railroad, navigation, or bridge companies were the most usual. There was expended during the said period by Virginia in its subscriptions to the capital stock of banks within her *present* territory the sum of $2,108,591. There was expended in the purchase of stock of turnpike and road companies wholly within the *same* territory the sum of $1,897,747. There was expended in the purchase of stock of bridge companies in the *same* territory the sum of $49,622. There was expended on account of purchase of stock of navigation companies

in the *same* territory the sum of $908,173. There was expended for the purchase of stock of railroad companies wholly within the *same* territory the sum of $13,713,256. There was expended as loans to railroad companies within the *same* territory the sum of $2,930,000. There was expended in the direct construction of the Blue Ridge Railroad within the *same* territory $1,604,824. There was expended in the construction of the Covington and Ohio Railroad *in the State of Virginia* the sum of $1,640,668. There was expended for the construction of turnpike and roads wholly on state account, and not for the purchase of any stock in the companies, within the *same* territory, $791,888. There was expended directly on state account in the *same* territory in the construction of turnpikes and roads extending into and between the territory now constituting the two states, the sum of $247,289. This last sum is Virginia's proportion on a mileage basis of the actual cost of the construction of such roads. There was expended in the purchase of stock of the Alexandria Canal Company the sum of $272,000. There was expended in the purchase of stock of the Winchester and Potomac Railroad Company and in a loan to said company, the sum of $270,000. On a mileage basis, $41^2/_3$ per cent of this road is in Virginia and $58\frac{1}{3}$ per cent in West Virginia. There was expended for the purchase of stock in the Chesapeake and Ohio Canal Company (a Maryland corporation) the sum of $250,000. There was expended for construction work and improvements on the James River Canal, Blue Ridge Canal, and Kanawha Road and River $1,216,666. Stock was taken for this upon the transfer of the canals and Kanawha Road and Kanawha River improvements to the James River and Kanawha Company. There was expended in the purchase of stock of the James River and Kanawha Company directly the sum of $2,000,000 additional. There were cash loans made by Virginia to this company of $890,000. Virginia loaned to this company bonds of the par value of $1,597,000. She guaranteed for this company bonds of the par value of $2,260,000. By the act of March 23, 1860, she assumed all of these bonds as her original debt and took in lieu thereof stock of the James River and Kanawha Company. The expenditures above named, together with others paid in interest on the bonds, amounted to a total of $9,547,582.

(R., pp. 820 L. & M.). These expenditures aggregated a sum in excess of $36,000,000, all of which was expended in the present State of Virginia except $302,000 on the Kanawha Road and Kanawha River. Practically all of this immense sum was paid for in bonds, which either formed a part of the public debt on the first day of January, 1861, or which had been retired through the operations of the Sinking Fund, or by the payment thereof by the state.

It will be seen that each and every one of these expenditures was of an extraordinary character for a state to make. They could not have been then called and would not be now called "ordinary expenditures of the state government."

While these immense expenditures were being made in the territory of the present State of Virginia, there was only expended in the counties now forming West Virginia, according to the claim of the Commonwealth of Virginia in this case, out of the moneys derived from the sale of bonds for the construction of roads, etc., and for the purchase of stocks, the sum of $4,200,000. (West Virginia does not concede that this sum was expended in the meaning of the ordinance and the decree, and the Master finds that only $2,811,000 was so expended in West Virginia, to which amount West Virginia excepts, because too large.) It will thus be seen that according to the claim of Virginia, out of a total of $40,000,000 spent for the purposes above set out, nine-tenths thereof was spent in the present State of Virginia, and one-tenth in the present State of West Virginia.

Naturally these immense investments in stocks and loans were not without some returns to the state, and Virginia recognizing this fact, made certain deductions in her "interest schedule" annexed to her original exhibit D-1 under the fourth paragraph. Credit is there given for certain sums paid as interest, as follows:

Interest on bonds in the Literary Fund	$1,324,051.00
Interest on state stock	$312,214.00
Interest on state stock	639,670.00
Interest on James River and Kanawha Company bonds	142,181.00
Total	$2,418,116.00

But in addition to the amounts collected by the state and included in the said total sum of $2,418,116, there are many other large items of income from these investments of the moneys made by the commonwealth which should be deducted if West Virginia is to be charged with any part of this interest as an ordinary expense of the state government.

There was received by Virginia the following sums from the following classes of corporations on account of investments made by Virginia therein of the moneys arising from sale of bonds, to wit:

Dividends on Bank stock	$5,936,000.00
Dividends and interest from Railroad Companies	1,748,000.00
Dividends and interest from Canal Companies	321,000.00
Dividends and interest from Turnpike Companies	119,000.00
Dividends and interest from James River and Kanawha Co.	926,000.00
Tolls from James River Company	588,000.00
Interest and annuity, Winchester & Potomac Railroad Co.	76,000.00
Tolls and Interest:	
Northwestern Turnpike, Southwestern Turnpike, Staunton & Parkersburg Turnpike	$ 77,000.00
Total	$ 9,791,000.00

In this sum of $9,791,000 there is included the sum of $1,094,000 for which credit has been given. The true total is therefore $8,697,000.

There was received by the commonwealth from investments in the territory now forming West Virginia, for which no credit has been given to West Virginia in this account anywhere, the following sums:

Dividends from Banks	$786,666.00
Dividends from Turnpike Companies	15,000.00
Dividends from Bridge Companies	6,000.00
Total	$807,666.00

Of these large sums it is probable that part of the bank dividends arose from stock which was not purchased with money derived from sale of the state's bonds; but it is certain that all of the balance was wholly derived from investments made by the commonwealth with moneys derived from the sale of such bonds, and it is further a certainty that nearly all of the bank dividends from the West Virginia counties and a goodly portion of the bank dividends from the Virginia counties were derived from the stocks which were paid for by the issue of bonds of the commonwealth. It is certain that in Virginia, from companies whose stock was purchased with the proceeds of bonds, and from works which were constructed by the commonwealth with the proceeds of bonds, there was derived as dividends and interest and paid into the treasury, the sum of $3,855,000; but credit was given by the commonwealth in this account for only $1,094,000 thereof, leaving a balance of $2,761,000 so derived, for which no credit is given in this account. There should be added to this last named sum at least $1,500,000 for the dividends received from banks, the stock of which was purchased by the commonwealth out of the proceeds of her bonds. This last named sum is probably too small, but the record does not show the exact amount.

This extraordinary condition of affairs seems to us to constitute very strong reason indeed why this interest on the public debt should not be charged as an ordinary expense of the state government. Investments for profit made by the commonwealth cannot be considered as performing one of the usual, customary or ordinary duties of a state government. This is proven by the investigations made by the commonwealth through Chief Justice Marshall, and many other able men of Virginia before her system of internal improvements was commenced. The matter was in fact considered for a great many years, and many discussions for and against the inauguration thereof were had. Many reports were written by able commissions and many messages on the subject were penned by able executives. It was recognized then as a work of *extraordinary* character and one outside of the usual, *ordinary* functions of a state government.

West Virginia is charged by the Master under Paragraph III. as her portion of the ordinary expenses of the state government, the

sum of $2,811,000. Of this amount about $100,000 was expended prior to the year 1831. A further sum of about $500,000 was expended between 1830 and 1840. Another sum of about $500,000 was expended between 1840 and 1850. The balance between 1850 and 1861, and the greater part of this balance of $1,900,000 was expended between 1855 and 1861. These facts were known to the Master when he made up his report, yet he finds that $18,500,000 of interest on the public debt is an ordinary expense of the state government *under the peculiar circumstances of this case.* The result of this finding is that West Virginia would pay from one-fourth to one-tenth, as this Court may determine, of this huge sum of money. For argument's sake we will suppose that this court will determine that a just proportion of these ordinary expenses to be paid by West Virginia under the ordinance would be one-fourth. That would make West Virginia liable for more than $4,600,000 of this interest on the public debt. This sum would be treble the amount of interest that Virginia actually paid on the amount found by the Master to have been expended by the commonwealth within the present limits of West Virginia.

It must be remembered that under Paragraph VI. of the decree, it is shown that West Virginia paid into the treasury of the commonwealth more than $6,100,000 in taxes during the period. While West Virginia receives credit in the settlement under the ordinance for this amount, she does not receive any interest thereon or on any part thereof. Certainly, it would have been just and equitable for the Master to have offset the interest on the state expenditure of $2,800,000 by the use of the $6,100,000.

It must be further remembered that the men who passed or adopted the ordinance knew of this expenditure for interest on the public debt; knew what items entered into the expenses of the state government; knew what expenditures had been made by the state within the limits of the counties now forming West Virginia. It is shown by the historical records of Virginia that many of them had been members of the legislature of Virginia; that many of them had been members of the constitutional convention of 1851, wherein these matters were very thoroughly discussed; that one citizen of the territory now West Virginia had been at that time (1861) for many years auditor of the

commonwealth; that this auditor had made annual reports, some of which have been filed as exhibits in this cause. These reports were large volumes, and gave the annual details of the moneys received and expended by the commonwealth. It gave the details of the bonds issued and sold, and the purposes for which their proceeds were used. In addition, there were the annual reports of the Board of Public Works, which contained all the reports made to them by the state engineer and all the other officers and employees of the state under their authority. A glance at these reports will show how full and complete they were as to the cost of all of these public works.

A controversy had existed for at least forty years concerning the expenditure of the public moneys derived from bonds on these public works. Citizens of the territory now within West Virginia had for that period claimed that a gross injustice was done to the people west of the mountains, and justified their contention by giving details thereof; and even to this day, with the lapse of fifty years for the passion and prejudice and the deep-seated feeling of injustice suffered at that period to pass away, we submit that no unbiased person will say that West Virginia received her share of these public improvements, when it is considered that out of $40,000,000 expended therefor Virginia only *claimed* to have expended one-tenth in the present limits of West Virginia. Virginia spent during this period $20,000,000 and more in purchasing stock and making loans for, and directly building, railroads in her present territory. Between 1855 and 1860 she expended $1,146,000 in the direct construction of one railroad in West Virginia, and that was done, as is plainly to be seen, for the benefit of the Virginia Central Railroad, which was built from her capital at Richmond to a point within fifteen miles of the present limits of West Virginia, and which, as it was then seen, could not be made a successful financial venture unless it reached the Ohio river and tapped the paying traffic of that region and that of counties now in West Virginia. This road and its connections would carry this rich traffic, by way of Virginia's capital, to her eastern seaboard, and prove, as it was believed, of immense benefit to that part of the old state.

The division of the old state was not the growth of a few weeks of civil war, but it was the result of what the people of the counties now

forming West Virginia believed and said was the gross injustice done to the counties west of the mountains by the larger population east thereof. The counties of West Virginia found an opportunity in 1861 to do that for which many had hoped for half a century preceding that date.

The record in this cause shows that in 1860 the slave population of Virginia amounted to 490,000 people. Of these only 18,000 were inhabitants of the counties now forming West Virginia. Two-thirds of this number of 18,000 were inhabitants of a half dozen border counties. Slaves were then the most staple and productive property. At $350 apiece this property was worth over $170,000,000, of which about $6,000,000 belonged to the people of the counties now forming West Virginia, and $164,000,000 to the people of the counties now forming the State of Virginia. The estimate of $350 per slave is a very low one indeed. If we were to take the estimate placed upon this class of property by the owners thereof, as shown by the census of the United States for 1860, the value would be more than double our figures. The auditor of Virginia estimated the slaves to be worth $612.63 each. (Auditor's report for 1858-59, p. 392.)

By the constitution of 1851, which the majority east of the mountains imposed upon the state, it was decreed that none of these slaves under twelve years old, although property and subject to sale, should be taxed, and those above the age of twelve years were taxed at a very small rate which amounted to $1.20 a person. The assessor's books show, as set out in the record, that the assessment of these slaves in number was much less than that shown by the census of the United States. Certain it is that the slaves above twelve years of age would easily average the price of five to seven hundred dollars apiece, but for the selfish reasons of the owners they practically escaped taxation. All the property of the people west of the mountains, except their small and decreasing number of slaves, paid its full share of taxes and had no such exemptions.

By reason of this unjust system of taxation the people living in the territory now West Virginia, from March 19, 1823 to January 1, 1861, the period of accounting in this cause, paid very many thousands of dollars in taxes above their just share. The system worked

a double injustice; for the people west of the mountains not only paid their just share of taxes, but they were compelled to pay in addition what the people east of the mountains ought to have paid and did not pay. This unjust system of taxation was put and kept upon the western counties by an equally unjust scheme of representation in the General Assembly of Virginia, whereby the basis of representation in that body was arbitrarily fixed to favor the eastern part of the state. It provided among other things, that the owner of slaves should have three votes for every five slaves owned by him. By the political power thus given them by their slaves the owners thereof in eastern Virginia practically exempted their slaves from taxation; and also by this unjust power they enacted laws to protect them in the ownership of this property, which entailed great expense upon the state; such items, for instance, as "slaves transported and executed," $311,000; "transportation of free persons of color to Liberia," $26,103.50; "fugitive slave fund," $5201; as well as no inconsiderable part of the large disbursements for military and militia expenses, criminal expenses and penitentiary expenses. By reference to Appendix A hereof, it will be seen, that from 1820 to 1861 the disbursements out of the treasury of Virginia for "criminal expenses," were $1,785,632.11, exclusive of $1,188,212.34 of "court charges;" and that the disbursements, during that period, on account of military expenses, embraced in such items as the "militia," "public arsenals," "public guard," "guards in the country," "military contingent," "armory—manufactory and repairs of arms," etc., etc., aggregated $1,325,000. This does not include disbursements on account of the penitentiary, of $844,000, nor the cost of the Harper's Ferry raid, $255,745.77 (Rec., p. 374). It should be remembered that there was not in the entire territory of Virginia, which is now West Virginia, on the 1st day of January, 1861, a single mile of state-built or state-aided railroad, nor a mile of canal, nor a state building; not even a school, not a public institution of any kind. The asylum for the insane, at Weston had just been commenced. The capitol and all the buildings appertaining thereto, the university, the asylums, the institutes, armories, arsenals, and all other public institutions, as well as all the railroads and canals constructed wholly or partly by state money, and in which

millions of such money had been expended, were all located in eastern Virginia and fell to that part of Virginia upon the formation of West Virginia.

With this knowledge and under these conditions the ordinance was framed and passed. It was believed to be just that West Virginia should pay for the state expenditures within her limits during the period of the contraction of this debt; and also should pay a just proportion of the ordinary expenses of the state government during the same period. These two sections taken together necessarily imply a distinction between these two classes of expenditures. They were made with complete knowledge at first hand of the history of the state for the period. Is it right, reasonable, or just to hold that this ordinance was intended to mean that West Virginia was to pay the full amount of all these expenditures, and in addition thereto to pay a large amount of the interest on the public debt which had been expended in the limits of Virginia, the objects upon which it had been expended being still the property of Virginia and situated within her territory? Is it not more reasonable and just to believe that they intended that the state expenditures should be paid, and that the just proportion of ordinary expenses of the state government meant those expenses which were then, had been in 1823, and are now the usual and customary expenses attached to the running of any state government, to wit, the legislative, executive, and judicial expenses, together with those of the state educational system and the state eleemosynary institutions? No stretch of the imagination can include investment in private corporations as a part of the usual and customary functions of a state.

Again, as stated above, the interest on the moneys with which West Virginia is charged is largely in excess of the interest on the moneys expended in West Virginia.

The act of February 3, 1863, which transferred certain property of Virginia within the limits of West Virginia to the new state, is so near to the time of the passage of the ordinance and the adoption of the constitution of 1862, that it becomes entitled to weight as a contemporaneous construction of these documents. It is inconceivable

that in a little over a year after the adoption of the ordinance they would have passed the act just spoken of if they believed they were to pay the value of the properties received by the act and in addition interest on the money which created the properties?

We can think of no more apt illustration of the falsity of the finding of this interest as an ordinary expense of the state government, than that of the ordinary family. Every one can apply this to himself, whether he be a lawyer or a layman. Every family has certain usual expenses, which can be as justly termed "ordinary expenses of family government and maintenance," as those in this case are termed "ordinary expenses of the state government and maintenance." We use the word "maintenance" advisedly, because the language of the ordinance undoubtedly means those ordinary expenses which are necessary to maintain a state government. The ordinary expenses of a family would surely include food, clothing, a house in which to live, gotten by rent or otherwise, furniture, expenses of education, expenses of illness, and the expenses necessary and incident to the care of a house and things of like nature for the necessities and comfort of the household. With these expenses upon him, if the head of the family should determine upon an investment in the purchase of a corner lot and the erection of a building thereon, for rental, or should invest in stocks for the purpose of receiving dividends, and the funds not being in hand, he would have to borrow the same and pay interest thereon, is it possible to say that the interest on this loan, made for this purpose, wholly unconnected with the usual expenses and purposes of family government and maintenance, is an ordinary family expense?

That was the condition of Virginia in 1822. She owed no public debt. She had no interest to pay. She entered upon this system of borrowing money for purposes wholly unconnected with her usual and customary duties as a state government. Surely this expenditure was extraordinary; the purpose was extraordinary; this payment of interest then was extraordinary and unusual. Can this principle be changed by the fact that Virginia enlarged these expenditures, enlarged her issue of bonds, and necessarily continued and enlarged her payment of interest?

Item 26, Expended for Primary Schools, $2,400,331.11.

The differentiation of the sum of $2,400,331.11 from other funds expended for primary schools, which were derived directly from taxation, is partly based on the source from which it is derived. Virginia had what was known as the Literary Fund. This fund was mostly in hand when our period commenced on March 19, 1823. Some accretions were made to it from time to time from forfeitures, fines and escheats. None of the principal of this fund was expended. This sum of $2,400,331.11 came from the income derived from the investment of the principal of this Literary Fund in bonds, stocks and loans, from which was derived dividends and interest, and these dividends and interest were expended by the state for educational purposes. As stated above, most of the principal of this fund was in hand when our period commenced, and Virginia remained the owner of all of it when our period ended on January 1, 1861. This fund was during that period the property of the entire state. It had come from the property of the entire state, as shown by the record, and it is an historical fact, that the nucleus of the fund was the money collected from the government of the United States by the Commonwealth of Virginia on account of Revolutionary War claims.

A brief analysis of this fund and statement of the methods of its production are pertinent at this point. This analysis is made from the figures found in the record, pages 538-B to 538-H. These figures are agreed to by the accountants of each party. They show that on the 19th of March, 1823, there was in the Literary Fund, in cash and moneys invested, $1,240,000; that on the first day of January, 1861, there was $2,200,000; there was received during the period from all sources $4,869,000; and that there was paid out in cash and charged off on account of losses $3,907,000.

The accretions to the fund, making up the sum of $4,869,000, are divided as follows:

From counties now forming West Virginia under laws then in existence....	$114,395.00
From counties now forming Virginia....	401,972.00

These sums under the law were permanent additions to the fund

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These sums under the law were permanent additions to the fund

and became part of the principal, which was in no way to be expended. These permanent additions were invested from time to time, as they came in, like other parts of the principal, and only the income thereof was permitted to be expended.

There was received from the United States war claims $182,441. This was a permanent addition, and comes under the rule set out above as to the funds.

There was received as dividends on stock and as interest on loans made to persons or corporations other than the commonwealth, the sum of $1,059,695. Of this sum $800,764 were dividends on bank stock owned by this fund, and $155,291 were dividends on James River Company stock owned by this fund.

There was received directly from the treasury of the commonwealth,

1.	United States war claims ---------- This sum was a permanent addition to the fund and was not to be annually expended like its income.	$ 77,216.00
2.	Capitation taxes ---------- This sum was expended annually through the Literary Fund, as received.	751,481.00
3.	Interest on investments in state bonds--	2,230,445.00
4.	Dividends on James River Co. stock----	50,686.00
	Total ----------	$4,869,000.00

The expenditures made from this fund, which are charged to the account of "ordinary expenses of the state government" under the ordinance and the decree in this cause, are as follows:

For account of Primary Schools—		
Paid from income from investments ----------	$2,400,331.00	
Paid from capitation tax	655,908.00	$3,056,239.00
University of Virginia ----------		613,000.00
Institution of Deaf, Dumb & Blind ----		40,821.00
Virginia Military Institute ----------		28,500.00
Salaries and expenses of Board ------		85,322.00
Total ----------		$3,823,882.00

Each and every one of these items of expenditure, as stated above, are charged to the account of "ordinary expenses of the state government". We have admitted that the sum of $655,908, paid out of capitation taxes, should be charged against us, for the reason that this sum was taken from the taxes collected from the whole state, and West Virginia has received under Paragraph VI. credit for the amount of taxes paid in by her counties to this fund. We have not seriously objected to the amounts paid to the University and to the other institutions named above. We have not objected that the salaries and expenses of the board were charged as part of the ordinary expenses of the state government. We have insisted, and still insist, that the sum of $2,400,000 is *not* a proper charge, because of the reasons set out above and for the further reasons hereinafter given.

The analysis of the figures above given plainly shows that no moneys were expended out of the capital of the Literary Fund as it existed on March 19, 1863. There was added to the capital of this fund during the period $960,000, of which $260,000 came from the United States on war claims, *and this was the property of the whole state.* The additional sum of $516,000 thereof came from redemption of lands, escheats, and things of like nature. Of this sum about two-sevenths came from counties now in the state of West Virginia. The balance of this capital account came from income of the fund which was not expended, and went back into the fund as a permanent addition thereto.

Virginia has seen fit to give credit against the item of interest on the public debt under Paragraph IV., the sum of $1,324,000, being a part of the interest received from the commonwealth on state bonds. Why she did not also give credit for the $926,919 interest received by this fund from the same source, and the $50,686 received from the commonwealth as interest on James River Company stock, we are at a loss to understand. West Virginia is charged twice in this account with these two sums, once as interest on the public debt, and once as expenditures from the Literary Fund. Common justice requires that, if the Court shall be of opinion that it is proper to charge this sum of $2,400,000 to the account of ordinary expenses under the particular circumstances herein detailed, it certainly will deduct this total of

$977,606, either from this item, or from the item of interest on the public debt in the event that the Court shall overrule our exception to the finding of the Master in reference to the interest on the public debt. But counsel for West Virginia are confident this Court will sustain our exception to this item of interest and deny the right of Virginia to charge the same as part of the ordinary expenses of the state government.

Virginia in her original exhibit D-1 under Paragraph IV. of the decree (printed as Appendix A of this brief) gives credit against the total of the ordinary expenses therein claimed for many items of income. These credits aggregate the sum of $838,000. She recognized the fact that where moneys were paid into the state treasury, which were the result of expenditures made from that treasury and charged in this account as ordinary expenses of the state government, the account should be credited with such receipts. As hereinbefore set out, some of these receipts were moneys received from the sale of goods made by convicts in the penitentiary, moneys received from the sale of supreme court reports which were printed and sold by the state, moneys received from the sale of slaves, which under statute were transported and sold. This admission on the part of Virginia of these credits is a complete and authoritative answer to the position of the Master, that the particular source from which money was derived was immaterial to him, so far as this account is concerned (Rep. p. 134). Virginia admits the right of West Virginia to investigate the source of the moneys paid out for the items claimed by her as ordinary expenses of the state government. She thereby further admits the principle of the right to credits against this account of ordinary expenses for all income into the treasury that arose from the labor of state employees or the management of state institutions or the investment of state funds. In fact, credit should be given against this account of ordinary expenses for all income into the treasury that arose from sources other than taxes in some form or moneys borrowed.

What was the difference in principle between moneys earned by a state convict by his labor and moneys earned by the loan or investment of the state Literary Fund by its labor? Each is measured alone by the work done by it. Each is a producer. The expenses con-

nected with the work of each were paid by the state and are charged in this account as ordinary expenses of the state government. Why should not the earnings of each be treated in the same manner?

We submit that the finding of the Master on this Item 26 is erroneous, and the exception of the State of West Virginia thereto should be sustained.

Exception as to Apportionment.

The defendant further excepts to the following finding.

> "I find that the method adopted by the plaintiff of ascertaining 'the average total population,' is the clearest and most accurate approximation upon which the ordinary expenses can be apportioned to 'the average total population,' as the object to be ascertained, is the population in existence, at the time of the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method." (Rep., p. 141.)

Paragraph IV. of the decree provides that the proportion of the ordinary expenses of the state government chargeable to West Virginia, be ascertained "on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States" (R., p. 173). As understood by West Virginia, this meant the average total population of each census, beginning with the period commencing on the 19th day of March, 1823, and ending on the 31st day of December, 1860. This made five census periods, 1820, 1830, 1840, 1850 and 1860. We conceive the language of the decree to mean that the average of these five census periods should be taken. Nothing in the decree or elsewhere, so far as we can find, directed the Master to divide these expenss into four periods, one of seven years and three of ten years.

As shown by the Master's report (p. 139), the only state expense which increased in proportion faster than the population, was the item, "interest on the public debt". In fact, outside of this one item, as claimed by the plaintiff, the ordinary expenses of the state government were in proportion to the population greater in the first decade. For instance, when the population, with slaves, of Virginia in the period between 1823 and 1830 was 928,558, and of West Vir-

ginia was 136,808, the ordinary expenses of the state government, after deducting the claimed interest charged, were $3,394,301.

In the period of 1840 to 1850, when the population of Virginia had increased to 1,120,000 and the population of West Virginia had increased to 302,000, the ordinary expenses outside of this claimed interest charge, had only increased to $5,365,000. The population of West Virginia had more than doubled, but the ordinary expenses of the state government outside of the claimed interest charge, lacked one million and a half dollars of doubling. It will be observed that the first period only covered seven years and the last ten years. The interest charge of the third decade as found by the Master is greater in amount than the total charges for ordinary expenses in the first decade. The interest charge in the fourth decade exceeds in amount the total of the charges, other than interest, in the third and fourth decades. It also exceeds in amount the total of the charges in the first, second and third decades, after the interest charges have been deducted therefrom.

The percentage of the increase in the population of the territory composing the two states was greater in that which is now West Virginia. The percentage of the increase of the expenditures of the state government, outside of the claimed interest charge and the taxes under the constitution of 1851 for school purposes and the Harper's Ferry Raid of 1859, were quite uniform. As shown elsewhere herein, the interest charges were based on the extraordinary expenditures made by the Commonwealth of Virginia in the construction of railroads, canals, and other works of like nature, and in the purchase of stocks in railroad companies, canal companies, and other companies of like nature, and in banks. About $40,000,000 was expended by the commonwealth for these purposes Nine-tenths of these expenditures and purchases were made in what are the present limits of the Commonwealth of Virginia. One-tenth of these expenditures and purchases was made in what are the present limits of the State of West Virginia. It does not seem to us to be an equitable way of ascertaining "a just proportion of the ordinary expenses of the state government" to apportion three-fourths of this interest to the decade when West Virginia's population was the largest. We sub-

mit that even if the Court should overrule the exception of West Virginia to the finding of the Master, which holds that interest on the public debt is an ordinary expense of the state government, it should nevertheless sustain the exception of West Virginia to this finding of the Master on apportionment.

We further submit that the Master was not called upon to render any decision on this claim of apportionment made by Virginia, as it is plainly not included in the decree of reference.

Exceptions of Virginia to the Finding of the Master Under Paragraph IV. of the Decree.

Virginia does not file any specific exceptions to any finding of the Master under Paragraph IV. Unless they intended to insist upon the same general exceptions as set out herein under Paragraph III., Virginia has no exception to the findings under Paragraph IV. The language of Virginia's general exception would include many findings of the Master under this paragraph.

The items asked for by Virginia, and which were not allowed by the Master, consist largely of one general class, to wit: buildings erected in the present State of Virginia in connection with public institutions. The following is a list thereof:

Item 6, Deaf, Dumb and Blind Institution	$ 80,661.94
Item 11, Virginia Military Institute, new building	151,000.00
Item 12, University of Virginia, repairs and improvements to buildings, and water supply	25,000.00
Item 13, Improvements, Capitol Square	12,278.47
Item 15, Penitentiary Lot, new hospital building	13,947.48
Item 17, Medical College of Virginia, additions and improvements to buildings	25,000.00
Item 19, Eastern and Western Asylum	344,295.57
Item 20, Gun House at Alexandria	900.00
Item 21, Cannon House, Surry County	110.00
Item 22, Cannon House for Richmond Artillery	1,079.00

All of these items were either for the purchase of real estate or the erection of buildings on real estate owned by the commonwealth. The only building in the territory now West Virginia was the asylum at Weston, called the Trans-Alleghany Lunatic Asylum, which was charged to West Virginia as a *state expenditure*. If such an expenditure of money should come under the first section of the ordinance as a state expenditure, then it would be utterly inconsistent to ask that expenditures of the same kind when made in Virginia should be classed as ordinary expenses of the state government. They were permanent investments, and are still owned and used by the State of Virginia. They were not expenditures for the maintenance of the inmates of those institutions. We submit that the Master's finding thereon was absolutely correct and should be sustained.

Three other items, which were claimed by Virginia as ordinary expenses of the state government, and which were not allowed by the Master, are as follows:

Item 2, Constitutional Conventions ---	$258,906.28
Item 4, Boundary lines ----------	16,704.78
Item 5, Maps of the Commonwealth ---	16,628.04

These items are in the same class in so far as they were moneys expended for occasional acts done in pursuance of law. There were two constitutional conventions within the period, one in 1829 and one in 1851, but they were not ordinary events in any sense of the word. During the period, under special acts of the legislature, certain boundary lines between Virginia and some of her neighbors were ascertained and established, and the sum of money above named as item 4 was specially appropriated for the purpose. The ruling of the Master should be sustained for the very good reasons given by him on p. 117 of his report.

The legislature also saw fit on certain occasions to have made a map of the state. These occasions were rare, and the duty was specially performed under a special act of the legislature. They were unusual in the sense that none of these acts were done except when the legislature specially ordered it, and when the specific order was complied with the whole matter was ended. We submit that the ruling of the Master thereon was correct. (Rep., p. 118.)

PARAGRAPH V. OF DECREE.

"5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

The exceptions of West Virginia under this paragraph are to the finding of the Master of the "fair estimated value" of the real estate in the counties now forming Virginia and in the counties now forming West Virginia. The assessed valuation of the real estate, on June 20, 1863, in the counties of Virginia was $296.085,460.31; and in the counties of West Virginia, $82,449,252.04.

In finding the valuation of property it has been conceded by both parties that the best evidence obtainable was the assessed valuation made by sworn officers of the state, chosen for the purpose. Their sworn returns of such valuation are *primi facie* correct. The acts were judicial in their character. The only other valuation of official character was that made by the officers of the United States in taking the census of 1860; in which each person for himself put down the real valuation, as conceived by him, of his property, real and personal. This valuation was at least three times as large as the assessed valuation. However, the Master took the assessed valuation as the basis; and the question now under discussion is whether he was justified in taking fifty per cent of the assessed valuation as the fair estimated valuation of such real property. He applied this rule to the *whole of Virginia* and to fourteen counties of West Virginia. This was done on the theory that the ravages of the war had depreciated the values equally in the ninety-nine counties of Virginia, but had only affected the values in fourteen of the forty-eight counties of West Virginia. We contend this is unfair to West Virginia.

Some evidence was taken by Virginia (R., pp 739-785). This was given by witnesses who had admittedly seen but a small part of Virginia and who necessarily knew the exact condition only in a small part of the state. Historically speaking, it is a known fact that up to the 20th of June, 1863, not one-third of the counties of Virginia had been in any way touched by invading armies, and no ravages could have been committed in the other counties where the sentiment of the people was apparently unanimously in favor of the Confederate

cause. The evidence of these witnesses is, we claim, incompetent, is very vague, indefinite, and altogether unreliable. None of them were qualified by reason of travel or knowledge during the particular period to speak of the conditions except in a very small territory. The evidence shows conclusively these facts. It is not the character of evidence sufficient to overthrow the official records of the State. Virginia cannot impeach the integrity of her sworn officers in this manner. Each county had an officer called Commissioner of Revenue and some counties had two or more of these officers. It was their sworn duty to assess the properties situated therein. They had the power *to reduce assessments of real estate* where the value thereof had been reduced by the destruction of any of the buildings or things of like nature thereon. The fact that the assessments of 1863 were made after the allowance of such reductions or depreciation in values, shows the mistaken ideas or the lack of information of these witnesses. The assessing officer fixed the value at the time he saw the property, while these witnesses estimated the value of such property which they casually saw a half century thereafter.

It is a well known historical fact that in the early period of the war there was a great conflict in many parts of the forty-eight counties now forming West Virginia. This is especially true of the southern and eastern counties thereof. It is a further fact that during practically the entire period of the war a destructive internecine conflict continued in at least one-half of the counties of West Virginia between those sympathizing with the Union and those sympathizing with the Confederacy. This condition was much more destructive of property than anything that had been actually done by the armies in the present State of Virginia prior to June 20, 1863.

We submit that there is no reliable or convincing testimony in this record sufficient for the Master to reduce the value of assessed real property in Virginia one-half in order to arrive at what is termed "the fair estimated value" thereof on the 20th of June, 1863. We further submit that if the testimony is sufficient to convince this Court that fifty per cent of the assessed value of real estate in Virginia was the fair estimated value, then the same rule should apply to West Virginia, and there should have been an equal reduc-

tion of the assessed value of the lands in the counties now forming West Virginia.

The fact must not be lost sight of that up to the 20th of June, 1863, the outlook for the success of the Union armies was not particularly bright; and the belief was pretty general, at least within the lines of the Confederacy, that the separation of the states therein from the Union was complete. Many parts of Virginia in the early period of the war reaped large benefits in a money way by the opportunity of her people to sell war supplies at an advanced rate.

It is proved by the evidence of witnesses that in West Virginia there was a decided emigration of many people, according to their sympathies. Those who sympathized with the southern cause sought protection within the lines of the Confederate forces and mostly within the counties now forming Virginia. Those who sympathized with the Union sought protection beyond the Ohio River within the certain lines of Union control. Many of these never returned, but settled upon the cheap lands of the West, and were lost as citizens forever to the State of West Virginia. Virginia still retained, up to the 20th of June, 1863, her labor supply of slaves. It will be remembered that in the Virginia counties, according to the census of 1860, there were 472,000 slaves, while there were only 18,000 in the counties of West Virginia. It is further shown in the record that three-fourths of those were in the counties which, during the greater part of the Civil War, gave allegiance to the Confederate government. Thus, one state had its labor supply at hand and the other state had its labor supply either in the army of one or the other contending parties, or had seen it migrate to the West. It will be remembered that the counties of West Virginia furnished the two contending armies, or used as home guard soldiers, a force of 60,000 men out of a population of only 376,000 white persons, as shown by the census of 1860.

We respectfully insist that under these circumstances the assessed valuation of the real estate should stand as the "fair estimated value of the real property" in the two states.

Exceptions of Virginia.

The first exceptions of Virginia under this paragraph relates to the

finding of the Master of the fair estimated value of the real and personal property in the counties of Virginia as of January 1, 1861, on the ground that the same is not responsive to the paragraph or any other paragraph of the decree. This finding of the Master was made at the request of the defendant under the following clause in the decree:

> "The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the Court."

It seemed to West Virginia that January 1, 1861, was a much more proper and pertinent date on which to find the fair estimated value of property, than the 20th of June, 1863, and for that reason the defendant requested the Master to make such finding.

Virginia also excepted to the finding of the Master under this paragraph, because he included the value of slaves in his statement of personal property in Virginia, and because he adopted the assessed value thereof as the fair estimated value. We are utterly unable to see any point in either of these exceptions. Slaves constituted the most valuable personal property that Virginia had. Their productive value, as well as their salable value, was much greater than all the other personal property in the whole state. They were assessed annually by the Commissioners of Revenue, and that assessment, made by more than one hundred commissioners representing each county in the state, (all appointed by law and sworn to perform an official duty to the best of their ability), is certainly entitled to more weight than the personal testimony of a few witnesses given forty-seven years after the event. We submit that Virginia cannot at this late day impeach her own official records in any such way or manner.

The last exception of Virginia under this paragraph relates to the question whether or not these assessments were made on the basis of Confederate currency.

It is shown by a comparison of the assessments of 1860 and 1863 that there was relatively the same proportion of such personal prop-

erty as horses, sheep and cattle, and that the increase in the assessed value thereof in many counties was not noticeable, while the greatest seems only to have been a thirty or forty per cent increase. The claim by Virginia that they had been increased at least four times was found to be utterly and entirely refuted by their own records. This question was considered by the Master, and in view of the official records he found against the contention of Virginia thereon. We respectfully submit that this finding was correct. We further submit that all the exceptions filed by Virginia to this paragraph should be overruled.

PARAGRAPH VI. OF DECREE.

> *"6. All moneys paid into the Treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."*

West Virginia excepted to the report of the Master under this paragraph, because of his refusal to allow any of the four items following as payment of money into the treasury of Virginia from counties now in West Virginia, namely:

Item 7, Dividends from Banks in West Virginia counties	$786,666.98
Item 8, Dividends and interest in Turnpike Companies in West Virginia counties	13,595.48
Item 9, Dividends from Bridge Companies in West Virginia counties	6,028.51
Item 10, Dividends from Interstate Turnpike Companies (proportion)	1,355.92

These four items aggregate $807,646.89. The Master refused to allow them on the ground that they were not public payments, but were simply dividends received by the state on stock owned by it and held in its private capacity. In view of the holding of the Master under Paragraph III. of the decree, that the purchase of the stock of banks and of turnpike, bridge and navigation companies was not a state expenditure within the meaning of the ordinance or decree, we believe that his holding in the present case is the correct one; and if

this Court should approve his holding in that respect, we desire to withdraw these exceptions. But if this Court should hold that the purchase of these stocks by the commonwealth was a state expenditure in the meaning of the ordinance and decree, then we insist that these four items should be allowed, and that our exceptions be sustained. Certainly, if West Virginia is to be charged with the cost price of the stocks, she should be credited with the income received therefrom. The Commonwealth of Virginia, in her original account, and even in her amended accounts, filed under Paragraph III. of the decree, claimed the sum of $391,800, expended for the purpose of bank stocks, as state expenditures. In her exceptions filed to Paragraph III. no mention is made of the refusal of the Master to allow this sum on said account.

It is but human to wonder whether this apparent withdrawal of this item was caused by the showing made by the defendant under Paragraph VI. Virginia certainly must have recognized that if West Virginia was to be charged with the value of these stocks, then she should also be credited with the dividends received therefrom. The dividends received on the bank stock were very large, but those received on the stocks in the turnpike, bridge and navigation companies were so small in amount that the total thereof would have no appreciable influence upon the grand total of $1,104,000 that was expended in the purchase of these stocks, and which total sum Virginia desires to charge to West Virginia under said Paragraph III.

The Master found that

Item 1, Bonus received from Banks	$96,253.62
Item 20, Merchants and Mechanics Bank stock sold (bonus stock)	43,103.35
Item 22, Northwestern Turnpike Road Item 23, Staunton and Parkersburg Road, net tolls	12,132.12

were moneys paid into the treasury of the commonwealth, and allowed the contention of West Virginia on that point. We are again in the dark as to the contention of Virginia. Her general exception covers these items, but there was no *specific* exception to the finding of the Master thereon. There can be no real question on these points. The

finding of the Master is absolutely correct. (R., pp. 174, 177, 178.) These sums, except perhaps the tolls, were raised in another form of taxation than that usually employed. Still they were taxes, and nothing else. A license tax or a franchise tax is a tax in the meaning of this ordinance and decree. This Court has recently held that they were taxes in the meaning of the bankrupt act. (*State of New Jersey* v. *Anderson*, 203 U. S., page 483.) The language of the ordinance and of this decree is broader than the word "tax." They use the expression, "All moneys paid into the treasury of the commonwealth." Only sovereigns have a right to levy taxes; that is, sovereigns within their own jurisdiction. Here the state levied a franchise tax, in one case of money, and in the other case of stock. Then the state sold the stock and received the money therefor.

PARAGRAPH VII. OF DECREE.

> "7. *The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the Restored Government of Virginia, together with the nature and description thereof.*"

West Virginia excepted to the finding of the Master because he found that on June 20, 1863, the 3418 shares of the capital stock of the Northwestern Bank of Virginia at Wheeling was worth the sum of $427,250. (Rep., pp. 189-192.) We are unable to appreciate the reasoning upon which the Master arrived at this conclusion. This bank was incorporated in 1817. The stock purchased by the state was made for two different accounts: $50,000 of stock was purchased in the years 1832 and 1833 for the Literary Fund, and the balance of $400,000 in 1837, 1838 and 1839 for the Commonwealth Fund. It is shown herein, and not disputed, that all the accounts of the state were carried either in the Commonwealth Fund, the Board of Public Works Fund, or the Literary Fund. They were all funds of the state of Virginia.

The laws of Virginia (Code of Va. 1860, chap. 58, secs. 42-3) required each of its state banks to make quarterly statements to the governor, showing therein the amount of its capital stock paid and unpaid, the value of its real estate, amount of debts due to and from it, its bad and doubtful debts, specie on hand, amount of deposits, its circulation, amount of bills on hand, rate of last dividend, and amount of surplus or contingent fund. There was no provision of law for periodical examination of banks by an expert public officer, as in these days. The only provision found in the laws of Virginia for the inspection of banks, is that contained in section 45 of said chapter 58 of the Code of 1860, wherein it is provided that an examination of the books and proceedings of any bank might be made by a joint committee of the two houses of the general assembly, or by that of either house, or by a commission appointed by the general assembly or the governor. It will be perceived that each bank was the sole judge of the value of its assets—of the value of its real estate, and whether a debt due it was bad or doubtful, etc. With such power, almost any bank, no matter how bad or doubtful its condition, could make a good showing. Modern laws, both of the Federal government, and perhaps of the most of the states, have changed all this. Experience made it necessary. Now, expert examiners are required, at short periods, carefully to examine in detail the assets of banks, inspecting each note, bond, and other details of such assets.

The Northwestern Bank, under statutes of Virginia, had its main or parent branch at Wheeling, in the county of Ohio, now West Virginia; a branch at Wellsburg, in the county of Brooke, now West Virginia; a branch at Parkersburg, in the county of Wood, now West Virginia, and a branch at Jeffersonville, in the county of Tazewell, then and now Virginia. The reports made by these branch banks were made to the parent bank at Wheeling, which made reports to state officers of Virginia of the bank as a whole, and not distinguishing among the branches. Hence, there cannot be ascertained from the books or the records of the State of Virginia the value of the assets of any one of these branches, nor indeed of the parent bank itself separately from the branches. The State of West Virginia, through

one of the counsel employed in this case, made an exhaustive search to find, if possible, the books of the Northwestern Bank at the time of the separation of the two states, or at any period near thereto. It was found that all the books had long since been destroyed.

After the war, in 1865, the parent bank and the two branches in West Virginia were converted into three National Banks, namely: the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank. There were certain assets of the old Northwestern Bank at each of these points which the new bank declined to take. These assets were administered by what was called the Board of Commissioners of the Northwestern Bank of Virginia. They acted as liquidating commissioners. The books of all the branches, after the national banks had taken such memoranda from them as they needed, were transferred and delivered to the Board of Commissioners of the Northwestern Bank, and for years remained in the building of the National Bank of West Virginia at Wheeling; but its affairs having been finally wound up a long time ago, no especial attention was paid to these old books, and they were deposited in the basement of the building occupied by the National Bank of West Virginia. Since that time Wheeling has been subjected to some extraordinary floods, particularly the one of 1884, and the best information that could be obtained tended to show that these old books of the Northwestern Bank were then completely destroyed. Certain it is that no trace thereof could be found. At the beginning of this suit, every one of the officers connected therewith, and who had any knowledge of the affairs of the bank, were dead. West Virginia was therefore compelled to get the best evidence she could to prove these values.

It is shown by the act of the general assembly of (the Richmond government of) Virginia, and by the report of the Hon. Chester D. Hubbard, which are printed as Appendix B of this brief, that the assets of the branch at Jeffersonville, in Tazewell county, Virginia, were wholly lost to the Northwestern Bank. What were the value of these assets which were practically confiscated by the said act, cannot now be definitely ascertained. The Northwestern Bank claimed a loss thereby of 1642 shares, of the par value of $164,200. (See statement

submitted by Mr. Hubbard in said Appendix B.) The provision of section 7 of the said confiscatory act of the Confederate government of Virginia, limiting the amount of redemption of certain notes to $180,000, seem to show that the estimate of the loss of the Northwestern Bank of $164,200 was not too high. The provisions of sections 2 and 4 of the said act are sweeping; they take from the Northwestern Bank every item of property it owned or held in its Jeffersonville branch.

Whatever the loss was—whether $164,200 or $180,000—it was a large loss, *and the Master takes absolutely no account whatever of this large loss* in arriving at the value of this bank stock as of June 20, 1863. *The best evidence, in our opinion, as to the value of these stocks, was the price put upon them by the National banks which took over the assets.* This was done in March, 1865. In the case of each of the three banks, to wit: National Bank of West Virginia, First National Bank of Wellsburg and the Parkersburg National Bank, the same value was placed upon the stock, that is to say, *fifty cents on the dollar.* At fifty cents on the dollar 3418 shares would have been worth $170,900.

By reference to the said report of Mr. Hubbard, which he made by the direction of the Board of the School Fund of West Virginia, it appears that on March 2, 1865, when these national banks were formed, the directors of the Northwestern Bank charged to the State of Virginia for the loss of the assets of the branch at Jeffersonville the amount of 1642 shares of the stock formerly held by the State of Virginia and canceled that amount, leaving 1776 shares, for which stock was given to West Virginia by the three national banks at the rate of *fifty cents on the dollar.* The stockholders other than the state only received stock in the new banks at the rate of fifty cents on the dollar. This fact shows their good faith in thus dealing with this proposition.

In addition to the 1776 shares of stock, for which West Virginia received stock in the new banks at the rate of fifty cents on the dollar, she also received stock in the new banks at the same rate for 326 shares of bonus stock given by the bank to the state of Virginia, and this makes the total of 2102 shares for which West Virginia received

stock in the new banks of the par value of $105,100. In addition to that West Virginia received out of the remaining assets of the Northwestern Bank the sum of $10,510 on the first day of July, 1867; the sum of $10,510 on the first day of August, 1868, and the sum of $10,510 on the first day of July, 1871. It is not denied that these amounts are all that were received by West Virginia in stocks or moneys out of the assets of the Northwestern Bank of Virginia upon its dissolution and winding up. The total was $136,630.

Suppose for a moment that West Virginia was negligent in permitting the stockholders of the Northwestern Bank to charge up the assets of the branch at Jeffersonville to the state holdings of stock, and that the state should have received also fifty cents per share on these 1642 shares, this would add the sum of $82,100 to the amount heretofore conceded. But we do not think that negligence can be reasonably charged to West Virginia in this matter. How could she prevent the State of Virginia from seizing the property of the branch at Jeffersonville, which was in her own territory and dominated by the arms of the Confederate States? This property of the Jeffersonville branch *was never transferred to West Virginia by Virginia. Virginia kept it and made us of it.* What reasonable claim can, therefore, be made that it should be charged to West Virginia?

We know of no better evidence that could be obtained than these acts of the parties at the time. They were dealing with the matter in a business way and on a business basis. The Master, as has been said, makes no deduction whatever for the loss of these assets of the branch at Jeffersonville, but on the contrary charges West Virginia with the stock as if this great loss had not happened. The Master also goes on the assumption that the fact of the payment of 7½ per cent dividend for a few years prior to the war shows that this stock was of the value of one-fourth more than par. This position is clearly untenable. *The sale by the state in 1857 to this bank itself of 1082 shares for $113,000 shows that the position taken by the Master cannot possibly be sound.*

Virginia, in 1857, when this stock was earning this 7½ per cent rate, was willing to take and did take less than $105 per share for the

stock, the par value of which was $100 per share. Hence, we cannot conceive how the Master could say that, amidst the throes of war, and especially at the time when the destiny of the country hung in the balance, as it did in June, 1863, this stock was worth $125 per share. It must be remembered that banks prior to 1863 and banks of the present day did business on different conditions. Supplemental Exhibit No. 9, filed with the Master after the record was printed, and upon which he based his finding in this particular in part, shows that the deposits in this bank were less than one-fourth of its capital stock, and further shows that the money-making powers of these banks in Virginia prior to the war lay in their exclusive right to issue Virginia notes, which notes passed as the money of that day. Certainly, by the second day of March, 1865, when this bank was nationalized, it was a recognized fact that this power to issue this money was gone; the immense amount of such notes which it had outstanding reduced its assets one-half. Is it to be presumed that, in June, 1863, before the battle of Gettysburg and before the fall of Vicksburg, when everything hung in the balance, the conditions of 1859 and 1860, so far as this bank is concerned, had continued just the same? The Master says that there is a presumption of such continuance of conditions, when there is no proof to the contrary. The Court will certainly take judicial notice of the fact that in this instance there is written on history's pages an immense amount of proof to the contrary. The greatest war of modern times, directly involving the territory of the two states, had drained into their soldiery the largest part of the able-bodied men who lived within the country reached by this bank. Can it be presumed that under these conditions the value of these bank stocks would have continued and grown twenty per cent greater in 1863 than they were in 1857?

The Master draws a comparison between the Fairmont Bank and the Northwestern Bank. He certainly overlooked some important matters in such comparison. He takes the statement made by West Virginia that Fairmont stock was worth par as proof that the stock of the Northwestern Bank must be worth more than par. The concession made by West Virginia as to the value of the Fairmont Bank stock was based solely and alone on the fact that when the Fairmont

Bank was nationalized in 1865, the stockholders thereof received stock in the new National Bank at par for their holdings in the Fairmont Bank. This concession on the part of West Virginia only proves that she was willing to pay for this stock every cent's value she received in it, which value is that which the persons in charge of the banks in 1865 fixed as the value of the stock, when they became incorporated under the laws of the United States. It is certainly reasonable to presume that when these banks became national banks, under the strict inspection given by the United States, they put a just value on the properties; and it is further reasonable to presume that when the stockholders in charge of the bank gave the state the same treatment that they gave themselves and other stockholders, they were acting justly. The comparison made by the Master between the Fairmont Bank and the Northwestern Bank on the basis of the concession that the Fairmont stock was worth par thus falls flatly to the ground. If the concession as to the Fairmont Bank can be regarded as proving anything, certainly the concession made as to the Northwestern Bank should be worth as much, and prove what it admits. Moreover, the Fairmont Bank had no such loss as was suffered by the Northwestern. A considerable part of its assets were not seized and confiscated by the enemy in war. This fact the Master also overlooks in his comparison.

We might recapitulate this case as follows: Virginia conceded in 1857 by her sale that the stock was worth only $105. A great war came on; there was a great upheaval, involving most of the territory served by this bank; one branch, with a capital stock of $150,000, was wholly lost to the bank; and yet the Master finds that the stock was worth twenty per cent more than the value placed upon it in 1857 by the Virginia state officers. The Master says that this conclusion is largely arbitrary, but he believes it reasonable. We certainly cannot agree with the latter phrase.

Exception by Virginia Under Paragraph VII. of Decree.

Virginia's exception under this paragraph is based on the finding of the Master that West Virginia received nothing in money from Virginia. The Master finds that there was received by West Virginia

from the restored government of Virginia a total of $170,771.46. These moneys were given over to West Virginia by the act of February 4, 1863, passed by the legislature of the loyal restored State of Virginia (App., p. 131). The entire amount of money so turned over was collected by taxation by the restored government from the people and properties of the territory which afterwards formed West Virginia. All of it had been acquired after the organization of the restored government. This is necessarily true, as the restored government had no money whatever when it was organized, and could only raise money by the collection of taxes within the territory where its authority was recognized.

It will be remembered that the act of February 3, 1863 (App., p. 128), transferred to the new state, when it should become one of the United States, certain described properties belonging to the State of Virginia within the boundaries of the proposed State of West Virginia. It further provided that if the new state was formed, and that grant took effect, the new state should account for the same in a settlement between the two states.

After that act had been passed and become law the legislature passed the act of February 4, 1863. By an act passed on May 14, 1862 (App., p. 128), there was appropriated to the new state the sum of $100,000; and this act provided in part as follows:

> "All of the appropriations made by this act shall be charged to the State of West Virginia in the settlement between the States of Virginia and West Virginia."

The act of February 4, 1863, contained the following provision:

> "That the act passed May 14, 1862, making an appropriation of $100,000 to the State of West Virginia be and the same is hereby repealed."

We thus see that it was plainly the intention of the legislature of Virginia not to charge to the new state this sum of $170,771.46. This is directly shown by the passage of the act of February 4, 1863, after the act of February 3, 1863, and by the repeal of the act of May 14, 1862. This was but simple justice to the new state. All this money had been collected on the property and from the citizens of the new state. It was specifically provided in the act of February 4,

1863, that all moneys which had been collected from the counties of Virginia outside of the new state, should be included in a settlement to be made by the auditor of Virginia, and also that all moneys that up to the same time had been expended in such counties should be included in another settlement, and the surplus expended, after deducting the moneys expended in such counties from the moneys collected from such counties, should remain the property of the Commonwealth of Virginia. This plainly shows that it was the intention of Virginia to separate the moneys then in the treasury according to the fact whether its sources were the counties of the new state or the counties of the old state. If it had been collected from the people of the counties of the new state, they justly said that the new state was entitled to it. The converse was also true. The moneys which had been collected from the counties of the old state should be retained by the restored government of Virginia. It was a gift indeed, but still a gift which in justice rightly belonged to the state to which it was given. It was no Indian gift: there was no expectation of any return.

PART III.

Causes of Separation of West Virginia.

Part I. of defendant's brief deals with questions of law which do not go to the merits of the case, and Part II. deals with the exceptions of the complainant and defendant and the report of the Master. This part is intended to deal with the principles of law applicable to the facts admitted by the pleadings, developed before the Master, and matters of common history and knowledge of which the Court takes judicial notice. Such an argument must inevitably involve some repetition in respect of questions covered by Part II.; but this is avoided as far as possible.

1 Rule of Construction to be Applied in This Case.

This Court said in *Scott* v. *United States* (12 Wallace 443), which involves the construction of a contract between the Government and an individual and the ascertainment of the intent of the parties:

> "In cases like this it is the duty of the Court to assume the standpoint occupied by the parties when the contract was made—to let in the light of surrounding circumstances—to see as the parties saw, and to think as they must have thought, in assenting to the stipulations by which they are bound. This process is always effective. When the terms employed are doubtful or obscure there is no surer guide to their intent and meaning."

This settled doctrine, so admirably stated by the Court, is peculiarly applicable to this case, both in the construction of the Wheeling Ordinance of August 20, 1861, and of Section 8 of Article VIII. of the Constitution of West Virginia, which was adopted by the Convention that assembled pursuant to the provisions of the Ordi-

pance and under which West Virginia, with the consent of Virginia, was admitted into the Union as a State. The true construction of these instruments and a just determination of the case, cannot be reached without reference to the relations of Northwestern Virginia and her people and Eastern Virginia and her people, territorially and sentimentally, and to the circumstances under which the movement for the formation of the new State was inaugurated and carried to consummation.

2. PHYSICAL CHARACTERISTICS OF EASTERN VIRGINIA AND NORTHWESTERN VIRGINIA.

Some elements in the problem are not susceptible of proof by the testimony of living witnesses, but are susceptible of accurate ascertainment from the history of that period. This Court will take judicial notice of the physical fact that Northwestern and Western Virginia within the boundaries described by the Ordinance and the Constitution is remote from tidewater, and separated from Eastern Virginia by the Alleghany Mountains; that this region which became the State of West Virginia lies mainly on the western slope of the Appalachian Mountains and is bounded on the north by Ohio, Pennsylvania and Maryland, on the east by Pennsylvania, Maryland and Virginia, on the south by Virginia and Kentucky, and on the west by Kentucky and Ohio.

> "The Alleghany watershed is in the eastern portion of the State, all except eight of the counties lying on the western slope within the Ohio Basin. In the higher parts of the State, where Pendleton, Pocahontas and Randolph Counties join, five rivers rise which flow across the State—two finally flowing eastward into the Atlantic and three westward into the Ohio. The Ohio forms the western boundary and is navigable throughout its length. The eastern part of the State is drained by the Potomac and its tributaries. The Cheat and Monongahela flow through the northern counties and the latter is now navigable as high up as Fairmont, in Marion County. The Greenbrier and the Elk form the watershed to the southwest and join the Great Kanawha, which flows northwest into the Ohio. The Great

Kanawha is navigable for 96 miles from the Ohio. The Big Sandy, flowing northwest, forms the southern boundary of the State. The river system of the State has been improved somewhat for navigation by government engineers, but the interior rivers will always be more valuable for their water power than for facilities of navigation" (See "West Virginia," the "Americana," published by "Scientific American").

3. COURT MAY RESORT TO SPEECHES OF CHAIRMAN OF COMMITTEE REPORTING A BILL AND OF AUTHOR OF THE BILL.

We are fully mindful of the rule that in construing an Act of Congress the court does not consider itself at liberty to recur to the views of individual members of either body in debate; or to consider the motives which influenced them for or against the passage of the measure. The rule has not always been observed here, and moreover, is not without exceptions.

What is said by the Chairman of a Committee of either body in reporting a measure as to its purpose and meaning, has been resorted to by the Court in aid of its construction. The same is true in respect of the observations of the author of a measure in exposition of its provisions. And here we, therefore, feel at liberty to quote from the remarks of Senator Wade, Chairman of the Committee on Territories of the Senate, who reported the Bill for the admission of West Virginia into the Union (Congressional Globe, Part 4, 37th Congress, 2d Session, p. 3038).

4. SPEECH OF SENATOR WADE IN SUPPORT OF ACT FOR ADMISSION OF WEST VIRGINIA.

Senator Wade said:

> "I have looked at the condition of things in Western Virginia, and I have come to the conclusion that it is impossible for the people of Eastern and Western Virginia to live together in harmony and peace. It is not a new controversy among these people. When I came to investigate it, I find that it has existed for a long period of years, much of it probably growing out of

the entire isolation of the two sections, for there is really no communication between the east and west. As Governor Pierpont remarked to me, 'We have no communication whatever, except it be furnishing a few members of the Legislature, and a few inmates of their penitentiary.' In other respects, in commercial feeling, in political feeling, in association, they are entirely isolated. On this subject of slavery they feel entirely different. There is an animosity between them that is more intense, I believe, from what I gather from the best men of that section, than that which exists between any of the northern and southern States. Under these circumstances the question is, shall they be compelled to be joined with the other portions of the State where they will undoubtedly be put under the ban of a hostile legislation for years? They complain that they have been heretofore. It is a standing complaint with them that while taxes and burdens have been imposed upon them by the vast majorities of the eastern section, for internal improvements and the like, they have been awarded no benefit from them whatever, and this has aggravated the difference between them."

5. SPEECH OF SENATOR WILLEY.

Senator Willey, elected to the "Restored" Legislature of Virginia, and the author of the Bill to admit West Virginia as a State (Cong. Globe, Part 4, 37th Cong., 2nd Session, p. 3038), said:

"Sir, it is with pain that I am compelled to take this stand, but I am justified in doing it. These people have looked for sixty long years to this day. Time and again have the sections of Virginia been upon the eve of an outbreak, of an insurrection. Criminations and recriminations have sounded in our legislative halls at every session of the Legislature for the last thirty or forty years. Threats of violence have been hurled by one section at the other. And today, when the loyal people come with a united voice, having fulfilled all the requisitions of the Constitution and all the forms of the law, and I stand here, where my colleague does not stand, representing the voice of the people of Virginia, who ask for freedom, who ask for severance from the

eastern section of the State to whom we have been in bondage in a great degree for fifty or sixty years, he gets up here on the very eve, as I have reason to believe, of the passage of the bill, when the Senate of the United States is about to bestow upon us the long prayed for boon, and he interposes an objection, to postpone and defer our long-cherished hopes and desires.

"Now, sir, I wish to make another remark in answer to the Senator from Illinois. He seems to have fallen into the mistake, common to almost every person, that this movement was conceived in a desire to separate ourselves from the disloyal portion of the State of Virginia, that it grew out of our national difficulties, out of the secession of Virginia from the Federal compact. No, sir; no. These circumstances may have precipitated action upon it; they may have given us the opportunity to effect the long-cherished desire of our section of the State; but this controversy is older than I am; I have heard it ever since I can remember anything. It grows not out of these national dissensions; it grows not out of loyalty or disloyalty to the government; it grows not out of this question of secession; but it grows out of the social, geographical, commercial, industrial distinction and antagonisms that never can be reconciled by the power of man. The Almighty, with His own eternal hand, has marked the boundary between us. We live upon waters that flow in the valley of the Mississippi; our eastern brethren live upon waters that flow into the Potomac and the Chesapeake; and there is a chain of impassable mountain barriers between us that prevent, and will forever prevent, all connection, all social relations, all interchange of traffic and commodities by any convenient means of transportation. Owing to these facts, we ask this separation, and we place it upon these large national grounds; not upon the question of secession and disloyalty. If those were the only questions at issue, I would say to the western people, as I have hitherto said to them, stand fast, not only until the Union is restored, but until all Virginia again is made loyal to the national flag, and until we all dwell together again beneath its ample folds in peace and in security. But, sir, we never can dwell

> in harmony, not because now we are separated by principles of secession and anti-secession or loyalty and disloyalty, but because the Almighty, with His own hand, has placed barriers between us that separate our trade and our intercourse, because our social relations are different, because our places of market are different, because our industrial interests are different, and because, on account of these facts, our internal resources have never been developed, and never can be developed while we are connected with Eastern Virginia."

Again he said:

> "It is said, 'Whom God hath joined together, let no man put asunder.' The reverse is true, whom God hath put asunder, let no man attempt to put together. There is no identity of interests, there is no homogeneity between the people of the valley and the people west of the Alleghany Mountains. And we are today fulfilling that remarkable prediction of Mr. Webster, that whenever there was an attempt to withdraw Virginia from the Union, it would be seen that the inhabitants living upon the waters of that State which flow into the Valley of the Mississippi would inevitably go with the people of that valley."

This was said in opposing the amendment reported to the committee which added 140,000 people and several counties to the proposed State. He further said in support of the amendment to strike out the additional counties which had been added by the committee (p. 3037):

> "By so doing you secure a new State, that will be perfectly homogeneous and identical in interests with the great States of Ohio and Pennsylvania; the great breakwater which the selfish policy of the eastern government of Virginia has always interposed between those connections across West Virginia will be swept away, and the people of Ohio, Pennsylvania, and West Virginia will be one people in interest, living together harmoniously; and the great resources of that section of the State will no doubt be speedily developed; while all this can be done without detracting one iota

from the interest, the welfare, the rights, or the privileges of the eastern section of the State."

6. SPEECH OF DANIEL WEBSTER.

The historical fact must be remembered, also, that the people of West Virginia were not in sympathy with the institution of slavery and were opposed to secession. Mr. Webster recognized the natural and abiding commercial isolation of western Virginia from eastern Virginia, and in a speech which he made, to which Senator Willey refers, at the laying of the corner stone of the addition to the capitol here in 1851, he warned the people of Virginia against the issue of disunion raised by Mr. Calhoun. After appealing to the people of Virginia, and especially to the men of "James River and the Bay" and to the men "beyond the Blue Ridge," he said:

> "And ye men of western Virginia, who occupy the great slope from the top of the Alleghanys to Ohio and Kentucky, what benefit do you propose to yourselves by disunion? If you 'secede,' what do you 'secede' from, and what do you 'accede' to? Do you look for the current of the Ohio to change and to bring you and your commerce to the tidewaters of eastern rivers? What man in his senses can suppose that you would remain a part and parcel of Virginia a month after Virginia should have ceased to be a part and parcel of the United States?"

7. CONDITIONS AT THE TIME OF CREATION OF WEST VIRGINIA.

When the great transactions occurred which are under review, the Confederate States of America had been formed. The Ordinances of Secession had been passed by South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana. Virginia had passed an ordinance of secession, had borrowed $1,000,000, had called for 10,000 men to serve for twelve months and had arranged with the Confederate government for admission to the Confederacy, and in the meantime that her troops should, under that government, be employed against the United States. Her troops had seized the Norfolk and Gosport Navy Yards, the arsenal at Harper's Ferry, the Customs Houses, and other property of the United States within her borders;

had hauled down the flag of the United States and hoisted in its place another. President Buchanan in a message to Congress had taken the position that there was no power in the Federal government under the constitution to coerce a state. Fort Sumter had been surrendered.

President Lincoln had called for 75,000 troops to serve three months. The battle of Bull Run had been fought in which the Federal troops were disastrously defeated. The "New York Tribune," edited by Mr. Greeley, exercising a most potent influence upon public opinion, advocated a peaceful separation of the states determined to withdraw, and many eminent men of undoubted love for the Union in both parties seemed to be of the same opinion. There was grave doubt throughout the country as to the ultimate result. *The people of West Virginia could not be blind to the fact that if the Confederacy should be established, that territory would, unless action were taken, be irrevocably a part of that Confederacy.*

Isolated from eastern Virginia, and differing in sentiment from her people in respect to the right of secession and the institution of slavery, her people are not to be justly chided here or elsewhere for embracing that opportunity to become a state in the Union. In this situation, is to be found the genesis of West Virginia; and in the light of this situation, her people are to be judged and her compacts and "constating" instruments are to be construed.

The Rule of Public Law in Regard to the Apportionment of the Debt of a State After Its Division.

1. THIS COURT HAS NEVER DECIDED THAT WHEN A STATE IS DIVIDED THE DEBTS OF THE ORIGINAL STATE SHOULD BE RATABLY APPORTIONED BETWEEN IT AND THE NEW STATE.

It has been assumed, and is now assumed by counsel for the complainant, that this Court has so decided. They cite in support of their contention the opinion of the Court delivered by Mr. Justice Field in *Hartman* v. *Greenhow*, 102 U. S. 672; and *Antoni* v. *Greenhow*, 107 U. S. 769. It may be said here that the opinion of Mr. Justice Field in the latter case was a dissenting one. The question was not in any wise involved in either case. The Hartman case was as follows:

By act of March 30th, 1871, known as the "Funding Act," by which Virginia made an adjustment with her creditors under which she funded two-thirds of her debt and issued bonds for the same, it was provided that the coupons should be made payable to order or bearer, and it was declared that the coupons should be payable semi-annually, to be "receivable at and after maturity for all taxes, debts, dues, and demands due the state," and that this should be so expressed on their face. Hartman, a resident of Richmond, and a citizen of Virginia, on the 5th of April, 1878, was indebted to the state for taxes to the amount of $26.53. On that day he tendered to the treasurer of Richmond, who was by law charged with the duty of collecting the taxes of the state in that city, certain interest coupons, which were overdue, amounting to $24, cut from bonds of the state, (which bonds he did not own), issued under the act of 1871, and $2.53 in lawful money of the United States in payment of the taxes. The treasurer refused to accept the coupons in payment of the taxes without first deducting therefrom the taxes imposed by Virginia on the bonds to which they were originally attached, and of which the holder of the coupons was not the owner. Upon this refusal, he applied to the Supreme Court of Appeals of Virginia for a writ of mandamus to the treasurer to compel him to receive the coupons, with the money mentioned, in full discharge of his taxes, without any deduction from the coupons for the taxes upon the bonds. The Court of Appeals of Virginia issued a rule or an alternative writ upon the treasurer, he answering that the General Assembly for many years had exercised the right to tax all bonds, choses in action, and other evidences of debt, including bonds of the state; that the taxes assessed upon the latter bonds were according to their market value, the amount being fixed at 50 cents on the $100 of such value; that the law required the taxes to be collected when the interest on the bonds was paid, and made it a high penal offense for any officer to receive coupons in payment of taxes without deducting from their face value the tax levy upon the bonds from which they were taken, etc.

The judges of the Supreme Court of Appeals of Virginia were equally divided upon the question. This operated as a denial and the

petition was denied. The court, however, certified that on the hearing of the case there was drawn in question the validity of the statute of the state authorizing the tax upon the bonds and requiring its deduction from the coupons, on the ground of its repugnancy to the provision of the constitution of the United States, prohibiting any legislation by the states impairing the obligation of contracts; and that the decision was in favor of the validity of the state statute and against the right claimed by the petitioner under the provision of the constitution of the United States.

Thereupon the case was brought to this Court and manifestly it involved only the question of the right of plaintiff in error, Hartman, to pay his taxes with the coupons and the added money. This, by the terms of the law, providing for the issue of the bonds and coupons and by the terms of the coupons themselves, he was entitled to do. The Court based its judgment sustaining the right of the plaintiff in error to pay his taxes with coupons on the authority of *Murray* v. *Charleston*, 96 U. S. 432, saying:

> "This decision would be decisive here, but the present case is still stronger for the creditor. The Funding Act made the bonds issued under it payable to order or bearer, and made the coupons payable to bearer. They were so far distinct and independent contracts that they could be separated from each other and transferred to different hands."

So it is held:

> "We are clear that this act of Virginia of 1876 (Sec. 117), requiring the tax on her bonds, issued under the Funding Act of March 30, 1871, to be deducted from the coupons originally attached to them when tendered in payment of taxes or other dues to the state, cannot be applied to coupons separated from the bonds, and held by different owners, without impairing the contract with such bond holders, contained in the Funding Act, and the contract with the bearer of the coupons."

Mr. Justice Field said, however, in the opinion:

> "During the war a portion of her territory was separated from her, and by its people a new state, named

West Virginia, was formed, and by the Congress of the United States was admitted into the Union. Nearly one-third of her territory and people were thus taken from her jurisdiction. But as the whole state had created the indebtedness for which the bonds were issued, and *participated in the benefits obtained by the moneys raised, it was but just that a portion of the indebtedness* should be assumed by that part which was taken from her and made a new state. Writers on public law speak of the principle as well established, that where a state is divided into two or more states, in the adjustment of liabilities between each other, the debts of the parent state should be ratably apportioned among them. On the subject Kent says: 'If a state should be divided in respect to territory, its rights and obligations are not impaired; and if they have not been apportioned by *special agreement*, their rights are to be enjoyed and their obligations fulfilled by all the parts in common.' 1 Com. 26. And Halleck, speaking of a state divided into two or more distinct and independent sovereignties, says: 'In that case, the obligations which have accrued to the whole before the divisions are, *unless they have been the subject of a special agreement*, ratably binding upon the different parts. This principle is established by the concurrent opinions of text-writers, the decisions of courts, and the practice of nations.' International Law, chap. 3, sec. 27." (Italics ours.)

In *Antoni* v. *Greenhow*, 107 U. S., p. 770, Mr. Justice Field, in his dissenting opinion, incorporated very much the same observations, referring to the authorities cited by him in *Hartman* vs. *Greenhow*, *supra*. The subject was not involved in either case. If Virginia had never been divided, under the same legislation and upon the same state of facts, the question befoe the Court would have been precisely the same.

We are constrained, albeit with the utmost reverence for the memory of Mr. Justice Field, to say that, in both opinions, his observations with respect to the liability of West Virginia, upon the rules of international law, for a proportion of the public debt of Virginia, prior to January 1, 1861, seem entirely *obiter*.

2. THE TRUE RULE OF PUBLIC LAW IN CASE OF THE DIVISION OF A STATE. GENERAL DEBTS ARE APPORTIONED ON THE BASIS OF TAXABLE VALUE. LOCAL DEBTS ARE ASSUMED BY THE STATE FOR THE EXCLUSIVE BENEFIT OF WHOSE TERRITORY THEY WERE INCURRED. THE AUTHORITIES.

Publicists seem to be in entire accord as to some phases of debt succession between states: First, that when one state and its provinces, if it have any, are absorbed by another, either through subjugation, or through voluntary merger, the absorbing state is liable for the whole debt of the extinguished state. Second, that when a state is broken up into separate states, the original state personality having become extinct, the separate states thus formed are each bound for a proportional amount of the debt of the original state. Third, where a state is broken up into fragments, and separate portions of it are absorbed by surrounding states, they are liable for the debts of the original state.

(*a*) HALL.

Mr. Hall, who has been frequently quoted by this Court, and who certainly was a discriminating and learned writer upon the law of nations, says at page 78:

> "When a *new state* splits off from one already existing, it necessarily steps into the enjoyment of all rights which are conferred upon it by international law in virtue of its existence as an international person, and it becomes subject to all obligations which are imposed upon it in the same way. No question, therefore, presents itself with respect to the general rights and duties of a new state. What, however, is its relation to the contract obligations of the state from which it has been separated, to property belonging to and privileges enjoyed by the latter, and to property belonging in common, before the occurrence of the separation, to subjects of the original state in virtue of their status as such, when some of them after the separation become subjects of the new state?
>
> "The fact of the personality of a state is the key to the answer. *With rights which have been acquired*

and obligations which have been contracted, by the old state as personal rights and obligations the new state has nothing to do. The old state is not extinct; it is still there to fulfill its contract duties, and to enjoy its contract rights The new state, on the other hand, is an entirely fresh being. It neither is, nor does it represent, the person with whom other states have contracted; they may have no reason for giving it the advantages which have been accorded to the person with whom the contract was made, and it would be unjust to saddle it with liabilities which it would not have accepted on its own account. What is true as between the new state and foreign powers, is true also as between it and the old state. From the moment of independence all trace of joint life is gone. Apart from special agreement no survival of it is possible, and the two states are merely two beings possessing no other claims on one another than those which are conferred by the bare provisions of international law. And as the old state continues its life uninterruptedly, it possesses everything belonging to it as a person, which it has not expressly lost; so that property enjoyed by it as a personal whole, or by its subjects in virtue of their being members of that whole, continues to belong to it. On the other hand, rights possessed in respect of the lost territory, including rights under treaties relating to cessions of territory and demarcations of boundary, *obligations contracted with reference to it alone*, and property which is within it, and which has theretofore a local character, or which, though not within it, belongs to state institutions localized there, transfer themselves to the new state person.

"Thus treaties of alliance, of guarantee or commerce, are not binding upon a new state formed by separation, and it is not liable for the *general* debt of the parent state. * * * * It is saddled with local obligations such as that to regulate the channel of a river or to levy no more than certain dues along its course, and *local debts*, whether they be debts contracted for local objects, or debts secured upon local revenues, are binding upon it."

On page 80 of his work on International Law is found a note upon the subject of this particular phase of law which is peculiarly instruc-

tive, for his comments upon the indefiniteness with which Grotius and other authors named have written upon it. For the convenience of the Court, it is herein incorporated:

> "The subject is one upon which writers upon international law are generally unsatisfactory. They are incomplete and they tend to copy one another. Grotius, for example, says that if a state is *split up,* 'Anything which may have been held in common by the *parts* separating from each other must either be administered in common or be ratably divided.' De Juri Belli et Pacis, lib. II, c. IX.; Section 10, Kent (Comm. i. 25) does little more than paraphrase this in laying down that 'If a state should be divided in respect of territory, its rights and obligations are not impaired; and if they have not been apportioned by special agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common.' Phillimore quotes Grotius and Kent and adds: 'If a nation be divided into *various distinct societies,* the obligations which had accrued to the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the parts; 1 sec. CXXXVII.'"

Mr. Hall adds (and it is certainly justified):

> "It is difficult to be sure whether these writers only contemplate the rare case of a state so *splitting up,* that the original state person is represented by no one of the factions into which it is divided, or whether they refer also to the more common case of the loss of such portion of the state territory and population by secession, that the continuity of the life of the state is not broken. If the former is their meaning, their doctrine is correct so far as property and monetary obligations are concerned; if not, it would be hard to justify their language even to this extent. No doubt the debt of a state from which another separates itself ought generally to be divided between the two proportionately to their respective resources as a matter of justice to the creditors, because it is seldom that the value of their security is not affected by a diminution of the state indebted to them. But the obligation is a moral, not a legal one. The fact

remains that the *general debt* of a state is a personal obligation. *The case also of the creation of a new state out of a part of an old one is not distinguishable, so far as the obligation to apportion debts is concerned, from that of the cession of a province by one state to another.* (Italics ours.) When the latter occurs at least as the result of conquest, it is not usual to take over any part of the *general debt* of the state ceding territory. The case of Belgium, which took over a portion of The Netherlands debt, is scarcely in point. The Treaty of 1839 (De Martens' Nouv. Rec. XVI, 782), by which the division of the debt was effected, was part of a general settlement of the countries in question made at the dictation of Europe with a view of dealing with all the interests concerned in the most equitable and advantageous manner and not with the bare object of enforcing law. The true rule is recognized by Halleck (i. 76), who distinguishes the case of a state which is so split up as to lose its identity from that of a state which suffers dismemberment without losing its identity. 'Such a change,' he says 'no more affects its rights and duties than a change in its internal organization or in the person of its rulers. This doctrine applies to debts due to as well as from the state and to its rights of property and treaty obligations except so far as such obligations may have particular reference to the revolted or dismembered territory or province.'"

In the brief of the learned counsel who formerly appeared as *amicus curiae*, but now appears for the bond-holding creditors of Virginia, it is said (page 20):

> "Among the writers on public law referred to by the learned justice (whose opinions concurred with the view expressed by him) there may be mentioned the following, citing Puffendorf, Phillimore, Wheaton, Moore, Wharton, Oppenheim."

(*b*) OPPENHEIM.

It is justly conceded that Oppenheim is a learned, accurate and discriminating publicist. He says (sec. 84):

> "When, in consequence of war or otherwise, one state cedes part of its territory to another, or when a

part of the territory of a state breaks off and becomes a state and an International Person of its own, succession takes place with regard to such international rights and duties of the predecessor as are *locally connected* with a part of the territory ceded or broken off and with regard to the fiscal property found on that part of the territory. It would only be just if the successor had to take over a corresponding part of the *debt* of its predecessor, *but no rule of international law concerning this point can be said to exist although many treaties have stipulated a devolution of a part of the debt of the predecessor upon its successor.* Thus, for instance, Articles 9, 33 and 42, of the Treaty of Berlin of 1878 stipulate that Bulgaria, Montenegro and Servia should take over a part of the Turkish debt."

He adds, in a foot-note:

"Many writers, however, maintain that there is such a rule of international law. (See Huber, Nos. 125-135 and 205, where various treaties are enumerated.")

(The italics are ours.)

(*c*) GLENN.

In Glenn's Work on International Law (Hornbook Series), page 36, under the head "Effect of Change of Sovereignty—Upon the Public Rights and Obligations," it is said:

"Three classes of cases arise: (*a*) When a new and independent state is formed by separation from an existing state; (*b*) When a portion of the state is lost by cession; (*c*) When a state is wholly absorbed.

"In the first case, two separate and distinct international persons exist instead of one and the new state has nothing to do with the personal rights and obligations of the parent state, which still possesses its identity. So also the parent state remains in sole possession and enjoyment of its separate property and the rights connected therewith. Treaties of alliance and guarantee of commerce are not binding upon the new state, nor is it liable for *the general debt of the parent state.* The new state comes into possession of rights, including those under treaties and *obligations, connected with the property within it.* It is entitled to the privileges of

navigating rivers that its citizens possess by virtue of being citizens of the parent state and is bound by the obligations connected therewith, such as regulations in regard to the dues, etc. It becomes liable for *local debts, including those for local objects,* and those *secured by local revenues.*" (Italics ours.)

(*d*) HANNIS TAYLOR.

Mr. Hannis Taylor, who is a writer of great research, and is quoted in the brief of the learned counsel for the bond-holding creditors, in his work on International Law, Section 166, says:

"*When severed territory becomes a distinct state—local rights and obligations.*—A narrower and more technical rule prevails when the parent state is deprived of a portion of its territory *which is erected into an entirely distinct political community.* The cogent reasoning in such a case is that as a man who loses an arm or leg in battle is not thereby relieved of any part of his obligations, so a state that is so dismembered as to suffer no loss of identity remains bound as before for its entire general indebtedness. 'Such a change,' Halleck says, 'no more affects its rights and duties, than a change in its internal organization, or in the person of its rulers.' This doctrine applies to debts due to as well as from the state, and to its rights of property and treaty obligations, *except so far as such obligations may have particular reference to the revolted or dismembered territory or province.*" (Italics ours.)

"In other words, as the old state continues its corporate life without interruption, it retains all general state property, and all general benefits resulting from treaties with full liability for all *general* obligations with which the new creation taken from its side may disavow all legal connection. The new state on its part carries with it *only local obligations,* whether *contracted for local objects* or secured by a lien on local revenues, and such local duties as arise out of agreements to maintain the channel of a river, or to levy no more than certain tolls along its course. As a compensation for such burdens the new state is entitled to property within it of a local character, or to such, not within it, as belongs to state institutions localized

there, and to the privileges arising from treaties specially contracted for the benefit of its territory," etc.

This certainly has the merit of clearness. Summarizing, he says (Section 168):

> "After a careful review of all the authorities the general statement may be made (1) that no matter whether a state is entirely extinguished by a division into two or more distinct states, or (2) whether it loses its identity by being absorbed into another state, or (3) whether a state without a loss of its identity has a portion of its territory taken from it to form an integral part of another state, or (4) whether such severed part is erected into an entirely new and independent state, all local charges, and guaranteed debts to which certain domains and their revenues are dedicated, survive as charges upon the localities to which they relate, with their equities unimpaired. In the case first named, the *general debt* of the state should certainly be ratably binding, morally, if not legally, on its several parts; in the second it passes as a whole to the absorbing state; in the third the acquiring state should assume a ratable proportion of it; and in the fourth, every principle of equity and good conscience requires that it should be provided for out of the common state property and the residue divided in proportion to the revenues of the two distinct commonwealths. In the notable case of West Virginia that obligation, though formerly recognized, has never been discharged."

He seems to coincide, so far as the moral obligation is concerned, with Hall, Oppenheim and other writers; and to agree with them also that there is no rule of International Law which makes it a *legal* obligation.

(*e*) PRADIER FODERE.

Pradier Fodere, in "Traite de Droit International Public," Vol. 1, Paris, 1885, Section 156, states:

> "The state to which cession is made is bound by *local debts* of ceded territory."

Section 157:

> "But is the state receiving the cession bound by a part of the other obligations resulting from treaties

made with the ceding state and not attached to the ceded territory, merely because it has had the benefit of the cession? In other words, are obligations and rights which are neither local nor personal, resulting from treaties made with a state, necessarily transmitted, in any proportion, to the state to which a cession is made, together with the ceded territory? *No; the ceding state remains bound or vested with the rights, for, it alone made the contract. The same rule holds, when, instead of being ceded, a province becomes an independent State.* The new state is not generally bound by *non-local obligations* of the state from which it is separated. Such at least is the principle; but it can be modified in practice by a treaty. Thus the Kingdom of Italy, after the acquisition of Lombardy and Venice, only took the place of Austria in respect of the local obligations and rights of the provinces acquired, and refused to take upon itself a proportion of the *general debt* (italics ours) of the Austrian Empire. So also no part of the French debt was imposed upon the province of Alsace-Lorraine which France was forced to cede to Germany in 1871; but—and this is an example of the exceptions which treaties can make from the general rule—the Treaty of Berlin, of 1878, imposed part of the public Turkish debt upon Bulgaria, constituting a diminished principality or territory under the suzerainty of the Sultan, and upon Montenegro and Servia, whose independence was recognized."

(*f*) BLUNTSCHLI.

Bluntschli says, Section 59:

"The debts of the state ought not to be divided proportionally to the *population*. Mortgage or landed debts will be adjudged to fall to the state which obtains the land securing the debt. Other debts will be apportioned proportionally to the *taxes* paid by the divers portions of the territory.

* * * * * *

"2. The security of other *public debts* rests on the *taxable fortune* of the members of the state, and is measured by the *actual product of the taxes* which, accordingly, furnish a *juster basis than the number of*

the population. Suppose a state to be divided in two parts, one having a rich urban population, and the other a poor rustic population. One of the parts, in case of a division proportional to the number of the inhabitants, would be overburdened with debt, and the other considerably relieved, in comparison with the taxes previously paid, all to the great prejudice of the creditors."

(*g*) BONFILS.

Manuel de Droit International Public, by Henry Bonfils, Professor of the Faculty of Law of Toulouse, 3d edition, 1901:

SECTION 223. "If a state ceases to exist by being broken up and divided into several new states, each of the latter ought to assume a portion of the debts which concerned the original state as a whole, and each of them ought also to take upon itself *exclusively the debts contracted for the exclusive benefit of its territory.*"

SECTION 224. "The new state formed by the separation of a province, or by the destruction of the bond of vassalage, should equitably assume a part of the public debt of the state of which it was a fraction. The reason of this is evident. The debts contracted by a state, in *the general interest,* have benefited all the provinces *in globo,* and the creditors had as a guaranty the wealth of all the provinces and the taxes which that wealth could bear."

SECTION 225. "Part of the territory of a state is ceded, annexed to another state. The annexing state should assume the contributive share of the annexed territory in the public debt of the ceding state. It is just that the state taking the cession should assume a part of the debts which, for divers reasons, directly or indirectly have benefited the territory with which it is enriching itself."

SECTION 226. "In the last mentioned cases, how shall the contributive share of the new state or of the annexing state be fixed? The authors are divided. Some fix upon the number of the population; others upon the extent of the territory. Bluntschli's opinion is better and juster. He determines the contributive

share according to the share of the *taxes borne by the annexed or separated province. There is, indeed, a necessary correlation between the public debt of a state and the taxes imposed upon the inhabitants.* The latter constitute a guaranty for the former.

"The personal debts of the annexed, or separated, provinces, relating to local interests, naturally ought to continue to be the debts of these provinces, and should be paid by the annexing state, or by the newly founded state."

(*h*) FRANZ V. LISZT.

Das Volkerrecht by *Dr. Franz v. Liszt*, Professor of the University of Berlin; second edition; Berlin, 1902:

Section 23, p. 175: The author, discussing the cession by a state of a part of its territory to another state, says:

"In any case, succession takes place as regards the so-called hypothecated debts (dettes hypothequees), that is, those debts which were incurred in the *exclusive interest of the ceded territory* (as for drainage works), and as regards mortgage debts (dettes hypothecaires), that is, those debts for which real property situated in the ceded territory was pledged as security."

(*i*) PIEDELIEVRE.

Precis de Droit International Public, by *R. Piedelievre*, Professor of the Law Faculty of Rennes; Paris, 1894:

Section 154:

"First question: should the annexing state take upon itself a part of the *general debt* of the dismembered state?

"The question is, in theory, at least, controverted. The negative solution is the less generally accepted. Its partisans take the ground that the dismembered state, however important a diminution of territory it suffers, nevertheless preserves its juridical personality intact, and conclude that it ought not to cease to be bound by the entirety of engagements, no more than an individual could take advantage of the loss of a part of

his patrimony so as to escape in a similar proportion the fulfillment of his obligations.

"The contrary opinion, more usually announced, seems to us better founded. It involves two principal reasons. The first is that the debts contracted by a state with a view to the *general* utility of the inhabitants, weigh *indivisibly* upon all parts of the territory, and, consequently, if one part of the territory is detached, the part of the debt which was incumbent upon it ought to follow it into the hands of its new master; the second reason is that these debts have served to realize improvements from which the annexed territory benefited in the past, and from which it may benefit again in the future; that it is, therefore, equitable that the state to which the cession is made, as it is to have the fruit of these expenses, should assume an equivalent part of their payment."

"Accepting the principle of apportionment of the debt between the two states, there is still a difficulty to resolve: how shall the principle be applied? How are we to determine what share of the debt of the dismembered state belongs to the annexed territory? Several systems have been proposed.

"Some authors consider solely the *territorial* importance of the detached provinces, so that supposing the debtor state to have lost a fourth or a fifth of its total possessions, the annexing state would have to assume a fourth or fifth of the former state's public debt. While we recognize the simplicity of this system, we think it should be rejected, for the reason that the wealth of a country has less connection with its territorial extent than with the activity of its inhabitants and the direction it has taken. With equal extent of territory, an industrial region is evidently wealthier than a purely agricultural region. But the proposed solution does not take account of this fact; it wrongly supposes the wealth of a state to be mathematically apportioned among its provinces, in proportion to their territorial extent. In practice, the result would be to give one of the states concerned an advantage at the expense of the other.

"A second system has been proposed which is sub-

ject to nearly the same criticism: this is the system of dividing the public debt between the two states in proportion to the number of the *population* of the annexed provinces. To the foregoing observations we may here add that annexation generally has the effect of creating a current of emigration, the importance of which it is difficult to foresee, and for this reason, the governments concerned would have great difficulty in finding the basis for an equitable apportionment.

"A third doctrine remains, which seems to us the best. It is that the debts should be apportioned in proportion to the figure which represents, in the whole amount of *taxes* collected by the dismembered state, the taxes paid by the ceded territory. In fact, the value of the different provinces of a state can only be measured exactly by the actual amount of the taxes paid by each of them. Besides, this system is easily applied and fully protects the rights of the creditors. The annexing state cannot complain, since before consenting to the cession it must have ascertained what were the rights and obligations of the annexed provinces with regard to the dismembered state, and the financial law which fixed the amount of taxes they were to pay sufficiently informed in respect to the debts with which it would be burdened in consequence of the annexation; on the other hand, there is no danger of the dismembered state's raising any objection in regard to the contributive share of the territory lost by it; for it fixed this share itself on the basis of the actual resources of the territory taxed.

Section 156:

"Whatever may be the solution adopted with reference to the question whether the annexing state, by reason of the annexation, ought to contribute to the payment of the public debts of the dismembered state, there are two categories of debts about which there can be no doubt:

"The first includes the *special debts* belonging to the annexed territory, that is to say, the debts which were contracted for their exclusive benefit, and which, like our department or communal debts, are not chargeable to the state. Diplomatic language calls them

dettes hypothequces, because of their particular destination. These debts the annexing state ought certainly to assume, or at least to cause them to be borne by the provinces which they specially affect. In any case, the *ceding state no longer has to pay them*. Thus by the treaties of Campo Formio of Oct. 17, 1797 (Arts. 4 & 10), and of Luneville of Feb. 9, 1801 (Art. 8), France assumed the debts hypothecated on the soil of the ceded countries which were acquired or exchanged.

"The second category includes the mortgage debts (dettes hypothecaires): these naturally are charged to the state which becomes the proprietor of the real property securing their payment."

(*j*) RIVIER.

Principes du Droit des Gens, by *Alphonse Rivier*, Professor at the University of Brussels. Paris, 1826; Volume 1, p. 213 (Art. 40, V):

"It is a general principle that ceded territory passes to the acquiring state just as it is, particularly carrying with it the obligations with which it is charged. '*Res transit cum suo onere.*'

"This principle, in the first place applies to obligations of a private nature, to the debts which specially belong to the ceded territory; the territory is transferred with its debts which remain special to it under the new sovereign as they were special to it under the old sovereign.

"This principle *should also be applied to the debts of the dismembered state* which *were contracted for the benefit of the ceded territory* and for the security of which that state gave pledges as mortgages in this territory; lastly, *the principle applied to the proportion* of the *national* debt of the dismembered state which ought to be taken over by the ceded territory.

"The authors disagree in regard to the disposition of the national debt in case of dismemberment of a part of the territory. According to some authors, the dismembered state continues to bear the whole burden. According to others, the debt is divided between the dismembered state and the annexing state, and this equitable system was put into practice in 1860 between

France and Sardinia, in 1866 between Austria, Prussia and Denmark, between the Holy See and Italy, in 1878 between Turkey and the new states, Bulgaria and Montenegro. M. Appleton, and also M. Cabonat accept the principle of division, but between the dismembered state and the ceded territory 'we favor the division of the debt between the dismembered state and the fragment detached therefrom.' *The proportion of the debt to be borne by the latter should be determined in accordance with the relative wealth of the detached portion and of the remainder of the dismembered state, and this wealth is disclosed by the taxes.*"

(*k*) FIORE.

Il Diritto Internazionale Codificato (International law codified), by *Pasquale Fiore*, Professor of International Law at the University of Naples:

Section 132:

> "In the absence of express agreement they" (the debts of the ceding state) "should be divided equitably upon the basis of the economic importance of the ceded territory, taking into account the proportional amount of the *taxes* borne by it."

Nouveau Droit International by *Pasquale Fiore*, Professor at the University of Naples; Paris, 1885.

Section 360:

> "When only a part of the territory is ceded the public debt ought to be equitably apportioned. On this subject we consider the principle laid down by Bluntschli to be correct, that the opportionment should *not be made proportionally to population*. In the case of mortgage or landed debts (foncieres), the state which receives the real property securing these debts, ought to assume their burden. Ordinary debts should be apportioned proportionally to the taxes paid by the respective parts of the territory."

(*l*) PRADIER FODERE.

P. Pradier Fodere, *Traite de Droit International Public;* volume 1; Paris, 1885.

Section 156: The author states that the state to which cession is made is bound by *local debts* of ceded territory.

Section 157:

> "But is the state receiving the cession bound by part of the other obligation resulting from treaties made with the ceding states and not attached to the ceded territory, merely because it has had the benefit of the cession? In other words, are obligations and rights, which are neither local nor personal, resulting from treaties made with a state, necessarily transmitted, in any proportion, to the state to which a cession is made, together with the ceded territory? *No. The ceding state alone remains bound or vested with rights, for it alone made the contract.* The same rule holds when, instead of being ceded, a province becomes an *independent state. The new state generally is not bound by non-local obligations of the state* from which it has separated. Such at least is the principle, but it can be modified in practice by treaty. Thus, the Kingdom of Italy, after the acquisition of Lombardy and Venice only took the place of Austria in regard to the local obligations and rights of the provinces acquired, and refused to take upon itself the payment of a portion of the *general debt* of the Austrian Empire." (Italics not the author's.) "So also no part of the French debt was imposed on the province of Alsace-Lorraine, which France was forced to cede to Germany in 1871. But—and this is an example of the exceptions which treaties can make from the general rule—the treaty of Berlin of 1878 imposed part of the public Turkish debt upon Bulgaria constituted an autonomous principality tributary under the suzerainty of the Sultan (Arts. 1 & 9), and upon Montenegro and Servia, whose independence was recognized (Arts. 26, 33, 34 & 42)."

(*m*) HUBER.

Max Huber, in his work on Staaten succession (1898) says (p. 90 § 34):

> "Without reference to those numerous cases in which a sum is fixed on account of the confusion of the financial conditions and when, therefore, it is difficult to ascertain the separate proportions, we are confronted in the practice of international law with four different methods of the assumption of the debt:
>
> "1. Territorial division (*i. e.*, Geographical).
>
> "2. Division in proportion to population.
>
> "3. Division in proportion to the tax return of the original domain.
>
> "4. Division in accordance with the nationality of the creditors.
>
> "In cases of doubt the most frequent and also the most equitable calculation of the sum to be assumed is the division in proportion to the tax return which the seceding country bears to the whole of the country."
>
> (A reference (paragraph 226) shows that in the treaty between Prussia and Saxony, May 18, 1815, this was the basis of the division and in accordance with the agreement entered into August 28, 1819, between Prussia and Saxony, which provided for all of the details of the succession the *tax conditions* were used as a measure.)
>
> "As in the countries of this day taxes are divided equally throughout the entire territory, the tax return of a particular portion of the country is a fairly accurate measure of its financial value to the state. Of course, the grantor always suffers a loss in favor of the grantee in so far as he loses the tax returns of the seceding country, but up to this time this has in no way been taken into consideration on account of the difficulty of the calculation.
>
> "In confederations such as Switzerland this measure would, however, seem to be the only right way since the budgets of this country are based chiefly upon their duty returns. In such case only a division in accordance with the population would in case of necessity be permissible since the consumption of each individual

country cannot accurately be known, while at the same time it may be assumed that the imports will be in proportion to the poplation, and that the more densely populated districts are as a rule the wealthiest.

(Page 92): "The division '*pro regionis*' has no reasonable basis since a mere extent of territory bears no direct relation to the fiscal value of the country or with the political power of its government."

Section 136 (page 96). *Special Debts.*

Debts which arise out of a particular domain or which *have been incurred in the interest of a particular domain.*

"By reason of their legal nature these debts should also be considered together with those dealt with in the foregoing abstract (*i. e.*, debts borne by the entire state or country). The debtor is the entire country. The liquidation will arise out of the debts of the entire country. Only the purpose is a different one. Such debts arise either in the interest of a particular portion of a country or they may be assumed by the main government as an already existing debt of a particular portion of it, in which latter event, of course, this would relieve such smaller or particular portion. In this respect these are the debts of the main government in the interest of a particular portion of it.

"According to the European practice these debts are always assumed by the seceding state; that is the seceding state has the obligation to assume them."

Section 272:

"Certainly the territorial principle applies to debts which have reference to particular portions of the country. Regarding these, the owner of the particular portion interested incurs the indebtedness. We have designated these debts as 'special capital' and they should always follow the fate of their territorial foundation."

(*n*) APPLETON.

Henri Appleton makes the following statement in his book entitled: "Des Effets des Annexions de Territoires Sur Les Dettes de L'Etat

Demembre ou Annexe," etc., *Paris 1895*, Chapter IV., Section II., Section 65:

"As soon as the principle is admitted that the debt of a dismembered country should be divided between it and the state which takes one or more of its provinces, a new question arises. In what proportion shall the division be made? Very evidently the more important the annexation, the greater will be the contributory part to be charged to the annexing state. If a tenth of the dismembered country is taken, the annexing state will pay a tenth of its debt. If a fourth is taken, it will assume a fourth of the debt.

"But we must be precise. When a fourth, a tenth of the dismembered country is mentioned, is the reference to the extent of its territory, to the number of its population, or to its wealth?

"What criterion shall we take, what basis must be adopted for such an apportionment?

"On this point opinions have not always been in harmony. The practice has varied, and the authors themselves have not always agreed. We do not speak, to be sure, of authors like Hall, Dudley Field, etc., who leave the entire burden of its debts upon the dismembered state. For then the question cannot arise, and none of them treats it, because they reject the principle itself of apportionment. The problem exists only if one admits apportionment of debt in principle, whether from the point of view of payment, as we have treated the matter, or from the double point of view of collection and payment, as is generally done.

"Three systems of apportionment: on the basis of extent of territory, on the basis of population and on the basis of wealth, have been recommended and applied. In 1866 Italy took upon herself the papal debt in proportion to the population of the provinces of Roumania which she had conquered.

"The treaty of Berlin left the question in doubt. Bulgaria, Montenegro and Servia, which took important territories from Turkey, were required in consequence of this to assume a part of the Turkish debt 'calculated upon an equitable basis.'

SECTION 66. "But at the present time one may say that the two first systems have had their day. The third system receives support

from the unanimous opinion of the publicists and in practice. It seems to be the most just, and, in truth, the only really equitable system. Indeed, the extent of territory acquired by the annexing state cannot be taken as a criterion; if the conquered territory is that of a great city, the conquest is infinitely more valuable than if it consisted of mountains or desert regions. The city has infinitely greater resources and furnishes more taxes, which enable the conqueror to assume a heavier part of the debt. As M. Cabouat says very well: 'With equal area, an industrial region is superior to a purely agricultural region, and even between territories of equal extent, devoted either to agriculture or to industry, it would be rash to affirm a constant equilibrium. Now, the system we are combating, completely ignores these facts; it reasons as if the wealth of a state could be mathematically divided among each of its provinces in proportion to their respective extents. Such a system could not be followed except upon the altogether chimerical hypothesis of dealing with the debt of an exclusively agricultural or manufacturing state whose various parts should have attained an equal degree of development. In practice the clearest result of such a system would be to procure for one of the interested states a reduction of the obligations incumbent upon it, and, consequently a gain, wholly at the expense of the other state.'

"An apportionment of the debt according to the number of the population inhabiting the annexed provinces would be subject to the same criticism. The new population acquired by the annexing state may be poor and capable of paying only small taxes; it may be, on the contrary, rich and prosperous. It would be unjust, in the two cases, to charge the annexing state with the same part of the debt. On the other hand, annexation always starts a current of emigration more or less strong. The population which the annexing state gains by annexation is always more or less inferior in number to that of the province at the moment of the annexation. This diminution, this decrease, cannot be foreseen, with any precision, at the moment of the treaty, and the apportionment which the negotiators might wish to make, would lack a solid basis."

* * * * * * *

§ 67. "The conclusion drawn by the authors from these observations is that a single criterion is admissible: that of wealth. Wealth will be disclosed by the amount of taxes paid up to the annexation by the two portions of the dismembered state: the annexed portion and the portion which keeps its independence. To eliminate as much as possible causes of error, the taxes taken are not those paid during the year preceding the annexation, but an average calculated over a space of several years. If the ceded province supplied a tenth, a fourth of the taxes levied by the ceding state, that state will be discharged of a tenth, a fourth of its debt. We are bound, like everybody else, to approve of this criterion. It is plain justice to take as a basis of apportionment, wealth as disclosed by taxation."

3. APPLICATION OF INTERNATIONAL LAW DOCTRINE IN THIS CASE

Quotations from publicists have been indulged with much liberality in the hope that they may be found convenient to the members of the Court, also for the purpose of showing the unanimity with which they recognize the distinction, in respect of debt succession among nations, between a *general* or *national debt* and a *special* or *local debt*, and the consequences resulting from the distinction; and for the further reason that they supply the international law standard for debt apportionment, which counsel have assumed to be either area, population or taxable values, and that they agree that the latter is the just and adopted standard.

Even if the Court should be of opinion that the rule of international law does not govern the present case, yet if the Court, apart from the method prescribed by the ordinance and notwithstanding the provision in the Constitution of West Virginia referring the matter for ascertainment to the legislature of that state, should undertake to determine the equitable proportion of the old Virginia debt which West Virginia should assume, then we submit that the Court cannot fail to give great weight to the authorities on international law which we have cited. The rules of international law are based entirely upon consideration of equity and fairness. They have no force nor sanction except from the consent of nations by reason of their evident justice. This Court, therefore, in determining what would be an

equitable apportionment of the Virginia debt, would undoubtedly desire to take into most careful consideration the unanimous opinion of the modern international law authorities that, in apportioning the debt of a state after its division, equity requires a distinction to be made between the portion of the debt which is local or special in its character and that which is general, so that the parent state and the new state are bound respectively to assume the whole of the *local debt* relating to their respective territories, leaving only the *general debt* to be apportioned on the basis of taxable value.

4. RECOGNITION OF DISTINCTION BETWEEN GENERAL AND LOCAL DEBTS IN DIVISION OF TERRITORY OF DAKOTA.

The authority for the rule of international law in the present case is peculiarly confirmed and strengthened by the fact that it was adopted and applied in the only case in our history which is directly analogous to the present case. We refer to the division of the territory of Dakota into the two states of North Dakota and South Dakota. The territory of Dakota had a bonded indebtedness incurred for the purpose of erecting certain public buildings and institutions. It also had incurred certain other liabilities of a general character.

The Sixth Section of the Act of Congress providing for the devision of Dakota into two states (25 U. S. Stat. at Large, p. 676) required the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, whose duty should be to agree upon an equitable division of all property belonging to the territory of Dakota and to adjust and agree upon the amounts of the debts and liabilities of the territory which should be assumed and paid by each of the proposed states of North Dakota and South Dakota. The Act of Congress further required the agreement respecting the territorial debts and liabilities to be incorporated in the respective constitutions of the new states, and required each of them to obligate itself to pay its proportion of such debts and liabilities, the same as if they had been created by such states respectively.

A joint commission was duly appointed and made an agreement for the two new states respecting the territorial debts and liabilities, which agreement, in accordance with the enabling Act of Congress,

was incorporated in the constitutions of North Dakota and South Dakota. The provisions concerning the apportionment of the territorial debt which we shall quote, are taken from the Constitution of South Dakota. (Similar provisions will be found in Art. 16 of the Constitution of North Dakota.)

Section 6 of Article 13 of the constitution of South Dakota is as follows:

> "In order that the payment of the debts and liabilities contracted or incurred by or in behalf of the Territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an Act of Congress approved Feb. 22, 1889, entitled 'An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states,' the states of North Dakota and South Dakota, by proceedings of a joint commission duly appointed under said Act, the sessions whereof were held in Bismarck in said State of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota which shall be assumed and paid by each of the States of North Dakota and South Dakota, respectively, to wit:"

The agreement follows.

Paragraph 3 of the agreement provides:

> "The said State of North Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the Territory of Dakota, approved March 3, 1889, entitled 'An Act to provide for the refunding of outstanding warrants drawn on the capitol building fund.'"

Paragraph 4 provides as follows:

> "The said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota."

Paragraphs 5 and 6 specify the particular bonds to be assumed respectively by North Dakota and South Dakota, and specify the local situations of the buildings and institutions on account of which the bonds assumed by the two states were issued.

Paragraph 6 provides:

> "The States of North Dakota and South Dakota shall pay one-half each of all liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore and hereafter incurred on account of public institutions, grounds or buildings, except as otherwise herein specifically provided."

Paragraph 7 provides in part:

> "Nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institution, grounds or buildings of the territory situated or located within the boundaries of the other state."

Paragraph 8 provides in part:

> "A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 8, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within boundaries on the same accounts and during the same time. Each state shall be charged

with one-half of all other expenses of the territorial government during the same time."

The Court will observe that the apportionment of the debt of the Territory of Dakota between the new States of North Dakota and South Dakota under their agreement was absolutely in accordance with the rule of international law that when a state is divided *local debts* must be assumed in their entirely by the state taking the territory with reference to which such debts were incurred. Each of the States of North Dakota and South Dakota assumed the bonds which had been issued on account of institutions located within its boundaries. General liabilities, on the other hand, were apportioned equally between the two states, as appears in paragraphs 6 and 8 of the agreement quoted above.

No contention can be made that this was merely the case of a special agreement, from which no principle of general application can be derived. The constitutions of the two states expressly declare the result of their agreement to be just and equitable. Section 6 of Article 13 of the South Dakota constitution (a similar provision will be found in paragraph 3, section 203, article 16 of the North Dakota Constitution) declares:

> "In order that the payment of the debts and liabilities contracted or incurred by and in behalf of the Territory of Dakota may be *justly and equitably* provided for and made * * * the states of North Dakota and South Dakota * * * have agreed to the following adjustment of the amounts of the debts and liabilities of the Territory of Dakota," etc.

Hence the opportionment of the debt of the Territory of Dokata can only be regarded as an equitable settlement between the two states. The full recognition in this settlement of the distinction between *local* and *general debts* not only confirms the doctrine of international law on this subject, but must impress the Court as an unique and valuable precedent for the purposes of the present case.

5. DISTINCTION BETWEEN GENERAL AND SPECIAL DEBT DISCUSSED IN NEGOTIATION OF TREATY BETWEEN UNITED STATES AND SPAIN.

His Honor Mr. Justice Day will remember that the distinction between a *general* or national debt and a *special* or *local debt*, from the standpoint of international law, involved a prolonged discussion between the American and Spanish commissioners at Paris in negotiating the Treaty of Paris, under which the United States secured to Cuba her independence and brought under our sovereignty Porto Rico and the Philippines. The Spanish Commissioners contended that the United States should assume, either for herself or for Cuba, that portion of the indebtedness which had been incurred and for which Spain had issued obligations *primarily secured by an hypothecation of the revenues of Cuba*. They contended that it was, to all intents and purposes, a Cuban debt; in other words, *local or special*, as contradistinguished from the *general or national* debt of Spain. The American commissioners recognized the distinction, but refused to accede to the demand of Spain, upon the ground that Cuba had had no debt, but, on the contrary had been a self-supporting colony, and that the indebtedness was incurred, and its proceeds used to wage war upon Cuba, and to resist by arms the aspirations and struggles of her people to be freed from long-continued despotism and misrule and was a part of Spain's *national or general debt*.

If we had taken over Cuba in the absence of *strife between Cuba and Spain and the United States and Spain*, and *there had been found an indebtedness incurred by Spain*, the *proceeds of which had been expended in public improvements in Cuba and for the benefit and betterment of the island and its inhabitants*, the question would have been a different one, and from the standpoint of international law and justice, our attitude must have been different.

6. THE DISTINCTION BETWEEN GENERAL DEBT AND LOCAL DEBT IS SUBSTANTIAL AND JUST.

And this distinction between a *general* and a *special* or *local debt* is a substantial one. It rests upon a sound principle, and is essentially

just. Obviously, there is no such distinction when we consider the relation of a state and its creditors. There, the purpose for which the loan was effected is immaterial; but, in respect of the apportionment of the debt of a state between itself and a new state, erected out of its territory, the distinction is not only apparent but important.

A *general debt*, using the phrase as the publicists use it, with reference to debt succession, one would say is a debt, the object and result of which inures to the benefit of all the people subject to the dominion of the state, the expenditures of which are not susceptible of localization, and which cannot be said to benefit one section more than another, or one class of citizens more than another.

The debt incurred by the United States during the war in maintaining the Union would fall, from every standpoint, within the definition of a *general debt*. It was to preserve the Union as the fathers made it, and its benefits inured to all the people in all the states.

If the Southern Confederacy had become an established government, a nation, the indebtedness which it had incurred in the establishment of that government would have been a *national* or *general debt* as contradistinguished from a *special* or *local debt*.

This expenditure of its proceeds would have been made for the general and indivisible benefit of the people living under its sovereignty.

Such a debt is not, in its nature, apportionable except by special agreement, or, ratably upon some basis recognized by international law.

On the other hand, the *special* or *local debt*, however large it may be, incurred by a state or a nation, upon a division which results in the erection of a part of the national territory into another nation or state, *apportions itself*.

If it had happened that every dollar of the public debt of the Commonwealth of Virginia, prior to January 1, 1861, had been expended in the construction of railways which Virginia owned, and canals and public buildings, toll highways, improved navigation, the utilization of which by the public required the payment of tolls, all owned by Virginia and within her borders, after the separation, could it, with any justice, be said that West Virginia, upon the division of the

two states and the erection of West Virginia into a state, should in equity assume any portion of that burden, when not a dollar of the money had been expended within her territory, and if there were not within it a work of internal improvement erected by Virginia out of the proceeds of that debt? Such improvements are on the land, and, of necessity, are transferred with it.

Suppose, on January 1, 1861, the only debt resting upon the Commonwealth of Virginia had been a debt of $10,000,000, the proceeds of which had all been *directly expended within the limits of the present State of West Virginia, and thereupon for the benefit of its people*, in the construction of railways and public buildings, in the making of highways and other improvements, important in their character and beneficial to that people remote from tide-water, and West Virginia had been admitted as a state into the Union, with no provision as to apportionment of debt. Can there be any doubt, upon principles of international law, and upon principles of common justice that it would *have been the duty of the new state to take that entire debt upon her shoulders?* It would have been incurred with reference to her territory. It would have been expended within her limits, and for her benefit. Although such a debt, like any other, as between Virginia and her creditors, would have bound Virginia, yet, as between Virginia and West Virginia, it would have been a special debt which West Virginia ought to assume and pay. If this proposition is not sustained by all writers on international law who have touched the subject, we are mistaken. What answer could West Virginia have made to it? Between nations, a refusal to adjust it upon that basis might very well have resulted in war.

7. THE PUBLIC DEBT OF VIRGINIA PRIOR TO JANUARY 1, 1861, WAS A LOCAL OR SPECIAL AND NOT A GENERAL DEBT.

It is averred in the first paragraph of the bill, that:

> "On the first day of January, 1861, your oratrix was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory."

It is admitted, in the first paragraph of the answer:

> "That she believes it is true as alleged that on the first day of January, 1861, plaintiff was indebted in 'about' the sum of $33,000,000, upon obligations and contracts made in connection with the construction of works of internal improvement within her then territory."

The investigation before the Master, as shown by the exhibits, clearly makes it appear that Virginia had no *general* public *debt* in 1823, and that the $33,000,000 was expended in works of internal improvement.

Here we are logically led to an analysis of this debt and of the purposes for which it was incurred and the expenditure of its proceeds.

8. THE NATURE OF THE DEBT, AS SHOWN BY THE LEGISLATION UNDER WHICH IT WAS INCURRED.

Let it be said first, that Virginia, in 1823, the initial year of the period ending with December 31, 1861, during which the debt of the commonwealth here involved was created, appears to have had outstanding no general debt.

Virginia embarked early on a system of internal improvement. She passed, on February 5, 1816:

> "An act to create a fund for internal improvement, to be applied exclusively to the purpose of rendering navigable and uniting by canals the principal rivers, and of more intimately connecting, by public highways, the different parts of this commonwealth."

This fund consisted of the shares held by the commonwealth in the stock of the following companies; Little River Turnpike Company, Dismal Swamp, Appomattox, Potomac and James River Canal Companies, of the Bank of Virginia and also the Farmers' Bank of Virginia,

> "together with such dividends as may from time to time accrue to such shares of stock, and such bonds and premiums as may be hereafter received for the incorporation of new banks or the augmentation of the capitals or the extension of the charters of existing banks."

She, at the same time, provided that, for the purpose:

> "of preserving and improving this fund, and of disbursing such portions of it as the General Assembly may, from time to time, direct, to be applied to any object of internal improvement, it shall be, and the same is, hereby, vested in a corporate body to be styled 'the president and directors of the Board of Public Works,' in which name they shall have a common seal, etc."

The governor was made, *ex officio*, the president of the board of public works. The directors were to consist of the treasurer and attorney general of the commonwealth, for the time being, and of ten citizens thereof, three of whom were to reside westward of the Alleghany Mountains, two between the Alleghany and the Blue Ridge, two between the Alleghany and the Great Post Road, and the residue between that road and the sea coast.

The act provided that the fund should be deposited in the Treasury, subject to the order of the president and directors of the board, paid out or delivered by the treasurer of the commonwealth upon the order of the board, and required accounts of the disbursements and the certificates upon which the same shall have been made to be preserved, and an annual account to be rendered to the general assembly.

Section 11 provided that the president and directors of the board of public works shall be, and they are hereby, authorized to subscribe, in behalf of the commonwealth, to such public works as the general assembly may, from time to time, agree to patronize, such portions of the fund for internal improvement as may be directed by law; but that no part of the said fund shall be subscribed towards the stock of any canal, turnpike or other company until three-fifths at least of the whole stock necessary to complete such canal, turnpike or other public works of such company, *shall have been otherwise subscribed*; or until, of the stock so subscribed, one-fifth thereof shall have been actually paid by the resident subscribers, or the payment thereof effectually secured by bond of approved security, or a deed of trust upon the real estate of such subscriber, of twice the value of such one-

fifth part; such bond to be taken payable to the president and directors of the company authorized to complete such public work.

It was then provided that the dividends on the stock subscribed by the president and directors of the board of public works should go exclusively to other subscribers than the commonwealth until such portion of the stock of those subscribers shall have netted to them six per centum per annum from the specified time of such payment: that any increase of profit after that net income should have been assured to the subscribers, should belong exclusively to the fund for internal improvements, until the net annual income of the whole stock actually expended by any company shall reach six per centum per annum;

> "*after which the commonwealth and the other subscribers to the stock* of the company shall divide the net profits on such stock in proportion to their respective interests."

It then provided that the president and directors should vest in some productive fund the undivided dividends accruing upon any of the stock, until the same was specially appropriated by law to some internal improvement; and adds:

> "And shall have power, subject to the control of the general assembly, to sell, from time to time, as may be ordained by law, the whole or any part of the shares held by the commonwealth of the stock of any canal, turnpike or other company subscribed for under the provisions of this act, *for the purpose of investing the proceeds of such sale in the stock of some other similar company*, subject to the like conditions as have been before expressed in this act."

The board of public works were given power, in behalf of the commonwealth, to appoint such number of directors of every public work as shall bear to the whole number of directors of such work the proportion of the commonwealth's shares of stock in such work, which may be subscribed in pursuance of this act to the whole number of shares thereof.

Section 16 provided:

> "That the public faith shall be, and the same is, hereby, solemnly pledged to fulfill the obligation of this act, and that the said appropriation shall continue in force until the first day of January of the year one thousand eight hundred and sixty-six; except at such time as the United States of America may be involved in war, or the safety of this commonwealth, may, in the opinion of the general assembly, require, when the general assembly may, withdraw (during the period of actual hostilities or of such imminent danger) the whole or any part of such fund, for the purpose of defense, provided such withdrawal can be made without a violation of any engagement made under this act."

The provision above quoted, by which the state withheld herself from dividends until the citizen subscribers had netted six per cent on what they had paid in, was changed by an act of February 20, 1829, chapter 21, in which it was enacted:

> "And all dividends upon subscriptions hereafter authorized or required to be made by the general assembly to any canal, road, bridge company or other corporation, shall be made and stand upon the same footing with subscriptions made by individuals."

The legislature of the commonwealth passed February 7, 1817, chapter 38, a general act providing certain general regulations for the incorporation of turnpike companies, entitled:

> "An act prescribing certain general regulations for incorporation of turnpike companies."

This act provided that:

> "Whenever it may be deemed expedient for the general assembly to make a turnpike road, and an act shall actually pass the general assembly for such purpose, the following general provisions shall be deemed to be contained as part of the said charter or act of incorporation, as if the same had been actually re-enacted in reference to such grant or charter, except in so far as such grant, charter or act may expressly provide."

And then provides that:

> "The commissioners named in any special act, or a majority of them, shall have power to open books for subscriptions to the stock at the places named in the act, and to divide the capital stock into as many shares, not exceeding one hundred dollars each, in amount, as they may deem proper, to appoint any number of deputy commissioners, to open books of subscription to the stock of the company, and the subscriptions shall be made and the payment of moneys received on subscriptions to the president and directors by the commissioners; that the books shall remain open until at least one-half of the capital stock of the company shall have been subscribed, when a general meeting of the subscribers is to be called by the commissioners,"

and provided other details for the purpose of organization.

It also prescribes the tolls which may be exacted, and provides for changing them, either raising or lowering the amounts, upon certain contingencies.

By section 28, it is provided that:

> "If the said president and directors do not begin the said work within two years after the passage of the act for *incorporating* the company, or shall not complete the same within ten years thereafter, in the manner hereinbefore directed, then the interest of such company in the said tolls and roads aforesaid shall be forfeited and cease."

It provides for reports of the receipts and profits to the board of public works.

It also provides that:

> "If the commonwealth shall desire to purchase the stock of such company, and shall vest authority to make such purchase in any person, corporation or body politic, it shall not be lawful for the *proprietor* of any such stock to sell or transfer the same to any person whatever until he shall actually and with good faith have offered the same for sale, for the price for which he is

> willing to take therefor, to the person, body politic or corporation, authorized to purchase by the commonwealth."

And also provides that after such offer to such person, body politic or corporation, no transfer or assignment to any other person, shall be entered or registered in the books of such company, or vest any right whatever, unless it shall have been proven to the satisfaction of the president and directors that the stock so transferred had been, with good faith, previously offered to the person, body politic or corporation, so authorized, at a price at least as low as that at which it had been sold to such assignee or transferee.

A general act was passed February 11, 1832, prescribing certain general conditions on which subscriptions to certain joint stock companies shall be made on behalf of the commonwealth. This act provides as follows:

> "That all subscriptions which are now authorized by law and have not been made by the board of public works, or which may hereafter be authorized, shall be subject to the following conditions and provisions, to wit:
>
> "In every case the board of public works shall be furnished with a certificate under the seal of the company signed by the treasurer and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock has been actually paid up into the hands of such treasurer, and the remainder of such subscription is either so made or is made by solvent persons fully able to pay, and these facts be shown to the satisfaction of the board of public works. They shall also be furnished with a list of the stockholders, showing a list of the shares standing in each name."

(The provision with reference to the proportion of capital stock subscribed by individuals was afterwards changed to "two-fifths," so that the state took three-fifths and private stockholders were permitted to take only two-fifths.)

If any private improvement shall have been commenced previously, and the subscriptions thereto have been authorized or made, the

board of public works shall be furnished with a statement showing the amount of money received up to the date of such statement, and of the amount expended in the work, together with the balance of money on hand, the contracts entered into for the construction of the improvements, the exact progress made therein, as near as may be, its dimensions and a correct map of its location.

The section provided:

> "Installments of future subscription of the board of public works shall be applied in the manner and on the conditions hereinbefore mentioned when not otherwise specifically provided by law; that is, one-fourth of such subscription shall be paid on the production of the draft of the treasurer or other authorized agent of the company, in the manner and in such form as the board of public works may prescribe, and the remaining three-fourths on similar drafts, in six equal semi-annual installments or in installments *of the same proportions with future payments or private subscriptions at the discretion of the board of public works.*"

It also provided that:

> "Before payments of the installments aforesaid, the board of public works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, showing the amount actually paid up by the private stockholders, which amount must be at least equal to the amount payable by the board of public works."

It was the evident purpose of the commonwealth from the beginning to render susceptible of easy ascertainment the identification of each loan with the particular improvement for which it was authorized by special act of the legislature to be made. Thus, by chapter 117 of the laws of 1834, which authorized the borrowing of money on the credit of the state at a rate of interest not exceeding five per centum for sums of money not less than $30,000, and not exceeding $60,000, it is provided:

> "That the moneys so to be borrowed shall be paid into the treasury upon the warrant of the second auditor, and upon the receipt in the treasury of the sum

> or sums so borrowed, the treasurer shall issue his certificate of loan for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the principal sum so borrowed, together with the interest at the rate of interest agreed upon, and that the interest so agreed upon is payable semi-annually at the treasury of the commonwealth. *Such certificate shall show on the face thereof that the loan was made under authority of this act.*"

And this principle was embodied, as the Court will see, in chapter 12, laws of 1838, providing for the negotiation of loans for internal improvements, a general act, the pertinent portions of which are as follows:

> "First, that all loans hereafter authorized by law for the payment of subscriptions on behalf of the commonwealth to the capital of joint stock companies *incorporated* for purposes of internal improvement or for defraying the expense of any work or internal improvement in which the state is or may be interested, as well as all loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.
>
> "Second, the board of public works in effecting such loans shall borrow upon the credit of the commonwealth at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the moneys so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators or assigns, the principal sum so borrowed, together with the interest at the rate agreed on; and that the interest is payable semi-annually at the treasury of the commonwealth, *and that such certificate or certificates were issued under authority of a special act authorizing such loans;* which certificate shall be signed by the treasurer and countersigned by

the second auditor and be registered in a book to be kept for that purpose by the second auditor, and shall be transferable on the books of his office in person or by attorney." * * * "All loans negotiated in conformity with this act shall be irredeemable for twenty years and shall afterwards be redeemed at the pleasure of the general commonwealth.

"Third, for the payment of the interest and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the moneys so borrowed, together with the dividends and other net incomes which may accrue therefrom to the commonwealth or to the fund for internal improvement, shall be and the same are *hereby appropriated and pledged; and in like manner the net income and other profits which may accrue from works in which the state is interested other than those of joint stock companies, and on which the money borrowed is to be expended,* shall be and the same are likewise hereby *appropriated and pledged for the payment of the interest and redemption of the principal of the moneys so borrowed;* that if the stock aforesaid and the said dividends, net profits and other income shall be inadequate to the payment of the said semi-annual interest and the final redemption of the principal of the respective loans, the general assembly pledges itself to provide other and sufficient funds, and for that purpose to levy any necessary and adequate taxes upon any or all subjects liable to taxation under the Constitution."

The act provides that:

"If the dividends and income arising from the stock or work as aforesaid, together with the fund for internal improvement, shall be insufficient to pay all interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the board of public works, issue his warrant upon the treasury directing the payment of such interest out of any moneys therein not otherwise appropriated, and in case of the inability of the treasury at any time to discharge such warrants, the board of public works shall be and they are hereby authorized to borrow the necessary amount from

> the banks of this state at a rate of interest not exceeding six per centum per annum, on the credit of the commonwealth, to be repaid in such manner as the general assembly may by law direct."

By section 5 the board is authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint one or more agents with necessary powers, and to allow him or them such compensation as they may deem reasonable; also that as to European loans they may provide for the payment of interest on the same semi-annually in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans.

It appears in the case that during the debt period, between 1823 and 1861, a large number of stock corporations were created to build works of internal improvement, of one kind and another, to whose stocks the board of public works, under this legislation, subscribed on behalf of the commonwealth, for a time, for two-fifths, and for another time, for three-fifths, but never until, in the one case three-fifths, and in the other, two-fifths, had been subscribed by *solvent private citizens,* and a required sum paid in *on the private subscriptions.* Moneys were borrowed in sums, great and small, from time to time, to pay these stock subscriptions of the commonwealth. This applied to turnpike companies, bridge companies, navigation companies and railway companies. And the state also subscribed a large amount to the stock of banks incorporated by her legislation and issued bonds in payment of her subscription.

The record shows that Virginia expended about $4,0000,000 more than the $33,000,000 debt on works of internal improvement, out of moneys raised by taxation. In some instances she expended through her board of public works directly the proceeds of loans.

In respect of all of the debt, the proceeds of which were expended in West Virginia, the schedule shows that the loans which she effected were numbered as required by law, the certificate of debt or certificates of debt, referring to the act which *authorized the particular expenditure,* so that it is not only true that the debt represents expenditures

for internal improvements, but it is true, so far as the expenditures in West Virginia were concerned, that the moneys which were expended, the proceeds of loans, are traceable to the particular improvements and the stocks and dividends thereon were pledged for the repayment of the loan.

An examination of complainant's exhibit A-2, which shows the form of bonds, will disclose that each loan was numbered; so that while the aggregate amount of the debt is very large, it is composed of a vast number of separate, relatively small loans, each susceptible of identification, and the proceeds of each traceable to the particular improvement for which the loan was authorized to be made, so that each loan was localized.

By chapter 8, laws, passed March 27, 1839, page 9, it was provided:

> "It shall be lawful for the treasurer of the commonwealth, and he is hereby directed upon the requisition of the board of public works, *and without requiring the previous payment of money into the treasury on account thereof, to issue* certificates of stock for the amount of any loan or loans which are now or may hereafter be authorized by law, to procure for private or internal improvements, payable in currency of the United States or that of any European state, and in such form and with such conditions and stipulations, *not inconsistent with law,* as the said board shall direct, which certificate shall be countersigned," etc., etc.

This phrase "not inconsistent with law" preserved the identification of the loan with the particular improvement as provided by the act of 1838 above quoted.

As it was a general provision of law, the presumption is that the same thing is true of the loans, the proceeds of which were expended within Virginia, or in the purchase of stocks of corporations whose improvements were within her present limits.

The Rule of Public Law Does Not Govern This Case Because the Wheeling Ordinance and the Constitution of West Virginia Constitute a Special Agreement as to the Proportion of the Old Virginia Debt to be Assumed by West Virginia.

Even if the Court should not recognize the distinction between *general* and *local debts*, the present case is within the exception to the rule of international law as stated by Mr. Justice Field in that the matter of the division of the public debt was the subject of a special agreement between the two states evidenced by the 9th section of the Wheeling Ordinance and Section 8 of Article VIII. of the Constitution of West Virginia.

1. SECTION 9 OF THE ORDINANCE.

The pertinent portion of the ordinance is as follows:

> "9. The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period. All private rights and interests, in lands within the proposed state, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed state, and shall be determined by the laws now existing in the State of Virginia.
>
> "The lands within the proposed state of non-resident proprietors shall not, in any case, be taxed higher than the lands of residents therein. No grants of lands, or land warrants issued by the proposed state shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed state now liable thereto."

2. SECTION 8 OF ARTICLE VIII. OF WEST VIRGINIA CONSTITUTION.

Section 8 of Article VIII. of the Constitution, "Taxation and Finance," is as follows:

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January in the year one thousand eight hundred and sixty-one shall be assumed by this state; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

3. TWO VIEWS OF OPPOSING COUNSEL IN RELATION TO THE ORDINANCE.

Two views are taken in relation to the ordinance and the quoted provision of the constitution by opposing counsel. The learned counsel who represents the "bondholding creditors of Virginia" contends in his brief (p. 38):

> "That ordinance, as shown by its title, was to provide for the formation of the new state. All of its sections, except the ninth, were directed toward that end. The state was formed when its constitution was framed and adopted by the people. The ordinance then became *functus officio*, and ceased to have any operation."

It is hardly to be expected that a lawyer, in the changing fortunes of a great litigation, can always be entirely consistent. The learned counsel has stated that he drew the bill, by the filing of which this suit was inaugurated. In that bill, page 4 (May's Comp.), is set forth the ordinance, followed on page 6 by several quotations from the first Constitution of West Virginia, including section 8 of Article VIII.

Paragraph 18 of the bill is as follows (p. 10):

> "Your oratrix charges that the liability of the State of West Virginia for a just and equitable proportion of the public debt of Virginia as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:
>
> "*First*. The area of the territory now known as the

> State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this *public debt* was created, and its population included about one-third of that of the original state at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the *public debt* created prior to the partition of such territory.
>
> "*Second.* The *liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia as it existed prior to the creation and erection of the State of West Virginia forms part of her very political existence, and is an essential constituent of her fundamental law,* as *shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861 in which the method of ascertaining her liability on account of said debt is prescribed. And this liabilty is imbedded in the Constitution under which she was admitted as a state into the Federal Union,* and *was one of the conditions under which she was created a state and admitted into the Union.*"

The learned counsel for the bond-holding creditors says, in his brief (page 37):

> "The tenth section of the ordinance to provide for the erection of a new state," etc. provided that—"When the general assembly shall give its consent to the formation of the new state, it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the new state may be admitted into the union of states."

He adds:

> "It did not provide that a copy of the 'ordinance' should be forwarded to congress, and there is nothing in this entire record to sustain the assertion that congress ever saw or knew of that ordinance or of its provisions."

It may be true that there is nothing in the record, technically speaking, to evidence the fact that the ordinance was before the congress, and accessible to its members, at the time the bill for the

admission of West Virginia was being considered and passed. That depends upon what the record in this case is; but some things the Court will take judicial notice of. In many instances, it has taken judicial notice of the archives of the government and the legislative history of measures before it, the construction and effect of which have been here involved. It has taken judicial notice of records of the treasury department, of the records of the congress in respect of the history of measures, or amendments offered and adopted or rejected, and of reports of committees.

It is said in our brief, filed on the argument of complainant's motion to refer cause to Master (page 42) as follows:

> "It ought here to be stated that the constitutional convention of West Virginia appointed three commissioners to that end, also that the commissioners presented on May 31, 1862, to the United States Senate a memorial praying for the admission of that state into the Union, addressed to the Honorable B. F. Wade, chairman of the committee on territories, in which they gave a history of the proceedings which led to the organization of the restored government of Virginia, *and which included at length the ordinance adopted on the 20th of August, 1861, by the convention at Wheeling, entitled, 'an ordinance to provide for the formation of a new state out of a portion of the territory of this state,' which, on the 31st day of May, 1862, was referred by the senate to the committee on territories and ordered to be printed* (Congressional Globe, p. 2451; 37 Cong. 2d. session, Misc. Senate Doc., No. 99)."

The Congressional Globe, being a public document, giving the proceedings of co-ordinate branches of the government, this Court will, undoubtedly, under the authorities, take judicial notice of the fact that it was presented to the senate, that it was ordered by the senate and referred to the committee on Territories. That the order to print the usual number, which supplies both houses, was obeyed, the Court will presume.

The Paquette Habana, 175 U. S., 712.
United States v. *Whittridge*, 197 U. S. 135.

4. VIRGINIA IS NOT IN A POSITION TO INSIST UPON THE ELIMINATION OF THE ORDINANCE FROM THE CASE.

Neither the learned counsel, nor the Commonwealth of Virginia, is in position to insist upon the elimination of the Wheeling Ordinance from this case. In 1871, *years after the adoption of the Wheeling Ordinance* and the *Constitution of West Virginia*, the Commonwealth of Virginia passed a funding act, the preamble of which (May's Comp. 14, Exhibit No. 1) of the bill, reads as follows:

> "WHEREAS, in the formation of the State of West Virginia there were included within its boundaries about one-third of the territory and population of the State of Virginia; and
>
> "WHEREAS, in the *ordinance authorizing the organization of said state it was provided* that the *said state shall take upon itself a just proportion* of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, *which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state*, and *will continue to be made as long as may be necessary;* and
>
> "WHEREAS, the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and
>
> "WHEREAS, it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof, and *not to this state, as the constitution of this state provides:*
>
> "NOW, THEREFORE, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt, as the same shall become due;
>
> "THEREFORE BE IT ENACTED:"

And the act proceeds to fund *two-thirds* of the debt, and to provide for the issue of certificates of Virginia for the remaining *one-third* —the payment of which

> "will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the State of Virginia in existence at the time of its dismemberment."

We find here a legislative recognition of the ordinance as the sole evidence of the assumption by West Virginia of a proportion of the public debt of the commonwealth prior to January 1, 1861. The legislature of Virginia evidently regarded it as not *functus officio*, although the constitution had been adopted for some years; and this legislative declaration was despite the fact that Virginia, in her constitution adopted in 1864, which was the only organic law of the state until 1870, had attempted in express terms to repudiate the ordinance, so far as it related to the debt.

Section 27 of article IV. of the constitution of 1864 is as follows:

> "SECTION 27. The *general assembly shall provide by law for adjusting* with the State of West Virginia the proportion of the public debt of Virginia proper to be borne by the states of Virginia and of West Virginia respectively * * * and no *ordinance passed by the convention which assembled at Wheeling on the 11th day of June 1861, adjusting the public debt between Virginia and West Virginia shall be binding upon this state.*"

5. VIRGINIA DOES NOT CONTEND THAT THE ORDINANCE HAS CEASED TO BE BINDING.

The legislation of Virginia, upon which was based her funding act, honorably ignored this attempted repudiation of the ordinance, and in the argument on the submission of a draft of a proposed decree the distinguished lawyer who represented the state as its attorney-general, now of counsel, in a brief filed here, said:

> "While the basis of settlement prescribed by the Wheeling Ordinance is, as we have always considered it arbitrary and inequitable, we *have never taken the position that that ordinance, reasonably and fairly construed, and taken and applied together with the act of the restored government of Virginia of February 3, 1863*, and section 8 of article VIII. of the constitution under which West Virginia became a state, *was not binding on both states.*"

The learned counsel who argue for Virginia here, in their notes of argument, do not quite contend that the ordinance became *functus officio* by the adoption of the constitution.

On page 13 of their "notes of argument," they say:

> "Now the insistence of Virginia has been, and is, that West Virginia should be charged with an equitable proportion of the debt, to *be ascertained under the Wheeling Ordinance construed so as not to defeat the express controlling purpose of its enactment* and qualified and ruled by the provisions of article VIII. of the West Virginia Constitution, upon which the consent of the legislature and of the Congress of the United States to the formation of the new state, was predicated.
>
> "Agreeably to the decision of this Court in its opinion, delivered by the late Chief Justice (R., 136), the view of Virginia is, and has been, that the ordinance and the provisions of the West Virginia Constitution, should be read as being *in pari materia;* but that the constitutional provision being the latest, must prevail whenever there is conflict between them."

And it is then said,

> "as logical and inevitable consequence from this, the claim of Virginia was, and is, that, if the language of the Wheeling Ordinance is fairly and reasonably susceptible of such a construction as will, when fairly applied to the facts of the case, lead to an equitable result, and place upon West Virginia an equitable proportion of the debt, such construction should be given to that ordinance; and that, if the language of the ordinance is not reasonably and fairly susceptible of such a construction, *then the ordinance must be discarded*, and the *mandate* of the *West Virginia Constitution followed*. And that, in any event, the provisions of the constitution will govern in placing a contractual obligation upon West Virginia to pay an equitable portion of the debt of the undivided state, and to pay interest upon the same from the date when that express contractual obligation accrued, until it shall have been discharged.
>
> But the claim of Virginia was, and is further, that the provisions of the Wheeling Ordinance—fairly, sensible and justly construed, and applied, according to its manifest purpose—places upon West Virginia a just and equitable proportion of the debt; and that West Virginia

> cannot be heard to repudiate this result of her own express covenant and promise."

In other words, the attitude of counsel for Virginia is, that if the ordinance, fairly, sensibly and justly construed, brings about a result which, in the opinion of the Court, is an equitable proportion of the public debt of Virginia, prior to 1861, to be assumed by West Virginia, the ordinance is binding; but if the Court shall be of opinion that the ordinance, construed in accordance with the settled rule of construction, does not produce a result which the Court regards as an equitable proportion of the public debt of Virginia, prior to 1861, to be borne by West Virginia, it was repealed by the Constitution and is no longer to be considered.

6. THERE IS NO CONFLICT BETWEEN THE ORDINANCE AND THE CONSTITUTION.

We contend that the ordinance is to be construed as any other contract would be construed: that its language is plain, and that the general words of assumption with which it begins cannot control the clear and special provisions which follow. We insist that there is no conflict between the ordinance and Section 8 of Article VIII. of the constitution. The ordinance contains substantially two provisions concerning the only matters with which the ordinance would naturally deal:

(1) That the proposed new state shall take upon itself a just proportion of the *public debt* of the Commonwealth of Virginia prior to the first day of January, 1861.

(2) The method by which it shall be ascertained which is clearly prescribed.

Two things the ordinance naturally and properly omitted:

(1) It made no provision as to the agency or tribunal whose duty it should be to ascertain the proportion by pursuit of the method prescribed by it.

(2) It made no provision for the payment of the just proportion when ascertained. These matters were left to the constitutional convention. In other words, the constitution supplies the provisions omitted from the ordinance which would obviously be necessary to carry it into execution. The one is a supplement of the other, and

there is no conflict between them, nor can any be claimed, but it is contended that if the method prescribed by the ordinance does not bring about a result which Virginia thinks is equitable, the ordinance then becomes *functus officio*, and Section 8 of Article VIII. of the constitution constitutes the entire compact between the two states. This is based upon the fact that the ordinance uses the word "just" as qualifiying the word "proportion," and the constitutional provision uses the word "equitable." It is not to be doubted, we think, that the two mean, as here used, the same thing. The constitutional convention was provided for by the ordinance. It met and adopted the constitution within ninety days of the adoption of the Wheeling Ordinance.

It is stated in the brief of the learned counsel for the "bond-holding creditors" that the same territory was represented in both bodies, and to a large extent by the same men. Probably no constitutional convention ever assembled in this country under such circumstances. It was in the midst of war, at a time of excitement and passion. There is no reason to suppose that the men in this convention who had thought out carefully the method by which the proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, to be assumed by the new state should be ascertained had either forgotten or abandoned, ninety days later, the method prescribed in the ordinance, as to the manner in which it should be ascertained. The constitutional provision was silent as to method. There was no occasion for repeating in it the language of the ordinance so recently adopted.

Virginia vs. *West Virginia*, (11 Wall. 39), decided in 1870, was a suit brought here by Virginia to have determined the true boundaries of the latter state with reference to whether three counties which, according to the contention of Virginia, were within her jurisdiction. This ordinance was treated in that case by this Court as a compact between two states, not binding, of course, until it had been ratified. The Court said at page 59:

> "But did congress consent to this agreement?
>
> "Unless it can be shown that the consent of congress under that clause of the constitution which forbids agreements between states without it, can only be

given in the form of an express and formal statement of every proposition of the agreement, and of its consent thereto, we must hold that the consent of that body was given to this agreement."

Virginia vs. *Tennessee*, 148 U. S. 503.
Wedding vs. *Meyler*, 192 U. S. 582.

The Court was referring there to the agreement so far as it related to the three counties.

It certainly was a compact, and wherever it was not carried into the constitution, it remains binding as such. There can be no doubt that if the constitution had been silent on the subject of the assumption of a proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, our friends on the other side would have been here claiming that the ordinance was both as to assumption and method a compact, and we do not perceive how West Virginia could have answered that claim. It might not be a binding compact until acted upon in some way by congress, but if acted upon by congress in the admission of the state, it would be binding *ex relatione* as a compact from the beginning. Its validity as a compact could not be attacked, because in our view its validity does not depend upon that provision of clause 3, Section 10 of Article I. of the United States Constitution which provides:

"No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power or engage in war unless actually invaded, or in such imminent danger as will not admit of delay."

The predicate of this provision is that there shall be "another state." When this ordinance was enacted there was but one state, and that was the Commonwealth of Virginia. The validity of this compact is traceable to, and well supported by, that provision of the constitution, clause I, Section 3 of Article IV.:

"New states may be admitted by the congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the

> legislatures of the states concerned, as well as of the congress."

When the congress admitted West Virginia into the Union, there were two states, and the ordinance so far as it was not merged into the constitution, was a compact binding from the beginning.

If the method prescribed by section 9 of the ordinance for the ascertainment of the proportion of the debt which the new state should assume, had produced a result satisfactory to Virginia, and the constitution had contented itself with enjoining upon the legislature to provide for the ascertainment and payment of the debt to be assumed by the new state, our friends would have been here contending that the method prescribed by the ordinance, not being in conflict with the constitution, was a compact binding upon West Virginia, and how could that contention have been successfully answered?

The circumstances under which the framers of this ordinance drew it and adopted it, the purposes to be accomplished by it, the fact so often referred to by the learned counsel of the bond-holding creditors, that the men who drafted and adopted it were West Virginians, whose homes would be in the new state, whose association has always been with the people and with the territory which were to constitute the new state, and who resented, and had long resented what they had long deemed unjust and oppressive treatment by the government of the Commonwealth of Virginia, all this is to be kept in mind.

7. THE VICE IN THE ARGUMENT FOR VIRGINIA.

The vice in the argument for Virginia is in the assumption that the ordinance is to be read as if it consisted only of these words:

> "The new state shall take upon itself a just proporportion of the public debt of Virginia prior to the first of January, 1861."

If the word "equitable" had been used instead of the word "just" in the first clause of the ordinance, then, applying the method prescribed, the result must have been the same.

Section 9 of the ordinance is to be construed as a whole; and it can mean but one thing, and that is an agreement that whatever sum shall result from an accounting, in accordance with the method

specifically prescribed by the ordinance, shall constitute the just proportion of the debt which the State of West Virginia should take upon herself.

It is perfectly apparent that the ordinance was not confined to the debt. Even the first item is not limited to expenditures in the creation of internal improvements within the limits of the new state, although it is well known that it was an internal improvement debt. It says:

> "The new state shall take upon itself a just proportion of the 'public debt,' etc., 'to be ascertained by charging to it all state expenditures within the limits thereof.'"

This is not limited in scope to internal improvement expenditures within her limits. First, whatever money the commonwealth has expended in the territory in the construction of public buildings, or the improvement of public buildings, it was clearly intended should be included. Every expenditure made by Virginia within the territorry of the proposed new state, which could be localized there, was to be included. Second, there was to be charged to her a just proportion of the ordinary expenses of the state government since any part of said debt was contracted.

It will be borne in mind, as has before been shown, that the Trans-Alleghany people had, for a great many years, complained publicly, in constitutional conventions, in the legislature and elsewhere, that a larger burden of taxation had been imposed upon the people living in the territory of the proposed new state than was just, from any standpoint. That Virginia had denied proper representation in the legislature to the people of the western portion of the state. That she had, while taxing them in a searching way, refused proper representation to the people of the western portion of the state, taxing them in the way of taxes on personal property, even including the interest on her own obligations, taxes on watches and plate, on carriages, and a long list of personal property; taxes on occupations and excises and taxes of every imaginable description; that she had exempted from taxation slaves under twelve years of age, unless hired to work under certain circumstances, and had taxed all slaves of greater age than twelve years, at the rate of one dollar and twenty

cents per slave, regardless, utterly, of the value of both classes—those under twelve years of age and those over twelve years of age—thus practically exempting, for the benefit of a class of property owners in the eastern portion of the state not less than $300,000,000 of marketable property; thereby casting an additional and oppressive burden upon the mountainous portion of the state, where there were, relatively, few slaves, and where the people were opposed to the institution of slavery. Those men, rightly or wrongly, considered that was the "parting of the ways" with the eastern portion of the state and her people, and that would "even up" on a just basis. They remembered that during the years from 1823 to 1861, the debt period, not a single public building had been constructed within the limits of the proposed new state; and that of the $33,000,000 of indebtedness incurred for internal improvements, only $2,800,000 at the uttermost, had been expended within her limits. And during all that time, the people felt that they had been over-taxed for the purpose of paying interest on an immense bonded debt, a trifle only of the proceeds of which had been expended within her territory, and that they had borne a larger than a just proportion of the ordinary expenses of the state government. It was, for this reason, manifestly, that there was inserted in that ordinance, as to be charged to West Virginia "a just proportion of the ordinary expenses of the state government," "since any part of said debt was contracted." And it was for this reason that, after charging both of the items to the new state, the ordinance provided for deducting from that total, "the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period."

It is said that this was an artificial and arbitrary method. That depends upon the point of view. We must take the standpoint of the men who drafted and adopted this ordinance. If the ordinance had used the word "equitable" instead of the word "just" before the word "proportion," in the first line, and had left the remainder as it stands, could the result have been any different?

The definitive words, "to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government since any part of the said

debt was contracted; and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period," would have remained, and the result must have been precisely the same by the pursuit of the same method.

To construe this ordinance by disregarding the method prescribed in it, in order to reach a result which Virginia deems equitable, or which the Court may think ought to have been prescribed, is not to "construe" the ordinance; but is to make a new and different ordinance.

The members of the legislature of 1871, presumably, knew what this ordinance was when they embodied it in their funding act. Is it to be supposed that the men who framed the ordinance, and so carefully outlined the method to be pursued, had, within 90 days, in the constitutional convention, abandoned that method, and had intended to assume a different proportion of the debt from that assumed by the ordinance? Counsel would have the Court take an extraordinary liberty in construing the ordinance.

They say, on page 11 of their notes:

> "That ordinance purported to be an enactment of Virginia alone. It prescribed, *upon its face,* an arbitrary and what would seem to be an inequitable basis of settlement. In so far as it provided for the assumption of the new state of a "just proportion" of the debt of the commonwealth, its language was free from objection. But when it came to indicate the manner in which that proportion should be ascertained, its terms were not only artificial, but *on their face,* inequitable."

That is a matter of opinion, and, although that is the opinion of the learned counsel and of the bond-holding creditors and their counsel, that is not the question before the Court. The question is, "what was intended by the framers of the ordinance?"

8. "JUST" AND "EQUITABLE" ARE SYNONYMOUS.

We say again that there is no conflict between the ordinance and Section 8 of Article VIII. Where the latter covers the same ground as the former, there is but one change, which, in the excitement of

that day, is easily accounted for, if it requires explanation; and that is the substitution of the word "equitable" for the word "just" in the ordinance. What is the difference in common parlance between the word "equitable" and the word "just"? Webster defines "equitable" as follows:

> "Possessing or exhibiting equity; according to natural right or natural justice; marked by a due consideration for what is fair; unbaised; impartial; just; as an *equitable* decision, an *equitable* distribution," etc.

The first word he gives as a synonym is "just," followed by:

> "Fair, reasonable, right, honest, impartial candid, upright."

He defines "just."

> "That which was fitting; conforming or conformable to rectitude or justice; not doing wrong to any one; violating no right or obligation; upright; righteous; honest; true;—said both of persons and things.
>
> "3. Rendering or disposed to render to each one his due; equitable; fair; impartial, as a just duty."

He gives as synonyms of "just":

> "Equitable, honest, upright, true, fair, impartial, proper," etc.

Soule gives as the synonyms of "just":

> "1. Equitable, right, rightful, lawful, reasonable.
>
> "2. Fair, fair-minded, candid, even-handed.
>
> "3. Honest, upright, righteous, blameless, pure, conscientious, uncorrupted, virtuous, good, straight-forward."

As the synonyms of "equity," he gives:

> "1. Justice, right.
>
> "2. Justice, rectitude, uprightness, righteousness, impartiality, fairness, reasonableness, fair play."

But it seems impossible, for a moment, to consider that the use of the word "equitable" in the constitution operated to obliterate the method prescribed by the ordinance, when, if the word "equitable" had been in the ordinance instead of the word "just," the result would have been precisely the same.

9. IF THE ORDINANCE IS IN CONFLICT WITH THE CONSTITUTION THE ORDINANCE MUST BE WHOLLY ELIMINATED.

We take it to be clear that if the ordinance is to be ignored as the method prescribed for ascertaining the proportion of the debt of the commonwealth, it must be because it conflicts with Section 8 of Article VIII. of the Constitution. And if it does so conflict, it is eliminated as an entirety from this case, and is neither to be treated as a compact, nor, so far as the method it prescribes is concerned, to be considered at all. It cannot be partly in and partly out of the case; in so far as it meets Virginia's notion of what it ought to be, and out, so far as it comes within her condemnation. It must either be the basis upon which the amount is to be ascertained, or entirely discarded for that purpose.

10. WITH THE ORDINANCE ELIMINATED THE ASCERTAINMENT OF WEST VIRGINIA'S PROPORTION OF THE DEBT MUST BE LEFT TO THE LEGISLATURE OF VIRGINIA.

If the ordinance is discarded, the case rests, so far as the liability is concerned, entirely upon Section 8 of Article VIII. of the West Virginia Constitution. As we have said, this article is entirely without provision as to the rule which shall govern in ascertaining the equitable proportion. One thing only is explicit in Section 8 of Article VIII., and that is the command of the legislature found in the words:

> "And the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal, within thirty-four years."

Here we have the action of the Virginia legislature consenting to and requesting, by legislative act, the admission of the state into the union under the provisions of its constitution. On the theory of the ordinance being eliminated, this is clearly a compact to the effect that the proportion of the public debt which the new state shall bear is to be ascertained by her legislature. This commits entirely to the legislature the ascertainment of the equitable proportion of the debt which the new state shall bear, and enjoins upon it the

necessity of using in the discharge of that duty all practicable speed. *Ex necessitate rei*, this not only gives to the legislature the power, but imposes upon it the duty, of choosing the method by which the equitable proportion shall be ascertained, and its action in that respect would not be subject to judicial review. This made of it a legislative question. It left it to the sense of justice of the tribunal which the constitution selected for its ascertainment. The legislature might ascertain it through a joint committee of the two houses, or it might provide for the appointment of a commission, instructing it as to the basis upon and a method by which it should be ascertained and reported to that body. It is urged against this view that it never could have been intended that the debtor state (if it should turn out on the accounting to be a debtor state), should be left to determine the proportion which it should assume. It is a sufficient answer to this to say that it was plainly and unmistakably done. The legislature was placed in the position sustained by the legislature of a state as to the selection of the method of ascertaining and prescribing the proportion of the debt of a county or town which is divided. And in such cases the courts have held, including this Court, that the question, "what proportion of the debt of a county or a city or a town which is divided by legislative authority, shall be borne by the portion set off to make a new town, or included within the boundaries of another county, city or town" is a legislative question and not a judicial one. *Commissioners of Laramie Co.* v. *Commissioners of Albany Co.*, 92 U. S. 307; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514. If the Legislature of West Virginia has failed, with or without justification, to discharge its duty imposed upon it by the constitution, what is the remedy? It has not yet been decided that any Court can mandamus a legislature to pass a law, or can restrain it in the exercise of its functions. It cannot enjoin it from passing an unconstitutional measure, albeit it may overturn the measure after it shall have been passed. Whether the Legislature of West Virginia is to be justly reproached for not having acted, is a question that will be considered later. And if the legislature had proceeded to the ascertainment of the amount of the debt—the just proportion which should be assumed by West Virginia—either by its own committees or by a commission, could the court overturn its ascertainment upon the ground that it had

not adopted the proper basis or method as between population, area or assessed valuation? When the power is unqualifiedly committed by a constitutional provision to the legislature, can any court control the exercise of that discretion as to the selection of the method by which the proportion of the public debt which the new state shall assume is to be determined? When the legislature in the exercise of its power and discretion shall have ascertained what it regards as an equitable proportion of the debt, can any court overturn that determination because in its opinion the proper method was not pursued, and the result does not in *its* opinion constitute an equitable proportion? The plain truth seems to be that the matter—the ordinance being out of the case—was left by the legislature of Virginia and by the congress to the honor of the Legislature of West Virginia. This is nothing new in our system. Since the adoption of Article XI. of the Constitution:

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

No state can be sued, even in this court or in other Federal courts, by citizens of another state or by citizens or subjects of any foreign state. Whether suit may be brought in a state court by an individual against the state in one of her own courts depends upon her own consent, as evidenced by her own laws. So that every citizen of the United States and every subject of a foreign state who buys a bond of a state, takes it with full notice and knowledge that the payment thereof and of the interest thereon rests, in the last analysis, upon the honor of the state whose obligation it is.

11. WITH THE ORDINANCE ELIMINATED IS THE MATTER JUSTIFIABLE?

The case of *County of Tulare* v. *County of Kings*, 117 Cal. 195, throws light upon this question.

Section 3 of Article II. of the Constitution of California is as follows:

> "Every county which shall be enlarged or created from territory taken from another county or counties

> shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken."

The County of Kings, in the State of California, was created wholly out of Tulare County, and was fully established May 23, 1893. It was contended that on that date there were outstanding $22,000 of court house and $5,000 of road bonds, and that the plaintiff county, Tulare, between May 29, 1893, and September 18, 1895, had paid, on account of said bonds, $14,472.46; that on the assessment rolls of the two counties, as the basis of apportionment, the amount due from defendant was $4,615,22, which, with interest due, would make $5,049.61, due October 11, 1895; that this claim had been presented, etc., to the supervisors of Kings County and rejected, when action was brought against Kings County to recover the sum. A demurrer being sustained, the case was taken to the supreme court.

The contention in the supreme court was that the defendant was liable under the constitution.

The Court said:

> "The contention of plaintiff is that by the supreme law of the state it has been declared that the new county shall pay a *just proportion* of the debts of the old county and it is left with the courts to determine what that *just proportion* may be in a case presented. In other words, it is denied that the legislature has any power to apportion the indebtedness, but that this question as to how much this just proportion will amount to is purely judicial.
>
> "On the other hand, defendant contends that the sole question is whether the action will lie against defendant, the legislature having failed to provide in the act creating Kings County for the apportionment of the public property and debts of the County of Tulare."

The court held, on the strength of a prior decision, that the constitutional provision was a restriction upon the power of the legislature to divide a county, and that the power still remained with the legislature to divide counties and that where a county was divided by the legislature without any provision as to the apportionment of the debt the presumption was that the legislature thought no apportionment was required.

The Court added:

> "It would seem to me, if the courts should undertake to determine this question upon the authority of the constitution alone, they would have neither compass nor rudder by which to be guided."

The case was ruled largely by the opinion of the supreme court in *Los Angeles County* v. *Orange County*, 97 Cal. 329, of which decision the opinion says:

> "The learned justice, in delivering the opinion of the court, called attention to the established rule that where no provision is made by the legislature as to the debts of the old county they remain with the old county. He then takes up the constitutional provision in question, and says: 'The mode of determining the 'just proportion' of the debts and liabilities for which the new county shall be liable, is not prescribed in the constitution, *but is left to the determination of the legislature in each particular case*'; he points out that the legislature did provide a mode of ascertaining the 'just proportion' of the debts by the appointment of commissioners, and limited the liabilities to those existing at the time the act took effect, and he says: 'As the legislature could divide the public property and assets of the county in such mode as it might choose, it was competent for it to fix upon a date, which it might select, as the time for ascertaining their amount and value, *as well as determining in connection therewith the 'just proportion' of the debts and liabilities to be assumed by the new county. In the present instance the legislature fixed the time when the act took effect as the proper period for ascertaining the amount of these assets and liabilities, and it cannot be held that the constitutional provision was violated in selecting that as the point of time at which to properly determine what would be a 'just proportion' of the debts and liabilities to be assumed by the new county.*' The expenditures for which the claim was made were incurred in the new county prior to its organization, but after the date of the act, and the commissioners had reported these separately, with the remark, 'that as a matter of equity the amount should be refunded by Orange county to Los Angeles county.'

The opinion upon this point continues: 'The legislature may have considered that it would be necessary for the County of Los Angeles to expend the money for municipal purposes within this territory; *and as it was within its discretion to determine that it should bear the burden of any of the expenditures which it might thus make, the fact that it has made no provision for its reimbursement is indicative that it was not its intention that it should be reimbursed therefor.*'

"Now, this was just such a claim as counsel for plaintiff insists must be heard and determined by the judicial arm of the government, and that over it the legislature has no jurisdiction or power whatever. It seems to me the decision necessarily settles the very question here—that it is a legislative and not a judicial function. Upon plaintiff's theory it was the duty of the court to overrule the demurrer and proceed to hear and determine what the 'just proportion' of the debt of Los Angeles county was that should be borne by Orange county; but the court found no cause of action stated, because the legislature had disposed of it, and because it was a legislative function and not a judicial one. (See, also, *County of Orange* vs. *Los Angeles County*, 114 Cal. 390.)"

County of Tulare vs. *County of Kings*, 117 Cal. 195.

If the liability of West Virginia is to be determined under Section 8 of Article VIII. of her Constitution, without reference to the ordinance, then the grounds for holding that the legislature of West Virginia is the only tribunal which can ascertain the amount of her liability are much stronger than those upon which the California court, in the case just cited, decided that it had no jurisdiction; since the Constitution of West Virginia expressly provides that the legislature shall ascertain the equitable proportion of the debt to be assumed. The California constitution contained no provision of this character.

We recognize, of course, the fact that the power of the legislature to apportion the indebtedness of counties exists in case of division, as an incident to their power to divide such municipalities. These are public corporations, created for political purposes, and they have no contract rights to continued existence. They are subject, at all times, to legislative change. But the power which the legislature has to

create them, and divide them, and, therefore, the incidental power to apportion their liabilities, while it proceeds from the power to create them, is no more direct and unlimited than the power with which the Constitution of West Virginia clothed the legislature of that state, in respect to the method of ascertainment, and otherwise, of the proportion of the public debt which would constitute an equitable share for West Virginia to pay.

The question is not whether it was wise for the Legislature of Virginia to consent to the admission of the State of West Virginia, under Section 8 of Article VIII. of her Constitution, vesting such a power in her legislature. The question is, did they do it? The ascertainment is, certainly, in its nature, a legislative function. In the exercise of its legislative powers, the legislature may provide for examination. It must, ultimately, pass upon the result. It may have done it on several bases or theories; but it must, in the end, select the basis, for it must provide for the payment.

The constitutional provision, without the ordinance as a guide as to method, seems to submit to the Court a question which is not judicial in its nature. The case in that respect, as well as others, is unique. It does not differ much, in the aspect of it which we are now considering, from the case of *Taylor* vs. *Brewer, et als.*, 1 Maule & Selwin, 290, and *Cummer* vs. *Butts*, 40 Mich. 322.

In the former case plaintiff founded an action of assumpsit on an agreement by defendant that any service by plaintiff should be taken into consideration, and such remuneration be made as should be deemed right.

The court refused to set aside a non-suit.

Lord Ellenburough, C. J., said: "Here, I own, it struck me, was an engagement accepted by the bankrupt on no definite terms, but only in confidence that if his labor deserved anything he should be recompensed for it by the defendants."

Grave, J., said: "I consider the resolution to import that the committee were to judge whether any or what recompense was right."

Le Blanc, J., said: "It seems to me to be merely an engagement of honor."

Bagley, J., said: "The fair meaning of the resolution is this, that

it was to be in the breast of the committee whether he was to have anything, then how much."

Cummer vs. *Butts* arose on a contract for the sale of lumber which stipulated that either party might cancel the contract "for good cause."

One of the parties terminated the contract, whereupon the other party, who insisted that no good cause for cancellation existed, brought suit.

Judge Graves said: "The difficulty is inherent. It exists in the terms adopted by the parties. The requirement of good cause as something on which the right to revoke by one or the other should depend, is, as here introduced, too vague to be fairly intelligible. It is manifestly applied to each party, but the phrase 'good cause' in such connection, as to parties and subject matter, has no distinct sense as to furnish a common and intelligible criterion for the parties, or any determinate sense whatever. It is impossible to say that the wills of the parties concurred and that each meant exactly what the other did, or even to say what either meant. The room for difference of opinion is immense, and the case is one where the parties have failed to express themselves in terms capable of being reduced to lawful certainly by judicial effort."

12. THIS COURT HAS DECLARED THAT THE ORDINANCE AND THE CONSTITUTION DO NOT CONFLICT AND ARE TO BE READ IN PARI MATERIA.

When this case was argued here on demurrer, counsel for defendant contended that the Court did not have jurisdiction to determine the prinicple upon which West Virginia should be made liable for any portion of the old debt of Virginia because this was a matter which the Constitution of West Virginia had referred to her legislature. Hence, it was argued, the consent of Virginia to the admission of West Virginia into the union, under the provision of that constitution, and the action by congress admitting the new state, constituted a compact between Virginia and West Virginia, which operated to commit to the legislature of the latter state the ascertainment of what would be a just and equitable proportion of the debt to be assumed, including the basis and method upon and by which it should be ascertained.

The Court in reply to this argument resorted to the ordinance which prescribes the method of ascertainment and thereby defines the proportion which should be assumed. The Court said, through the Chief Justice (206 U. S. 290, 319):

> "It is, however, further insisted that this Court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of congress, by which the question of the liability of West Virginia to Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia, when admitted into the union contained the provision: 'An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a sinking fund and redeem the principal within thirty-four years.' And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled 'An act giving the consent of the Legislature of Virginia to the formation and erection of a new state within the jurisdiction of this state,' by which consent was given to the creation of the proposed new state, 'according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;' and that by the act of congress, the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two states. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided 'for the formation of a new state out of the territory of this state,' and declared therein that 'the new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January,

> 1861,' to be ascertained as provided, it is to be supposed that the new state had this in mind when it framed its own constitution, and that when that instrument provided that its legislature should 'ascertain the same as soon as practicable,' it *referred to the method of ascertainment* (italics not the Court's) prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the 'legislature shall ascertain' was that the legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained."

While nothing has been settled in this case except the question of jurisdiction, it is quite difficult to conceive upon what principle Section 8 of Article VIII. of the Constitution can be read without reference to Section 9 of the ordinance; and there is no point in reading it in connection with Section 9 of the ordinance except that the ordinance furnishes, and nowhere else is it to be found, the intention of its framers as to the method which should be pursued in ascertaining the result which would constitute the just or equitable proportion intended to be assumed. Reading the ordinance *in pari materia*, with Section 8 of Article VIII. of the Constitution, incorporates into that provision of the constitution all of Section 9 of the ordinance relating to the method prescribed for the ascertainment of the proportion of the debt which the new state was to assume.

Exceptions to the Master's Report.

Pursuant to the interlocutory decree, there has been an accounting before the Master on the basis of the ordinance, and, alternatively, on the other *bases* indicated by the decree. A large number of exceptions have been filed, by both parties, to the findings of the Master. Most of these exceptions have been fully argued in Part II. of this brief. It is admitted that the amount of the public debt, on January 1, 1861, was $32,919,863.93; nor is there any dispute that this debt was incurred for works of internal improvement, as alleged in the bill, and admitted in the answer.

1. THE MASTER WAS RIGHT IN HOLDING THAT BONDS HELD BY THE SINKING FUND AND BY THE LITERARY FUND WERE NOT A PART OF THE PUBLIC DEBT OF VIRGINIA.

The only difference that arose under Paragraph II. of the decree between the complainant and defendant is whether the bonds of the commonwealth held by the Sinking Fund of $1,369,243.92, and by the Literary Fund, $1,116,843.35, with accrued interest amounting to $15,895, are part of the debt.

As to the latter, after investigation by counsel for the complainant, it was conceded that the bonds were in possession of the board of public works for sale; but have never been disposed of, and were, therefore, not a part of the public debt. As to the other two items, the master held that the bonds were the property of Virginia, and were no part of the public debt on January 1, 1861. This question is elaborately discussed by the Master in his report.

We are content to rest the question whether the bonds in the Literary Fund and the Sinking Fund were part of the public debt of the Commonwealth of Virginia, on January 1, 1861, upon the reasoning and citations of the Master, calling attention only to one or two authorities which are not cited by him.

In *Board of Public Works, etc.*, v. *Gannt*, 76 Va. 465, the court said:

> "The bills are against the board of public works and the board of education. Although the persons composing those boards are made parties, in their individual character, no relief is asked against them as such, and it is obvious that as individuals they have no sort of concern or interest in the question. The acts complained of are acts of the legislature, and the relief sought is against corporations composed exclusively of officers of the state. The bill is precisely such as it would have been if the appellees were proceeding against the state.
>
> "*Conceding that the fund in controversy is subject to a pledge on behalf of the public creditors, it is still the property of the state as absolutely as any of the money in her treasury, or the capitol square and public buildings.*
>
> "It is none the less in her possession because it is

> under the control of the board of education, for that board is a mere agency of the state, having no existence or power independently of the state. As was said by Judge Anderson in *Clarke* v. *Tyler*, 30 Gratt. 159: 'After money is set apart as a literary fund, the commonwealth is still the sole owner of it, as she is of all the funds and property of the board of education and the other corporations, which are composed of officers of the government, the funds and property of which are the sole property of the commonwealth.'"

It would seem to be clear that the property of Virginia could not very well be a part of the public debt of Virginia. Such bonds are not outstanding obligations of the state. When the bonds were purchased by the state, the debt was *pro tanto* discharged, and the bonds were then no more the obligations of the state than if they had never been negotiated.

At the foot of the opinion is the following:

> "NOTE BY JUDGE STAPLES.—'Since the foregoing opinion was delivered, the decision of the Supreme Court of the United States in the case of *John Elliott and als.* v. *The Governor, Lieutenant-Governor, Auditor, and other State Officers of Louisiana*, has been rendered. The reasoning in that case sustains fully the views presented in my opinion.'"

(The case to which Judge Staples refers is reported under the title of "*Louisiana* v. *Jumel*" and "*Elliott* v. *Wiltz*," 107 U. S. 711.)

2. THE MASTER WAS RIGHT IN EXCLUDING UNDER PARAGRAPH III. OF THE DECREE EXPENDITURES BY CORPORATIONS IN WHICH VIRGINIA WAS A STOCKHOLDER.

Paragraph III. of the Decree required the master to ascertain and report:

> "All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, since any part of the debt was contracted."

We agree with the Master that the paragraph was based upon that portion of the Wheeling Ordinance which reads:

> "The new state shall take upon itself a just pro-

> portion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it *all state expenditures within the limits thereof.*"

We do not agree that the discussion by the Master of the question which arose under this paragraph, as to the doctrine of "equitable construction," was at all warranted by any question which arose, or could arise, under the third paragraph, and insist that the question is one of law, which the Court did not commit to the Master. The sole question under that paragraph, committed to the Master, was to ascertain and report:

> "All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted."

(*a*) THE MASTER'S FINDING.

The complainant claimed that $5,639,302.66 had been expended by the state within the designated territory (Record, p. 371, c. 1, p. 1).

The amount conceded by the defendant was $1,251,288.92.

The question as to the items 2, 3, 10, 11, 12, 13, 14, 25, 28, 35, 55, 150, have been fully argued in another portion of the brief.

The Master allowed, to which the defendant excepted, in addition to the conceded sum, $1,560,271.06, making $2,811,559.68, rejecting claims insisted upon under this paragraph by the complainant, amounting to $2,827,742.68.

(*b*) THE REJECTED CLAIMS REPRESENTED EXPENDITURES BY PRIVATE CORPORATIONS.

The claims rejected represented the expenditures within the State of West Virginia, except as hereinafter stated, by private corporations created by Virginia by special act, which possessed under her general laws all the faculties of a corporation, including perpetuity, the right to have a common seal, to be managed by a board of directors, to issue stock, to the stock of which corporations Virginia had subscribed through her board of public works duly thereunto authorized by law in conjunction with solvent citizens, either two-fifths or three-fifths, as the special act provided. The Master was clearly right in

excluding these as state expenditures within the Territory of West Virginia. The money paid in by the state and other stockholders to the treasury of the corporation on their respective subscriptions became the property of the corporation. For such payments the stockholders each received stock representing his interest in the company's property. The distinction between the stockholder and the corporation is too well settled to require argument. The improvements made through the expenditure of the moneys thus paid into the treasury of the corporation was its property. This property did not belong to the state, nor did it belong to the stockholders. The state in subscribing to the stock carried none of its sovereignty into that relation. It stood before the law in respect of ownership and control precisely as individuals or private stockholders stood. This has been long settled by the decisions of this Court.

(*c*) VIRGINIA LEGISLATURE AND COURTS RECOGNIZE THE DISTINCTION BETWEEN PRIVATE CORPORATIONS WITH STOCK AND PUBLIC CORPORATIONS WITHOUT STOCK.

The Virginia legislation recognizes the distinction between private corporations and public corporations. In several instances the legislature created public corporations composed of the governor, the attorney general, and some other official of the state, through which to construct works of public improvement. These corporations had no stock. The corporations were simply the agents of the state, each without stock; their property was the property of the state. The Supreme Court of Appeals of Virginia held that such a corporation was not liable for damages caused in the construction of an improvement, or in its management.

Sayre v. *The Northwestern Turnpike Road,* 10 Leigh 454.

These private corporations, on the other hand, in which the state had taken stock in conjunction with others, were, in respect of suits, subject to the same laws as other private corporations throughout the state, to which the state sustained no relation whatever except as a sovereign. In the case of *James River, &c.,* v. *Early,* 13 Grattan 541, cited by the Master and in Part II. of this brief, which was an action

to recover for the negligence of the corporation and in which the right to sue the corporation was raised, the Supreme Court of Appeals distinguished that corporation from the public corporation involved in the Sayre case.

We do not suggest that the primary motive of the state in subscribing to the stocks of such companies to secure the construction of highways, bridges and railways, and the improvement of rivers, and works of public convenience and benefit, was to make money. She borrowed the money to pay her stock subscriptions in almost every one of these cases. In each case, the loan was authorized by the act of the legislature which created the corporation. And in each case the evidences of debt, which were certificates of stock issued by the state, contained a reference to the particular act under the authority of which the loan was made, and the Court will see in the schedule annexed to the Master's report opposite the name of each of these corporations the purpose for which the loan was created, giving the act by date, and also the number of the loan, its maturity and amount. On principles of international law, upon the division of Virginia by the separation of the territory now constituting West Virginia, and her admission into the union as a state, the public improvements, public buildings and other governmental property within West Virginia, would pass by the fact of separation to the new state; and the latter would be obliged on principles of international law, as she took the property, to bear not a part, but the whole debt which had been incurred in its creation. It would be a debt running with the land, an obligation not secured by a mortgage upon the territory of the new state and localized in that way, but a debt *contracted with reference to, and for the benefit of, the territory embraced* in the new state. It would be manifestly impossible for the State of Virginia by any act of her own, or any agreement between her and the proposed new state, to convey to the latter the property of the corporations in which she was a mere stockholder, for she would not have any property to convey except her stock; manifestly she could not transfer the private property of the corporation; nor could the interest of the private stockholders in the corporation be displaced by any agreement made by the commonwealth in respect to it.

(*d*) VIRGINIA ACT OF 1863 TRANSFERRING TO WEST VIRGINIA PROPERTY WITHIN HER BOUNDARIES.

No change of the government of the old state, or its territory, could change in the slightest the corporation ownership, or release it from its duties under its charter. It would be subject, perhaps, to a new master; and this was evidently Virginia's notion of it in '63. The act of February 3, 1863, passed by the restored government, Chapter 15, Appendix to the Record, page 128, provides:

> "That all property, real, personal and mixed, owned by or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to and become the property of the State of West Virginia, and without any other assignment, conveyance, transfer or delivery than is herein contained; and shall include among other things not herein specified, all lands, buildings, roads and other internal improvements, or parts thereof, situated within the said boundaries, and now vested in this state, or in the president and directors of the board of the literary fund, or the board of public works therefor, or in any person or persons, for the use of this state to the extent of the interests and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any *parent bank or branch* doing business *within the said boundaries;* and all *stocks of any other company or corporation,* the principal office or place of business whereof is located within the said boundaries standing in the name of this state or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state."

It was admitted on the record by the defendant that the principal office or place of business of any corporation whose works were wholly within the State of West Virginia, was within the State of West Virginia, and came within the provisions of the act. Section 2, transferred unpaid and uncollected, arrearages of taxes on lands, lots, of all description, fines imposed by courts, forfeitures and penalties, &c., &c., dividends on stock owned by the state or by the board of public works

or the literary fund, in any bank, bridge or other corporation, and various other items which need not be mentioned. Section 5 provided that:

> "If the appropriations and transfers of property, stocks and credits provided for by this act take effect, the State of West Virginia *shall duly account for the same* in the settlement hereafter to be made with this state; provided that no such property, stocks and credits shall have been obtained since the re-organization of the state government."

(*e*) THE TRANSFERS OF PROPERTY TOOK PLACE.

That the transfers did take effect, is apparent from the legislation of West Virginia, put in the record by the complainant, and will be found in the appendix. If by that act Virginia had transferred to West Virginia her interest in the property, and had provided simply for the transfer of the stocks or property of corporations in which her stock represented her interest, it might be thought that it was intended as a mere muniment of title; but the provision that she shall *account for it hereafter in the settlement to be had between the two states gives to it conclusively a different aspect.* This act is set out in Paragraph VIII. of the bill. And it is alleged in this paragraph that:

> "The property which was by the operation of this act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted in the aggregate to several million of dollars, the exact amount your oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this act, the State of West Virginia realized and received into her treasury from the sale thereof about $600,000; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

(*f*) WEST VIRGINIA CANNOT EQUITABLY BE CHARGED BOTH WITH THE VALUE OF THE STATE AND WITH THE EXPENDITURES MADE BY THE CORPORATIONS.

And the Master finds that the amount due Virginia on account of the stock of the Northwestern Bank of Virginia and of the Fairmont Bank is $477,250; and he also adds $7,578, stock of the Sweet & Salt Sulphur Spring Company; $4,000, stock of the White & Salt Sulphur Spring Company; $12,000 for stock of the Fairmont & Palatine Bridge Company, making in all $500,828. No evidence was offered, upon which he could find, nor does he find, the value of the other stocks at the time of the transfer under the act of 1863 to the defendant. It is admitted that they were of no value. Before that date the property of such corporations had to a considerable extent been destroyed by the troops of Virginia acting in co-operation with the Confederate States, stocks of the bridge companies and the turnpike companies. If there had been evidence upon the part of the plaintiff that the stock other than bank stock; in other words, the stocks of the private corporations created to build bridges, turnpikes, and other works of internal improvement, whose principal place of business was in 1863 in the territory of West Virginia were worth par when transferred, he would have been obliged to find in favor of West Virginia for all the stocks at par. That it is confessed on the record that they were worthless at the time they were transferred does not change in the slightest the status or the principle. Upon this basis, it is perfectly apparent that it was the understanding of the legislature that the expenditures by these companies of their money within West Virginia could not be considered state indebtedness; otherwise, if West Virginia were obliged to pay for them as *state expenditures* and also to pay for the *stock*, the defendant would be subjected to double payment for the same thing, which, of course, never could have been intended. It is thus apparent that not only was the Master right, as a matter of law, in rejecting under Paragraph 2 expenditures by these corporations as state expenditures, but that this could not have been the understanding of Virginia, as shown by the act of 1863. And it will not escape attention that the act of 1863 in respect of all the items embraced in it, stocks and improvements, localized them, just as the ordinance localizes expenditures. The

act of 1863 was based upon territorial limits. It can hardly be possible that West Virginia *could equitably be held responsible* for these stocks under the act of 1863 at par if they *were worth par,* and also be responsible for all, or a part, of the moneys which Virginia had *borrowed with which to purchase them.* That would be unique for want of equity:

(*g*) COUNSEL FOR VIRGINIA BEG THE QUESTION.

Counsel for Virginia on page 21 of their Notes of Argument say:

> "In considering the questions which are presented by the controverted items in the schedules filed under this paragraph it is important always to bear in mind the precise language of the decree which, following the terms of the Wheeling Ordinance, directs the ascertainment of:
>
> 'ALL *expenditures* made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.'
>
> "It is manifest that that language in explicit and comprehensive terms embraces without exception or qualification, all expenditures of whatever character or description, and on whatever account, or for whatever purpose, or in whatever manner made, which were made by the Commonwealth of Virginia in any part of the territory now constituting West Virginia, after March 19, 1823, the agreed time at which any part of the debt in question was contracted."

This is *petitio principii.* The question is whether an expenditure by Virginia in the purchase of stock of a corporation, which corporation is authorized to construct a work of internal improvement within the territory of what is now West Virginia, is an expenditure "*made* within West Virginia could not be considered state expenditures: *made in West Virginia by a corporation in which Virginia is a stockholder.* The learned counsel have emphasized the capital letters and italics in the wrong place. The point is not there; the capitals and the italics, both, should be transferred from the words "*all expenditures*" to the words "*made by the Commonwealth of Virginia.*"

Pile, etc.

3. THE MASTER WAS WRONG IN FINDING THAT INTEREST ON THE PUBLIC DEBT OF VIRGINIA WAS PART OF THE ORDINARY EXPENSE OF THE STATE GOVERNMENT.

If the state chooses to create corporations, and invest in their capital stocks, for the making of internal improvements, and borrows the money for the purpose of paying her stock-subscriptions, while she does it upon her credit as a sovereign, the use to which she devotes the money is not a *governmental* use; but is a commercial use.

While the debt, as between the bondholders and the state, is the debt of a sovereign state, the property acquired is an investment. It is, in no sense, governmental. It is commercial. And to say that the interest annually accruing upon such a debt is an ordinary expense of state government, seems to be absurd. To say that it is even an ordinary expense of a state, as a sovereignty, is not maintainable.

Is it conceivable that the framers of this ordinance could ever have been induced to agree to the proposition, or have contemplated, that by its provisions they were binding the new state to pay, under the guise of ordinary expenses, nearly $4,000,000 of interest on the moneys borrowed by Virginia to invest in capital stocks of corporations, which, on the separation, she was to keep, and did keep, as well as all of the internal improvements which that stock represented?

The Master finds the ordinary expenses of the state government of Virginia, during the debt period; that is to say, from March 19, 1823, to January 1, 1861, to have been $40,274,896.70, including interest on the public debt during that period, amounting to $18,574,747.84, leaving as the sum for ordinary expenses of the state government, excluding interest, $21,700,148.86, of which he assigns to West Virginia $4,161,352.99. This ascertainment and apportionment was excepted to by the defendant. He also assigns to the defendant, $3,986,102.93, as its proportion of the interest paid on the public debt during the debt period, which he includes as a part of the ordinary expenses of the state government. To this, the defendant excepts.

(*a*) THE LANGUAGE OF THE ORDINANCE.

Section 9 of the Wheeling Ordinance, in which the words to be construed occur, is as follows:

> "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the *ordinary expenses of the state government*, since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period."

(*b*) DEFENDANT'S CONTENTION.

The defendant contends that upon every principle of construction, by the plain meaning of the words "ordiary expenses of the state government," by the interpretation which results from reading section 9 of the ordinance as a whole, by the meaning which the words in question have acquired from common use in the constitutions and statutes of the different states as well as by the great preponderance of judicial interpretation in cases where these words have been construed interest on a public debt, especially where such a debt was incurred for extraordinary purposes, cannot properly be included among the ordinary expenses of a state government.

(*c*) INTEREST ON A STATE DEBT IS NOT AN ORDINARY EXPENSE OF GOVERNMENT BECAUSE IT IS PAYABLE ONLY DURING A LIMITED PERIOD.

The adjective "ordinary" fixes the character of the expenses of the government with which the ordinance charges West Virginia. An ordinary expense of government is one which ordinarily recurs so long as government exists. It is obvious that interest on a state debt does not belong to this category. A state debt is a temporary obligation to be discharged at an agreed time by payment. The ordinary expenses of a state government, however, never cease. So long as the government exists, expenses for its support, for the maintenance of the legislative, judiciary and executive departments, for the performance

of the various duties which they owe to the people will annually recur and must be met. Even if it were proper, as we do not think it is, to describe payments upon a bonded state debt as an expense of government, is it not too clear for argument, when we find that payments upon such a bonded debt are by the terms of the contract creating the debt only to continue during a specified limited time, while ordinary expenses of the government must continue indefinitely, that the term *ordinary* expenses must be applied exclusively to the latter class of expenses, and cannot be deemed to include the payments on the debt which are to cease after the expiration of the time fixed by the contract?

(*d*) INTEREST ON THE OLD VIRGINIA DEBT WAS NOT AN ORDINARY EXPENSE OF GOVERNMENT BECAUSE THE DEBT WAS INCURRED FOR EXTRAORDINARY PURPOSES.

In considering whether interest on a state debt is one of the ordinary expenses of a state government, it is important to bear in mind the purposes for which the debt was incurred. The debt of Virginia to which the Wheeling Ordinance refers, was incurred for internal improvements. The proceeds of the Virginia bonds were either directly applied in the construction of highways, railways, bridges and similar improvements, or to the purchase of stock in corporations which applied the money in the construction of such internal improvements. These improvements were of a permanent character, and in constructing them the state was making a permanent investment. We do not understand that there is any dispute that expenditures for works of internal improvements are extraordinary and not ordinary expenditures. The Master's report (page 112) states that "the question as to what is an extraordinary expense seems to be well settled," and the cases which he cites in illustration decide that expenditures for permanent improvements are extraordinary expenditures. All the authorities on this question are in agreement. A number of state constitutions prohibit the state from expending money on works of internal improvement. This shows the impossibility of regarding such an expense as an ordinary expense of government. If the principal of some of the Virginia bonds issued for internal

improvements had fallen due within the period covered by the ordinance and had been paid to the bondholders, is it not manifest that this payment for an extraordinary purpose, a payment which could be made only once, could not be deemed an ordinary expense? And if payment of the principal debt would not be an ordinary expense, on what theory can payment of the interest, which is merely incidental to the principal debt, be so regarded?

(*e*) THE FACT THAT THE INTEREST WAS PAYABLE AT REGULAR INTERVALS DID NOT MAKE IT AN ORDINARY EXPENSE.

The only circumstance which gives any semblance of plausibility to the claim that interest on the Virginia debt was an ordinary expense of the state government is the fact that the interest was payable at regular intervals until the principal fell due and was paid. We have already pointed out that the annual recurrence of an interest charge during a *limited* period does not make the interest an *ordinary* expense. Suppose the state had made a contract for the construction of works of internal improvement, under which payment therefor was to be made in equal semi-annual installments during a period of years. Would it be possible to claim that the payment of such installments was an ordinary expense of government?

(*f*) INTEREST IS NOT PROPERLY DESCRIBED AS AN EXPENSE.

Leaving out of consideration the force of the adjective "ordinary," it would still be not in accordance with the common use of language to describe the payment of interest on a funded public debt as an *expense* of *government*. The difference between expense and debt in the common use of language is well expressed by Judge Spencer in a Louisiana case as follows: "In common parlance there is, no doubt, a distinction in the meaning of the words debts and expenses. The latter is usually applied to those current temporary obligations which are met by payment as they arise, while the former designates obligations of a more enduring kind" (*State ex rel.* vs. *State Auditor*, 32 La. Ann. 89, 90).

A striking illustration of this distinction is found in the provisions of state constitutions relating to taxation and revenue. In most of the

states the constitutional provisions concerning taxation and the appropriation of revenue expressly provide for the payment of the expenses of government, and *also* for the payment of the public debt and interest thereon. Clearly the men who framed these constitutions would not have provided separately for the payment of the principal and interest of the public debt, if they had supposed that such payment fell among the expenses of government for which they had already provided. We shall subsequently call the attention of the Court to the specific constitutional provisions to which we refer.

(*g*) THE DISTINCTION BETWEEN THE STATE AND THE GOVERNMENT OF THE STATE.

The Wheeling Ordinance expressly discriminates between the state and the government of the state. According to the ordinance, "the new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia." The public debt to be assumed is the debt of the Commonwealth of Virginia and not of its government: and the new *state*, not the *government* of the new state, is to take upon itself a just proportion thereof, which is to be ascertained "by charging to it all the *state* expenditures within the limits thereof and a just proportion of the ordinary expenses of the state *government*." All *state* expenditures within the defined area are to be charged and in addition a part of all the ordinanry expenses of the state *government*. It is a cardinal principle of construction that effect must be given to every word in a written instrument. In the ordinance no effect can be given to the word "government" unless it is construed as meaning something different from the word "state." If this is granted, then the conclusion follows that under the ordinance payment of the public debt of Virginia, if it is to be regarded as an "expense," is an expense of the *state*, and not of the *government* of the state, because the ordinance describes the public debt as the "debt of the Commonwealth of Virginia," that is to say, of the *state*. The state may have expenses which are not the expenses of the state government. If a state fails to pay interest on its bonds, its credit is affected, and it is an event to be deplored; but the government of the state must go on just the same. The distinction drawn by the ordinance between the state and the government of the state is a real and not an artificial

distinction which this Court has recognized in *Texas* v. *White*, 7 Wall. 700, and in *Poindexter* v. *Greenhow*, 114 U. S. 290. In the former case Chief Justice Chase delivered the opinion of the Court, and in enumerating the various senses in which the word state is used said: "And there are instances in which the principal sense of the word seems to be that primary one to which we have adverted, of a people or political community, as distinguished from a government. In this latter sense the word seems to be used in the clause which provides that the United States shall guarantee to every state in the union a republican form of government, and shall protect each of them against invasion. In this clause a plain distinction is made between a state and a government of a state." We think the language of the ordinance plainly shows that the words commonwealth and state are therein used in the primary sense of a people or political community as distinguished from the government. Such an interpretation is in accordance with the actual fact. Under American institutions the government of a state has no validity except as representing the people who compose the state. When a public debt is contracted it is not the government, but the people of the state who become liable for its payment. The government merely acts as the agent of the people in the transaction. In the case of this debt of Virginia this is peculiarly true. The whole debt which is the subject of this suit was incurred for internal improvements, matters in which the people were interested, from which the people might anticipate benefits in the conduct of their trade and commerce, but which have no relation to the work of government. How can the payment of such a debt or of the interest thereon be regarded as an expense of government? Suppose a private individual entrusts the conduct of his affairs to an agent, who, in the course of his employment, executes a note on behalf of his principal. Would it not be doing violence to the ordinary sense in which language is understood to include payment of the note or of interest thereon among the expenses of the agent? In the case of business corporations, the word government is not used to describe the agents who conduct the business, but the work performed by them is commonly described by the word management, and the expenses of the management of a private corporation, in the largest sense, are called operating expenses. We submit that no instance can be found in the

records of private corporations where the payment of interest on bonds of such a corporation is treated as an operating expense.

(*b*) FINANCE PROVISIONS OF STATE CONSTITUTIONS SHOW THAT INTEREST ON A STATE DEBT IS NOT REGARDED AS AN EXPENSE OF GOVERNMENT.

The provisions of the state constitutions relating to taxation and revenue are helpful in considering the phrase "ordinary expenses of the state government." The constitutions show two things, (1) that the creation of a public debt is not an ordinary, but an extraordinary matter, and (2) that the phrases "expenses of the state" and "expenses of the state government" do not apply to the payment of interest on state bonds. Examination of the constitutions makes it plain that the founders of state government intended that ordinary expenses should be defrayed out of funds raised by taxation, that the power of creating funded debts by the issue of bonds, if granted at all, should be exercised only for the purpose of meeting extraordinary emergencies, and that such debts when created should be paid and extinguished at maturity, thus restoring the normal and ordinary condition of paying expenses as they arise by the imposition and collection of taxes. Nearly all the state constitutions carefully limit the power of the legislature to issue bonds and define the purposes for which this power may be exercised. In some states, as in Wisconsin, the constitution prohibits the state from contracting public debts except for the purpose of defraying extraordinary expenditures. Many of the constitutions also direct that the law authorizing the creation of a public debt shall provide for levying a special annual tax sufficient to pay the interest on the debt and to provide a sinking fund for the payment of the principal at maturity within a specified number of years. Furthermore, in many of the states the constitutions direct the legislatures to raise revenues sufficient to defray the estimated expenses of the state or of the state government, and also sufficient sum to pay the interest on the state debt. There could not be a clearer indication that interest on the state debt was not regarded as an *expense* of the state government. Had it been deemed such an expense there would have been no need of requiring the legislature to raise revenue to pay

interest on the state debt in addition to revenue for the purpose of defraying the expenses of the state government.

We shall now quote the specific provisions from the state constitutions to which we have made general reference. In many of these provisions the phrase used is substantially the same as that in the Wheeling Ordinance; namely, the ordinary, or the current, or the necessary, expenses of the state government, and these expenses are expressly distinguished from interest on the state debt. When we find that so many constitutions, drawn up by men who were under a peculiar obligation to use language accurately, agree in separating the ordinary expenses of the state government from interest on the state debt, the inference is compelling that this distinction is generally accepted, and that the men who framed the Wheeling Ordinance, in charging the new state with a just proportion of the ordinary expenses of the state government, did not intend to include interest on the public debt of Virginia among these expenses.

(*i*) EXTRACTS FROM STATE CONSTITUTIONS.

Alabama, Constitution of 1875, Article X., Section 7, provides that the City of Mobile "may, until the 1st day of January, 1879, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed three-fourths of one per centum to pay the *expense of the city government*, and may *also* until the 1st day of January, 1879, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed three-fourths of one per centum to pay the *existing indebtedness* of said city and *the interest thereon*."

Alabama, Constitution of 1901, Article XI., Paragraph 216, provides that the City of Mobile "may from and after the ratification of this constitution levy a tax not to exceed the rate of three-fourths of one per centum to pay *the expenses of the city government*, and may also levy a tax not to exceed three-fourths of one per centum to pay *the debt* existing on the 6th day of December, 1875, *with interest thereon*, or any renewal of such debt."

Florida, Constitution of 1885 (in force at present), Article IX., Section 2: "The legislature shall provide for raising revenue sufficient to defray *the expenses of the state* for each fiscal year, and *also* a sufficient sum to pay *the principal and interest of the existing indebtedness of the state*."

Georgia, Constitution of 1877 (in force), Article VII., Section 1: "The powers of taxation over the whole state shall be exercised by the general assembly for the following purposes only: For the support of the state government and the public institutions. * * * * To pay the interest on the public debt. To pay the principal of the public debt."

Section 14, Paragraph 1: "The general assembly shall raise by taxation each year, in addition to the sum required to pay the public expenses *and* interest on the public debt, the sum of $10,000 which shall be held as a sinking fund to pay off and retire the bonds of the state which have not yet matured."

Indiana, Constitution of 1851 (in force), Article X., Section 2: "All the revenues derived from the sale of any of the public works belonging to the state, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury derived from taxation for general state purposes, *after* the payment of *the ordinary expenses of the government, and* of the *interest* on bonds of the state, other than bank bonds, shall be annually applied, under the direction of the general assembly, to the payment of the principal of the public debt."

The ordinance relating to the state debt which was adopted as part of the Louisiana Constitution of 1879, reduced the interest payable on certain state bonds, fixing the rate from January 1st, 1880, at 2 per cent. for five years thereafter, and provided in article 3: "Be it further ordained, that the coupons of said consolidated bonds falling due the first day of January, 1880, be and the same is hereby remitted, and any *interest* taxes collected to meet said coupons are hereby *transferred* to defray *the expenses of the state government.*"

Michigan, Constitution of 1850 (in force), Article XIV., Section 1, provides that, "The legislature shall provide for an annual tax, sufficient with other resources, to pay the estimated *expenses of the state government,* the *interest of the state debt,* and such deficiency as may occur in the resources."

North Dakota Constitution, Article II., Section 174, provides that: "The legislative assembly shall provide for raising revenue sufficient to defray *the expenses of the state* for each year, not to exceed in any one year four mills on the dollar of the assessed valuation of all tax-

able property in the state, to be ascertained by the last assessment made for state and county purposes, and *also* a sufficient sum to pay *the interest on the state debt.*"

Ohio Constitution, Article XII., Section 4, provides that: "The general assembly shall provide for raising revenues sufficient to defray the *expenses of the state* for each year, and *also* a sufficient sum to pay the *interest on the state debt.*"

Oklahoma Constitution, Article X., Section 2, provides that: "The legislature shall provide by law for an annual tax sufficient, with other resources, to defray the estimated *ordinary expenses of the state,* for each fiscal year."

Section 4 provides that: "For the purpose of paying *the state debt,* if any, the legislature shall provide for levying a tax, annually, sufficient to pay the annual *interest and principal of such debt* within 25 years from the final passage of the law creating such debt."

Oregon, Constitution of 1857 (in force), Article IX., Section 2: "The legislative assembly shall provide for raising revenue sufficient to defray the *expenses of the state* for each fiscal year, and *also* a sufficient sum to pay the *interest on the state debt,* if there be any."

Pennsylvania, Constitution of 1838, Article XI. (added 1864), Sections 1, 2 and 3 provide for the creation of state debts. Section 4 provides for the creation of a sinking fund to pay the accruing interest and annually to reduce the principal of the state debt and then provides: "The said sinking fund may be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the *ordinary and current expenses of government.*"

Pennsylvania, Constitution of 1873, Article IX., Section 11, is in substance the same as Section 4 of Article XI. of the preceding Constitution referred to above, and provides that: "Said sinking fund * * * shall be increased from time to time by assigning to it any part of the taxes or other revenues of the state not required for the ordinary and current expenses of government."

South Dakota Constitution, Article XI., Section 1, provides that: "The legislature shall provide for an annual tax sufficient to defray the estimated *ordinary expenses of the state* for each year, not to exceed in any one year two mills on each dollar of the assessed valua-

tion of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes.

"And whenever it shall appear that such ordinary expenses shall exceed the income of the state for such year, the legislature shall provide for levying a tax for the ensuing year, sufficient, with other sources of income, to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year. And for the purpose of paying *the public debt,* the legislature shall provide for levying a tax annually, sufficient to pay the *annual interest and the principal of such debt* within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the state as ascertained by the last assessment made for the state and county purposes."

In the case of *In re Limitation of Taxation,* 3 S. D., 456, the court construed Section 1 of Article XI. of the Constitution as follows: "This section relates to three different and distinct items of taxation: First, the annual tax for defraying *the ordinary expenses* of the state; second, taxes to pay deficiencies from preceding years; third, taxation for the purpose of paying *the public debt.* * * * When the purpose is to pay the public debt, the legislature shall provide for levying an annual tax sufficient to pay the annual interest and the debt within ten years. The tax, *like the one* for the estimated ordinary expenses, is limited to two mills on the assessed valuation of property."

Texas Constitution, Article XI., Section 6, provides that: "Counties, cities and towns are authorized, in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed, and collected *separately* from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied."

Virginia Constitution, Article XIII., Section 188, provides that:

"No other or greater amount of tax or revenue shall at any time be levied than may be required for the *necessary expenses* of the government, *or* to pay the *existing indebtedness* of the state."

Section 189 fixes the rates of state taxation on property, and provides that the proceeds "shall be applied to the expenses of the government *and* the indebtedness of the state."

Washington Constitution, Article VII., Section 1, provides that: "The legislature shall provide by law for an annual tax sufficient, with other sources of revenue, to defray the estimated *ordinary expenses* of the state for each fiscal year. And for the purpose of paying the *state debt*, if there be any, the legislature shall provide for levying a tax annually, sufficient to pay the *annual interest and principal of such debt* within twenty years from the final passage of the law creating the debt."

West Virginia Constitution, Article X., Section 4, provides that: "The payment of any liability other than that for the *ordinary expenses* of the state, shall be distributed over a period of at least twenty years."

Section 5 provides that: "The power of taxation of the legislature shall extend to provisions for the payment of the *state debt* and *interest* thereon, the support of free schools, *and* the payment of the annual estimated *expenses of the state*."

(*j*) THE DISTINCTION BETWEEN ORDINARY EXPENSES OF GOVERNMENT AND INTEREST ON A PUBLIC DEBT IS APPARENT IN THE CASE OF MUNICIPAL CORPORATIONS.

The line of division between ordinary expenses of government and interest on a public debt is plainly marked in the case of municipal corporations. It is familiar law that a municipal corporation has no power to issue bonds without express authority from the legislature, and statutes giving such authority are strictly construed. It necessarily follows that a municipal corporation has no power to impose taxes for the purpose of paying bonds or interest thereon unless authority to issue the bonds was duly conferred. On the other hand, a municipal corporation, by virtue of its creation, has implied power to incur debts for the purpose of its existence and to raise money

by taxation to pay these living expenses. In *U. S. v. New Orleans*, 98 U. S. 381, 393, Mr. Justice Field, speaking for this Court, said: "When such (municipal) a corporation is created, the power of taxation is vested in it as an essential attribute, for all the purposes of its existence, unless its exercise be in terms prohibited. For the accomplishment of these purposes, its authorities, however limited the corporation, must have the power to raise money and control its expenditure. In a city, even of small extent, they have to provide for the preservation of peace, good order and health, and the execution of such measures as conduce to the general good of its citizens; such as the opening and repairing of streets, the construction of side-walks, sewers and drains, the introduction of water, and the establishment of a fire and police department."

Is it not clear that the expenses, which municipal corporations have power to incur by necessary implication, are ordinary expenses of municipal governments as distinguished from those payments which are not necessary to their existence and grow out of obligations which depend for their validity on the express authorization of the legislature?

(*k*) THE ADJECTIVES "ORDINARY," "CURRENT" AND "NECESSARY" WHEN APPLIED TO GOVERNMENTAL EXPENSES ARE SYNONYMOUS.

The Master has pointed out that the expression considered by the courts in some cases is "ordinary expenses," while in others it is "current expenses," and in still others it is "necessary expenses." These different phrases also appear in the constitutional provisions which we have quoted. The Master rightly concludes that the courts treat the adjectives "ordinary" and "current" when applied to expenditures of a state or a municipality as synonymous (Master's Report, pages 91, 92). This Court, in considering the terms of a private trust, said: "We think the correct interpretation to the phrase 'current expenses' was given it by the Circuit Court, namely, ordinary expenses" (*Taylor* v. *Mayo*, 110 U. S. 330). The cases, furthermore, show that the expression "necessary expenses," when the context shows that regularly recurrent expenses of government are referred to, has

the same meaning as "ordinary expenses" and "current expenses." We submit that all these phrases describe the expenses which are incurred in carrying on the regular work of government. Judge Lurton, in the case of *City of Cleveland* v. *U. S.*, 111 Fed Rep. 341, 350, defined current expenses as follows: "Those current expenses proper for the maintenance of the city government and chargeable against current revenue." In *Burch* v. *Earhart*, 7 Ore. 58, 66, Chief Justice Kellogg gave the following definition: "Current expenses of the state mean the ordinary running liabilities incurred by the state in the administration of its offices from year to year." In *Dunbar* v. *Board, etc.*, 5 Ida. 407, 412, 413, the court, referring to the ordinary expenses of a county, defined them as "Ordinary expenses such as are usual to the maintenance of a county government, the conduct of its necessary business, and the protection of its property."

(*l*) THE MASTER'S ARGUMENT.

The regular work of government to which the foregoing definitions refer differs according to the needs, the means and the demands of different communities. The Master's Report (page 87) states: "The defendant contends that the language should receive a construction which would make 'ordinary' synonymous with 'necessary' or 'essential' used in the sense of indispensable expenses—expenses which if not paid the wheels of government will cease to revolve, without the payment of which the state government cannot be administered." In one sense this is a correct statement of defendant's position, but not in the sense in which the Master apparently understands this statement. On page 92 of his report the Master says: "The defendant relies upon the line of cases where judgment creditors seeking to recover payments from the revenues of the municipality have been postponed to ordinary current or necessary expenses, which are made a primary charge upon revenues. The cases clearly establish the general doctrine. From some of them it might perhaps be inferred that interest was not a primary charge or an ordinary, current or necessary expense. I find none of them, however, where the specific question as to whether interest is or is not an 'ordinary expense' is concerned. It is very clear that all essential expenses are also 'ordinary expenses,' but it does not by any

means follow that all 'ordinary expenses' are essential expenses, that there may not be 'ordinary expenses' which are not essential expenses. If it were true that judgment creditors were postponed only to essential or indispensable expenses, the cases might be entitled to considerable significance. On the contrary, however, the postponing of judgment creditors is not confined to essential or indispensable expenses, as expenses which do not come within that class, are often held to be primary in their character and to precede judgment creditors as a charge upon the current revenues. The following cases show that such current or ordinary expenses as light, water and fire protection, none of which are essential to the revolution of the wheels of government, have been held to be ordinary or current expenses that will be made a charge upon the revenues prior to the claims of judgment creditors, thus demonstrating that the essential character of the expenditure is not the test of an ordinary expense.' "

(*m*) FALLACY OF THE MASTER'S ARGUMENT.

The Master's argument in substance appears to be this: He concedes that the payment of interest on a public debt is not an "essential expense," indispensable to carrying on the government, but he argues that because judgment creditors are postponed not only to essential expenses, but also to "ordinary expenses" which are not "essential," therefore the cases relating to judgment creditors do not decide that payment of interest on a public debt is not an ordinary expense. It would be a sufficient answer to point out that in some cases the judgments which were postponed to ordinary expenses were judgments for interest on a public debt. The fallacy of the Master's argument, however, lies in his assumption that he or a court can determine what is an indispensable or essential expense of a particular government. The true rule is that this is a matter to be determined by the government, and that the determination of the government cannot be reviewed by a court in the absence of clear abuse of discretion. The requirements of a highly developed state are different from those of a newly settled state. The essential expenses of a city like New York are in number and kind very unlike those of a town in a sparsely settled western state. There is no conflict in the cases if one bears in

mind this rule, that the judge of the necessity of expenses is the government itself. When this rule is borne in mind it is evident that the Master is wrong, and that there can be no ordinary expenses of government in the sense in which this phrase is used by the courts, which are not essential expenses. The rule as we have stated it has been established by the highest authorities. In *City of East St. Louis* v. *U. S.*, 110 U. S. 321, Mr. Justice Matthews, in delivering the opinion of the Court, said: "The question, what expenditures are proper and necessary for the municipal administration is not judicial; it is confided by law to the discretion of the municipal authorities. No court has the right to control that discretion, much less to usurp and supersede it." The same rule is also recognized and approved in the following cases:

White v. *Mayor*, 109 Ala. 476.
Mayor v. *State*, 32 La. Ann. 748, 749.
State ex rel. Lorenz v. *New Orleans*, 116 La. 851.
Sherman v. *Langham*, 92 Tex. 13.
Young v. *Lamb*, 43 Neb. 813.
State v. *Sheldon*, 52 Neb. 364.
Ward v. *Piper*, 69 Kan. 773.

(*n*) BY THE GREAT PREPONDERANCE OF JUDICIAL CONSTRUCTION INTEREST ON A PUBLIC DEBT IS NOT AN ORDINARY EXPENSE OF GOVERNMENT. THE AUTHORITIES.

The cases in which the question has arisen whether ordinary or current expenses of government include interest on a public debt are few. This we are persuaded is due to the general understanding as indicated by the constitutional provisions cited above, that interest on a public debt is not one of such ordinary expenses. The cases to which we shall now call the attention of the court, however, seem to us sufficient in number and weight to be decisive on this question.

In the case of *Quincy* v. *Jackson*, 113 U. S. 332, a creditor who had recovered a judgment upon coupons for interest on bonds which the City of Quincy had issued in payment of a subscription for stock of a railroad company, had petitioned for a writ of mandamus to compel the city to levy taxes for the payment of his judgment. The city was empowered by a law passed in 1863 to levy taxes not exceed-

ing fifty cents on each one hundred dollars ($100) of the assessed value of property "to pay the debts and meet the general expenses of said city." In 1869 the legislature passed the act authorizing the subscription for railroad stock in payment of which the city had issued the judgment creditor's bonds. The city contended that its power to tax was defined by the act of 1863, and that this power had been exhausted. The court, however, decided that the act of 1863 applied only to taxation for raising money to pay ordinary expenses, that the indebtedness arising on the bonds given for railroad subscriptions was not of this character, and the power to tax for the purpose of raising money to pay the bonds was implied in the grant of authority to issue the bonds in payment of the stock subscription. Mr. Justice Harlan, speaking for the Court, (page 336) said: "The act of 1863 related to debts and expenses incurred for ordinary municipal purposes and not to indebtedness arising from railroad subscriptions, the authority to make which is not implied from any general grant of municipal power, but must be expressly conferred by statute." Referring to the act of 1869, which authorized the city to subscribe for the railroad stock, Mr. Justice Harlan further said (page 337): "It could not have been contemplated that indebtedness thus created would be met by such taxation as was permitted for ordinary municipal purposes. In giving authority for such extraordinary indebtedness the legislature did not restrict its corporate authorities to the limit of the taxation provided for ordinary debts and expenses. The limitation imposed by the city's charter upon its power of taxation had reference to its ordinary municipal debts and expenses." This decision is in point. The judgment sought to be enforced was for interest on a public debt. The limited power of the city to tax for the purpose of meeting its ordinary expenses had been exhausted, and if the court had deemed interest on a public debt an ordinary expense the writ of mandamus must have been refused, but the Court held that the interest on this public debt was not an ordinary expense, and therefore, the limitation upon the city's power to tax for ordinary expenses did not apply.

In *Clay County* v. *McAleer*, 115 U. S. 616, the case arose on a petition for a writ of mandamus to compel Clay County to levy a sufficient tax to pay the petitioner's judgment. It appeared that the power of the county to levy for ordinary county revenue was limited to six

mills, and by demurrer to the answer it was admitted that the maximum levy would not be sufficient to pay the ordinary current expenses of the county, and that no part thereof could be applied for the payment of the petitioner's judgment without seriously impairing the efficiency of the county government. The Court held that no levy could be ordered to pay the relator's judgment, saying (page 618): "Here the answer shows affirmatively that the whole of the six mill levy of 1882 will not be sufficient to pay the ordinary expenses of the county."

East St. Louis v. *U. S.*, 110 U. S. 331, is to the same effect.

In *Sibley* v. *Mobile*, 3 Woods 535, 541, Judge Woods, referring to the bondholders who had recovered judgment against the city, said that they "are entitled to have all the taxing power of the city within the constitutional limit exercised, if necessary, to secure the performance of the contract made by the city with them. When that power is exercised the current expenses of the city must be paid out of the fund so raised, and out of the residue the relators are entitled to share *pro rata* with the other creditors of the city who have no specific lien or claim to any portion of the taxes."

Accord *Mayor, etc., of New Orleans* v. *U. S.*, 49 Fed. Rep. 40.

In the case of *Ward* v. *Piper*, 69 Kan. 773, a creditor who had obtained a judgment for interest on township bonds applied for a writ of mandamus to compel the officers of Isabel Township to pay his judgment. The plaintiff asked to have the fund which had been levied and collected to meet the general current expenses of the township applied to the payment of his judgment. This was denied by the court. Johnston, C. J., delivering the opinion, said (page 775): "It is not alleged nor shown that the funds raised for current expenses are more than sufficient for that purpose. It does not even appear that the indebtedness on which the judgment was founded was for an ordinary expense of the township to which funds derived from a levy for legal expenses could be legally applied. The taxes levied for one purpose cannot be diverted and applied to another. Presumably the township officers are acting in good faith, and have levied and raised a fund which is necessary as well as sufficient to meet the ordinary current expenses of the economical administration of the township. The township organization must be maintained, and its current ex-

penses met, although creditors of the township must wait for the payment of their bonds and judgments."

In *State ex rel. Watkins* v. *Macon County Court,* 68 Mo. 29, a creditor who had recovered judgment on bonds which the county had issued in payment of its subscription for stock in a railroad company, applied for a writ of mandamus to compel the county to pay his judgment out of its general fund. It appeared that the statute which authorized the county to issue bonds in payment of the subscription provided for a tax not to exceed one-twentieth of one per cent. upon the assessed value of the taxable property in the county for the purpose of paying the interest on the bonds, but this special tax was insufficient to pay relator's judgment. The case arose on demurrer to the return which alleged that all of the general fund was needed to pay the current and necessary expenses of conducting the county government. The court refused to grant the writ of mandamus. Judge Norton, in the opinion of the court, which he delivered, said (page 42): "What, then, are the purposes for which the general expenditure or common fund of a county is raised? A proper answer to this question can only be returned by the law which authorizes a levy of taxes to produce it. That law is to be found in Wagner's Statutes, section 165, page 1193, and is as follows: 'The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties, by a tax upon all property and licenses made taxable by law for state purposes, * * * but the county tax shall in no case exceed one-half of one per cent.' The revenue derived from the tax thus authorized to be annually imposed, is in the very terms of the law declared to be to defray the expenses of the county, which we understand to mean the ordinary current expenses incurred in conducting the county government, such as the payment of grand and petit jurors, witnesses summoned before the grand jury, costs of criminal prosecutions, expenses in supporting the poor and insane of the county, salaries of officers, assessing and collecting the revenue, &c.

"That an extraordinary indebtedness incurred by a county in subscribing stock to a railroad corporation and in issuing bonds in payment was never intended by the general assembly to be embraced in the words 'expenses of the county,' or that they contemplated the creation

of any debt for county purposes is manifest from section 166, which makes it the duty of the county court, after the assessor's book has been adjusted and returned, 'to ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes so as to raise the required sum.' If section 165, *supra,* was intended to authorize the creation of debts or provide for their payment, the general assembly would, doubtless, have so expressed themselves as they did in sections 1 and 7, page 1158, of the same law in providing for the levy of state taxes. Section 1 provides that 'for the support of the government of the state, the payment of the state debt, * * * taxes shall be levied on all property, real and personal,' * * * and section 7 provides that there shall annually be levied, assessed and collected on the assessed value of all the real and personal property subject to taxation in the state, one-fifth of one per cent. for state revenue, and one-fourth of one per cent. for the payment of all state indebtedness. The state revenue thus provided is in express terms for the support of the state goverment, and the county revenue provided for in section 165 is for the payment of the expenses of the county government.

> "That such an extraordinary indebtedness as is incurred by a county in issuing bonds in payment of a railroad subscription was not intended to be embraced in the terms 'expenses of the county,' is apparent when it is considered that the very same words used by the general assembly in section 165 are to be found in section 20, Revised Statutes 1825, page 671, except in the latter act, the tax authorized was limited to 50 per cent. of the amount of state tax. The same section was continued in the Revised Code of 1835, except that the amount of tax was in no case to exceed the amount of the state tax. It is also to be found in the Code of 1845, and that of 1855, the only difference being that in the former the rate of taxation was not to exceed 34 cents, and in the latter not to exceed 40 cents on a valuation of $100. It is clear that the general assembly in 1825 and in 1835, when they authorized the county courts to levy such tax from time to time as should be necessary for defraying county expenses, could have had no reference to such indebtedness as arises from a county bond issued in discharge of a subscription to

the stock of a railroad corporation, because, at that time, there was no law to be found on our statute books authorizing such subscriptions or the issuance of any such obligations."

Accord *State ex rel. Hudson* v. *Trammel*, 11 S. W. Rep. 747, Missouri.

City of Denison v. *Foster*, 37 S. W. Rep. 167, Texas.

Cromarty v. *Commissioners*, 85 N. C. 211, 87 N. C. 134.

In the foregoing cases creditors who had recovered judgments on claims for interest on municipal bonds were not allowed to take funds raised for the payment of the ordinary expenses of the municipalities when the funds were needed for this purpose. The decisions conclusively establish that interest on a public debt is not an ordinary expense of government; if it had been, the courts would have been bound to hold that funds devoted to the payment of ordinary expenses should be applied to the payment of such interest, but they held instead that the claims for interest must wait for payment until the ordinary expenses had been paid. The Master's report (page 108) protests that the cases of the judgment creditors are not directly in point, because the present case is not a controversy between a judgment creditor and a municipality; but surely the principle which governed the decisions by which the payment of judgments for interest on a public debt were postponed to the payment of ordinary expenses, is the same principle which must govern in the controversy between Virginia and West Virginia. The question here is the same as the question in these cases, namely, whether interest on a public debt is an ordinary expense of government. The cases cited above decided that it was not.

In *White* v. *Mayor*, 119 Ala. 476, the case arose on an application by the holder of a judgment based on coupons for interest on bonds of the town of Decatur for a writ of mandamus to compel the town to pay this judgment out of its general revenue. The court held that the petitioner was entitled to mandamus, applicable, however, only to the surplus of the town's revenues over its current expenses. McClellan, J., in delivering the opinion of the court, said, page 480: "It is thoroughly well settled law that where the interest and principal of a municipal bonded debt is payable out of the general revenue of the town, no part of such revenue that is necessary to meet current

legitimate municipal expenses can be subjected to the payment thereof, but only to the surplus of income after the governmental expenditures have been met or provided for can by any process of law be applied to such debt. *Dill* v. *Mun. Corp.*, Secs. 100, 101; *Underhill* v. *Calhoun*, 63 Ala. 216; *Williamsport* v. *Com.*, 190 Pa. St. 498; *East St. Louis* v. *U. S.*, 110 U. S. 321; *Com.* v. *Commission*, 1 Wharton 1. Nor can it make any difference that the bonded debt is specially charged upon the general revenues or that the corporate authorities are specially required to set apart a sufficiency of such revenues to meet such debt. * * * * with or in the absence of such provisions, it is within the power of and is the duty of municipal corporations * * * * to apply the whole revenues to current municipal expenses, leaving nothing to go in payment of bonded debts, nor can the courts determine what municipal expenditures are necessary. If a given expenditure is within charter authorization, and therefore abstractly considered a legitimate municipal charge, the courts cannot pass upon the advisability or wisdom of its being made or incurred."

In the case of *Anniston* v. *Hunt*, 140 Ala. 394, the charter of the City of Anniston required the city council before July 1st in each year to agree upon a budget of expenses for governmental purposes for the year ending on the 30th of the following June. In making up the budget for the year ending June 30th, 1903, the council had included among the expenses for government purposes an item of $7,600 for interest on bonds of the city. A judgment creditor of the city applied for a writ of mandmus commanding the mayor and councilmen to pay his judgment out of the surplus revenue of the city for the year ending June 30th, 1903, and restraining them from paying the interest on the bonds which had been included in the budget among the government expenses. If the revenues were not applied to the payment of this interest there would be a surplus to pay the petitioner's judgment. The writ of mandamus was granted and the Supreme Court affirmed the judgment of the court below. In delivering the opinion of the court, Haralson, J., said (p. 400): "We have found neither in the charter nor in any other statute any legislative authority to make the interest income on municipal bonds and accounts an item of expenditure for the administration of government purposes. The council, therefore, had no right to estimate this interest as a

government expense and by way of anticipation in their budget of expenses to appropriate the amount to the payment of interest on municipal bonds and accounts so as to defeat the plaintiff or other creditors in their efforts to subject this excess over necessary current expenditures to the satisfaction of their demands."

In *Leavitt* v. *Town of Somerville*, 75 Atlantic Rep. 54 (Maine, 1909), the question was whether certain bonds of the town were valid under the constitutional provision limiting the debt which the town could incur. The bonds in question, which exceeded in amount the limit of indebtedness, purported to refund a debt existing at the time when the constitutional limitation took effect. The amount of the bonds was larger than the original debt, but if the excess represented accumulated interest the bonds would be valid. The court, however, declared this fact had not been proved, saying (page 57): "There is no legitimate inference that the town officers paid current expenses any more than that they paid the interest on the town debt."

In *Dexter* v. *County Commissioners*, 20 Weekly Law Bulletin 364 (Hamilton County, Ohio, Common Pleas), it was held that the estimated levy which the statutes required the auditor to present to the county commissioners on or before the first Monday in April of each year, was intended to cover current expenses as distinguished from the payment of the bond liabilities of the county, and that the acts creating sinking funds for future payments of outstanding bonds did not contemplate the payment of debts and the accumulation of moneys for that purpose as among the current monthly or annual expenses of the county.

In the case of *University R. R. Co.* v. *Holden*, 63 N. C. 410, the Supreme Court of North Carolina had occasion to construe a provision of the recently adopted Constitution of 1868. This provision contained in Article 5, section 1 of the Constitution, is as follows:

> "The general assembly shall levy a capitation tax on every male inhabitant—which shall be equal, on each, to the tax on property valued at $300 in cash. * * * And the state and county capitation tax combined shall never exceed $2.00 on the head."

The question was whether this provision, requiring what the court called an equation of taxation between the property tax and the capi-

tation tax, applied to all taxes, or whether it was limited. The court gave the question most careful consideration, deeming it so important that each of the judges delivered a separate opinion. The conclusion of the judges was that the equation of taxation established by the provision which we have quoted did not apply to all taxes, but only to taxes imposed for the ordinary expenses of government, and the judges expressly declared that the equation of taxation did not apply to taxes imposed for the purpose of raising money to pay interest on a public debt.

Pearson, C. J., said (page 414):

> "I agree that if under this equation, carried to its limits, the amount is not enough to meet current expenses, and also to pay the interest on the public debt, then for the excess needed it is not only within the power, but it is the duty of the general assembly to disregard the equation."

Reade, J., said (page 418):

> "My construction of the tax power of the legislature under the constitution is as follows: (1) The first object of the convention in the fifth article of the constitution was to provide for the ordinary and current expenses of the government; that is done in sections 1, 2 and 3. And for that purpose the tax is limited to $2 on the poll, and the same amount on $300 worth of property, and the equation must be observed. This was thought to be sufficient for the ordinary and economical administration of the government. (2) We had a considerable public debt, and after providing for current expenses, the next consideration was, how is the public debt to be met? And the fourth section provides, that a special tax shall be laid for that."

Dick, J., said (page 432):

> "The object of the convention in article 5, section 1, was to provide a system of general taxation for the ordinary expenses of the government. * * * Sections 1, 2 and 3 establish a general revenue system for the state; and sections 4 and 5 provide special taxes for the state indebtedness, unexpected exigencies and for the completion of unfinished railroads."

Speaking in reference to Section 5, Article 5, of the Constitution, which authorizes the state to issue bonds for extraordinary purposes, Judge Dick said (page 433):

> "The convention evidently contemplated the necessity of incurring new debts outside of the ordinary expenses of the government."

Settle, J., said (page 436):

> "I conclude that the equation of taxation applies only to the ordinary expenses of the state government. It does not apply to the public debt."

The opinion of the judges in *University R. R. Co.* v. *Holden*, that the equation of taxation prescribed in Section 1, Article 5, of the North Carolina Constitution, applies only to taxes imposed for the payment of the ordinary expenses of government and does not apply to taxes imposed for payment of interest on a public debt, was affirmed after very careful consideration of the whole subject and a review of all the authorities in the recent case of *Southern Ry. Co.* v. *Board of Commissioners of Mecklenberg County*, 148 N. C. 220.

The case of *Union Pacific R. R. Co.* v. *U. S.*, 99 U. S. 402, though it relates to a private corporation, is, we submit, in point, because it decides that interest on a funded debt is not an ordinary expense. The question in the case was whether the Union Pacific Company was liable to account to the government for five per cent. of its net earnings under the sixth section of its charter, and the Court had to determine what was meant by the expression, "the net earnings of the road." Mr. Justice Bradley, who delivered the opinion of the Court, said:

> "As a general proposition, net earnings are the excess of the gross earnings over the expenditures defrayed in producing them, aside from, and exclusive of, the expenditure of capital laid out in constructing and equipping the works themselves. It may often be difficult to draw a precise line between expenditures for construction and the ordinary expenses incident to operating and maintaining the road and works of a railroad company. Theoretically, the expenses chargeable to earnings include the general expenses of keeping

> up the organization of the company, and all expenses incurred in operating the works and keeping them in good condition and repair; whilst expenses chargeable to capital include those which are incurred in the original construction of the works, and in the subsequent enlargement and improvement thereof. * * * All payments of interest on the bonded indebtedness of the company should be charged to capital interest account, and not to current expenditures. Though payable out of earnings before any dividend can be made to stockholders, they cannot be deducted for the purpose of ascertaining the 'net earnings' of the road, as that term is to be understood in the sixth section of the act. The bonded debt incurred for the purpose of construction and equipment is but another form of capital, analogous to preferred stock; and the interest accruing thereon is in the nature of a dividend on such capital. It has nothing to do with and cannot affect the amount of the net earnings of the road."

(*o*) LEGISLATION OF VIRGINIA DURING THE PERIOD COVERED BY THE ORDINANCE DID NOT DEAL WITH INTEREST ON THE PUBLIC DEBT AS AN ORDINARY EXPENSE OF GOVERNMENT.

The legislature of Virginia, in its appropriations, from 1823, did not deal with the interest on the internal improvement debt as one of the items constituting the ordinary expenses of the state government. The fiscal year of the state began on the first day of October of each year. The annual appropriation bill constituted a general fund of the taxes and arrears of taxes due on the first day of October, last preceding, not otherwise appropriated, and all other branches of revenue not appropriated by law, which shall come into the public treasury prior to the succeeding October and the surplus of all appropriations theretofore made, shall constitute a general fund, and be appropriated in specific sums, as follows, to-wit:

To the expense of the general assembly; to the salaries and allowances of the officers of the civil government; to the commissioners of the revenue, for examining commissioners' books; to defray criminal charges, including the expense of guarding jails; for pensions, civil contingent fund, militia establishment, including the services of clerks

of courts-martial, of adjutants, provost marshals, and expenses, and for the purchase of drums, fifes, and to pay for instruments where the fines of the regiment are insufficient, pay of the adjutant and inspectors; internal charges of the penitentiary, house and officers' salaries and the transportation of criminals to the penitentiary, such balance of former appropriations to complete penitentiaries; public guard in the city of Richmond; slaves executed or transported; expense of representation to congress and state senate; public warehouses, including the pay of superintendents, civil prosecutions, including clerks and sheriffs' fees; services of guard at Lexington arsenal; for the collection and transportation of arms; to constitute the balance of military contingent fund, including claims for services during the last war; transportation of public arms; defray expense of publishing the map of Virginia; complete erection of Western Lunatic Hospital; support of lunatic hospital at Williamsburg; transportation and expenses of lunatics confined in jail, etc.—all ordinary expenses of the state government.

In addition, the legislature made specific appropriation to pay the interest on $319,000 of the seven per cent. debt, and on two certificates of six per cent. debt held by the literary fund, $23,773. This appeared to be the *general debt* outstanding. These bonds, held by the literary fund, were owned by the state; and this was simply the measure of annual appropriation to that fund, for purposes of convenience, such as has been frequently resorted to by other states.

The second section provides that so much of the public revenues, and of other public moneys *not otherwise appropriated by law* as may be received into the treasury after the thirtieth day of September, next, and the surplus of all other appropriations heretofore made, shall constitute a general fund to defray such expenses authorized by law as are not therein specifically provided for; and to defray the current and other expenses of the commonwealth in the fiscal year commencing on the first day of October, next, and terminating on the 30th day of September, 1828 (this was the act of 1827); and the auditor of public accounts is authorized and required to issue his warrants in the same manner as if the funds had been specifically mentioned, with such exceptions, etc. This was the act passed March 8, 1827; and those which had preceded it, from 1822, did not differ.

As early as 1840, in none of these appropriation bills was interest appropriated for the payment of bonds issued for internal improvements.

As early as 1840 the annual appropriation bill changed in respect of the provision as to interest. It created, as did its predecessors, a general fund constituted of the taxes and arrears of taxes due to the preceding October, and not otherwise appropriated, and all other branches of revenue not appropriated by law which should come into the treasury prior to the succeeding October, and the surplus of all other appropriations.

Out of this fund were appropriated expenses of the general assembly, officers of the civil government, commissioners and clerks, criminal charges, and items similar to those mentioned in the act of 1827.

And it provided expressly and specifically for interest on the public debt as follows:

To pay the interest on certain certificates of public debt, to-wit:

For one year on seven per cent. debt, due literary fund, $22,330;

Half year's interest on same, unpaid on October 1st last and chargeable on present fiscal year, $11,165;

(This did not default the state, for she had the bonds on which she had omitted to pay interest to the literary fund.)

One year's interest on 6 per cent. debt, held by literary fund, $1,442.35;

One year's interest on $250,000 of 5 per cent. stock subscribed to the Chesapeake and Ohio Canal Company guaranteed by the act of February 18, 1833, $12,500;

One year's interest on $398,700, certificates issued for money borrowed to pay commonwealth's subscription to the stock of the Exchange Bank, $19,922;

Ten months' interest on $62,825, additional sum borrowed to pay commonwealth's subscription to stock of Exchange Bank, $3,143.23;

One year's interest on $80,592, certificates issued for money borrowed to pay commonwealth's subscription to stock of the Northwestern Bank, $5,315.52;

and then, after appropriating for contingent expenses of courts, pensions, civil contingent fund, militia, public guards, slaves transported,

representation to congress and the state senate, warehouses, civil prosecutions, arms, military contingent fund, removal of lunatics in jails, vaccine agents, roads, military school, electors, clerks of committees, sweepers of the capitol, principal engineer, etc., etc.

Section 3 provides that so much of the public revenue and all other moneys not otherwise appropriated by law as may be received into the public treasury, after the 30th day of September, next, and the surplus of all other appropriations heretofore made, shall constitute a general fund to defray expenses authorized by law which are not herein particularly provided for, and to defray the current and other expenses of the commonwealth in the fiscal year which will commence on the first day of October, next, and terminate on the 30th day of September, 1842; and the auditor of public accounts is hereby authorized and required to issue his warrants in the same manner as if the sums had been specifically mentioned, subject to such conditions, exceptions, and limitations, as the general assembly may prescribe by law.

Then comes an additional section, which was continued in each appropriation act until after the establishment of the sinking fund for the payment of interest and principal on the public debt, provided for by the constitution of 1850. It will be remembered that the stock for which the commonwealth subscribed, and the dividends thereon, were, in each instance, pledged, primarily, together with the improvement fund, not otherwise appropriated. It enacted, further, that if the revenue of the fund for internal improvement shall, at any time, be insufficient to meet the payments of the interest charge on such fund as it shall become due upon loans obtained for purposes of internal improvement, under existing or future acts, of the general assembly, such interest *shall be paid out of any money in the Treasury not otherwise appropriated;* and the auditor of public accounts is hereby authorized and required, upon the receipt of the order or orders of the board of public works, certifying the fact of such insufficiency in the funds of said board, to issue his warrant or warrants in their favor for the necessary sum or sums which shall be deposited in the treasury to the credit of the fund for internal improvement, to be applied by the said board on the warrants of the second auditor towards the payment of such interest.

Here, it will be noticed, interest on the internal improvement loans,

perhaps as a reason why specific appropriations were not made in any year to pay the interest on internal improvement loans, is that by law the primary security for such loans was the stocks and dividends derived from the stocks, and the internal improvement fund, which, if taken together, were inadequate, were supplemented by the pledge of the commonwealth to raise the money otherwise necessary to pay the interest and the principal as it matured. By this provision, it is seen that the interest on the internal improvement fund, where the special security proved inadequate, was to be paid out of money deposited to the credit of the internal improvement fund; not, by the act, otherwise appropriated. In other words, the payment of interest on internal improvement loans was deferred to all appropriations for the ordinary expenses of the government, whether specifically made, or generally appropriated, by Section 3 above quoted. And that provision was the last section of every appropriation act from 1840 to the time the sinking fund was established. Twenty million dollars of this debt was incurred between 1850 and 1861, after the sinking fund for the payment of interest and principal had been created.

(*p*) THE CREATION OF A SINKING FUND FOR THE PAYMENT OF INTEREST ON THE VIRGINIA DEBT SHOWS IT WAS NOT AN ORDINARY EXPENSE OF THE STATE GOVERNMENT.

The very fact of the creation of a sinking fund for the payment of interest on the public debt differentiates it from ordinary expenses of the state government.

Whoever heard of the payment of the ordinary expenses of a state government out of a sinking fund?

Section 29 of Article IV. of the Constitution of 1850, sets apart annually, from the accruing revenues, a sum equal to seven per centum of the state debt, as existing on the first day of January, 1862, to be called "The Sinking Fund," and applied to the payment of the interest on the state debt and the principal or such part as may be redeemable. If no part be redeemable, then the sum so remaining shall be invested in the bonds or certificates of debt of this commonwealth, or of the United States, or of some of the states of this Union, and applied to the payment of the state debt as it shall become redeemable. And

it made subject to this provision all debts contracted by the commonwealth thereafter.

It added this provision:

> "The general assembly shall not otherwise appropriate any part of the sinking fund or its accruing interest, except in time of war, insurrection or invasion."

If there were a deficiency in the treasury, because of an underestimate of the revenue, or of the expenses of the government, resort could not be had, for its payment, to the sinking fund. That one fund could be resorted to only for a purpose other than that for which it was created and set apart, in case of war, insurrection or invasion.

The creation of a sinking fund, which is so common in all the constitutions, and has been for a great many years in most constitutions, marks, in an illuminating way, the distinction between the ordinary expenses of a state government and the interest to accrue upon the public debt.

The ordinary annual expenses of the state government are estimated for. They change. Some times they exceed the estimate; and there is a deficit, although, by the Federal government, that has been prohibited by law, as has been done by the constitutions of some of the states. It is true that ordinary expenses are estimated for by county governments and other municipalities, even towns and villages. Speaking in respect of governments, sometimes additional offices are created; some times departments or bureaus, which have long existed, have, in legislative judgment, become unnecessary, and they are disposed of, and their duties transferred to some other department, or altogether pretermitted. But who ever heard of estimating the interest on the public debt? That does not fluctuate. It may be enlarged by the increase of debt, or diminished by payment of debt; but it is always susceptible of accurate ascertainment. It is fixed. In corporate management, it is characterized as a "fixed charge," as contradistinguished from ordinary expenses.

The ordinary expenses of the government, changing from time to time, must continue as long as the government lasts. The interest on the public debt continues as long as the debt lasts.

The philological distinction as to the difference between the expenses

of the government—ordinary, essential and necessary—confuses; but does not enlighten. They come to the same thing in the end.

(*q*) THE WORDS OF THE ORDINANCE SHOULD BE CONSTRUED IN THE LIGHT OF THE SURROUNDING CIRCUMSTANCES.

This Court, said, in *Sand Filtration Corporation* v. *Cowardin*, 213 U. S., page 364:

> "The object of construction is to effectuate the intention of the parties in making a given contract. When the contract is in writing the language used should be interpreted in the light of the circumstances surrounding the parties at the time the contract was made."

This is a succinct and clear definition. It must be remembered, in reading the ordinance, that, at the time it was drafted and adopted, the debt of the Commonwealth of Virginia was about $33,000,000, the proceeds of which she had either expended directly for internal improvements or had invested in bank stocks, the stocks of railway companies, navigation companies, turnpike companies and bridge companies. The improvements constructed by the use of this borrowed money were almost all within the present limits of Virginia, and this was well known to the men who drafted and adopted this ordinance. These stocks were thought by Virginia to be of value, for, in her constitution of 1850, section 30, article IV., it was provided:

> "The general assembly may, from time to time, direct a sale of the stocks held by the commonwealth in internal improvement and other companies, and the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner."

Can it be supposed that the men who framed and adopted this ordinance would have been willing to stipulate that the proposed new state should take upon herself the payment not only of a just proportion of the ordinary expenses of the state government, but a proportion of the $18,000,000 of interest upon the moneys borrowed by the Commonwealth of Virginia from 1823 to 1861, and invested in $30,000,000 of stocks, bank and otherwise, incorporations whose

improvements lay almost entirely within her limits, would remain within her limits, and which investments she was to keep? It is inconceivable.

To say that when she incurred this indebtedness, which is the sum of a great number of special loans, each with a special security, and invested the same in stocks, she did not expect them to be valuable and revenue-producing, not simply during the duration of the debt, but long after the debt should have been paid, would be to impeach her honor in the earlier, if not better days, of her existence, for she held out these stocks and dividends as the primary security of the money she borrowed, with which to repay it.

She became a great battlefield and the camping ground of contending armies; and if the ravages of war destroyed, in large measure, these improvements, and disappointed the expectation with which she had invested her money, it cannot be said that that unfortunate result is, in any wise, imputable to West Virginia, or her people.

It is not a complicated question. The words "ordinary expenses of the state government" are words of common use, and they are without technical signification. It seems to us impossible to misunderstand them.

The ruling of the Master seems to have been unconsciously, and with perfect good faith, based somewhat upon what seemed to him to be the equitable construction which he advocates in his report. If the words "ordinary expenses of the state government," as a matter of law, include interest on the public debt, he is right. If they do not, whatever may be the result of their exclusion from the computation, he is wrong, for it is a question of law. Whatever it means, as here used, it means wherever it is used.

(*r*) THE PROPORTION OF ORDINARY EXPENSES WITH WHICH WEST VIRGINIA IS TO BE CHARGED SHOULD BE ASCERTAINED UPON THE BASIS OF TAXABLE VALUES.

Whichever view this Court may adopt as to the meaning of the phrase, "A just proportion of the ordinary expenses of the state government," the question confronts it, upon what basis or standard are these expenses to be apportioned?

First: On the basis of area; or

Second: Upon the basis of population, and if so, shall slaves be included or excluded? or

Third: Shall it be upon the basis of population of 1823 of Virginia, as shown by the census of the United States, the average population to be taken as required by the decree; or shall it consist of five averages of ten-year periods combined, as taken by the Master; or

Fourth: Shall it be upon the basis of the assessed valuation of the real and personal property of Virginia and West Virginia?

Fifth: If so, shall it be based upon the valuation of January 1st, 1861, or June 23rd, 1863?

The joint schedules returned by the Master furnish a basis in accordance with the several alternatives.

We feel constrained to the opinion that the true basis is taxable values, or the average revenues for a period prior to the 1st of January, 1861. We formerly inclined to the opinion that population was the best basis. We see no reason, however, for the adoption of a basis upon which the ordinary expenses are to be apportioned which differs from the international law basis of general indebtedness, which we have somewhat discussed. A peculiar complication arises here with reference to the ascertainment upon the basis of population; and that is, the large number of slaves within the limits of Virginia and the relatively small number within that portion of Virginia which now constitutes West Virginia. Those slaves were property, albeit, as we have shown, they constituted a property upon which was levied a tax entirely disproportionate to their market value. They were the subjects of barter and sale the same as any other private property in the commonwealth was subject to it. They were taken care of by their masters. They were, of course, not given the privileges of white children in respect of common education. They did not enter into the basis of representation; and, therefore, neither paid taxes, nor contributed to the school fund, nor derived benefit from it. Even in the emancipation of slaves by the constitution, and free negroes, section 19 of article "IV." of the Constitution of 1859 provided that:

> "Slaves hereafter emancipated shall forfeit their freedom by remaining in the commonwealth more than twelve months after they become actually free, and

shall be reduced to slavery under such regulations as may be prescribed by law."

Section 20:

"The general assembly may impose such restrictions and conditions as they shall deem proper on the power of slave owners to emancipate their slaves; and may pass laws for the relief of the commonwealth from the free negro population, by removal or otherwise."

Section 21:

"The general assembly shall not emancipate any slave, or the descendant of any slave, either before or after the birth of such descendant."

Section 22:

"Taxation shall be equal and uniform throughout the commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law."

Section 23:

"Every slave who has attained the age of twelve years shall be assessed with a tax equal to and not exceeding that assessed on land of the value of three hundred dollars. Slaves under that age shall not be subject to taxation; and *other* taxable property may be exempted from taxation by vote of a majority of the whole number of members elected to each house of the general assembly."

Section 24:

"A capitation tax, equal to the tax assessed on land of the value of two hundred dollars, shall be levied on every white male inhabitant who has attained the age of twenty-one years; and one equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools; but nothing herein contained shall prevent exemptions of taxable polls in cases of bodily infirmity."

It seems quite impossible that slaves should be included in the population. The taxes upon them were assessed to their owners. It seems impossible that in such a situation slaves should be considered

as part of the population for any purpose. Their value, as property, would, of course, enter into any calculation based upon the taxable values, or assessed value, of the separate portions of the state. And as we have already shown to the Court, the population as a basis of apportionment of debt between nations, is rejected. It has also appeared that area, or territory, is rejected as a basis for the apportionment of state debts. Capitation taxes were levied by Virginia under the constitution of 1850. During the whole period from 1823, the revenues of the state, aside from those which went into the internal improvement fund, were derived from the taxation of lands, inheritance, taxes on incomes, salaries and licenses, and almost every imaginable excise tax, including the taxation of land and personal property, as well as watches, clocks, plate, carriages and the like, and interest on the state's own securities, and excises of every imaginable description. The basis upon which the moneys were collected for the payment of ordinary expenses during these years would seem to be the basis upon which they should be apportioned between the two states.

West Virginia is not Bound to Pay Interest from January 1, 1861, on the Proportion of the Old Virginia Debt Assumed by Her.

1. NEITHER BY THE ORDINANCE NOR BY HER CONSTITUTION DID WEST VIRGINIA IN PRAESENTI ASSUME ANY PORTION OF THE PUBLIC DEBT OF VIRGINIA.

By the ordinance West Virginia *was* to take upon herself a "just proportion of the public debt of the Commonwealth of Virginia prior to January 1, 1861, to be *ascertained*," etc. We may here inquire what is meant by the words "to *be ascertained*"? There can be but one answer to this question, and that is, the just proportion of the public debt of the Comonwealth of Virginia prior to January 1, 1861, which West Virginia was to take upon herself. How was this just proportion to be ascertained? First, by charging to it all state expenditures within the limits thereof; second, a just proportion of the ordinary expenses of the state government since any part of the said debt was contracted; and, third, deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period.

The ordinance did not become a compact between the two States of Virginia and West Virginia, nor did section 8 of Article VIII. of the Constitution become a compact between the two states at the time of their adoption, for there was then but one state and that was the Commonwealth of Virginia. When she consented and the congress of the United States admitted West Virginia into the union, there was an agreement between two states, and for the first time efficacy was given to section 9 of the ordinance and section 8 of Article VIII. of the Constitution. Before that they rested entirely in proposition.

When they became effective, they became effective as a compact between two states, one older than the other, but of no greater dignity or sovereignty; for West Virginia was admitted into the union, as all states must be admitted, on terms of equality with the original states. It is not conceivable that any state shall be dissimilar or unequal in dignity and sovereignty to the other states. If section 8 of article VIII. is to be read in connection with the ordinance, then the compact created the assumption, which was *in futuro*, and left yet to be ascertained, as we have argued, what was the just proportion of the debt which West Virginia agreed to assume or, what is precisely legally equivalent, to take upon herself? It was an unliquidated account. She did not assume the payment of any of the bonds or obligations of Virginia outstanding prior to January 1, 1861. The amount that she was to assume was, if the ordinance was in effect for any purpose, the amount ascertained by the methods prescribed by the ordinance. If it is not in effect, then the method is left to the legislature to choose and to execute.

The word "thereof" in section 8 of Article VIII. of the Constitution of West Virginia does not bear the construction for which counsel for Virginia contend, nor does the rule of law established in Virginia prior to 1863, that in private contracts "interest follows the principal as the shadow does the substance" apply to this case. The decisions which laid down that rule were all with reference to interest between individuals on private obligations.

2. THE VIRGINIA RULE AS TO PRIVATE CONTRACTS THAT INTEREST FOLLOWS THE PRINCIPLE DOES NOT APPLY TO CONTRACTS BETWEEN STATES.

But for the dignity and character of the eminent gentlemen who urge it, it is difficult to regard as serious the proposition that because among private parties in Virginia prior to the admission of West Virginia as a state "the interest follows the principal as the shadow does the substance" or, differently stated, because interest is an incident to the debt, or is favored both by the legislative and judicial bodies of the state, and because the laws of the old state, until changed, were adopted in the new as to private parties, that, therefore, by the contract between the sovereign State of Virginia and the sovereign State of West Virginia, a case for which the law of neither state made provision, West Virginia would be liable to pay all the unpaid interest on her proportion, when ascertained, of the debt existing January 1, 1861. No such intention can be imputed to the framers of the ordinance, nor the convention which adopted the Constitution of West Virginia.

The learned counsel appear to be conscious of the inapplicability of the rule which they assert as to interest on private contracts; and to show that it is the rule that the commonwealth pays interest on claims against her, they cite the case of *Higginbotham's Executrix v. Commonwealth*, 25 Grattan 627. That case was decided in 1875, and if it is authority for the statement that in 1875 interest, by the law of Virginia, was allowed against the commonwealth without any promise to pay interest, but as a mere incident to a debt, it cannot apply in this case. The question would be, what was the law of Virginia in respect of the liability for interest upon claims against her in the absence of contract in 1861, when the ordinance was adopted and when the constitution of West Virginia was adopted.

3. ANALYSIS OF HIGGINBOTHAM'S EXECUTRIX V. COMMONWEALTH.

It is notable that in the *Higginbotham case* the question of interest was not discussed, although many other questions were discussed. The syllabus of the case is as follows:

> "1. The present State of Virginia is bound to the creditors of the state for the debts due before the divi-

> sion for the whole of their debts. And West Virginia is equally bound for them."

That is a decision which hardly binds West Virginia, for she was not a party.

> "2. Under the statute, the State of Virginia may be sued for any debt or claim due, whether liquidated or unliquidated."

The plaintiff in error, and petitioner below, was the executrix of David Higginbotham, deceased, who was the owner of twelve shares of stock in the old James River Company.. By an amendment to the charter of that company, passed on the 17th day of February, 1820, and accepted by the company, the company became the agent of the state to carry on the work for the state, and under the direction and the control of the general assembly; and it was agreed between the state and the company that, in lieu of the annual dividends which might have been thereafter declared on the stock, the company should be allowed twelve per centum per annum on its stock for twelve years from the commencement of the amendatory act, and fifteen per centum per annum thereafter forever. The act was declared on its face to be "a compact" between "this commonwealth and the said company, subject, however, at all times, to such change and modification as the legislature may think proper to make; provided that no such change or modification shall be made as will take from the James River Company their right to the dividends, or any part of the dividends, upon their stock allowed to them by this act." It was a solemn compact between the state and the company that "the dividend or annuity, as it is in effect, should be forever paid without abatement or diminution." Such was the solemn obligation assumed by the state as the price of the stockholders' property.

By an act of February 17, 1820, and other acts, the powers and duties of the James River Company, acting for the state, were from time to time extended and enlarged; but the company up to the last mentioned date, continued to exist under its own organization. On that day, however, a new company, with greatly extended powers, was chartered, called the James River and Kanawha Company, to which all the interest of the state in the old James River Company was transferred; but this transfer was made expressly "subject to the

payment of fifteen per centum per annum forever to the *stockholders of the old company.*" By this act the James River and Kanawha Company became the successor of the old James River Company, and the duty of providing forever for the dividend, as it is called, of fifteen per centum per annum to the stockholders of the old company devolved, as we have seen, directly on the James River and Kanawha Company, under its agreement with the state; and by the act of March 22, 1836, the state required the latter company to pay these dividends into the public treasury, to be disbursed among the stockholders of the old James River Company by the second auditor; thus again solemnly acknowledging the right of the stockholders to these "dividends," and the duty of the state to see that they were punctually paid, by requiring her assignee to pay them into the public treasury to be disbursed to the stockholders by a state officer.

Now, this was treated by the court as a solemn compact, the obligation of which on the state should be "eternal." The court says:

> "Accordingly we find that under all the changes of legislation on the subject down to the first of January, 1865, the appellant's annuity was regularly paid; but since that date there has been but a single payment of $120, leaving arrearages to the amount of $2,220, as of the first of July, 1871. For that amount *with its accruing interest,* after applying for payment at the offices of the auditor of public accounts, and the second auditor, and being refused at both, this suit was brought."

The petition was dismissed below.

It was claimed by the attorney general of Virginia that the dismemberment of the State of Virginia and the formation of a new state, called West Virginia, out of a portion of her territory, had discharged the State of Virginia from this debt as now claimed; that the old debt of Virginia contracted prior to her dismemberment, if not wholly extinguished by the events leading to, attending and following her dismemberment, was not then due from her, but only ratably from the two states. The court say:

> "Were this a question between the two states alone, I should not question the concluding part of the proposition;"

and quote from Puffendorf:

> "When a kingdom divides by common consent into two or more distinct commonwealths, the public patrimony, with all the debts and encumbrances upon them, ought to be equally shared among them."

The court decided that, in its opinion, Virginia was liable to pay the petitioner the amount of her demand, with interest, but the court said, in so deciding:

> "No power is claimed for this court to control or in manner to interfere with the discretion of the legislature in making provision for the payment of this debt. * * * The judgment being for more than three hundred dollars, the court has no authority to require the auditor of public accounts to issue his warrant for the amount. In such cases, the provision to be made for the judgment is expressly reserved to legislative discretion, and to that discretion we must leave it."

It must be noted, in respect of this claim, and it is rather exceptional, that when the state took the property, it was agreed between the state and the old James River Company that, in lieu of the annual dividends which might have been thereafter declared, the company should be allowed twelve per centum per annum on the stock for twelve years from the commencement of the amendatory act, and fifteen per centum per annum thereafter forever. That was a liability from the state to the company in exchange for its property. By subsequent arrangement, all the interest of the state in the old James River Company was transferred to the James River and Kanawha Company, subject to the payment of fifteen per centum per annum forever to the *stockholders* of the old company. By this act the James River and Kanawha Company became the successors of the old James River Company, and the duty of providing forever for the dividend, as it is called, of fifteen per centum per annum to the *stockholders* of the old company devolved directly on the James River and Kanawha Company under its agreement with the state.

This created the relation of debtor and creditor between the James River stockholders and the James River and Kanawha Company. When the commonwealth compelled the company to pay the dividend

monies into her treasury for distribution by her among the stockholders, she made herself a trustee of the latter, had no right to withhold or use the trust fund, and having failed to pay it over was bound in equity for interest upon it, just as the company would have been liable for interest, if the commonwealth had not interfered and the company had failed to pay the dividend.

This case cited by counsel is a long way from establishing the proposition, that even in 1875, thirteen years after the transactions involved here, it was the rule in Virginia for the state to allow interest upon claims against her.

When a state takes upon herself a trust she should stand like any other trustee, and the principle that a trustee can take no profit out of the trust estate applies universally.

4. THE CASE OF UNITED STATES V. NORTH CAROLINA.

The learned counsel refer to the case of the *United States* v. *North Carolina*, 136 U. S. 211. This was an action of debt brought in this Court, November 5, 1889, by the United States against North Carolina upon 147 bonds, duly executed, for $1,000 each, payable in thirty years from date, with interest at the yearly rate of six per cent., alleged in the declaration to be payable half yearly until payment of the principal. They were executed at different dates, set forth in the statement of the case. They were interest bearing debts. The declaration alleged that, at the dates when the bonds became payable payment of the principal was demanded by the United States and refused by the State of North Carolina. The defendant pleaded payment of the principal sums of the bonds after they became payable, together with all interest accrued thereon to the days when they became payable. The Court say:

> "The only question presented for our decision is whether, as a matter of law, the principal of the bonds bore interest after maturity."

And they add:

> "Interest, when not stipulated for by contract, or authority by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled: and,

> as has been settled on grounds of public convenience, is not to be awarded against a sovereign government, unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers;"

citing:

United States v. *Sherman*, 98 U. S. 565.
Angarica v. *Bayard*, 127 U. S. 251, 260.

The Court looked into the laws of North Carolina, and after stating the law as to the payment of interest in an action, against a private person and citing authorities, said:

> "But it is equally well settled, by judgments of the Supreme Court of North Carolina, that the state, unless by or pursuant to an explicit statute, is not liable for interest, even on a sum certain which is overdue and unpaid."

5. THERE IS NO BASIS FOR VIRGINIA'S CLAIM FOR INTEREST.

No statute of Virginia has been cited by the learned counsel, who would have cited it, we think, if there had been such, by which the state subjects itself to the payment of interest as an incident to a debt, or by way of compensation for its use, or damages for non-payment of the principal when due. Whether the legislature in the *Higginbotham case* appropriated the interest, the counsel do not state. The opinion of the Supreme Court of the state that it ought to do so does not make it the rule of the state, nor do legislative acts in special and sporadic cases which allow interest on claims constitute a rule which binds the state to pay interest upon claims against it.

Moreover, Virginia is the state *demanding interest*. If one sovereign makes it a rule to pay interest on claims against it without having contracted so to do; in other words, puts itself upon the same plane as private creditors may be placed by its laws, does it follow that, because it pays interest itself without having agreed to do it, that it may collect interest from another sovereign which does not pay interest except where it has contracted to do so? The United States does not pay interest except where it contracts to pay it.

We have found no indication in the decisions of the Supreme Court

of Virginia that any such rule has been adopted by the legislature of that state, or by the courts of that state, if indeed the courts can make such a rule for a state. It is a matter of contract, and contracts are not made by the courts for states or their citizens.

Virginia has given very liberal right to her citizens to sue; but it is a suit for liquidation. The court has no power, except in petty claims, amounting to not over $300, to direct the auditor to issue a warrant, and the whole matter of payment, including the principal sum awarded, with or without interest, is left entirely to the discretion of the legislature. Probably, sometimes, they pay interest, and oftener they do not, as the case may or may not appeal to the legislative judgment. But there is no statutory rule for the payment of interest by the state on claims against her where she has not contracted to pay it.

In 1837, the question arose in the Court of Appeals of Virginia in the case of *Commonwealth* v. *Marston's Administrator*, 9 Leigh, page 36. To that case, there is appended a note, as follows:

> "There was an error committed by the reporter, in the report of *Lilly's* case, 1 Leigh 525, 6. It is there stated, that the circuit court of *Henrico* reversed the auditor's decision, and ordered him to issue a warrant in favor of *Lilly's* administrator, *for the amount of five years full pay, with interest from the 22d April, 1873;* and that that judgment was affirmed. But, in fact, the circuit court gave judgment, *not* for the *commutation*, but for the *half pay* that accrued to *Lilly* during his life, without interest; and that was the judgment which this court affirmed. This court expressly decided, that no *interest* should be paid; see judge *Green's* opinion, in the same case, *Id.* 538, and in *Markham's* case, *Id.* 523, 4."

6. WEST VIRGINIA AGREED TO ASSUME A JUST PROPOSITION, NOT OF THE OUTSTANDING OBLIGATIONS OF VIRGINIA, BUT OF HER DEBT.

It is clear that the constitution can bear no such construction as is sought to be placed upon it. It must be borne in mind that neither by the ordinance nor by the constitution was there any agreement to assume, or an assumption of, any proportion of the obligations of the

Commonwealth of Virginia outstanding prior to 1862. If she had agreed to assume a just proportion of the obligations of the commonwealth, it might be argued that, as they were interest-bearing obligations, she assumed to pay the principal and accruing interest, until paid; but the bonds or state stock, as evidences of debt, are one thing. The debt is another, and different thing. Moreover, it seems impossible to impute an intention, upon the part of the framers of the two instruments, that the new state should assume a proportion of the outstanding interest-bearing securities of the old state, January 1, 1861. For that day, it was an enormous debt. The framers of those instruments were well aware, as were the people in the Trans-Allenghany territory, that the moneys borrowed by the state had been expended in payment of stock subscriptions in corporations created to construct various internal improvements. It is conceivable that it could have been intended by the convention which framed either the ordinance or the constitution that the new state should assume, considering the character of the debt, the purposes for which it was contracted, the territory within which it had been expended, from 1823 to 1861, a proportion of the obligations representing the debt, and especially in view of the fact that the people of what now constitutes West Virginia had been, during a large portion of the period, deeply resentful that they were taxed to pay interest upon such indebtedness, so little of the proceeds of which was expended within their territory, and enured to their benefit?

7. THERE IS NO EVIDENCE THAT THE IMPROVEMENTS CONSTRUCTED BY VIRGINIA WITHIN HER PRESENT LIMITS WERE FOR THE BENEFIT OF THE REGION NOW WEST VIRGINIA.

It is alleged in the bill that these expenditures were largely with a view to the ultimate benefit of West Virginia, and to secure the development of her resources and the prosperity of her people. This is alleged in general terms. If this allegation is susceptible of proof, no proof has been offered. If, by the participation of her government and people in the war she was, and as a consequence of the impoverishment and destruction wrought by war within her limits, unable to continue to completion such works as would, if completed, have benefited West Virginia and her people, it is safe to say that the people

of that portion of the state did not contribute to that result (*Davis* v. *Gray*, 16 Wallace 203).

The answer denies that the purpose of the improvements or the effect of the improvements, in the main constructed within the present limits of Virginia, were with reference to the well-being, or would, if completed, have essentially affected the well-being of what is now West Virginia and her people. Answer under oath is not waived by the bill, and the answer is verified by the oath of the governor of West Virginia. No evidence has been offered upon the subject.

8. FACTS SHOWING INJUSTICE OF VIRGINIA'S CLAIMS.

The injustice of charging to West Virginia a proportion of the internal improvement debt of Virginia, prior to January 1, 1861, *as such*, is further intensified by the facts in relation to the population of the other during the years from 1823 to 1861. While the territory was separated, as we have said, from Eastern Virginia, and what is known as "The Valley" by the Alleghany Mountains, and while the markets of its people were to the westward, rather than to the eastward, it was no sparsely settled region.

There was laid before the constitutional convention of 1829-30 by Mr. Doddridge, one of its ablest members, who represented West Virginia, a statement showing the distribution of the white population in 1810, 1820 and 1829, as follows:

"In 1810 the white population was distributed thus, viz.:

East of the Blue Ridge		338,837
In the Valley	108,355	
West of the Alleghany	104,377	212,726
Whole population		551,553

"In 1820 population was distributed thus, viz.:

East of the Blue Ridge		248,875
In the Valley	121,196	
West of the Alleghany	133,112	254,308
Whole population		603,081

"And in 1829 the white population, as estimated by the auditor, stood thus:

East of the Blue Ridge		362,745
In the Valley	138,134	
West of the Alleghany	181,384	319.516
Whole population		682,261"

It will be noticed that from 1810 to 1820 the population east of the Blue Ridge increased 10,038. The Valley increased 12,841. The increase west of the Alleghany was 28,735. From 1820 to 1829 the increase in the white population east of the Blue Ridge was 13,870. The increase in the Valley was 16,938. The increase in the Trans-Alleghany territory was 48,272.

(These figures from the book entitled "Proceeding and Debates of the Virginia State Convention of 1829-30," page 686. There are some errors in addition; but they are, relatively, trifling. The book was printed after the convention had been dissolved, and, undoubtedly, the figures used by Mr. Doddridge, were correct.)

It will be observed that the increase in population in the territory "east of the Blue Ridge" combined with the increase in population "in the Valley" was 30,808, a total increase for the two regions of 17,464 less than the total increase in population in the territory "west of the Alleghany."

Mr. Doddridge said (page 682):

> "It thus appears that in 19 years, white population east of the Blue Ridge, beginning with 338.837, has increased to 362,745, or to the amount of 29,908. The increase in the Valley having in 1810, 108,345 has been 29,779. Making in 1829, 138.134. These data show that the increase in the valley and in the whole east are nearly equal. That in the Valley being the smallest only by a difference of 129. As the Valley has kept pace with the whole east for nineteen years past, so it probably will hereafter, and therefore, a permanent apportionment which would do justice to the present Valley and eastern population with reference to each other, might probably suit them in all future time: yet, the same apportionment might operate to the

> utmost excess of cruelty and injustice to the Trans-Alleghany country. To concur in such a one would be a treachery to the Valley, of which we have not the least apprehension. The extent of this injustice will be manifest by comparing the increase of that population during the same period of 19 years. In 1810 we commenced with a population of 104,377, which, in 1829, is 181,384, having increased 77,007, or four times as much as either the Valley or all the country east of the Blue Ridge mountains."

The Territory of West Virginia was, by location, climate, proximity to Pennsylvania, Ohio and Kentucky, and in the sentiment of her people upon the question of slavery and the trifling number of slaves within her territory, inviting an immigration, which never sought, in even measurably the same numbers, the real slave states of the union. Notwithstanding this population, constantly increasing, of the $33,000,000 expended out of borrowed money, less than one-tenth was expended within what now are the limits of West Virginia; and it may very well be said that it was largely due to the fact of disproportionable representation.

It is truthfully said in "Part II." of this brief, page 173:

> "It should be remembered that there was not in the entire territory of Virginia, which is now West Virginia, on the 1st day of January, 1861, a single mile of state built or state-aided railroad, nor a mile of canal, nor a state building; not even a school, not a public institution of any kind."

9. UNDER THE ORDINANCE AND HER CONSTITUTION WEST VIRGINIA CANNOT BE CHARGED WITH INTEREST UNTIL AFTER THE ASCERTAINMENT IN THE MANNER PRESCRIBED OF HER EQUITABLE PROPORTION OF THE OLD VIRGINIA DEBT.

The ordinance prescribes a method of accounting by which a definite sum shall be ascertained. This sum the ordinance, in effect, declares to be West Virginia's just proportion of the old Virginia debt. Section 8 of Article VIII. of West Virginia's Constitution, when read in connection with the ordinance, as this Court has said it should be, produces precisely the same result. West Virginia did not agree to

pay interest on the sum to be ascertained by the prescribed method before this sum was ascertained.

We refer again to section 8 of Article VIII. of the Constitution of West Virginia.

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the 1st of January, 1861, shall be assumed by this state, and the legislature shall *ascertain the same* as soon as may be practicable and provide for the liquidation *thereof* by a sinking fund sufficient to pay the *accruing* interest and redeem the *principal* within thirty-four years."

That the word "thereof" refers to the result of an accounting in accordance with the terms of the ordinance, or, if the latter be eliminated, in accordance with such method as the legislature shall adopt, is not susceptible of doubt. That the command to the legislature to "provide for the liquidation thereof," means the sum which the legislature shall ascertain by pursuit of the methods prescribed by the ordinance, or if that be eliminated, by such method as the legislature shall adopt, is equally clear. The words "accruing interest" obviously refer to the word "principal."

We maintain most earnestly that, all things considered, it is clear that it was the manifest purpose that West Virginia was not to assume any portion of the public debt of Virginia as such, but was only to contribute to that end such sum, be it much or little, as would result from the accounting prescribed by the ordinance, unless the general words in the first clause of section 9 of the ordinance control and destroy the special provisions which follow, all being expressed in a single sentence. Moreover, this produces an equitable result, for the debt being an internal improvement debt, and nine-tenths of it having been expended by Virginia within her present limits, in public improvements, it would have been, in the highest degree, inequitable for the new state to take upon herself an obligation to contribute one-third of that debt, when Virginia retained the bank and other stocks.

"Accruing" is a word operative in the future, and has no reference to the past. When we speak of past due interest we refer to it as "accrued interest."

Six months' interest, the record shows, was due and defaulted on

this debt on January 1, 1861. Where is there any indication here, upon the part of West Virginia, of an intention to pay accrued interest? The interest up to the time of the ascertainment would be "accrued." She did not in her constitution assume:

> "a just proportion of the debt, with interest to accrue thereon, to the date of the ascertainment, until the just proportion shall have been ascertained and paid."

The constitution speaks of "accruing interest" and that means the interest to accrue on the principal thereafter to be ascertained, and not yet ascertained. This is not technical. It is substantial. It is in harmony with the ordinary use of the word "accrue" and with its technical, legal signification.

At an earlier hearing in this case, we called the attention of the Court to the case of *Gross* v. *Partenheimer*, 159 Pa. 556. The case may be briefly stated:

Plaintiff agreed to purchase from defendant, in April, 1883, a lot of land, for $8,000, payable $5,000 in cash, on delivery of deed, and the residue by plaintiff's assumption of a mortgage for $3,000, then on the lot, plaintiff to pay also the accruing interest on said mortgage, not exceeding six months. The six months' interest from the date of mortgage to February 26, 1893, was past due and unpaid, and, to avoid foreclosure proceedings, plaintiff was compelled to pay the same: He then brought suit to recover the sum thus paid, the vendor claiming that the purchaser was obliged to pay it under the agreement.

The court, at page 558, said:

> "This contention hinges entirely on the proper construction of the clause in the contract of sale above referred to, wherein the plaintiff agrees to pay 'the accruing interest in said mortgage not exceeding six months.' There is nothing in the affidavit of defense that can in any wise aid or control the construction of this clause. If, 'accruing interest' means interest which, according to the terms of the security, was due and payable on February 26, 1893, and remained overdue and unpaid at the date of the contract, the defendant's construction should prevail; but we cannot agree that these words mean any such thing. Such a con-

struction would be strained and wholly unwarranted by the language employed. As generally undertsood, accruing' interest means running or accumulating interest, as distinguished from accrued or matured interest. When we speak of interest which is from day to day accumulating on the principal debt, but which is not yet due and payable, we call it accruing interest. When we refer to interest heretofore payable but still remaining unpaid, we speak of it as overdue interest, arrears of interest, or interest in arrear, just as we speak of rent in arrear. We are therefore of opinion that the words 'accruing interest' do not refer to, or in any manner embrace any part of the six months' interest which was then overdue and unpaid. That interest was an encumbrance on the lot, which the defendant was bound to remove. He refused to do so, and the plaintiff, who was compelled to pay it, in order to prevent foreclosure of the mortgage, etc., is entitled to recover the amount thus paid with interest from date of payment. The learned court was clearly right in adjudging the affidavit of defence insufficient and entering judgment against defendant for the amount claimed by plaintiff."

If there had been any intent to assume, or pay, the accrued interest on the bonds of Virginia, outstanding, the constitution would have so expressed it; and, as expressed, we earnestly contend that it can be construed to mean no such thing.

For the convenience of the Court, we venture to insert the memorandum of authorities submitted by the late John G. Carlisle, who died during the last summer, upon this question of the liability of the state to pay interest.

10. MEMORANDUM OF JOHN G. CARLISLE.

"It will be observed that in Paragraph II. of this draft of a decree the Master is not only directed to ascertain the amount and proportion of said indebtedness, but 'of the interest accrued thereon.'

"Counsel for the defendant object further to this paragraph because there is no legal ground for directing the ascertainment of interest. The State of West Virginia has not obligated herself in any manner for the

payment of interest. The principle is well settled that a state is not liable to pay interest unless it has expressly contracted to do so.

"In support of this proposition this Court, in *United States* v. *North Carolina*, 136 U. S. 211, said:

"'A state is not liable to pay interest on its debts, unless its consent to do so has been manifested by an act of its legislature, or by lawful contract of its executive officers.'

"Following the principle thus announced by this Court, many of the state courts have laid down in distinct terms the same proposition. Among the decisions of those courts are the following:

Sawyer v. *Colgan*, 102 Cal. 293; 36 Pac 583.

Hawkins v. *Mitchell*, 34 Fla. 421, 422; 16 So. 316.

Molineaux v. *State*, 109 Cal. 380; Am. St. Rep. 50; 42 Pac. 34.

Flint, etc., R. R. v. *Board of State Auditors*, 102 Mich. 502; 60 N. W. 971.

Carr v. *State*, 127 Ind. 204; 22 Am. St. Rep. 624.

"In *Carr* v. *State*, 127 Ind. 204, 22 Am. St. Rep. 624, this principle is announced as one of the points decided:

"'A sovereign state is not bound to pay interest unless it has contracted to do so.'"

"The court, in the course of its opinion in this case, says:

"'In the case of *State ex rel.* v. *Board*, etc., 36 Ohio St. 409, it was held that in the absence of a promise to pay interest none can be recovered against a state, and that a state is not within the provisions of a general statute providing for the payment of interest in cases where money is wrongfully withheld from a creditor. The court put its decision upon the familiar rule that a sovereign is not bound by the words of a statute unless it is expressly named, and in support of its conclusion cited these cases: *Trustee, etc* v. *Campbell*, 16 Ohio St. 11; *Jaselyn* v. *Stone*, 28 Miss. 753; *State* v. *Kinne*, 41 N. J. 238; *Attorney General* v. *Cape Fear, etc., Co.*, 2 Ired. Eq. 444; *Auditorial Board* v. *Arles*, 15 Tex. 72; *State* v. *Thompson*, 10 Ark. 61. In *Wightman* v. *United States*, 23 Ct. of Cl. 144, the general rule

> was stated, and it was said: 'Hence there is no law fixing a rate for interest for all classes of the public debt, and a long-established public policy has been to pay interest only where it is a subject of express agreement or of positive enactment.' It was held in the case of *Tillson* v. *United States*, 100 U. S. 43, that a statute referring to a claim did not authorize a recovery of interest, in the absence of words expressly providing for the payment of interest. It is impossible to escape the effect of these authorities, and considerations may be readily suggested which increase their force. One is, there is no right to coerce the payment of a debt due from a sovereign, and, of course, a sovereign may impose limitations upon its liability."

In a note appended to this case as reported in 22 American State Reports, at page 448, we find the following:

> 'With respect to the obligation of the state to pay interest upon its indebtedness, the principal case is well established by other authorities upon the same subject. In nearly and perhaps all of the states there are statutory provisions providing that moneys, after they become due, shall, in the absence of express contract to the contrary, bear the rate of interest specified in such statutes; but, acting under the old common-law rule that the king or sovereign is not bound by statute unless expressly named therein, it has been uniformly held that these statutory provisions respecting interest did not apply to any obligation either of the state or of the national government, and therefore that interest is never allowed upon such obligations, in the absence of some special statute clearly manifesting the intention of the sovereign to be bound for the payment of interest upon the particular obligation or class of obligations under consideration (*United States* v. *North Carolina*, 136 U. S. 211; *State* v. *Thompson*, 10 Ark. 61; *State* v. *Board of Public Works*, 36 Ohio St. 409; *State* v. *Bank of Washington*, 18 Ark. 554; *United States* v. *Sherman*, 98 U. S. 565; *United States* v. *Bayard*, 127 U. S. 251; *Tillson* v. *United States*, 100 U. S. 43; *In re Gosman*, 17 Ch. Div. 771; *Attorney General* v. *Cape Fear N. Co.*, 2 Ired Eq., 444; *Bledsoe* v. *State*, 64 N. C. 392; *Trustee* v. *Campbell*, 16 Ohio St. 11; *Joselyn*

v. Stone, 28 Miss. 753; *Wightman* v. *United States*, 23 Ct. of Cls. 144)."

11. VIRGINIA'S RESPONSIBILITY FOR THE DELAY IN APPORTIONING THE DEBT.

Reading section 8 of Article VIII. of the Constitution of West Virginia with the ordinance, or regardless of it, the complainant, by her own act, rendered impossible, any ascertainment prior to January 1, 1871, of the just proportion of the public debt of Virginia to be borne by West Virginia. In 1866, she instituted in this Court, the suit of *Virginia* v. *West Virginia*, 11 Wallace 39. This was an original bill to settle the boundary line between the States of Virginia and West Virginia. It involved the question whether the counties of Berkeley and Jefferson were a part of West Virginia. The case was not decided until December, 1870. While Virginia cannot be complained of for instituting and prosecuting the suit, it is manifest that, until the determination thereof, there could be no apportionment of the old Virginia debt, either under the ordinance or under section 8 of Article VIII. of the Constitution of West Virginia.

Pending the decision of the case, the accounting provided for by the ordinance would be impossible, in view of its requirements:

> (*a*) "*Charging to it all state expenditures within the limits thereof.*"

Manifestly, so long as those limits were unsettled, this could not be done.

> (*b*) "*A just proportion of the ordinary expenses of the state government since any part of said debt was contracted.*"

This could not be fulfilled upon the basis of taxable values, area or population until the boundaries of the state were settled.

> (*c*) "*Deducting therefrom the moneys paid into the treasury of the commonwealth from the counties included within the said new state during the same period.*"

This could not be done until the territorial limits of the new state

were settled, and it was known what counties were included within the new state. So that, while entirely within her right, Virginia's own act compelled a delay from the filing of this bill until the entry of the final decree therein of an adjustment under the ordinance or under the constitution.

Section 9 of Article X. of the Constitution of Virginia, which became operative in 1870, contained the following provisions:

> "The general assembly shall provide by law for adjusting with the State of Virginia the proportion of the public debt of Virginia proper to be borne by the States of Virginia and West Virginia, and shall provide that such sum as shall be received from West Virginia, shall be applied to the payment of the public debt of the state."

We do not deem it necessary here to give a history of the appointment of commissioners by the two states with reference to the adjustment of the debt. This history is set out in the pleadings. It is enough to say that as early as 1870, a commission appointed by West Virginia proceeded to Richmond, where the archives all were, and their visit resulted in accomplishing little. But, on March 30, 1871, the legislature of Virginia, by a law passed in 1871, apportioned the debt between the two states, assuming for itself two-thirds, and issuing certificates for the other one-third as West Virginia's share. Subsequent legislation of Virginia proceeded upon that apportionment, certificates being issued, to be accounted for by West Virginia.

It is difficult to conceive of any theory upon which Virginia could justly assume the function of apportioning the debt and issuing obligations for which West Virginia could be accountable. Virginia's general assembly were, by the constitutional provision above quoted, required to provide by law for adjusting with the State of West Virginia the proportion of the public debt to be borne by the two states. They proceeded to apportion it themselves, without consulting West Virginia.

West Virginia then was a comparatively new state, and her resources were relatively undeveloped.

To issue securities to be accounted for by West Virginia, was not only apparently in defiance of Virginia's own constitutional provision,

but was usurpatory, detrimental to the credit of West Virginia, and well calculated to produce resentment among her people.

From that time, West Virginia was placed in a position which rendered it almost impossible for her, with dignity and self respect, to take further initiative in the matter.

In 1894, the legislature of Virginia, after she had funded and refunded her debt, adopted a joint resolution, providing for the appointment of a

> "commission of seven members, who were authorized and directed to negotiate with the State of West Virginia for a settlement and adjustment of the latter state's part of the public debt proper to be borne by her."

It was provided:

> "But said commission shall, in no event, enter into any negotiation hereunder, except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof."

It is quite manifest that West Virginia was here called upon, as a condition of any negotiation whatever, to accept the action of Virginia taken in 1871, 1879 and 1894 apportioning the debt, two-thirds to herself and one-third to West Virginia. It needs no argument to show that West Virginia could not be expected to negotiate upon such a basis. It was not until 1905, preliminary to the institution of this suit, that a commission went to West Virginia freed from such restraint.

The attention of the Court is especially directed to the Appendices "A," "B," "C," and "D" printed herewith.

We respectfully submit that from the record in this cause and upon the authorities cited by counsel for the defendant, the State of West Virginia ought to prevail.

WILLIAM G. CONLEY,
Attorney General of West Virginia.

JOHN C. SPOONER,
CHARLES E. HOGG,
W. MOLLOHAN,
GEORGE W. MCCLINTIC,
W. G. MATHEWS,
WM M. O. DAWSON,
Of Counsel for Defendant.

APPENDICES
A, B, C AND D.

APPENDIX A.

PLAINTIFF'S EXHIBIT "D-1."

Commonwealth of Virginia v. *State of West Virginia.*

Ordinary Expenses of Government.

ARTICLE [PARAGRAPH] IV.

Statement Prepared by
PRICE, WATERHOUSE & COMPANY,
Chartered Accountants.

Division of Ordinary Expenses of Government as per Article IV.:—			$40,023,287.79
I. On basis of Total Population (including Slaves) June 20, 1863:			
Virginia		75.66%	$30,281.619.54
West Virginia		24.34%	9,741,668.25
Note: This is without regard to color,—Whites and Blacks being taken together in arriving at the population of June 20, 1863, from the census figures of 1860 and 1870.			
II. On basis of Population (without Slaves) Estimated June 20, 1863:			
Virginia		66.71%	$26,699,535.28
West Virginia		33.29%	13,323,752.51

Ordinary Expenses of Government—Article IV.

	Schedule.	
General Expenses of Government, as per Commonwealth Disbursements	1	$20,371,768.47
Administrative Expenses of the Board of Public Works	2	221,532.78
Maps, Expenses of Surveys and Inspection of Internal Improvements	3	155,643.39
General Expenses of the Literary Fund	4	891,435.66
Interest on old Military Debt		24,265.31
Interest on Treasury Notes		157,879.02
Specie Premium		11,534.63
Interest on Sundry Claims		52,324.09
Interest on Temporary Loans		112,545.82
Interest on Public Debt	9	18,024,358.62
		$40,023,287.79

SCHEDULE I.

Analysis of General Expenses of Government—Summary.

Description.	*Amount.*
General Assembly	$ 4,130,064.55
Officers of Government	3,595,102.14
General Government	8,495.63
Pensions	88,548.74
Criminal Charges	1,785,632.11
Commissioners of the Revenue	1,697,751.95
Court Charges	1,188,212.34
Contingent Fund	679,120.46
Militia	755,663.41
Expenses of Representation	24,120.17
Public Arsenals	96,709.63
Public Guard (City)	839,528.23
Penitentiary, House Expenses	215,985.76

SCHEDULE 1—*Continued.*

Description.	*Amount.*
Penitentiary, Criminal Charges	256,522.93
Penitentiary, Officers	305,367.24
Warrants on Account, and General Appropriation	746,087.72
Slaves Transported and Executed	611,351.23
Gun Carriages	14,317.05
Guards in the Country	105,049.34
Public Improvements	11,803.75
Military Contingent	75,395.41
Lunatic Asylums	1,888,992.06
Revisions of Laws	4,500.00
Seines	71.10
Public Warehouses	35,722.00
Tobacco Sales	454.91
Armory, Manufactory and Repairs of Arms	243,015.60
Sale of Slaves	99.26
Expense of Lunatics	158,112.71
Collection and Transportation of Arms	10,212.83
Revolutionary Claims Agent	3,861.67
Administrators of J. Merryweather and R. Graves	11,067.33
Electors	11,839.26
Civil Prosecutions	47,684.56
Repairs to Governor's House	50,733.60
Penitentiary, Enlarging and Repairs	53,572.60
Clerk Hire, etc., on account of Delinquent Lands	18,374.27
Repairs to Capitol	51,281.47
Public Library	695.23
Military Equipment	9,993.09
Buckingham Furnace Lands	771.72
Transportation of Free Persons of Color to Liberia	26,103.50
Geological Survey	40,980.61
Military School, Appropriation and Repairs	296,296.19
Reassessment of Lands	147,868.10
Deaf, Dumb and Blind Institution	369,919.73

SCHEDULE 1—*Continued.*

Description.	*Amount.*
Unexpended Postage returned to Treasury	53.13
Penitentiary—*Hatcher* v. *Commonwealth*	12,897.96
Ferriage of Troops during late War	54.71
Criminal and Civil Code	52,073.88
Rents	52.25
Virginia Volunteers	29,470.05
Tobacco Sales and Burnt Tobacco	1,931.30
Land Taxes	296.59
Assessment of Free Negroes	897.21
Expenses of Sinking Fund	3,904.82
Fugitive Slave Fund	5,201.00
Land Sold in 1855	8.40
Public Printing	23,092.31
Claims under 27th and 45th ch. of Code of Virginia	1,344.05
Weights and Measures	14,854.90
Registration Expenses	14,661.20
Treasury Note Expenses	375.74
Tax on Dividends	128.50
Arms and Munitions of War	4,111.13
Survey of Washington's Birthplace	139.21
Temporary Clerks in Auditor's Office	3,826.64
Marking Virginia and Maryland Boundary	6,094.44
Maps	11,400.90
Public Arms	11,499.97
State Convention	258,677.40
Repairs to Legislative Halls	4,650.07
Medical College	25,000.00
Experimental Railroad	10,000.00
Blair & Bolling Special Service	200.00
Total	$21,209,952.03
Less—Total Credits as per Summary Schedule after P. No. 1	838,183.56
Total as per Recapitulation	$20,371,768.47

SCHEDULE "S."

Analysis of "Sundry Receipts."

Credits to Ordinary Expenses of Government—Auditor of Public Accounts—Summary.

Description.	*Total Amounts.*
Refunds of Advances, and amounts paid in error	$ 36,252.56
Rents	53,160.55
Repayments of Loans and Interest	1,603.35
Sundry Sales	15,631.70
Judgment on Bonds	16,483.69
Sale of Slaves	272,347.57
Sale of Land	9,189.61
Returns—Expenses of Lunatics	3,588.65
Returns—Lunatic Hospital	16,670.48
Returns—Court Charges	1,656.68
Governor's House	1,701.17
Refunds—Criminal Charges	3,754.69
Tax on Salaries	449.16
Refunds—Attorney General's Fees	1,622.74
Records of Court of Appeals and Clerk's Fees	42,154.55
Interest on Loans	3,914.53
Weighmaster of Live Stock	8,493.32
Virginia Volunteers	8,126.43
Tax on Express Companies	252.68
Collections from Banks to pay salary of Treasurer's Clerks	1,500.00
Voluntary Enslavements	5,175.54
Fugitive Slave Fund	2,444.50
Miscellaneous	53,078.06
	$562,242.26
Proceeds of Goods Manufactured at Penitentiary	275,941.30
Total Credits	$838,183.56

SCHEDULE 2.

Board of Public Works Disbursements—Administrative Expenses—Summary.

Description.	*Amount.*
Salary of Engineers	$ 54,353.30
Pay and Mileage—Members of the Board	19,286.71
Literary Fund, Difference in Exchange, etc.	187.50
Maps, Books, Supplies, Stationery, Postage, etc.	9,599.51
Salary of Secretary	4,982.97
Printing	14,098.70
Advertising	1,013.41
Doorkeeper's and Messengers' Compensation, Postage, etc.	4,208.34
Premium in favor of Specie over Bank Notes	45.60
Equivalent for Specie in Paying Auditor's Warrants	24.31
Literary Fund Transfer	48.67
Tax on Salaries—2nd Auditor's Office	143.76
Compensation	84.17
Engineers' Supplies and Repairs	2,200.63
Fee Bills	1,186.29
Expenses of Tour of Examination	488.37
Traveling Expenses—Respecting Loans, etc.	2,304.53
Expenses preparing Coupon Bonds	13,346.78
Damage Account—Experimental Railroad	65.00
Expenses *re* B. & O. Railroad	249.40
Expenses *re* Investigation Selden, Withers & Company	9,351.45
J. T. Soutar—New York Bond Agent	3,686.60
Commissioners, etc., for paying Coupons	4,604.87
Tabulated Railroad Reports, etc.	1,074.50
Sextant	40.00
Express	18.00
Collectors' Salaries	6,720.68
Salary of Second Auditor and Clerks	68,119.83
	$221,532.78

SCHEDULE 3.

Board of Public Works Disbursements.

Analysis of Charges to Both States to be Charged, in the Final Settlement, to Ordinary Expenses of Government.

MAPS.

Year.	*Reference.*	*Amount.*
1820	5-20	$12,000.00
1	1	9,000.00
2	1	9,000.00
5	22	4,428.79
1836	25	55.00
8	35	700.00
1848	22	750.00
9	21	750.00
1851	24	995.62
2	11-21-22	2,730.46
4	149	292.61
5	7	803.00
6	7	899.50
8	8	125.00
		$42,529.98

SURVEYS—SALARIES AND EXPENSES.

Year.	*Reference.*	*Amount.*
1820	6-7-8-10	$5,373.81
1	11	1,000.00
2	8	1,000.00
3	12	1,889.50
4	12-13	500.46
5	9-10	4,270.38
6	8	2,766.66
7	8	2,319.35
8	7	1,682.22

SCHEDULE 3—*Continued.*

Year.	*Reference.*	*Amount.*
9	8	2,100.00
1830	5	3,941.00
1	6-7	4,449.99
2	13	280.00
4	Pt. 16	2,151.32
5	Pt. 14-15	7,122.13
7	Pt. 22-23	12,464.35
8	20-26	16,699.84
9	13-16	13,678.93
1840	30-32	10,787.00
1	2-3	5,530.00
2	2	3,400.00
3	3	1,233.33
7	18	500.00
		$114,273.35
Credits as per Schedule attached		3,903.88
		$110,369.47

INSPECTION OF INTERNAL IMPROVEMENTS OF STATE.

Year.	*Reference.*	*Amount.*
1849	15	$ 665.00
1850	12	1,087.22
1	15	1,027.13
2	8	656.37
		$3,435.72
Credits as per Schedule attached		691.78
		$2,743.94

SUMMARY.

Maps	$ 42,529.98
Surveys, Salaries and Expenses	110,369.47
Inspection of Internal Improvements	2,743.94
	$155,643.39

SCHEDULE 4.

Summary of Analysis—Literary Fund Disbursements—General Expenses and Sundries.

Description.	*Amount.*
Copies of Judgments	$ 433.75
Clerks' Salaries	82,259.73
Expenses and Commissions to H. Eustace, etc., account of Bristoe Estate	1,786.30
Advances Account of Contingent Expenses	350.00
Judgments and Commissions on Escheats, Delinquent and Redeemed Lands	26,029.48
Accrued Interest and Premium on Sundry Securities Purchased	1,667.95
Expenses account of Purchase of Stock by J. Bauer	902.23
Commission on U. S. Debt	4.199.92
Cost of Seal	100.00
Stationery, Postage, Printing, Fee Bills and Advertising	8,625.21
Commission on Bonds	94.29
Sale of Slaves and Expenses of Free Negroes	837.73
Expenses on Sale of Stock	14.00
Taxes on Salaries	217.23
State Claims against the United States	2,722.82
Davis' Book on Criminal Law	12,000.00
Medical College	5,000.00
University of Virginia	649,874.00
Virginia Military Institute	28,500.00

SCHEDULE 4—*Continued.*

Description.	*Amount.*
Deaf, Dumb and Blind Institute	40,821.02
Hampden-Sidney College	25,000.00
Total	$891,435.66

SCHEDULE 9.

Interest on Public Debt.

Interest on Public Debt paid by the Board of Public Works	$5,825,538.66	
do do do	1,834,276.61	
Interest on Bank Debt paid by the Treasurer of the Commonwealth	360,883.02	
Interest on Public Debt (C. and O. Canal Loan) paid by Treasurer of Commonwealth	207,479.25	
Interest on Public Debt paid by the Sinking Fund from its establishment in 1853 till December 31st, 1860	11,762,509.04	
Interest on James River and Kanawha Guaranteed Bonds, paid by Treasurer of the Commonwealth	613,542.66	
		$20,606,229.24
Deduct		
Interest received on State Stock held by Board of Public Works and paid to that Board	$312,211.22	
Refund of Interest on Public Debt previously paid Selden, Wethers & Co.	29,924.70	

SCHEDULE 9—*Continued.*

Interest received by Sinking Fund of Trustees of Selden, Wethers & Company and J. T. Soutters ----	40,133.59	
Interest received on State Stock held by Board of Public Works, paid to that Board, etc., ----------	639,670.71	
Deduct		
Interest received by the Commonwealth on Certificate of State Stock, $100,000, owned by the Commonwealth ----------	30,213.70	
Interest received on State Stock held by the Literary Fund ----------	1,324,051.72	
Interest received on Bonds of J. R. & K. Company paid to the Treasurer of Commonwealth by that Company ----------	142,181.74	
Interest received by Sinking Fund on Stock held by them as Investments ----------	61,807.55	
Refunds received by the Sinking Fund account of over-payments ------	1,672.69	
		$ 2,581,870.62
		$18,024,353.62

Interest on 7% War Debt of 1813-14, viz: $319,000.00 and Interest on 6% War Debt of 1809, viz: 24,039,17, both of which were held throughout the period by the Literary Fund, has been excluded in both the Payments and Receipt statement above.

APPENDIX B.

CHAP. 75.—An Act to convert the Branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independent Bank.

Passed March 13, 1862.

Whereas the armed occupation of northwestern Virginia, by lawless enemies of this state, has entirely destroyed all business intercourse and relations between the Northwestern Bank of Virginia at Wheeling and its branch at Jeffersonville, to the great detriment of the state and loyal stockholders, and it seems proper under the circumstances to dissolve the connection heretofore subsisting between said bank and its branch at Jeffersonville, and of authorizing the latter to transact business as a separate and independent corporation:

1. Be it therefore enacted by the general assembly, that the branch of the Northern Bank of Virginia at Jeffersonville be and the same is hereby constituted, created and incorporated a separate, distinct and independent bank, under the corporate name of Graziers Bank of Virginia; and all the power, control, direction, supervision, relation and connection of said Northwestern Bank of Virginia over and with the said branch at Jeffersonville, are hereby dissolved, abrogated and annulled.

2. All the assets held by said branch (embracing all bills and notes discounted, whether the same be in suit, protested, due or maturing, all judgments, balances due on accounts current, all money, either in coin or currency, all evidences of debt or other securities, all real estate, and every right and interest) are absolutely vested in the said Graziers Bank of Virginia; and in every case where suit has been instituted in the name of the Northwestern Bank of Virginia for the recovery of money or other thing, to which said branch is entitled, the suit so brought shall be prosecuted in the name of the Northwestern Bank of Virginia, for the use and benefit of said Graziers Bank

of Virginia; and in every case where suit shall hereafter be instituted for the recovery of money or other thing belonging to said branch, the suit shall be in the name of said Graziers Bank of Virginia.

3. The said Graziers Bank of Virginia is subject to all the liabilities of the said branch, except so far as the said liabilities are modified by the followng sections of this act.

4. The said Graziers Bank of Virginia shall in no event be required to account to the said Northwestern Bank of Virginia for any portion of the net profits or contingent fund of the said branch, nor to contribute to the payment of, or pay out of the assets of said branch, or otherwise, to any stockholder, billholder or creditor of the said Northwestern Bank, any sum of money which any such stockholder, billholder or creditor may be entitled to demand and have of said Northwestern Bank of Virginia.

5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Graziers Bank of Virginia.

6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof.

7. The Graziers Bank of Virginia, hereby established, shall be required to redeem, from loyal citizens of the Confederate States of America, in notes of its own issue, all such notes of said branch as may be in their possession at the passage of this act; provided the same be presented in six months after notice of this provision shall have been published for one month in some weekly newspaper published in the city of Richmond: and provided further, the amount

offered for redemption shall not exceed one hundred and eighty thousand dollars.

8. The legislature reserves the power to provide, after the termination of the war with the United States, the extent, mode and time of redemption by said Graziers Bank of Virginia, of any outstanding notes of said branch, with which, according to the principles of equity, justice and right, it is chargeable. But as it is represented to this general assembly that the said branch has a special deposit of twenty-four thousand dollars in gold with the said Northwestern Bank of Virginia, heretofore made by said branch to meet the redemption of its notes; and as notes payable at said branch may have been issued by the said Northwestern Bank of Virginia, which have not been reported to said branch, nor charged to said Northwestern Bank of Virginia, and which it would be evidently unjust to require the said branch to redeem, it is hereby expressly provided and enacted, that the whole amount of circulation of the said branch, which the said Graziers Bank of Virginia shall be required to redeem, under the provisions of this act, and of any subsequent act of the legislature, taken collectively, shall not exceed the balance of the circulation of said branch, after deducting therefrom the sum of twenty-four thousand dollars on account of said special deposit, and also any amount or amounts of circulation payable at said branch (if any such there be), issued by the said Northwestern Bank of Virginia, of which the said branch has not heretofore received notice from said Northwestern Bank of Virginia.

9. The cashier shall forthwith, after the expiration of three months from the passage of this act, out of the surplus or contingent fund of the said branch, pass to the credit of the stockholders of the said Graziers Bank of Virginia and to the state, a dividend of ten per centum upon their stock issued under the provisions of the fifth and sixth sections of this act.

10. The said Graziers Bank of Virginia shall be located and transact its business at the town of Jeffersonville.

11. The said Graziers Bank of Virginia may, by sales of new stock, increase its capital to two hundred thousand dollars.

12. The present board of directors for the said branch shall con-

tinue to act as a board of directors for the said Graziers Bank of Virginia until a new board shall be appointed under the general law.

13. Except so far as the same may be inconsistent with the provisions of this act, the general banking law of the state shall apply to the said Graziers Bank of Virginia; and the general law of joint stock companies shall apply to the said Graziers Bank of Virginia, so far as the same is applicable to it, and not inconsistent with the provisions of this act.

14. This act shall be in force from its passage, but may be repealed, altered or modified, at the pleasure of the general assembly.

(Copied from Acts of the General Assembly of Virginia, session of 1861-2, pp. 90, 91, 92, 93.)

Report of Honorable Chester D. Hubbard.

Wheeling, West Virginia, Feb. 23, 1871.

Hon. W. E. Stevenson, President.

Dear Sir: In accordance with the instructions of the Board of the School Fund in their action of the 15th, I have ascertained and herewith transmit a statement of the stock held by the state in the National Bank of West Virginia at Wheeling, the First National Bank of Wellsburg, and the Parkersburg National Bank, and the different funds to which said stock is credited.

I also proceeded to Wellsburg and exchanged as directed the stock of the Internal Improvement Fund in the First National Bank of Wellsburg, 163 shares, for United States 5-20 coupon bonds (the Bank had no registered bonds), receiving therefor six teen bonds of $1,000 each and three bonds of $100 each lettered and numbered as follows: $1000 K 134,401, 134,403, 134,404, 134,405, 134,406, 134,407, 134,413, 134,414, 163, 792, G. 142,990, 142,991, 142,981, 142,982, 142,983, 142,984, 142,985. $100 each I, 177,876, C. 102,938, D. 236,517. These bonds carry the coupons of July 1, 1871, and were issued July 1, 1867, under the act of 1865.

I have sealed the bonds in an envelope writing my name across the seal and labelling them as belonging to the School Fund of West Virginia, and have deposited them as a special deposit in the First

National Bank of Wheeling. The bonds can be exchanged for registered bonds by sending them to Washington. I will attend to it if you desire it to make any other disposition of the bonds you may direct.

The Bank declined to exchange for the stock held in the name of the state, believing that they could not safely do so under section 7, article 8, of the Constitution, besides I was not certain that my authority extended to such an exchange. If I am to make any other disposition of the bonds, please advise me at your earliest convenience.

The stock exchanged at Wellsburg will modify the bond statement to that extent.

Very respectfully,

C. D. HUBBARD.

Statement of Stock held by the State of West Virginia in "The National Bank of West Virginia at Wheeling," "The First National Bank of Wellsburg," and "The Parkersburg National Bank," and the different funds to which said stock is credited.

1837—(July 18)—The Commonwealth of Virginia subscribed 4,000 shares of stock in the Northwestern Bank of Virginia			$400,000.00
1857—March 3.—The Bank purchased of this stock 1,082 shares as follows:			
Northwestern Bank of Virginia at Wheeling,	332	shares	
" " " Wellsburg,	250	"	
" " " Parkersburg	250	"	
" " " Jeffersonville	250	"	
	1,082	"	
			108,200,00
Leaving 2,918 shares			$291,800.00
1865—March 2.—The Bank charged to the Commonwealth of Virginia all the stocks of the Bank of Jeffersonville, on the plea that the State had taken possession of that Bank, 1,642 shares			164.200.00

And transferred the remaining stock to the State of West Virginia, 1,276 shares	127,600.00
1866—July 1.—On the organization of the present Bank this 1,276 shares was transferred at 50 cents on the dollar, as follows, viz:	
National Bank of West Virginia at Wheeling, 300 shares	30,000.00
First National Bank of Wellsburg, 188 shares	18,800.00
Parkersburg National Bank, 150 shares	15,000.00
The Internal Improvement Fund of Virginia subscribed to the Stock of the Northwestern Bank of Virginia:	
1856—August 30.—326 shares	32,600.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the First National Bank of Wellsburg, (163 shares)	16,300.00
The President and Directors of the Literary Fund of Virginia subscribed to the stock of the Northwestern Bank of Virginia—1832—November 24.—500 shares	50,000.00
This stock was transferred at 50 cents on the dollar, 1866, July 1, to the Parkersburg National Bank, 250 shares	25,000.00

SUMMARY.

The State now holds in the—	
National Bank of West Virginia at Wheeling, 300 shares (in name of the State)	$30,000.00
First National Bank of Wellsburg, 188 shares in name of the State	18,800.00
First National Bank of Wellsburg, 163 shares in Internal Improvement Fund	16,300.00
Parkersburg National Bank, 150 shares in Internal Improvement Fund	15,000.00
Parkersburg National Bank, 250 shares in Literary Fund	25,000.00
	$105,100.00

1867—July 9.—The Northwestern Bank of Virginia paid a dividend of 5 per cent on 326 shares Internal Improvement Fund	$1,630.00	
On 1,276 shares Commonwealth of Virginia stock	6,380.00	
On 500 shares Literary Fund	2,500.00	$10,510.00
1868—August 1.—A like dividend of 5 per cent on the same stocks		$10,510.00

February 21, 1871.

I, J. S. Darst, Auditor of the State of West Virginia, and *ex officio* Secretary of the Board of the School Fund of said State, hereby certify that the foregoing is a true and correct copy from the record of the minutes of the proceedings of said Board, pages 37 to 41 of Record Book No. 1 of said Board.

Given under my hand and official seal, this 26th day of February, 1910.

J. S. DARST,
Auditor.

APPENDIX C.

37TH CONGRESS, 2d Session. | SENATE. | MIS. DOC. No. 99.

MEMORIAL OF THE COMMISSIONERS

APPOINTED BY THE

CONVENTION OF WEST VIRGINIA

PRAYING

For the admission of that State into the Union.

MAY 31, 1862.—Referred to the Committee on Territories, and ordered to be printed.

To the Hon. B. F. WADE,

Chairman of the Committee on Territories:

In conformity with the suggestion of your committee, the undersigned, commissioners appointed by the convention to frame a constitution for West Virginia, beg leave to submit the following:

In the month of January, 1861, the Legislature of Virginia, convened in extra session, passed an act providing for the election of delegates on the 4th of February, 1861, to meet in convention at the city of Richmond on the 13th of the same month to take into consideration the then condition of the country.

The act calling the convention provided that it should submit any proposition it might adopt changing the relations of the State to the Federal Government or the organic law of the State to the voters of the State, to be approved or rejected by them at the polls, provided the people should so require by their vote on the 4th day of February, 1861; and accordingly the people, at the same time they voted for delegates to the convention, voted upon the question whether the action of the convention should be submitted to them

for their ratification before the said action of the convention should be of binding obligation.

The people, by a majority of more than fifty thousand votes, declared in favor of submitting the action of the convention to them for ratification or rejection.

On the 17th day of April, 1861, the convention passed an ordinance of secession; on the 24th day of April, 1861, commissioners appointed by the convention entered into an agreement with A. H. Stephens, vice-president of the so-called Confederate States, transferring the State to the said confederacy. On the fourth Thursday in May thereafter the question of ratifying or rejecting the ordinance of secession was submitted to the voters of the State, but prior to that day the authors of secession had organized the military forces of the State in the interest of the so-called Confederate States, and occupied most of the counties of the State on the day of voting upon the ordinance, so that, in fact, a reign of terror was inaugurated to prevent a free and fair expression of the popular will at the polls.

On the 22d of April, 1861, a meeting of the people of Harrison County was held at the courthouse of that county, which adopted the resolutions following:

GRAND UNION MEETING.

1,000 to 1,200 people present.

At a large and enthusiastic meeting of from 1,000 to 1,200 of the citizens of Harrison County, assembled at the courthouse upon a notice of forty-eight hours, on Monday, April 22, 1861, the following preamble and resolutions were adopted without one dissenting voice:

PREAMBLE.

Whereas the convention now in session in this State, called by the legislature, the members of which had been elected twenty months before said call, at a time when no such action as the assemblage of a convention by legislative enactment was contemplated by the people, or expected by the members they elected in May, 1859, at which time no one anticipated the troubles recently brought upon our common country by the extraordinary action of the State authorities of

South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, and Texas, has, contrary to the expectation of a large majority of the people of this State, adopted an ordinance withdrawing Virginia from the Federal Union; and whereas by the law calling said convention it is expressly declared that no such ordinance shall have force or effect or be of binding obligation upon the people of this State until the same shall be ratified by the voters at the polls; and whereas we have seen with regret that demonstrations of hostility, unauthorized by law, and inconsistent with the duty of law-abiding citizens still owing allegiance to the Federal Government, have been made by a portion of the people of this State against the said government; and whereas the governor of this Commonwealth has, by proclamation, undertaken to decide for the people of Virginia that which they had reserved to themselves, the right to decide by their votes at the polls, and has called upon the volunteer soldiery of this State to report to him and hold themselves in readiness to make war upon the Federal Government, which Government is Virginia's government, and must, in law and of right, continue so to be until the people of Virginia shall by their votes and through the ballot box, that great conservator of a free people's liberties, decide otherwise; and whereas the peculiar situation of northwestern Virginia, separated as it is by natural barriers from the rest of the State, precludes all hope of timely succor in the hour of danger from other portions of the State, and demands that we should look to and provide for our own safety in the fearful emergency in which we now find ourselves placed by the action of our State authorities, who have disregarded the great fundamental principle upon which our beautiful system of government is based to wit, "that all governmental power is derived from the consent of the governed," and have, without consulting the people, placed this State in hostility to the federal government by seizing upon its ships and obstructing the channel at the mouth of Elizabeth River, by wresting from the federal officers at Norfolk and Richmond the customhouses, by tearing from the nation's property the nation's flag, and putting in its place a bunting, the emblem of rebellion, and by marching upon the national armory at Harper's Ferry—thus inaugurating a war without consulting those in whose

name they profess to act; and whereas the exposed condition of northwestern Virginia requires that her people should be united in action and unanimous in purpose—there being a perfect identity of interests in times of war as well as in peace: Therefore, be it

Resolved, That it be, and is hereby, recommended to the people in each and all of the counties composing northwestern Virginia to appoint delegates, not less than five in number, of their wisest, best, and discreetest men, to meet in convention at Wheeling, on the 13th day of May next, to consult and determine upon such action as the people of northwestern Virginia should take in the present fearful emergency.

Resolved, That Hon. John S. Carlile, W. P. Goff, Hon. Charles S. Lewis, John J. Davis, Thos. L. Moore, S. S. Fleming, Lot Bowen, Dr. Wm. Dunkin, Wm. E. Lyon, Felix Sturm, and James Lynch, be, and are hereby, appointed delegates to represent this county in said convention.

JOHN HURSEY, *President.*

J. W. HARRIS, *Secretary.*

Strange to say, among that large assembly not a single response was heard to the call by the president for the nays on any of the questions before the meeting.—[*Guard Office, Clarksburg, Va.*]

The proceedings of this meeting were sent to the several counties of northwestern Virginia by special messengers, which responded to the call, and, in accordance with it, a convention of some five hundred delegates from thirty-odd counties of the State met in the city of Wheeling on the 13th day of May, 1861, and adopted the following resolutions:

Convention of the people of northwestern Virginia, held at Wheeling, May 13, 1861.

The following resolutions were unanimously adopted:

1. *Resolved*, That in our deliberate judgment the ordinance passed by the convention of Virginia on the 17th day of April, 1861, known as the ordinance of secession, by which said convention undertook, in the name of the State of Virginia, to repeal the ratification of the Constitution of the United States by this State, and to resume all the

rights and powers granted under said Constitution, is unconstitutional, null and void.

2. *Resolved*, That the schedule attached to the ordinance of secession, suspending and prohibiting the election of members of Congress for this State, is a manifest usurpation of power to which we ought not to submit.

3. *Resolved*, That the agreement of the 24th of April, 1861, between the commissioners of the Confederate States and this State, and the ordinance of the 25th of April, 1861, approving and ratifying said agreement, by which the whole military force and military operations, offensive and defensive, of this Commonwealth, are placed under the chief control and direction of the President of the Confederate States, upon the same principles, basis, and footing, as if the Commonwealth were now a member of said confederacy, and all the acts of the executive officers of our State in pursuance of said agreement and ordinance, are plain and palpable violations of the Constitution of the United States, and are utterly subversive of the rights and liberties of the people of Virginia.

4. *Resolved*, That we earnestly urge and entreat the citizens of the State everywhere, but more especially in the western section, to be prompt at the polls on the 23d instant, and to impress upon every voter the duty of voting in condemnation of the ordinance of secession, in the hope that we may not be involved in the ruin to be occasioned by its adoption, and with the view to demonstrate the position of the west on the question of secession.

5. *Resolved*, That we earnestly recommend the citizens of Western Virginia to vote for members of the Congress of the United States in their several districts, in the exercise of the rights secured to us by the Constitutions of the United States and the State of Virginia.

6. *Resolved*, That we also recommend to the citizens of the several counties to vote at said election for such persons as entertain the opinions expressed in the foregoing resolutions for members of the senate and house of delegates of our State.

7. *Resolved*, That in view of the geographical, social, commercial, and industrial interests of northwestern Virginia, this convention are constrained, in giving expression to the opinion of their constituents,

to declare that the Virginia convention, in assuming to change the relation of the State of Virginia to the federal government, have not only acted unwisely and unconstitutionally, but have adopted a policy utterly ruinous to all the material interests of our section, severing all our social ties, and drying up all the channels of our trade and prosperity.

8. *Resolved,* That in the event of the ordinance of secession being ratified by a vote, we recommend to the people of the counties here represented, and all others disposed to cooperate with us, to appoint on the 4th day of June, 1861, delegates to a general convention, to meet on the 11th of that month, at such place as may be designated by the committee hereinafter provided, to devise such measures and take such action as the safety and welfare of the people they represent may demand—each county to appoint a number of representatives to said convention equal to double the number to which it will be entitled in the next house of delegates; and the senators and delegates to be elected on the 23d instant, by the counties referred to, to the next general assembly of Virginia, and who concur in the views of this convention, to be entitled to seats in the said convention as members thereof.

9. *Resolved,* That inasmuch as it is a conceded political axiom that government is founded on the consent of the governed and is instituted for their good, and it cannot be denied that the course pursued by the ruling power in the State is utterly subversive and destructive of our interests, we believe we may rightfully and successfully appeal to the proper authorities of Virginia to permit us peacefully and lawfully to separate from the residue of the State, and form ourselves into a government to give effect to the wishes, views, and interests of our constituents.

10. *Resolved,* That the public authorities be assured that the people of the northwest will exert their utmost power to preserve the peace, which they feel satisfied they can do, until an opportunity is afforded to see if our present difficulties cannot receive a peaceful solution; and we express the earnest hope that no troops of the Confederate States be introduced among us, as we believe it would be eminently calculated to produce civil war.

11. *Resolved*, That in the language of Washington, in his letter of the 17th of September, 1787, to the President of Congress: "In all our deliberations on this subject we have kept steadily in view that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, and perhaps our national existence." And therefore we will maintain and defend the Constitution of the United States and the laws made in pursuance thereof, and all officers acting thereunder in the lawful discharge of their respective duties.

12. *Resolved*, That John S. Carlile, James S. Wheat, C. D. Hubbard, F. H. Peirpoint, Campbell Tarr, G. R. Latham, Andrew Wilson, S. H. Woodward, and James W. Paxton be a central committee to attend to all the matters connected with the objects of this convention; and that they have power to assemble this convention at any time they may think necessary.

13. *Resolved*, That each county represented in this convention, and any others that may be disposed to co-operate with us, be requested to appoint a committee of five, whose duty it shall be to correspond with the central committee, and to see that all things necessary be done to carry out the objects of this convention.

14. *Resolved*, That the central committee be instructed to prepare an address to the people of Virginia, in conformity with the foregoing resolutions, and cause the same to be published and circulated as extensively as possible.

By order of the convention.

JOHN W. MOSS, *President.*

G. L. CRANMER,
M. M. DENT,
C. B. WAGGENER,
Secretaries.

Under the eighth of which resolutions delegates to a convention were chosen on the 4th of June, 1861, and met in the city of Wheeling on the 11th of that month, and adopted the following declaration on the 13th, two days after they met.

A declaration of the people of Virginia, represented in convention, at the city of Wheeling, Thursday, June 13, 1861.

The true purpose of all government is to promote the welfare and provide for the protection and security of the governed; and when any form or organization of government proves inadequate for, or subversive of this purpose, it is the right, it is the duty of the latter, to alter or abolish it. The bill of rights of Virginia, framed in 1776, reaffirmed in 1830, and again in 1851, expressly reserves this right to a majority of her people. The act of the general assembly, calling the convention which assembled at Richmond in February last, without the previously expressed consent of such majority, was therefore a usurpation; and the convention thus called has not only abused the powers nominally intrusted to it, but with the connivance and active aid of the executive, has usurped and exercised other powers, to the manifest injury of the people, which, if permitted, will inevitably subject them to a military despotism.

The convention, by its pretended ordinances, has required the people of Virginia to separate from and wage war against the government of the United States, and against the citizens of neighboring States, with whom they have heretofore maintained friendly, social, and business relations.

It has attempted to subvert the Union founded by Washington and his co-patriots in the former days of the republic, which has conferred unexampled prosperity upon every class of citizens, and upon every section of the country.

It has attempted to transfer the allegiance of the people to an illegal confederacy of rebellious States, and required their submission to its pretended edicts and decrees.

It has attempted to place the whole military force and military operations of the Commonwealth under the control and direction of such confederacy, for offensive as well as defensive purposes.

It has, in conjunction with the State executive, instituted, wherever their usurped power extends, a reign of terror, intended to suppress the free expression of the will of the people, making elections a mockery and a fraud.

The same combination, even before the passage of the pretended ordinance of secession, instituted war by the seizure and appropriation of the property of the Federal Government, and by organizing and mobilizing armies, with the avowed purpose of capturing or destroying the capital of the Union.

They have attempted to bring the allegience of the people of the United States into direct conflict with their subordinate allegiance to the State, thereby making obedience to their pretended ordinances treason against the former.

"We, therefore, the delegates here assembled in convention to devise such measures and take such action as the safety and welfare of the loyal citizens of Virginia may demand, having maturely considered the premises, and viewing with great concern the deplorable condition to which this once happy Commonwealth must be reduced unless some regular adequate remedy is speedily adopted, and appealing to the Supreme Ruler of the universe for the rectitude of our intentions, do hereby, in the name and on behalf of the good people of Virginia, solemnly declare that the preservation of their dearest rights and liberties, and their security in person and property, imperatively demand the reorganization of the government of the Commonwealth, and that all acts of said convention and executive, tending to separate this Commonwealth from the United States, or to levy and carry on war against them, are without authority and void; and that the offices of all who adhere to the said convention and executive, whether legislative, executive, or judicial, are vacated."

This convention continued in session several weeks, and on the 19th of June, the following ordinance was adopted:

An ordinance for the reorganization of the State government, passed June 19, 1861.

The people of the State of Virginia, by their delegates assembled in convention at Wheeling, do ordain as follows:

1. A governor, lieutenant governor, and attorney general for the State of Virginia shall be appointed by this convention to discharge offices by the existing laws of the State, and to continue in office for

six months, or until their successors be elected and qualified; and the general assembly is required to provide by law for an election of governor and lieutenant governor by the people as soon as in their judgment such an election can be properly held.

2. A council, to consist of five members, shall be appointed by this convention to consult with and advise the governor respecting such matters pertaining to his official duties as he shall submit for consideration, and to aid in the execution of his official orders. Their term of office shall expire at the same time as that of the governor.

3. The delegates elected to the general assembly on the 23d day of May last, and the senators entitled under existing laws to seats in the next general assembly together with such delegates and senators as may be duly elected under the ordinances of this convention, or existing laws, to fill vacancies, who shall qualify themselves by taking the oath or affirmation hereinafter set forth, shall constitute the legislature of the State, to discharge the duties and exercise the powers pertaining to the general assembly. They shall hold their offices from the passage of this ordinance until the end of the terms for which they were respectively elected. They shall assemble in the city of Wheeling on the 1st day of July next, and proceed to organize themselves as prescribed by existing laws in their respective branches. A majority in each branch of the members qualified as aforesaid shall constitute a quorum to do business. A majority of the members in each branch thus qualified, voting affirmatively, shall be competent to pass any act specified in the twenty-fourth section of the fourth article of the constitution of the State.

4. The governor, lieutenant governor, attorney general, members of the legislature, and all officers now in the service of the State, or of any county, city or town thereof, or hereafter to be elected or appointed for such service, including the judges and clerks of the several courts, sheriffs, commissioners of the revenue, justices of the peace, officers of the city and municipal corporations, and officers of militia, and officers and privates of volunteer companies of the State, not mustered into the service of the United States, shall each take the following oath or affirmation before proceeding in the discharge of their several duties:

"I solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinances of the convention which assembled at Richmond on the 13th of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention which assembled at Wheeling on the 11th of June, 1861."

If any elective officer, who is required by the preceding section to take such oath or affirmation, fail or refuse so to do, it shall be the duty of the governor, upon satisfactory evidence of the fact, to issue his writ declaring the office to be vacant, and providing for a special election to fill such vacancy, at some convenient and early day, to be designated in said writ; of which due publication shall be made for the information of the persons entitled to vote at such elections: and such writ may be directed, at the discretion of the governor, to the sheriff or sheriffs of the proper county or counties, or to a special commissioner or commissioners to be named by the governor for the purpose. If the officer who fails or refuses to take such oath or affirmation be appointed by the governor, he shall fill the vacancy without writ; but if such officer be appointed otherwise than by the governor or by election, the writ shall be issued by the governor, directed to the appointing power, requiring it to fill the vacancy.

ARTHUR J. BOREMAN,
President.

G. L. CRANMER, *Secretary.*

This convention, in pursuance of the declaration and ordinance aforesaid, elected a governor, lieutenant governor, and attorney general; each to serve for six months, and until their successors could be elected by the people of the State (which election was had on the 23d day of May, 1862). The governor, by proclamation, convened the legislature, under and by virtue of the power vested in him by the constitution of the State so to do, to meet in the city of Wheeling on the ——— day of July, 1861, and addressed an official letter to the President of the United States, calling upon him, as the

Chief Executive of the United States, to aid him, as the executive of the State, in suppressing the insurrection in the State, and to protect the people of the State from domestic violence. To this letter the President of the United States responded, recognizing the governor, thus elected by the June convention, as the chief magistrate of the Commonwealth of Virginia.

On the 9th day of July, 1861, the legislature elected senators of the United States, who were admitted on the 13th day of July to seats in the United States Senate, as senators from the State of Virginia.

On the 20th of August, 1861, the convention at Wheeling passed the following ordinance:

An ordinance to provide for the formation of a new State out of a portion of the territory of this State.

Whereas it is represented to be the desire of the people inhabiting the counties hereinafter mentioned to be separated from this Commonwealth, and to be erected into a separate State and admitted into the Union of States and become a member of the Government of the United States:

The people of Virginia, by their delegates assembled in convention at Wheeling, do ordain that a new State, to be called the State of Kanawha, be formed and erected out of the territory included within the following described boundary: Beginning on the Tug Fork of Sandy River, on the Kentucky line, where the counties of Buchanan and Logan join the same, and running thence with the dividing lines of said counties and the dividing line of the counties of Wyoming and McDowell to the Mercer County line, and with the dividing line of the counties of Mercer and Wyoming to the Raleigh County line; thence with the dividing line of the counties of Raleigh and Mercer, Monroe and Raleigh, Greenbrier and Raleigh, Fayette and Greenbrier, Nicholas and Greenbrier, Webster, Greenbrier, and Pocahontas, Randolph and Pocahontas, Randolph and Pendleton to the southwest corner of Hardy County; thence with the dividing line of the counties of Hardy and Tucker to the Fairfax Stone; thence with the line dividing the States of Maryland and Virginia to the Pennsylvania line; thence with the line dividing the States of Pennsylvania

and Virginia to the Ohio River; thence down said river, and including the same, to the dividing line between Virginia and Kentucky, and with the said line to the beginning, including within the boundaries of the proposed new State the counties of Logan, Wyoming, Raleigh, Fayette, Nicholas, Webster, Randolph, Tucker, Preston, Monongalia, Marion, Taylor, Barbour, Upshur, Harrison, Lewis, Braxton, Clay, Kanawha, Boone, Wayne, Cabell, Putnam, Mason, Jackson, Roane, Calhoun, Wirt, Gilmer, Ritchie, Woods, Pleasants, Tyler, Doddridge, Wetzel, Marshall, Ohio, Brooke, and Hancock.

2. All persons qualified to vote within the boundaries aforesaid; and who shall present themselves at the several places of voting within their respective counties on the fourth Thursday in October next, shall be allowed to vote on the question of the formation of a new State, as hereinbefore proposed; and it shall be the duty of the commissioners conducting the election at the said several places of voting, at the same time, to cause polls to be taken for the election of delegates to a convention to form a constitution for the government of the proposed State.

3. The convention hereinbefore provided for may change the boundaries described in the first section of the ordinance, so as to include within the proposed State the counties of Greenbrier and Pocahontas, or either of them, and also the counties of Hampshire, Hardy, Morgan, Berkeley, and Jefferson, or either of them, and also such other counties as lie contiguous to the said boundaries or to the counties mentioned in this section, if the said counties to be added, or either of them, by a majority of the votes given, shall declare their wish to form part of the proposed State, and shall elect delegates to the said convention, at elections to be held at the time and in the manner herein provided for.

4. Poll books shall be prepared under the direction of the governor for each place of voting in the several counties hereinbefore mentioned, with two separate columns, one to be headed, "For the new State," the other "Against the new State." And it shall be the duty of the commissioners who superintend, and the officers who conducted the election in May last, or such other persons as the governor may appoint, to attend at their respective places of holding

elections, and superintend and conduct the election herein provided for. And if the said commissioners and officers shall fail to attend at any such place of holding elections, it shall be lawful for any two freeholders present to act as commissioners in superintending the said election, and to appoint officers to conduct the same. It shall be the duty of the persons superintending and conducting said election to employ clerks to record the votes, and to indorse on the respective poll books the expenses of the same.

If, on the day herein provided for holding said election, there shall be in any of the said counties any military force, or any hostile assemblage of persons, so as to interfere with a full and free expression of the will of the voters, they may assemble at any other place within their county, and hold an election as herein provided for. It shall be the duty of the commissioners superintending, and officers conducting said election, and the clerks employed to record the votes, each, before entering upon the duties of his office, to take, in addition to the oath now required by the general election law, the oath of office prescribed by this convention. It shall be the duty of the officers and commissioners aforesaid, as soon as may be, and not exceeding three days after said election, to aggregate each of the columns of said poll-books, and ascertain the number of votes recorded in each, and make a return thereof to the secretary of the Commonwealth, in the city of Wheeling, which return shall be in the following form, or to the following effect:

"We, ———, commissioners, and ———, conducting officer, do certify that we caused an election to be held at ———, in the county of ———, at which we permitted all persons to vote that were entitled to do so under existing laws, and that offered to vote, and that we have carefully added up each column of our poll-books, and find the following result:

"For a new State, ——, votes; against a new State, —— votes.

"Given under our hands this —— day of ——, 1861."

"Under which certificate there shall be added the following affidavit:

"——— county, to wit:

"I, ——, a justice of the peace, (or any officer now authorized by law to administer oaths), in and for said county, do certify that the above-named commissioners and conducting officer severally made oath before me that the certificate by them above signed is true.

"Given under my hand this —— day of ——, 1861."

The original poll-books shall be carefully kept by the conducting officers for ninety days after the day of the election, and upon the demand of the executive shall be delivered to such person as he may authorize to demand and receive them.

5. The commissioners conducting the said election in each of said counties shall ascertain, at the same time they ascertain the vote upon the formation of a new State, who has been elected from their county to the convention, hereinbefore provided for, and shall certify to the Secretary of the Commonwealth the name or names of the person or persons so elected to the said convention.

6. It shall be the duty of the governor, on or before the 15th day of November next, to ascertain and by proclamation make known the result of the said vote; and if a majority of the votes given within the boundaries mentioned in the first section of this ordinance shall be in favor of the formation of a new State, he shall so state in his said proclamation, and shall call upon said delegates to meet in the city of Wheeling on the 26th day of November next, and organize themselves into a convention; and the said convention shall submit, for ratification or rejection, the constitution that may be agreed upon by it to the qualified voters within the proposed State, to be voted upon by said voters on the fourth Thursday in December next.

7. The county of Ohio shall elect three delegates; the counties of Harrison, Kanawha, Marion, Marshall, Monongalia, Preston, and Wood shall each elect two; and the other counties named in the first section of this ordinance shall each elect one delegate to the said convention. And such other counties as are described in the third section of this ordinance shall, for every seven thousand of their population according to the census of 1860, be entitled to one delegate, and to an additional delegate for any fraction over thirty-five hundred; but each of said counties shall be entitled to at least one

delegate. The said delegate shall receive the same per diem as is now allowed to members of the general assembly; but no person shall receive pay as a member of the general assembly and of the convention at the same time.

8. It shall be the duty of the governor to lay before the general assembly, at its next meeting, for their consent, according to the Constitution of the United States, the result of the said vote, if it shall be found that a majority of the votes cast be in favor of a new State, and also in favor of the constitution proposed to said voters for their adoption.

9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of the said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.

The lands within the proposed State of non-resident proprietors shall not in any case be taxed higher than the lands of residents therein. No grant of lands or land warrants issued by the proposed State shall interfere with any warrant issued from the land office of Virginia prior to the 17th day of April last which shall be located on lands within the proposed State now liable thereto.

10. When the general assembly shall give its consent to the formation of such new State it shall forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the said new State may be admitted into the Union of States.

11. The government of the State of Virginia, as reorganized by this convention at its session in June last, shall retain, within the territory of the proposed State, undiminished and unimpaired, all the

powers and authority with which it has been vested, until the proposed State shall be admitted into the Union by the Congress of the United States; and nothing in this ordinance contained, or which shall be done in pursuance thereof, shall impair or affect the authority of the said reorganized State government in any county which shall not be included within the proposed State.

A. I. BOREMAN, *President.*

G. L. CRANMER, *Secretary.*

Under this ordinance the people within the boundary prescribed, having voted almost unanimously for a new State, and having elected delegates to a convention as provided for, those delegates thus elected from the counties named lying in the boundaries of the proposed new State met, and formed the constitution now before the committee, which was, on the 3d of April, 1862, ratified and adopted by the people of the counties named by the vote accompanying the constitution; and, as required by the ordinance, the legislature of the State of Virginia was convened by proclamation of the governor, and passed the act accompanying the constitution, giving the assent of the legislature of Virginia to the formation of the proposed State of West Virginia.

ELBERT H. CALDWELL.
JAMES W. PAXTON.
E. B. HALL.

APPENDIX D.

COMMONWEALTH OF VIRGINIA.

INVESTMENTS IN CAPITAL STOCK.

Investments in Companies Lying Wholly Within the Territory Now Constituting the Commonwealth of Virginia:		
Banks	$ 2,108,591.00	
Turnpike and Road Companies	1,897,747.22	
Bridge Companies	49,622.16	
Navigation Companies	908,173.17	
Railroad Companies	13,713,256.55	
Alexandria Canal Company	272,000.00	
Total Investment in Virginia Companies		$18,949,390.10
Percentage of Total Investment 62.9120		
Investments in Companies Lying Wholly Within the Territory Now Constituting the State of West Virginia:—		
Banks	$ 391,800.00	
Turnpike and Road Companies	700,103.49	
Bridge Companies	78,412.50	
Navigation Companies	210,500.00	
Total Investment in West Virginia Companies		$1,380,815.99

Brought forward		$20,330.206.09
Percentage of Total Investment -- 4.5844		
Investments in Inter-State Companies:—		
Turnpike and Road Companies	$ 175,108.58	
James River and Kanawha Company (3.49% located in West Virginia)	9,245,140.46	
Winchester and Potomac Railroad Company	120,000.00	
Total Investments in Inter-State Companies		9,540,249.04
Percentage of Total Investment 31.6736		
Chesapeake and Ohio Canal Company: Maryland Division		250,000.00
Percentage of Total Investment--0.8300		
Total Investment in Capital Stock		$30,120,455.13

Office Supreme Court, U. S.
FILED,
FEB 15 1911
JAMES H. McKENNEY,
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

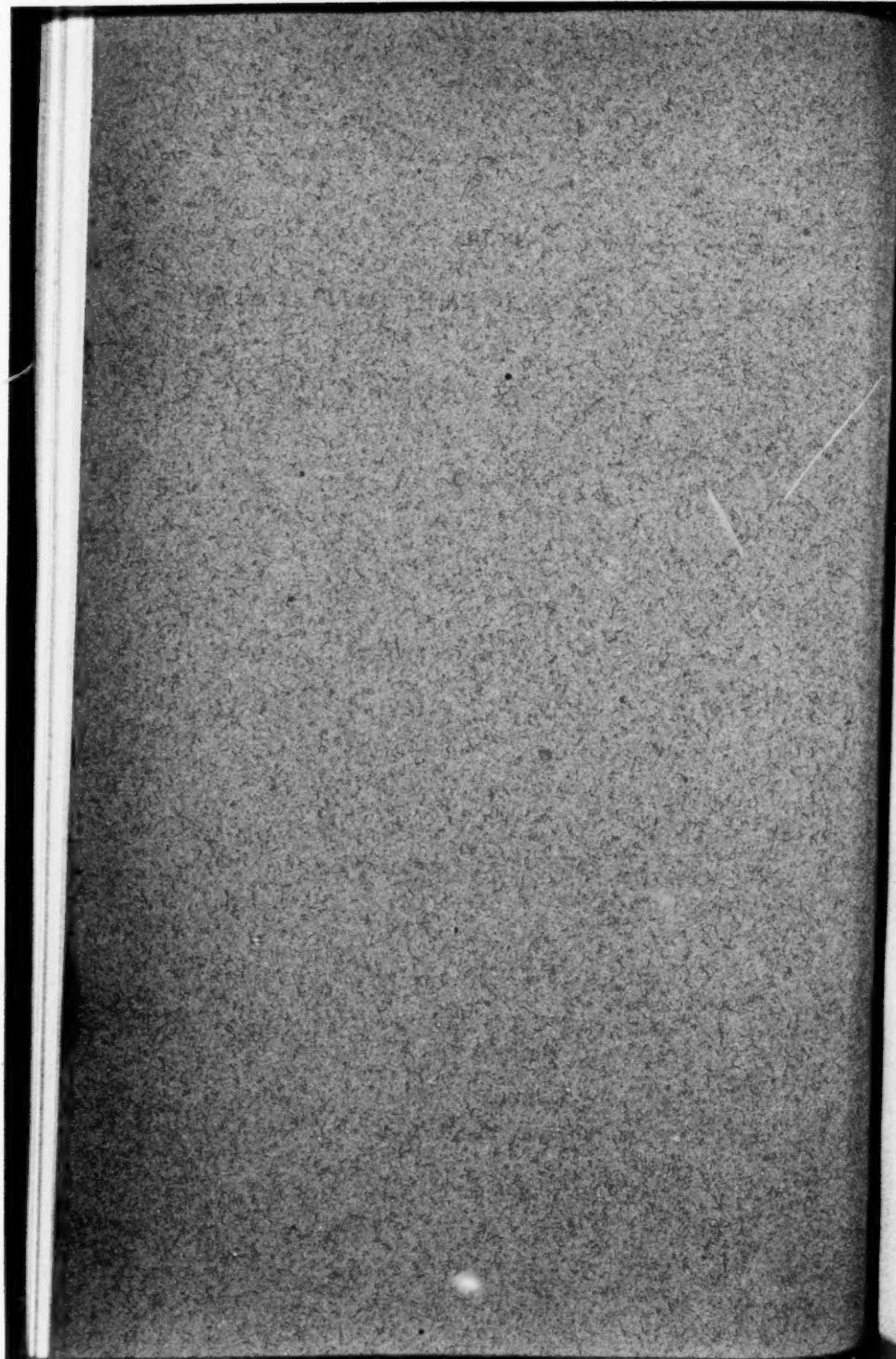
ORIGINAL No. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs. } In Equity.

STATE OF WEST VIRGINIA, Defendant.

Statement prepared by Mr. Thomas Bird Dimry, Assistant for West Virginia, at the request of Mr. Justice Hughes on the hearing of the above case.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1910.

ORIGINAL No. 3.

COMMONWEALTH OF VIRGINIA, Plaintiff,

vs.) In Equity.

STATE OF WEST VIRGINIA, Defendadt.

Statement prepared by Mr. Thomas Bird Dixcy, Accountant for West Virginia, at the request of Mr. Justice Hughes on the hearing of the above case.

STATEMENT NO. ONE.

All State Expenditures Within the Territory now Constituting the Commonwealth of Virginia From March 19, 1823, to January 1, 1861.

Covington and Ohio Railroad:—		
Total Expenditure, (Record, p. 373; item 2.)	$2,787,128.33	
Charged by Master to West Virginia, (Report, p. 83.),	1,146,460.42	
Balance chargeable to Virginia,		$1,640,667.91

Appropriations to Turnpikes and Roads, wholly within the territory now constituting the Commonwealth of Virginia, (Record, bottom p. 1059.)		791,888.04
Construction of the Blue Ridge Railroad, (Record, top p. 1060.)		1,604,824.73
Bridge at Covington, (Record, p. 1060; item 2.)		6,007.07
Virginia's proportion, based on actual cost and mileage, of appropriations to to turnpikes and roads extending into and between the two states as at present constituted, (Record, p. 1060; item 3.)		247,289.33
Birthplace of Washington; Land, (Record, p. 1061; item 4.),†		139.21
Portrait of Chief Justice Marshall, (Record, p. 1061; item 8.)		500.00
Gun Houses in Virginia, (Record, p. 1061; item 10.)		1,000.00
Cannon House; 71st. Regiment, (Record, p. 1061; item 12.)		110.00
Institute for the Deaf, Dumb and Blind, (Record, p. 1061; item 17.)		100,661.94
Eastern Lunatic Asylum; Williamsburgh:—		
Buildings, (Record, p. 1061; item 20.)		68,264.19
Gas installation, (Record, p. 1061; item 21.)		6,000.00
Enclosure walls, etc., (Record, p. 1061; item 22.)		13,16100
Additional charges on buildings, etc., (Same; item 23.)	$38,589.00	
Less amount charged by Master to Ordinary Expenses, (Report, p. 135; item 19.)	5,000.00	33,589.00
Furnituree, buildings, land, etc., (Record, p. 1061; item 24.)		7,266.00
Gun House at Alexandria, (Record, p. 1062; item 3)		900.00
Gun House at Richmond, (Record, p. 1062; item 4.)		1,079.09
Jefferson Statue, (Record, p. 1062; item 16)		9,950.00
Lot on Governor Street, (Record, p. 1062; item 21)		983.92
Museum property, (Record, p. 1062; item 22)		6,958.50
Medical College of Virginia, at Richmond, (Record, p. 1062; item 24)		25,000.00
Monroe Monument and burial, (Record, p. 1063; item 1)		3,887.54
Margaret Academy, Accomac County, (Record, p. 1063; item 2)		1,500.00
Penitentiary:		
Erecting Hospital, (Record, p. 1063; item 7)		9,346.98
Lot, (Record, p. 1063; item 8)		3,000.00
Pipe for water supply, (Record, p. 1063; item 9)		1,600.50
State Courthouse, (Record, p. 1064; item 2)		22,387.54
Capitol Square, Governor's Mansion, etc., (Record, p. 1064; item 3)		12,278.47
University of Virginia, (Record, p. 1064; item 8)		25,000.00
Virginia Military Institute:		
Buildings, (Record, p. 1064; item 9)		151,000.00
Statue of Washington, (Record, p. 1064; item 10)		10,000.00
Washington College, (Record, p. 1064; item 11)		8,114.64
Warehouses purchased, (Record, p. 1064; item 12)		37,550.15
Washington Monument, at Richmond, (Record, p. 1064; item 13)		169,706.81
Western Lunatic Asylum, Staunton:		
Buildings, (Record, p. 1064; item 18)		160,642.37
Water, gas and heating plant, (Record, p. 1064; item 19)		40,685.00
Land, enclosure walls, etc., (Record, p. 1064; item 20)		25,988.01
Support, land, etc., (Record, p. 1064; item 21)	$10,700.00	

Less support charged by Master to Ordinary Expenses, (Report p. 135; item 19)		7,450.01	3,249.99
Surveys:			
Total, (Record, p. 374; item 55 & p. 1063; item 16)		$250,206.56	
Less charged by the Master to:			
West Virginia, (Report, p. 83; item 55)	$ 60,873.19		
Ordinary expenses, (Report, p. 135; item 27).	106,983.67	167,856.86	
Balance, chargeable to Virginia			82,349.70
Total			$ 5,334,527.63

STATEMENT NO. TWO.

Investments, by the Commonwealth of Virginia, in the Capital Stock of Companies incorporated for enterprises of public improvement and convenience, from March 19, 1823, to January 1, 1861.

	Total subscribed by the State	Cost of property located in Virginia	West Virginia
Investments in the Capital Stock of Companies whose property lay wholly within the territory now constituting the Commonwealth of Virginia:			
Banks, (Record, p. 1059)		$ 2,108,591.00	
Turnpike and Road Companies, (Record, p. 1059)		1,897,747.22	
Bridge Companies, (Record p. 1059)		49,622.16	
Navigation Companies, (Rec. p. 1059)		908,173.17	
Railroad Companies (Rec. p. 1059)		13,713,256.55	
Alexandria Canal Company, (Record, p. 1060)		272,000.00	
Total Investment in Virginia Companies.	$18,949,390.10		
Investments in the Capital Stock of Companies whose property lay wholly within the territory now constituting the State of West Virginia:			
Banks:			
Northwestern Bank of Virginia, (Record, p. 820 A)			$ 341,800.00
Fairmont Bank, (Record, p. 820A)			50,000.00
Turnpike and Road Companies, (Record, p. 820 A)			700,103.49
Bridge Companies, Rec. p. 820 A)			78,412.50
Navigation Companies, (Record, p. 820 A)			210,500.00
Total Investment in West Virginia Companies	1,380,815.99		
Investmensts in the Capital Stock of Compaines whose property extended into and between the			

territory now constituting the two States:			
Record,(p. 375; items 70 to 80, inclusive):			
Berkeley & Hampshire Turnpike Co.....	16,572.00	1,249.53	15,322.42
Cross Roads & Summit Pt. Turnpike Company.....	6.000,00	3,217.20	2,728,80
Giles, Fayette & Kanawha Turnpike Company.....	44,991.60	1,070.80	43,920.80
Huntersville & Warm Springs Turnpike Company.....	6,159.24	4,843.63	1,315.61
Hardy & Winchester Turnpike Company....	23,400.00	7,672.86	15,727.14
Hillsborough & Harper's Ferry Turnpike Company.....	6,000.00	5,857.20	142.80
Martinburgs & Winchester Turnpike Company.....	27,000.00	11,045.70	15,954.30
Morgan & Frederick Turnpike Co.....	8,005.00	2,134.67	5,870.33
Mountain Lake & Salt Sulphur Springs Turnpike Company.....	4,800.00	4,000.00	800.00
North Frederick Turnpike Company.....	11,325.00	10,002.24	1,322.76
Raleigh & Wythe Line Turnpike Co.....	400.00	106.67	293.33
Berryville & Charlestown Turnpike Company (Record, pp. 373 & 1061. Master's Report, p. 64; item 6).....	20,455.74	8,523.22	11,932.52
James River & Kanawha Company:			
Record, pp. 820 A and 820 M $9,547,582.21			
Less amount charged by Master as an expenditure within the territory of West Virginia..... 302,441.75	9,245,140.46	8,922,489.06	322,651.40
(Report, p. 83; items 10 to 14, inclusive).			
Whincester & Potomac Railroad Co., (Record, pp. 373 & 1060).....	120,000.00	44,208.00	75,792.00
Chesapeake & Ohio Canal Company; Maryland Division, (Record, p. 1061).....	250.000.00	250,000.00	
Total.....	$30,120,455.13	$28,225,810.88	$1,894,644.25

STATEMENT NO. THREE.

Loans by the Commonwealth of Virginia to Companies incorporated for enterprises of public improvement, from March 19, 1823, to January 1, 1861.

	Total loaned by the State	Cost of property in Virginia	West Virginia
Loans to Railroad Companies whose Railroads lay wholly within the territory now constituting the commonwealth of Virginia; unpaid January 1, 1861. (Record, p. 1060).....	$2,930.000.00	$2,930,000.00	
Loan to Winchester & Potomac Railroad; (Record,			

pp. 489 & 1060. Master's Report, p. 63). 63. 16% in West Virginia	150,000.00	55,260.00	$94,740.00
Loan to James River & Kanawha Company; (Record, pp. 490 & 1063. Master's Report, p. 710. 3.49% in West Virginia	60,000.00	57,906.00	2,094.00
Total	$3,140,000.00	$3,043,166.00	$96,834.00

It will be observed that statement No. 1 applies alone to moneys expended by Virginia within the territory of Virginia on properties wholly owned and continuing the property of the State of Virginia after the division.

It will be observed from statement No. 2. that it consists wholly of the investment in stocks where the property of the companies was located either in what is now Virginia or what is now West Virginia. This statement, in the portion applying to West Virginia, includes bank stock $391,800.00, James River and Kanawha Company stock $322,651.40 and Winchester and Potomac Railroad Company stock $75,792.00, and bonds $94,740.00, which Virginia has admitted was not a state expenditure within the meaning of the first section of the Ordinance and in third paragraph of the decree.

Statement No. 3 shows the loans made to companies and where the property of the company to which the loan was made is situated.

Respectfully submitted,

WILLIAM G. CONLEY,

ATTORNEY GENERAL OF WEST VIRGINIA.

Feb. 10, 1911.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1910.

VIRGINIA *v.* WEST VIRGINIA.

IN EQUITY.

No. 3, Original. Argued January 20, 23, 24, 25, 26, 1911.—Decided March 6, 1911.

A suit brought by one State against another, formed by its consent from its territory, to determine what proportion the latter should pay of indebtedness of the former at the time of separation, is a quasi-international controversy and should be considered in an untechnical spirit. In such a controversy there is no municipal code governing the matter and this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone.

A State is superior to the forms that it may require of its citizens; and where a part of a State separates and is created into a new State, a contract can be created by the constitutive ordinance of the parent State followed by the creation of the contemplated State.

A provision of the constitution of a new State, which is not addressed solely to those who are to be subject to its provisions, but is intended to be understood by the parent State and by Congress as embodying a just term which conditions the parent's consent, amounts to a contract.

In this case, the ordinance of Virginia, the constitution of West Virginia, and the act of Congress admitting West Virginia into the Union, when taken together, establish a contract that West Virginia will pay her share of the debt of Virginia existing at the time of separation.

Where all expenditures for which the debt of a State is created have the ultimate good of the whole State in view, the whole State, and not the particular locality in which the improvements are made, should equally bear the burden; and so *held* in apportioning the debt of Virginia between that State and West Virginia, that the latter should bear its share of the debt so created.

Provisions in the constitution of one State which is a party to a contract with another State cannot be taken as the sole guide to determine obligations under the contract.

What is just and equitable under a contract between States is a judicial question within the competence of this tribunal to decide.

A State may, by suit in this court, enforce against another State a contract in the performance of which the honor and credit of the plaintiff State is concerned. *New Hampshire* v. *Louisiana*, 108 U. S. 76, distinguished.

The liability assumed by West Virginia to bear a fair proportion of the debt of Virginia is a deep-seated equity not discharged by the fact that the creditors of Virginia may have released that State from the obligation of the portion to be assumed by West Virginia as ultimately determined; and Virginia may maintain a suit in this court to determine the liability of West Virginia even if the proceeds are to be applied to those holding certificates on which Virginia is no longer liable.

In apportioning the debt of Virginia between that State and West Virginia, the court rejects other methods proposed and adopts the ratio determined by the master's estimated valuation of real and personal property of the two States at the date of separation.

The value of slaves is properly excluded from such valuation.

There are many elements to be considered in determining the liability for interest by a newly created State on its share of the debt of the parent State, and this court will, before passing on that question in a suit of this nature, afford the parties an opportunity to adjust it between themselves.

A suit between States to apportion debt is a quasi-international controversy involving the honor and constitutional obligation of great States, which have a temper superior to that of private litigants; and, when this court has decided enough, patriotism, fraternity of the Union and mutual consideration should bring the controversy to an end.

THE facts, which involve the adjustment between Virginia and West Virginia of the debt of Virginia at the time

of the formation of the State of West Virginia, are stated in the opinion.

Mr. Samuel W. Williams, Attorney General of Virginia, *Mr. William A. Anderson*, *Mr. Randolph Harrison* and *Mr. John B. Moon* for Virginia:

The insistance of Virginia has been, and is, that West Virginia should be charged with an equitable proportion of the debt, to be ascertained under the Wheeling ordinance construed so as not to defeat the expressed controlling purpose of its enactment, and qualified and ruled by the provisions of Article VIII of the West Virginia constitution, upon which the consent of the legislature of Virginia and of the Congress of the United States to the formation of the new State was predicated.

Agreeably to the decision of this court in its opinion, delivered by the late Chief Justice, the view of Virginia is, and has been, that the ordinance and the provisions of the West Virginia constitution, should be read as being in *pari materia;* but that the constitutional provision, being the latest, must prevail, if, and whenever there is any conflict between them.

Under paragraph 1 of the master's report, the public debt of the Commonwealth of Virginia as of January 1, 1861, is ascertained to be $33,897,073.82. The only controverted questions which have arisen under this paragraph have been as to the inclusion of the bonds of the Commonwealth, held by her Sinking Fund Board, and her Literary Fund Board, as part of the public debt. Virginia withdraws her objections to the master's action in excluding these bonds from the amount of the public debt.

Under paragraph 2 of the master's report, "the extent and assessed valuation of the territory of Virginia and of West Virginia, June 20, 1863, and the population thereof, with and without slaves, separately," as ascertained and reported by the master, are acceptable to Virginia.

Under paragraph 3 of the master's report, he has reported "all expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia, since any part of the debt was contracted."

This is one of the accounts which is called for under § 9 of the Wheeling ordinance. The only questions to be considered in determining whether any particular expenditure made during that period should be charged against West Virginia, are: First, Was it made by Virginia, and Second, Was the money expended in West Virginia? The expenditures made in West Virginia in the construction of the Covington & Ohio Railroad, amounting to $1,146,460.42, are allowed by the master, but this allowance is objected to by West Virginia on the ground that by reason of the public acts and transactions of Virginia and West Virginia, in reference to this railroad, Virginia has lost her right to have those expenditures charged against West Virginia.

The Wheeling ordinance prescribed the basis on which the proportion of the Virginia debt to be assumed by West Virginia was to be ascertained and vested in the new State the ownership of the portion of the Covington & Ohio Railroad located in Virginia, and there is nothing in the concurrent acts of the two States, in reference to the Covington & Ohio Railroad, which repeals or modifies the provisions of that ordinance.

The master rejected, as proper charges against West Virginia, all expenditures made by Virginia in West Virginia territory in the construction of works of internal improvement located in West Virginia, but built through the agency of joint stock companies.

The master erred in the rejection of those items of the account against West Virginia. Paragraph 3 of the decree, closely following the terms of the Wheeling ordinance, directs the master to ascertain and report "*all*

expenditures made by the Commonwealth of Virginia within the territory now constituting West Virginia." The ground relied on for excluding these items from the debit account against West Virginia is, because of the manner in which the expenditures were made; that is, because they were not made by the State directly, through her own officers or employés, but were made through the medium of joint stock companies. There is no such qualification of the expenditures which are to be charged, either in the decree or in the ordinance. The words "direct" or "indirect" are not found in either the decree or in the ordinance. No such classification is to be found in either the decree or in the ordinance.

The view which is here urged as to the expenditures of the Commonwealth in works of internal improvement constructed in West Virginia territory, and as to the classification of such of those expenditures as were made through the agency of joint stock companies, is the view heretofore consistently taken by the representatives of West Virginia most familiar with the subject. The construction of the Wheeling ordinance in respect to the expenditures made by Virginia, through the agency of joint stock companies in the territory of West Virginia and adopted by public officials of West Virginia, remained unchallenged for more than a generation, and until this case, when this new and forced construction is attempted to be placed upon the Wheeling ordinance. We submit that this construction is not warranted, and that there is no authority for the master, under the language of the decree, which requires a report of all expenditures, to classify expenditures as "direct" and "indirect."

The fourth paragraph of the decree directs the master to ascertain "such proportion of the ordinary expenses of the government of Virginia, since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the

basis of the average total population of Virginia, with or without slaves, as shown by the census of the United States."

This inquiry is manifestly predicated upon the language of the Wheeling ordinance, which provides that the new State shall be charged with "a just proportion of the ordinary expense of the state government, since any part of the said debt was contracted."

Nor are the ordinary expenses of a state government merely those which are necessary and regular in their occurrence, but quite as largely such as are usual, though not periodical, and such as are appropriate though not essential to the needs and aspirations of an enlightened and progressive people, and as are lawful.

In a modern State, and particularly in a State of the American Union, caring for, conserving and promoting the economic and material, as well as the social, sanitary, physical, intellectual and moral welfare of its people, many expenditures which may not be regarded as strictly governmental, and some which may not be absolutely necessary, are proper, lawful, usual and ordinary.

Under the decree the master was directed to ascertain and report "such proportion of the ordinary expenses of the government of Virginia since any of the debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia, on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia."

This paragraph is clearly in the alternative with the last clause of paragraph 4. The land assessments in Virginia were made in 1856, seven years before June, 1863, at which latter date at least four-fifths of the present territory of Virginia and one-fifth of the present territory of West Virginia had been ravaged and desolated by war, so that the valuation in 1856 afforded no just measure of

value in 1863. The lands were assessed as of their cash value in 1856. The personal property in Virginia counties was assessed annually on the first of February of each year, as of its then value, in the currency which then constituted the medium of exchange and the standard of value. The currency in 1863, with reference to which, as a standard of value, all their transactions were conducted was the depreciated currency of the Confederate States. The market values of all property, real and personal, in Confederate Virginia, was, throughout 1863, fictitiously enhanced by reason of the depreciation of the currency in circulation in those regions, in which currency alone those values were measured. The uncontradicted evidence in the case shows that the depreciation in value extended not only to slaves, but to all personal property, and was at least fifty per cent as a minimum.

The sixth paragraph of the decree directs the master to ascertain all money paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

The defendant objects to the master's findings under this head because he fails to give West Virginia credit for certain items.

The master's findings upon these items is evidently justified by the facts, and is consistent with the language of the decree and of the Wheeling ordinance.

The amounts received by Virginia upon the accounts and items objected to by defendant, particularly the dividends upon bank stock, were in no sense money paid into the treasury of the Commonwealth from the counties included in the State of West Virginia. They were profits earned by Virginia's own money which she had invested in fiscal institutions, and not money paid to Virginia from West Virginian counties, within the meaning or within the reason of the sixth paragraph of the decree, or

of the ninth section of the Wheeling ordinance, on which that paragraph is based.

The seventh paragraph of the decree directs an account ascertaining "the amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof."

This direction of the decree was doubtless given in response to the provisions of §§ 1, 2 and 5 of the act of the Wheeling legislature passed February 3, 1863. There were large amounts of property, chiefly unappropriated, abandoned, and delinquent and forfeited lands to which the Commonwealth had title, which passed to the new State by the said act of the Wheeling legislature and with the value of which property West Virginia was chargeable by the terms of that act, upon such settlement as should be had between the two States.

It was found to be impracticable to obtain satisfactory evidence of the disposition which had been made by the new State of large quantities of land, delinquent and forfeited to the Commonwealth prior to June, 1863. So that the only charges made by Virginia under the seventh paragraph of the decree are for money and bank stocks actually received by West Virginia from Virginia, after the formation of the new State in 1863 and 1864.

West Virginia received from the Commonwealth amounts aggregating $170,771.46, as assented to and certified by the accountants of both parties, and is reported by the master at page 181 at his report. Under these circumstances it is difficult to understand upon what ground the master excluded these items amounting to $170,771.46, as to which the facts are unquestionable.

These sums of money were undoubtedly received by the new from the old State. At that time the officials of the restored government of Virginia were West Virginians. That government dominated by West Virginians and the new State of West Virginia could appropriate and take out of the treasury of the State of Virginia at Wheeling, whatever it chose, and it did undoubtedly receive from the restored government of Virginia $170,771.46 for which sum it is properly chargeable.

What should West Virginia pay? What is West Virginia's share of the debt?

There can be no question but that the provisions of Article 8, § 8 of the West Virginia constitution, the act of Virginia and the act of Congress created a compact, and that the provisions of the constitution constituted an essential stipulation and condition upon which the consent of the legislature of Virginia to the creation of the new State was predicated. The Congress of the United States would never have given its consent to the partition of Virginia, and the erection of the new State out of her domain, but for the fact that the new State had undertaken to assume an equitable proportion of the then existing debt of the Commonwealth of Virginia, and pay the same with interest thereon.

As to the liability of West Virginia for interest; the contract here considered was a Virginia contract. Under the law of Virginia as repeatedly adjudicated by her highest court, the interest is incident to the obligation, and whenever a debt is due the debtor is bound to pay interest unless relieved from this obligation by agreement. "The interest follows the principal as the shadow does the substance." The decisions of the highest court in West Virginia are in accord with the decisions of the Virginia courts. This rule is applied in Virginia to debts due by the Commonwealth. The framers of the Wheeling ordinance must be presumed to have drawn that instru-

ment with reference to the principle of equity and justice which had then and long before that time been embodied in the laws of Virginia by the repeated decisions of her highest courts.

The language of the Wheeling ordinance is that "The new State shall take upon herself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861," etc.

The debt of Virginia therein referred to was an interest-bearing debt. It was evidenced by the bonds of the Commonwealth, all of which, by the express terms of the obligations, bore interest, payable in the future.

The stipulation of West Virginia expressed in her constitution and accepted and acted upon by Virginia, was that West Virginia would pay the accruing interest on her share of the debt, as it should accrue, and the principal thereof within thirty-four years.

The claim of Virginia is that West Virginia is bound both by the terms of the Wheeling ordinance and of her first constitution to pay a just and equitable part of this debt, with interest thereon until the same shall be fully paid, and that she shall not be suffered to repudiate either obligation.

Mr. Holmes Conrad, counsel for the bondholding creditors, appearing as *amicus curiæ:*

Counsel for bondholders dissents from the views expressed in the briefs and arguments of the Attorneys General of Virginia and West Virginia, respectively, as to the validity and application here of the ninth section of the Wheeling ordinance.

1. The ninth section of the ordinance was not "the basis upon which the consent of the Commonwealth of Virginia was given to the formation of the new State." Such ninth section was never, for one instant of time, recognized by any convention or legislature as having

any binding force upon either State or person, and that as a proposition made by Virginia to West Virginia it was never accepted by the latter State.

2. The ninth section was not "a stipulation imposed by Virginia upon West Virginia as a condition upon which her consent was given and which was afterwards accepted and assented to by the people of West Virginia."

3. It was not "a contractual or a fundamental provision, and it did not constitute a primary obligation, or lie at the foundation of the right of West Virginia to be a State."

West Virginia became a State by being admitted into the Union by the Congress of the United States, upon the consent, first obtained, of the restored State of Virginia, and such consent, in its express terms, referred to the constitution framed for West Virginia, and did not by expression or implication refer to the ordinance or to any of its provisions.

4. The "basis of settlement prescribed by the Wheeling ordinance," whether taken alone or in connection with any legislation or constitutional provision, was never binding "on both States" or on either State.

It was not referred to in the case of *Virginia* v. *West Virginia*, 11 Wall. 39, and, as shown by Mr. Faulkner, the counsel for West Virginia in that case, had no relevancy or connection with the line of argument taken by either the counsel or the court in that case.

The bondholding creditors, whose interests this court has allowed to be represented here, are creditors of Virginia and of West Virginia alike. They are not formal parties to this cause, but their interests are fully recognized and secured by the several acts of the General Assembly of Virginia, which form part of this record, and under which Virginia has received and holds the bonds deposited by them, as a trustee, as to the unfunded one-third of the amounts of such bonds.

On the part of the bondholding creditors, it is insisted that the only just and reasonable plan for ascertaining the proportion of the debt proper to be borne by West Virginia, is that stated and approved by the writers on international or public law, and which was adopted by this court, in its opinion, delivered by Mr. Justice Field, in *Hartman* v. *Greenhow*, 102 U. S. 672.

Both on the ground of international law, and on the express provision of the constitution of the State, under which Congress admitted it into the Union, the liability of West Virginia, for an equitable proportion of the public debt of Virginia, appears to be inevitable.

The bonds evidencing the public debt of Virginia, prior to the first day of January, 1861, and deposited by the holders thereof, with the Commonwealth of Virginia, under the provisions of the several funding acts, were not cancelled or extinguished as to the one-third of the amount thereof, estimated to be the equitable proportion of such debt to be borne by the State of West Virginia.

The Commonwealth of Virginia has never been discharged from liability on the bonds issued by her prior to January 1, 1861, except as to the extent of the two-thirds of the amount thereof for which amount the holders surrendered them, as to such two-thirds, and received in lieu thereof the new bonds of the Commonwealth.

The Wheeling ordinance, as shown by its title, was "to provide for the formation of a new State, out of a portion of the territory of this State." All of its sections, except the ninth, were directed to that end. The State was formed when its constitution was framed and adopted by its people. The ordinance then became *functus officio*, and ceased to have any operation. The ninth section, as contended by counsel for West Virginia, was a proposition made by Virginia and tendered to West Virginia.

West Virginia's time for accepting it, was when she was assembled in convention in November, 1861; then, and

only then, while she was framing her constitution could she have signified her acceptance of the proposition, by embodying it in her constitution. She did not embody it. She embodied something altogether different, and made no reference to the ninth section of the Wheeling ordinance.

A "plan by which the new State should ascertain her just proportion of the public debt of Virginia" was not a matter as to which the parent State, Virginia, could prescribe or dictate terms to the new State. In none of the compacts made by States does it appear that the parent State has ever sought or been allowed to impose on the new State any such burdens, limitations or conditions, as were not immediately connected with the territory ceded to the new State. The extent of such territory, its boundaries, and the rights and assessments incident thereto, and these only, can be the subject-matters of such compacts. All other matters fall within the domestic power and control of the new State.

At no time and in no manner did West Virginia ever accept the proposition contained in the ninth section of the Wheeling ordinance. The provision made by West Virginia in her constitution was not an acceptance of the ninth section of the Wheeling ordinance. It differed in its most material features from that section. Acceptance of a proposition must be absolute and unconditional without the omission or addition of a single term.

The method of ascertainment proposed by the ninth section of the ordinance cannot be accepted as a proper plan for ascertaining West Virginia's just proportion of the public debt of Virginia, because—as the master has found in his report—"The Wheeling ordinance is not predicated upon the *amount* of the public debt," and counsel for West Virginia have repeatedly stated that "the ninth section of the ordinance has no relation to the amount of the public debt of Virginia," etc. "The amount of the

Virginia debt is not a factor to be taken into consideration in ascertaining West Virginia's just proportion."

The "just proportion" of an amount cannot be ascertained without knowing the *amount* itself.

The convention that framed the constitution for the proposed new State did not regard itself as bound by any suggestions offered by the Wheeling ordinance. It either ignored or repudiated the suggestion made as to the name of the new State, and also as to the plan for ascertaining the proper proportion of the public debt of Virginia to be borne by West Virginia.

The act of Congress of December 31, 1862, admitting the State of West Virginia into the Union, did not refer to the Wheeling ordinance, but did refer only to the act of the Virginia legislature and to the constitution adopted by West Virginia.

The act of the legislature of Virginia giving consent to the erection of the new State within its territory did not refer to the Wheeling ordinance, and her consent was not given on any condition, either express or implied, that the ordinance or any of its provisions should form a compact between the two States, but such consent was given to the formation of the new State according to the boundaries and under the provisions set forth in the constitution for the said State of West Virginia, proposed by the convention which assembled in Wheeling on November 26, 1861.

The Wheeling ordinance was adopted by a convention which sat in August, 1861, and the purpose of the Virginia legislature appears to have been to exclude the inference that it referred in any way to the acts of that convention.

Mr. Charles E. Hogg, *Mr. George W. McClintic* and *Mr. John C. Spooner*, with whom *Mr. William G. Conley*, Attorney General of the State of West Virginia, *Mr.*

Wm. Mollohan, Mr. Wm. M. O. Dawson and *Mr. W. G. Matthews* were on the brief, for West Virginia:

When the great transactions occurred which are under review, the Confederate States of America had been formed. Ordinances of secession had been passed by South Carolina, Georgia, Florida, Alabama, Mississippi and Louisiana. Virginia had passed an ordinance of secession, had borrowed $1,000,000, had called for 10,000 men to serve for twelve months and has arranged with the Confederate government for admission to the Confederacy, and in the meantime that her troops should, under the Confederate government, be employed against the United States.

Her troops had seized the Norfolk and Gossport Navy Yards, the arsenal at Harper's Ferry, the Customs Houses, and other property of the United States within her borders; had hauled down the flag of the United States and hoisted in its place another. President Buchanan in a message to Congress had taken the position that there was no power in the Federal Government under the Constitution to coerce a State. Fort Sumter had been surrendered.

President Lincoln had called for 75,000 troops to serve three months. The battle of Bull Run had been fought in which the Federal troops were disastrously defeated. The "New York Tribune," edited by Mr. Greeley, exercising a most potent influence upon public opinion, advocated a peaceful separation of the States determined to withdraw, and many eminent men of undoubted love for the Union in both parties seemed to be of the same opinion. There was grave doubt throughout the country as to the ultimate result. The people of West Virginia could not be blind to the fact that if the Confederacy should be established, that territory would, unless action were taken, be irrevocably a part of that Confederacy.

Isolated from eastern Virginia, and differing in senti-

ment from her people in respect to the right of secession and the institution of slavery, her people are not to be justly chided here or elsewhere for embracing that opportunity to become a State in the Union. In this situation, is to be found the genesis of West Virginia; and in the light of this situation, her people are to be judged and her compacts and "constating" instruments are to be construed.

This court has never decided that when a State is divided the debts of the original State should be ratably apportioned between it and the new State. That question was not involved in or decided by either *Hartman* v. *Greenhow*, 102 U. S. 672, or *Antoni* v. *Greenhow*, 107 U. S. 769.

The true rule of public law in case of the division of a State is that general debts are apportioned on the basis of taxable value. Local debts are assumed by the State for the exclusive benefit of whose territory they were incurred. See Hall's International Law, 78, 80. No rule of international law concerning this point can be said to exist, although many treaties have stipulated a devolution of a part of the debt of the predecessor upon its successor. See also Treaty of Berlin of 1878, and Huber, Nos. 125–135 and 205; Oppenheim's Int. Law, § 84; and Glenn's Int. Law, 36. As to effect of change of sovereignty upon the public rights and obligations, see Hannis Taylor, Int. Law, §§ 166, 168. Pradier Fodéré, in "Traité de Droit International Public," Vol. 1, § 156, states that the state to which cession is made is bound by local debts of ceded territory.

Bluntschli says, § 59, that the debts of the state ought not to be divided proportionally to the population, but that the taxes furnish a juster basis. Bonfils, 3d ed., §§ 223–226, limits the liability exclusively to the debts contracted for the exclusive benefit of its territory, and makes taxation the basis. Franz v. Liszt, University of

Berlin, 2d ed., Berlin, 1902, § 23, p. 175, takes the same view; see also Piédelièvre, Paris, 1894, §§ 154, 155. The proportion of the debt to be borne should be determined in accordance with the relative wealth of the detached portion and of the remainder of the dismembered state, and this wealth is disclosed by the taxes. Alphonse Rivier, Paris, 1826, Vol. 1, p. 213 (Art. 40, V).

Pasquale Fiore, Int. Law, § 132, of his codified Int. Law, § 360 of Nouveau Droit International, says that Bluntschli is correct, that the apportionment should not be made proportionally to population, but apportioned proportionally to the taxes. Pradier Fodéré, §§ 156, 157, states that the state to which cession is made is bound by local debts of ceded territory, citing as instances the acquisition of Lombardy and Venice by Italy, and the Alsace-Lorraine cession of 1871, as the general rule, to which the treaty of Berlin of 1878, imposing part of the public Turkish debt upon Bulgaria, Montenegro, Servia, was an exception.

Max Huber, on Staatensuccession (1898), says, pp. 90–92, § 34, that the division *pro rata regionis* has no reasonable basis, and on p. 96 limits the assumption to special debts; see also § 272, as to debts incurred in the interest of the particular domain. See also Henri Appleton on Annexation and Debts, Paris, 1895, Ch. IV, § II, 65–67.

Even if the court should be of opinion that the rule of international law does not govern the present case, yet if the court, apart from the method prescribed by the ordinance and notwithstanding the provision in the constitution of West Virginia referring the matter for ascertainment to the legislature of that State, should undertake to determine the equitable proportion of the old Virginia debt which West Virginia should assume, it cannot fail to give great weight to the authorities on international law which we have cited. The rules of international law are

based entirely upon considerations of equity and fairness. They have no force nor sanction except from the consent of nations by reason of their evident justice. This court, therefore, in determining what would be an equitable apportionment of the Virginia debt, would undoubtedly desire to take into most careful consideration the unanimous opinion of the modern international law authorities that, in apportioning the debt of a state after its division, equity requires a distinction to be made between the portion of the debt which is local or special in its character and that which is general, so that the parent state and the new state are bound respectively to assume the whole of the local debts relating to their respective territories, leaving only the general debt to be apportioned on the basis of taxable value.

The distinction between general and local debts was recognized in the division of territory of Dakota. Act of Congress of Feby. 22, 1889, § 6, 25 U. S. Stat. 682.

The distinction between general and special debt was discussed in negotiation of treaty between United States and Spain. The American commissioners recognized the distinction, but refused to accede to the demand of Spain, upon the ground that Cuba had had no debt, but, on the contrary, had been a self-supporting colony, and the commissioners considered that the indebtedness was incurred, and its proceeds used, to wage war upon Cuba and to resist by arms the aspirations and struggles of her people to be freed from long-continued despotism and misrule and that the debt was, therefore, a part of Spain's national or general debt.

If we had taken over Cuba in the absence of strife between Cuba and Spain and the United States and Spain, and there had been found an indebtedness incurred by Spain, the proceeds of which had been expended in public improvements in Cuba and for the benefit and betterment of the island and its inhabitants, the question would have

been a different one, and from the standpoint of international law and justice, our attitude must have been different.

The distinction between general debt and local debt is substantial and just and rests upon a sound principle.

The public debt of Virginia prior to January 1, 1861, was a local or special and not a general debt.

In respect of all of the debt, the proceeds of which were expended in West Virginia, the schedule shows that the loans which she effected were numbered as required by law, the certificate of debt or certificates of debt, referring to the act which authorized the particular expenditure, so that it is not only true that the debt represents expenditures for internal improvements, but it is true, so far as the expenditures in West Virginia were concerned, that the moneys which were expended, the proceeds of loans, are traceable to the particular improvements and the stocks and dividends thereon were pledged for the repayment of the loan.

The rule of public law does not govern this case because the Wheeling ordinance and the constitution of West Virginia constitute a special agreement as to the proportion of the old Virginia debt to be assumed by West Virginia.

Virginia is not in a position to insist upon the elimination of the ordinance from the case. Virginia does not contend that the ordinance has ceased to be binding. There is no conflict between the ordinance and the constitution; the latter was adopted within ninety days of the former. The constitutional provision was silent as to method. There was no occasion for repeating in it the language of the ordinance so recently adopted as to the ordinance being a compact. See *Virginia* v. *West Virginia*, 11 Wall. 39; and as to whether Congress consented to it, see *Virginia* v. *Tennessee*, 148 U. S. 503; *Wedding* v.

Meyler, 192 U. S. 582. It certainly was a compact, and wherever it was not carried into the constitution, it remains binding as such.

When the Congress admitted West Virginia into the Union, there were two States, and the ordinance so far as it was not merged into the constitution, was a compact binding from the beginning.

The vice in the argument for Virginia is in the assumption that the ordinance is to be read as if it consisted only of these words: The new State shall take upon itself a just proportion of the public debt of Virginia prior to the first of January, 1861. The ordinance was not confined to the debt.

"Just" and "equitable" are synonymous. See Webster; "1. Justice, right."

If the ordinance is in conflict with the constitution the ordinance must be wholly eliminated; and with the ordinance eliminated the ascertainment of West Virginia's proportion of the debt must be left to the legislature of West Virginia. What proportion of the debt of a county or a city or a town which is divided by legislative authority, shall be borne by the portion set off to make a new town, or included within the boundaries of another county, city or town, is a legislative question and not a judicial one. *Laramie Co.* v. *Albany Co.*, 92 U. S. 307; *Mount Pleasant* v. *Beckwith*, 100 U. S. 514. If the legislature of West Virginia has failed, with or without justification, to discharge the duty imposed upon it by the constitution, the matter was left by the legislature of Virginia and by the Congress to the honor of the legislature of West Virginia. There is no recourse to courts. With the ordinance eliminated the matter is not justiciable. *Tulare County* v. *Kings County*, 117 California, 195; *Los Angeles County* v. *Orange County*, 97 California, 329; *Taylor* v. *Brewer*, 1 Maule & Selwin, 290; and *Cummer* v. *Butts*, 40 Michigan, 322.

This court, however, has declared that the ordinance and the constitution do not conflict and are to be read in *pari materia*. See former opinion in this case, 206 U. S. 290, 319.

The master was right in holding that bonds held by the Sinking Fund and by the Literary Fund were not a part of the public debt of Virginia. *Board of Public Works* v. *Gannt*, 76 Virginia, 465; *Louisiana* v. *Jumel* and *Elliott* v. *Wiltz*, 107 U. S. 711.

The master was right in excluding under paragraph III of the decree expenditures by corporations in which Virginia was a stockholder.

Virginia legislature and courts recognize the distinction between private corporations with stock and public corporations without stock. *Sayre* v. *The Northwestern Turnpike Road*, 10 Leigh, 454.

The master was wrong in finding that interest on the public debt of Virginia was part of the ordinary expenses of the state government.

Interest on a state debt is not an ordinary expense of government because it is payable only during a limited period.

Interest on the old Virginia debt was not an ordinary expense of government because the debt was incurred for extraordinary purposes.

West Virginia is not bound to pay interest from January 1, 1861, on the proportion of the old Virginia debt assumed by her.

There is no basis for Virginia's claim for interest. *Commonwealth* v. *Marston's Administrator*, 9 Leigh, 36.

Neither by the ordinance nor by her constitution did West Virginia *in præsenti* assume any portion of the public debt of Virginia.

The Virginia rule as to private contracts that interest follows the principal does not and cannot apply to contracts between sovereign States. *Higginbotham's Execu-*

trix v. *Commonwealth*, 25 Grattan, 627, does not apply in this case.

United States v. *North Carolina*, 136 U. S. 211, holds that interest is not to be awarded against a sovereign government, unless its consent to pay interest has been clearly manifested by an act of its legislature, or by a lawful contract of its executive officers. Citing *United States* v. *Sherman*, 98 U. S. 565; *Angarica* v. *Bayard*, 127 U. S. 251, 260.

West Virginia did not agree to assume a just proportion of all the outstanding obligations of Virginia, but only of her debt.

There is no evidence that the improvements constructed by Virginia within her present limits were for the benefit of the region now West Virginia.

Under the ordinance and her constitution West Virginia cannot be charged with interest until after the ascertainment, in the manner prescribed, of her equitable proportion of the old Virginia debt.

If there had been any intent to assume, or pay, the accrued interest on the bonds of Virginia, outstanding, the constitution would have so expressed it.

Following the principle announced in *United States* v. *North Carolina*, 136 U. S. 211, many of the state courts have laid down in distinct terms the same proposition. *Sawyer* v. *Colgan*, 102 Florida, 293; *Hawkins* v. *Mitchell*, 34 Florida, 421; *Molineaux* v. *State*, 109 Florida, 380; *Flint &c. R. R. Co.* v. *State Auditors*, 102 Michigan, 502; *Carr* v. *State*, 127 Indiana, 204; *S. C.*, 22 Am. St. Rep. 624, note, p. 448.

Virginia alone is responsible for the delay in apportioning the debt and West Virginia cannot be charged with that delay.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill brought by the Commonwealth of Vir-

ginia to have the State of West Virginia's proportion of the public debt of Virginia as it stood before 1861 ascertained and satisfied. The bill was set forth when the case was before this court on demurrer. 206 U. S. 290. Nothing turns on the form or contents of it. The object has been stated. The bill alleges the existence of a debt contracted between 1820 and 1861 in connection with internal improvements intended to develop the whole State, but with especial view to West Virginia, and carried through by the votes of the representatives of the West Virginia counties. It then sets forth the proceedings for the formation of a separate State and the material provisions of the ordinance adopted for that purpose at Wheeling on August 20, 1861, the passage of an act of Congress for the admission of the new State under a constitution that had been adopted, and the admission of West Virginia into the Union, all of which we shall show more fully a little further on. Then follows an averment of the transfer in 1863 to West Virginia of the property within her boundaries belonging to West Virginia, to be accounted for in the settlement thereafter to be made with the last-named State. As West Virginia gets the benefit of this property without an accounting, on the principles of this decision, it needs not to be mentioned in more detail. A further appropriation to West Virginia is alleged of $150,000, together with unappropriated balances, subject to accounting for the surplus on hand received from counties outside of the new State. Then follows an argumentative averment of a contract in the constitution of West Virginia to assume an equitable proportion of the above-mentioned public debt, as hereafter will be explained. Attempts between 1865 and 1872 to ascertain the two States' proportion of the debt and their failure are averred, and the subsequent legislation and action of Virginia in arranging with the bondholders, that will be explained hereafter so far as needs. Substantially all the bonds outstanding in 1861

have been taken up. It is stated that both in area of territory and in population West Virginia was equal to about one-third of Virginia, that being the proportion that Virginia asserts to be the proper one for the division of the debt, and this claim is based upon the division of the State, upon the above-mentioned Wheeling ordinance and the constitution of the new State, upon the recognition of the liability by statute and resolution, and upon the receipt of property as has been stated above. After stating further efforts to bring about an adjustment and their failure, the bill prays for an accounting to ascertain the balance due to Virginia in her own right and as trustee for bondholders and an adjudication in accord with this result.

The answer admits a debt of about $33,000,000, but avers that the main object of the internal improvements in connection with which it was contracted was to afford outlets to the Ohio River on the west and to the seaboard on the east for the products of the eastern part of the State, and to develop the resources of that part, not those of what is now West Virginia. In aid of this conclusion it goes into some elaboration of details. It admits the proceedings for the separation of the State and refers to an act of May, 1862, consenting to the same, to which we also shall refer. It denies that it received property of more than a little value from Virginia or that West Virginia received more than belonged to her in the way of surplus revenue on hand when she was admitted to the Union, and denies that any liability for these items was assumed by her constitution. It sets forth in detail the proceedings looking to a settlement, but as they have no bearing upon our decision we do not dwell upon them. It admits the transactions of Virginia with the bondholders and sets up that they discharged the Commonwealth from one-third of its debt and that what may have been done as to two-thirds does not concern the defend-

ant, since Virginia admits that her share was not less than that. If the bonds outstanding in 1861 have been taken up it is only by the issue of new bonds for two-thirds and certificates to be paid by West Virginia alone for the other third. Liability for any payments by Virginia is denied and accountability, if any, is averred to be only on the principle of § 9 of the Wheeling ordinance, to be stated. It is set up further that under the constitution of West Virginia her equitable proportion can be established by her legislature alone, that the liquidation can be only in the way provided by that instrument, and hence that this suit cannot be maintained. The settlement by Virginia with her creditors also is pleaded as a bar, and that she brings this suit solely as trustee for them.

The grounds of the claim are matters of public history. After the Virginia ordinance of secession, citizens of the State who dissented from that ordinance organized a government that was recognized as the State of Virginia by the Government of the United States. Forthwith a convention of the restored State, as it was called, held at Wheeling, proceeded to carry out a long entertained wish of many West Virginians by adopting an ordinance for the formation of a new State out of the western portion of the old Commonwealth. A part of § 9 of the ordinance was as follows: "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new state during the said period." Having previously provided for a popular vote, a constitutional convention, etc., the ordinance in § 10 ordained that when the General Assembly should give

its consent to the formation of such new State, it should forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the new State might be admitted into the union of States.

A constitution was framed for the new State by a constitutional convention, as provided in the ordinance, on November 26, 1861, and was adopted. By Article 8, § 8, "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years." An act of the legislature of the restored State of Virginia, passed May 13, 1862, gave the consent of that legislature to the erection of the new State "under the provisions set forth in the constitution for the said State of West Virginia." Finally Congress gave its sanction by an act of December 31, 1862, c. 6, 12 Stat. 633, which recited the framing and adoption of the West Virginia constitution and the consent given by the legislature of Virginia through the last mentioned act, as well as the request of the West Virginia convention and of the Virginia legislature, as the grounds for its consent. There was a provision for the adoption of an emancipation clause before the act of Congress should take effect, and for a proclamation by the President, stating the fact, when the desired amendment was made. Accordingly, after the amendment and a proclamation by President Lincoln, West Virginia became a State on June 20, 1863.

It was held in 1870 that the foregoing constituted an agreement between the old State and the new, *Virginia* v. *West Virginia*, 11 Wall. 39, and so much may be taken

practically to have been decided again upon the demurrer in this case, although the demurrer was overruled without prejudice to any question. Indeed, so much is almost if not quite admitted in the answer. After the answer had been filed the cause was referred to a master by a decree made on May 4, 1908, 209 U. S. 514, 534, which provided for the ascertainment of the facts made the basis of apportionment by the original Wheeling ordinance, and also of other facts that would furnish an alternative method if that prescribed in the Wheeling ordinance should not be followed; this again without prejudice to any question in the cause. The master has reported, the case has been heard upon the merits, and now is submitted to the decision of the court.

The case is to be considered in the untechnical spirit proper for dealing with a quasi-international controversy, remembering that there is no municipal code governing the matter, and that this court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone. *Missouri* v. *Illinois*, 200 U. S. 496, 519, 520. *Kansas* v. *Colorado*, 206 U. S. 46, 82–84. Therefore we shall spend no time on objections as to multifariousness, laches and the like, except so far as they affect the merits, with which we proceed to deal. See *Rhode Island* v. *Massachusetts*, 14 Peters, 210, 257. *United States* v. *Beebe*, 127 U. S. 338.

The amount of the debt January 1, 1861, that we have to apportion no longer is in dispute. The master's finding was accepted by West Virginia and at the argument we understood Virginia not to press her exception that it should be enlarged by a disputed item. It was $33,897,073.82, the sum being represented mainly by interest-bearing bonds. The first thing to be decided is what the final agreement was that was made between the two States. Here again we are not to be bound by techni-

cal form. A State is superior to the forms that it may require of its citizens. But there would be no technical difficulty in making a contract by a constitutive ordinance if followed by the creation of the contemplated State. *Wedding* v. *Meyler*, 192 U. S. 573, 583. And, on the other hand, there is equally little difficulty in making a contract by the constitution of the new State, if it be apparent that the instrument is not addressed solely to those who are to be subject to its provisions, but is intended to be understood by the parent State and by Congress as embodying a just term which conditions the parent's consent. There can be no question that such was the case with West Virginia. As has been shown, the consent of the legislature of the restored State was a consent to the admission of West Virginia under the provisions set forth in the constitution for the would-be State, and Congress gave its sanction only on the footing of the same constitution and the consent of Virginia in the last-mentioned act. These three documents would establish a contract without more. We may add, with reference to an argument to which we attach little weight, that they establish a contract of West Virginia with Virginia. There is no reference to the form of the debt or to its holders, and it is obvious that Virginia had an interest that it was most important that she should be able to protect. Therefore West Virginia must be taken to have promised to Virginia to pay her share, whoever might be the persons to whom ultimately the payment was to be made.

We are of opinion that the contract established as we have said is not modified or affected in any practical way by the preliminary suggestions of the Wheeling ordinance. Neither the ordinance nor the special mode of ascertaining a just proportion of the debt that it puts forward is mentioned in the constitution of West Virginia, or in the act of Virginia giving her consent, or in the act of Congress by which West Virginia became a State. The ordi-

nance required that a copy of the new constitution should be laid before Congress, but said nothing about the ordinance itself. It is enough to refer to the circumstances in which the separation took place to show that Virginia is entitled to the benefit of any doubt so far as the construction of the contract is concerned. See opinion of Attorney-General Bates to President Lincoln, 10 Op. Atty. Gen. 426. The mode of the Wheeling ordinance would not throw on West Virginia a proportion of the debt that would be just, as the ordinance requires, or equitable, according to the promise of the constitution, unless upon the assumption that interest on the public debt should be considered as part of the ordinary expenses referred to in its terms. That we believe would put upon West Virginia a larger obligation than the mode that we adopt, but we are of opinion that her share should be ascertained in a different way. All the modes, however, consistent with the plain contract of West Virginia, whether under the Wheeling ordinance or the constitution of that State, come out with surprisingly similar results.

It was argued, to be sure, that the debt of Virginia was incurred for local improvements and that in such a case, even apart from the ordinance, it should be divided according to the territory in which the money was expended. We see no sufficient reason for the application of such a principle to this case. In form the aid was an investment. It generally took the shape of a subscription for stock in a corporation. To make the investment a safe one the precaution was taken to require as a condition precedent that two or three-fifths of the stock should have been subscribed for by solvent persons fully able to pay, and that one-fourth of the subscriptions should have been paid up into the hands of the treasurer. From this point of view the venture was on behalf of the whole State. The parties interested in the investment were the same, wherever the sphere of corporate action might be. The whole State

would have got the gain and the whole State must bear the loss, as it does not appear that there are any stocks of value on hand. If we should attempt to look farther, many of the corporations concerned were engaged in improvements that had West Virginia for their objective point, and we should be lost in futile detail if we should try to unravel in each instance the ultimate scope of the scheme. It would be unjust, however, to stop with the place where the first steps were taken and not to consider the purpose with which the enterprise was begun. All the expenditures had the ultimate good of the whole State in view. Therefore we adhere to our conclusion that West Virginia's share of the debt must be ascertained in a different way. In coming to it we do but apply against West Virginia the argument pressed on her behalf to exclude her liability under the Wheeling ordinance in like cases. By the ordinance West Virginia was to be charged with all state expenditures within the limits thereof. But she vigorously protested against being charged with any sum expended in the form of a purchase of stocks.

But again, it was argued that if this contract should be found to be what we have said, then the determination of a just proportion was left by the constitution to the legislature of West Virginia, and that irrespectively of the words of the instrument it was only by legislation that a just proportion could be fixed. These arguments do not impress us. The provision in the constitution of the State of West Virginia that the legislature shall ascertain the proportion as soon as may be practicable was not intended to undo the contract in the preceding words by making the representative and mouthpiece of one of the parties the sole tribunal for its enforcement. It was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be and an indication of the way. Apart from the

language used, what is just and equitable is a judicial question similar to many that arise in private litigation, and in nowise beyond the competence of a tribunal to decide.

The ground now is clear, so far as the original contract between the two States is concerned. The effect of that is that West Virginia must bear her just and equitable proportion of the public debt as it was intimated in *Hartman* v. *Greenhow*, 102 U. S. 672, so long ago as 1880, that she should. It remains for us to consider such subsequent acts as may have affected the original liability or as may bear on the determination of the amount to be paid. On March 30, 1871, Virginia, assuming that the equitable share of West Virginia was about one-third, passed an act authorizing an exchange of the outstanding bonds, etc., and providing for the funding of two-thirds of the debt with interest accrued to July 1, 1871, by the issue of new bonds bearing the same rate of interest as the old, six per cent. There were to be issued at the same time, for the other one-third, certificates of same date, setting forth the amount of the old bond that was not funded, that payment thereof with interest at the rate prescribed in the old bond would be provided for in accordance with such settlement as should be had between Virginia and West Virginia in regard to the public debt, and that Virginia held the old bonds in trust for the holder or his assignees. There were further details that need not be mentioned. The coupons of the new bonds were receivable for all taxes and demands due to the State. *Hartman* v. *Greenhow*, 102 U. S. 672. *McGahey* v. *Virginia*, 135 U. S. 662. The certificates issued to the public under this statute and outstanding amount to $12,703,451.79.

The burden under the statute of 1871 still being greater than Virginia felt able to bear, a new refunding act was passed on March 28, 1879, reducing the interest and providing that Virginia would negotiate or aid in negotiating

with West Virginia for the settlement of the claims of certificate holders and that the acceptance of certificates 'for West Virginia's one-third' under this act should be an absolute release of Virginia from all liability on account of the same. Few of these certificates were accepted. On February 14, 1882, another attempt was made, but without sufficient success to make it necessary to set forth the contents of the statute. The certificates for balances not represented by bonds, "constituting West Virginia's share of the old debt," stated that the balance was "to be accounted for by the state of West Virginia without recourse upon this commonwealth."

On February 20, 1892, a statute was passed which led to a settlement, described in the bill as final and satisfactory. This provided for the issue of bonds for nineteen million dollars in exchange for twenty-eight millions outstanding, not funded, the new bonds bearing interest at two per cent for the first ten years and three per cent for ninety years; and certificates in form similar to that just stated, in the act of 1882. On March 6, 1894, a joint resolution of the Senate and House of Delegates was passed, reciting the passage of the four above mentioned statutes, the provisions for certificates, and the satisfactory adjustment of the liabilities assumed by Virginia on account of two-thirds of the debt, and appointing a committee to negotiate with West Virginia, when satisfied that a majority of the certificate holders desired it and would accept the amount to be paid by West Virginia in full settlement of the one-third that Virginia had not assumed. The State was to be subjected to no expense. Finally an act of March 6, 1900, authorized the commission to receive and take on deposit the certificates, upon a contract that the certificate holders would accept the amount realized from West Virginia in full settlement of all their claims under the same. It also authorized a suit if certain proportions of the certificates should be so de-

posited, as since then they have been—the State, as before, to be subjected to no expense.

On January 9, 1906, the commission reported that apart from certificates held by the State and not entering into this account, there were outstanding of the certificates of 1871 in the hands of the public $12,703,451.79, as we have said, of which the commission held $10,851,294.09, and of other certificates there were in the hands of the public $2,778,239.80, of which the commission held $2,322,141.32.

On the foregoing facts a technical argument is pressed that Virginia has discharged herself of all liability as to one-third of the debt; that, therefore, she is without interest in this suit, and cannot maintain it on her own behalf; that she cannot maintain it as trustee for the certificate holders, *New Hampshire* v. *Louisiana*, 108 U. S. 76; and that the bill is multifarious in attempting to unite claims made by the plaintiff as such trustee with some others set up under the Wheeling ordinance, etc., which, in the view we take, it has not been necessary to mention or discuss. We shall assume it to be true for the purposes of our decision, although it may be open to debate, *Greenhow* v. *Vashon*, 81 Virginia, 336, 342, 343, that the certificate holders who have turned in their certificates, being much the greater number, as has been seen, by doing so, if not before, surrendered all claims under the original bonds or otherwise against Virginia to the extent of one-third of the debt. But even on that concession the argument seems to us unsound.

The liability of West Virginia is a deep-seated equity, not discharged by changes in the form of the debt, nor split up by the unilateral attempt of Virginia to apportion specific parts to the two States. If one-third of the debt were discharged in fact, to all intents, we perceive no reason, in what has happened, why West Virginia should not contribute her proportion of the remaining

two-thirds. But we are of opinion that no part of the debt is extinguished, and further, that nothing has happened to bring the rule of *New Hampshire* v. *Louisiana* into play. For even if Virginia is not liable she has the contract of West Virginia to bear an equitable share of the whole debt, a contract in the performance of which the honor and credit of Virginia is concerned, and which she does not lose her right to insist upon by her creditors accepting from necessity the performance of her estimated duty as confining their claims for the residue to the party equitably bound. Her creditors never could have sued her if the supposed discharge had not been granted, and the discharge does not diminish her interest and right to have the whole debt paid by the help of the defendant. The suit is in Virginia's own interest, none the less that she is to turn over the proceeds. See *United States* v. *Beebe*, 127 U. S. 338, 342. *United States* v. *Nashville, Chattanooga & St. Louis Ry. Co.*, 118 U. S. 120, 125, 126. Moreover, even in private litigation it has been held that a trustee may recover to the extent of the interest of his *cestui que trust*. *Lloyd's* v. *Harper*, 16 Ch. D. 290, 309, 315. *Lamb* v. *Vice*, 6 M. & W. 467, 472. We may add that in all its aspects it is a suit on the contract, and it is most proper that the whole matter should be disposed of at once.

It remains true then, notwithstanding all the transactions between the old Commonwealth and her bondholders, that West Virginia must bear her equitable proportion of the whole debt. With a qualification which we shall mention in a moment, we are of opinion that the nearest approach to justice that we can make is to adopt a ratio determined by the master's estimated valuation of the real and personal property of the two States on the date of the separation, June 20, 1863. A ratio determined by population or land area would throw a larger share on West Virginia, but the relative resources of the

debtor populations are generally recognized, we think, as affording a proper measure. It seems to us plain that slaves should be excluded from the valuation. The master's figures without them are, for Virginia $300,887,367.74, and for West Virginia $92,416,021.65. These figures are criticised by Virginia, but we see no sufficient reason for going behind them, or ground for thinking that we can get nearer to justice in any other way. It seems to us that Virginia cannot complain of the result. They would give the proportion in which the $33,897,073.82 was to be divided, but for a correction which Virginia has made necessary. Virginia with the consent of her creditors has cut down her liability to not more than two-thirds of the debt, whereas at the ratio shown by the figures her share, subject to mathematical correction, is about .7651. If our figures are correct, the difference between Virginia's share, say $25,931,261.47, and the amount that the creditors were content to accept from her, say $22,598,049.21, is $3,333,212.26; subtracting the last sum from the debt leaves $30,563,861.56 as the sum to be apportioned. Taking .235 as representing the proportion of West Virginia we have $7,182,507.46 as her share of the principal debt.

We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest. Whether any interest is due, and if due from what time it should be allowed and at what rate it should be computed, are matters as to which there is a serious controversy in the record, and concerning which there is room for a wide divergence of opinion. There are many elements to be taken into account on the one side and on the other. The circumstances of the asserted default and

the conditions surrounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party, would require to be considered. A long time has elapsed. Wherever the responsibility for the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case analogous to this. Statutes of limitation, if nothing else, would be likely to interpose a bar. As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best at this stage to go no farther, but to await the effect of a conference between the parties, which, whatever the outcome, must take place. If the cause should be pressed contentiously to the end, it would be referred to a master to go over the figures that we have given provisionally, and to make such calculations as might become necessary. But this case is one that calls for forbearance upon both sides. Great States have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.